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IDENTIFICATION AND ELIMINATION OF THE CAUSES OF THE HIGH COST OF WORKERS' COMPENSATION INSURANCE TO ALASKAN EMPLOYERS

February 1980

Prepared by

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FORWARD

The Alaska Conference of Employers, Inc. (A.C.E.) was formed in April, 1979 as a research and educational non-profit corporation to investigate on behalf of its members and contributors the causes and possible means of controlling the high cost of workers compensation insurance. The members of and contributors to A.C.E. are shown on Exhibit "A".

Richard L. Block & Associates, retained by A.C.E. to research the subject and make recommendations, engaged in the research phase of this project from April to December, 1979. The actual research was conducted as follows:

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Agencies

Alaska Department of Administration
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Division of Insurance
Alaska Department of Labor
Division of Labor Statistics
Division of Workers' Compensation
Division of Vocational Rehabilitation
United States Department of Labor
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Municipality of Anchorage
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Associations

Alaska Carriers Association
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Firms

Alaska Pacific Assurance Company
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Firemans Fund Insurance Company
Hagens, Smith and Brown
Industrial Indemnity Insurance Company
Insurance Company of North America
Lynden Transport
Northern Adjusters
Providence Washington Insurance Company
Rollins, Burdiek & Hunter
Sohio

Each agency, association and firm made their contribution freely and without prior knowledge of the content of this report or its conclusions or recommendations. It is necessary to point out, therefore, that they may not necessarily concur fully with the reports content, conclusions or recommendations.

LIST OF CONTRIBUTORS

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Alaska Trucking Association Casualty Insurance and Trust

Aleyeska Pipeline Service Company

Arco Oil and Gas

Associated General Contractors Alaska Chapter

Chevron U.S.A. Incorporated

Exxon

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Sohio

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TABLE OF CONTENTS

I	Introduction	Page 1
	National History and Background	Page 3
	Developments in Alaska	Page 7
II	Establishing the Cost Level Objectives	Page 14
	Benchmark State Costs	Page 17
	Cost of Living Difference	Page 18
	Inherent Differences	Page 25
III	Study Approach	Page 28
	Relevance	Page 28
	Competition	Page 28
IV	Reordering Incentives	Page 29
	Statutory Benefit Structure	Page 29
	Maximum Benefits	Page 30
	Permanent Partial Disability	Page 38
	The Effect of Compensation on Healing Time	Page 42
	Average Weekly Wage	Page 45
	Filing Time Limitations	Page 46
	Offsets	Page 47
	Medical Management In Alaska	Page 48
	Choice of Physician	Page 50
	Physicians Fees	Page 52
	Palliative Care vs. Curative Care	Page 52
V	Making the System Elements More Relevant	Page 54
	Post-Injury Employment	Page 54
	Rehabilitation of Workers' Compensation	Page 55
	Re-Employment Preparation	Page 58
	The Workers' Compensation Claims System	Page 59
	Workers' Compensation Board	Page 60
	Responsibilities	Page 60
	The Workers' Compensation Act	Page 60
	Staff and Budget	Page 62
	Capabilities	Page 62
	Data Systems	Page 66
	Impact of Delay in Hearings and Rulings	Page 68
	Employee Information	Page 69
	Monitoring Self-Insurers	Page 69
	Role of Attorney	Page 71
VI	Competition in the Workers' Compensation System	Page 73
	Private Carriers	Page 73
	Earned Premium	Page 73
	Loss Exenses	Page 74
	Incurred Losses	Page 74
	Investment Income and Operating Profit	Page 74
	Effect of Tabs	Page 78
	Assigned Risk Pool	Page 81
	Small Risk Surcharge	Page 82

Pool Servicing Fee Page 88
The Second Injury Fund Page 89
Self-Insurers Page 93
Self-Insurance in Alaska Page 94
Reserving and Administrative Cost Difference Page 96
Safety Groups Page 98
Alternate Insurance Mechanism to Provide the Statutory Benefit Page 99
Ratemaking Page 101
Methodology Page 101
Data Base and Time Lags Page 103

TABLE OF EXHIBITS

1.	Workmans' Compensation Rate Level History.	Page 2
2.	Estimated Cost Of Workers' Compensation To Employers Selected Years, 1940-74.	Page 5
3.	Base States Compared To Alaska For 1976.	Page 15
4.	1978 Earned Rates And Pre-1978 Rate Increases For Benchmark States.	Page 19
5.	Workers Compensation Manual Rates For 40 Risk Classifications In Dollars Per $100 Of Payroll (Absolute Rates) For Alaska, Washington, Oregon, California And Montana.	Page 20
6.	Workers' Compensation Manual Rates For 40 Risk Classifications Adjusted So That Class 88100 = 1.	Page 21
7.	Workers' Compensation Manual Rates For 40 Risk Classifications Adjusted So That Alaska Class 8810 = 1.00.	Page 22
8.	Comparative Cost Of Living Index For Metropolitan Areas In Basis States (For a 4-Person Family with an Intermediate Budget)	Page 23
9.	A Comparison Of Unit Statistical Plan Data (Alaska, Oregon, Montana).	Page 24
10.	A Comparison Of Development Factors (Alaska, Oregon, Montana).	Page 26
11.	State Of Alaska Changes In Workers' Compensation Laws 1975 - 1979.	Page 31
12.	Average Weekly Wages, Maximum Workers' Compensation Benefits For Alaska, California, Oregon, And Washington.	Page 33
13.	Comparison Of Maximum Workers' Compensation Benefits With Estimated Net Annual Take-Home Pay.	Page 34
14.	Percent Distribution Of Money Income, Wage And Salary For Persons Over 14 In Alaska For 1975 (Numbers In Thousands).	Page 36

15. Percent Distribution Of Money Income, Wage And Salary For Persons Over 14 In Alaska (Estimated For 1979). Page 36

16. Current Workers' Compensation Board Members. Page 61.

17. Workmans' Compeensation Divison Department Of Labor. Page 63

18. Percent Increase In Hearing Workload Contrasted Against Budget Increases For Division Of Workers' Compensation FY 1975 Through FY 1979. Page 64

19. Percentage Increase In W/C Board Hearings - FY 1975 Base Period. Page 65

21. Expense Loading And Loss Adjustment Factors For Top Ten Alaskan Carriers, All Alaskan Carriers, And National Experience Between 1976 And 1978. Page 75

22. Workers' Compensation Earned Premium And Incurred Losses Contrasted With Alaska's Average Weekly Wages 1972 - 1980. Page 79

23. Aggregate Loss Ratios For Alaska Carriers Including ALPAC, Net Of ALPAC, And Net Of TAPS For 1976 - 1978. Page 80

24. Employer Growth In The Alaskan Assigned Risk Pool. Page 83

25. (Assigned Risk Pool Growth Trends). Page 84

26. Assigned Risk Pool Charges In Earned Premium And Incurred Losses. Page 85

27. Cumulative Percent Of Total Risk Generating And Total Premium Generated Form Manual Premiums Equal Or Less Than Premium Indicated For FY 1978. Page 86

28. Small Risk For Alaska Assigned Risk Pool 1975 - 1978. Page 87

29. Second Injury Fund Balances For Fiscal Years 1977 - 1979. Page 91

30. Self-Insured Employers In Alaska. Page 95

SUMMARY OF RECOMMENDATIONS

RECOMMENDATION No. 1

THE ESCALATING MAXIMUM BENEFIT SCHEDULE ADOPTED IN AS 23.30.-175 BE ABANDONED AND IN ITS PLACE THERE BE ADOPTED THE FOLLOWING SCHEDULE:

1. 66-2/3% OF THAT PORTION OF WAGES UP TO 150% OF THE STATES AVERAGE WEEKLY WAGES, AND

2. 40% OF THAT PORTION OF WAGES FALLING BETWEEN 150% AND 200% OF THE STATES AVERAGE WEEKLY WAGES AND

3. 20% OF THAT PORTION OF WAGES FALLING BETWEEN 150% AND 300% OF THE STATES AVERAGE WEEKLY WAGE.

4. NO BENEFIT WILL ACCURE FOR ANY WAGES EARNED IN EXCESS OF 300% OF THE STATES AVERAGE WEEKLY WAGE.

RECOMMENDATION No 2

AS 23.30.180 SHOULD BE REPEALED TO ELIMINATE PRESUMPTIVE PERMANENT TOTAL STATUS. ALL WORKERS CLASSIFIED AS PERMANENTLY DISABLED SHOULD BE PAID COMPENSATION BASED STRICTLY ON ACTUAL WAGE LOSS. IN OTHER WORDS, THAT COMPENSATION BE 66-2/3% OF THE DIFFERENCE BETWEEN PRIOR-TO-INJURY AVERAGE WEEKLY WAGES AND CURRENT WEEKLY WAGES SUBJECT TO THE WEEKLY MAXIMUM. IF IT IS IN THE BEST INTEREST OF THE INJURED WORKER, COMPROMISE AND RELEASE AGREEMENTS WITH LUMP SUM SETTLEMENTS SHOULD BE AVAILABLE.

RECOMMENDATION NO. 3

THE PRESENT SCHEDULED PERMANENT PARTIAL DISABILITY LIST IN AS 23.30.190 SHOULD BE ELIMINATED AND A VERY SIMPLE IMPAIRMENT SCHEDULE ADOPTED. THE IMPAIRMENT SCHEDULE SHOULD ONLY ADDRESS THE LOSS OF A HAND OR AN ARM, A FOOT OR A LEG, LOSS OF VISION IN PART OR IN WHOLE, AND LOSS OF HEARING IN PART OR IN WHOLE.

THE IMPAIRMENT AWARD SHOULD EQUAL 52 WEEKS OF COMPENSATION. LOSS OF MORE THAN ONE MEMBER SHALL INCREASE THE AWARD PROPORTIONATELY.

RECOMMENDATION No. 4

DISABILITY COMPENSATION SHOULD BE 66-2/3% OF THE DIFFERENCE BETWEEN THE AVERAGE WAGES EARNED AT THE TIME OF INJURY AND ANY CURRENT WAGES PRESENTLY BEING EARNED SUBJECT TO THE WEEKLY MAXIMUM. AND THE DUBLICATION BETWEEN TEMPORARY AND PERMANENT DISABILITY AWARDS SHOULD BE ELIMINATED.

RECOMMENDATION No. 5

THE MAXIMUM COMPENSATION BENEFITS WHICH A PERMANENTLY DISABLED WORKER MAY BE ALLOWED SHALL BE NO GREATER THAN THREE YEARS ANNUAL SALARY OR WAGES EARNED AT THE TIME OF INJURY UNLESS THAT PERMANENTLY DISABLED WORKER IS, SUBSEQUENT TO THE THREE YEAR PERIOD, DETERMINED TO BE PERMANENTLY TOTALLY INJURED. IN THIS CASE BENEFITS SHALL EXTEND FOR LIFE.

RECOMMENDATION No. 6

EACH PERMANENTLY DISABLED INJURED WORKER SHOULD BE REQUIRED TO FULLY REGISTER WITH THE EMPLOYMENT SERVICE, PURSUE JOB REFERRALS, AND REPORT ANY WAGES EARNED DURING A PRIOR TWO WEEK PERIOD.

IF THE INJURED WORKER DOES NOT REPORT TO THE EMPLOYMENT SERVICE FOR JOB REFERRALS OR REPORT HIS PRIOR TWO WEEKS EARNINGS, BENEFITS SHALL BE REINSTATED AFTER A WORKER REPORTS TO THE EMPLOYMENT SERVICE AND REPORTS HIS PRIOR TWO WEEK WAGES.

RECOMMENDATION No. 7

EACH INJURED WORKER WHO OBTAINS A JOB REFERRAL WILL BE EXPECTED TO OBTAIN AN INTERVIEW. IF WITHIN A THREE YEAR PERIOD THE INJURED WORKER HAS RECEIVED 10 JOB REFERRALS AND IS NOT EMPLOYED, THE EMPLOYMENT SERVICE WILL CONTACT THE DIVISION OF WORKERS' COMPENSATION WHO WILL NOTIFY THE CARRIER OR THE EMPLOYER TO CEASE BENEFITS. IF ON THE OTHER HAND, THE PERMANENTLY DISABLED WORKER, WITHIN THE THREE YEAR PERIOD OF TIME HAS NOT OBTAINED 10 JOB REFERRALS, THIS WILL PERMIT A DETERMINATION OF PERMANENT TOTAL DISABILITY IN ACCORDANCE WITH THE FACTS.

RECOMMENDATION No 8

PRIOR TO AN EMPLOYEE BEING CLASSIFIED IN A PERMANENT DISABILITY STATUS, IT WOULD BE IN THE BEST INTEREST OF THE EMPLOYER DURING THE PERIOD THE INJURED WORKER IS REACHING MAXIMUM MEDICAL IMPROVEMENT, (I.E., DURING THE PERIOD HE IS IN THE TEMPORY TOTAL STATUS) THAT ALL EFFORTS TOWARD JOB, VOCATIONAL AND PHYSICAL REHABILITATION BE MADE. IF REHABILITATION AND MAXIMUM MEDICAL IMPROVEMENT CONINCIDE, THE POTENTIAL COMPENSATION LIABILITY WILL BE MINIMIZED.

RECOMMENDAITON No. 9

AS 23.30.220 (1) SHOULD BE AMENDED TO READ "THE AVERAGE WEEKLY WAGE IS CALCULATED BY DIVIDING 52 INTO THE TOTAL WAGES EARNED, INCLUDING SELF-EMPLOYMENT, IN THE TWELVE MONTHS PRECEDING THE INJURY.

RECOMMENDATION No. 10

AS 23.30.105 SHOULD BE AMENDED TO PROVIDE FOR SUBTANTIALLY SHORTER FILING PERIODS TO SIX MONTHS AFTER VOLUNTARY PAYMENTS HAVE TERMINATED BUT IN ANY EVENT NO LATER THAN TWO YEARS AFTER INJURY.

RECOMMENDATION No. 11

WE RECOMMEND THAT OFFSETS SIMILAR TO THOSE PROVIDED BY SOCIAL SECURITY AGAINST WORKERS COMPENSATION, BY PROVIDED FOR UNEMPLOYMENT INSURANCE BENEFITS AND RETIREMENT PROGRAM BENEFITS.

RECOMMENDATION No. 12

THE EMPLOYER, OR CARRIER SHOULD BE ALLOWED TO DESIGNATE THE PANEL OF PHYSICIANS FROM WHICH THE INJURED WORKER MUST SELECT HIS TREATING PHYSICIAN. THE PANEL SHOULD INCLUDE AT LEAST TWO PHYSICIAN IN EACH GEOGRAPHIC AREA FROM EACH RECOGNIZED MEDICAL SPECIALITY. THERE SHOULD BE TWO EXCEPTIONS TO THIS RULE; a) IF THE INJURED WORKER HAS SEEN A FAMILY PHYSICIAN OR A PHYSICIAN IN THE SAME SPECIALITY AS REQUIRED FOR THE INDUSTRIAL INJURY FOR ACTUAL TREATMENT WITHIN THE ONE YEAR PRECEDING THE INDUSTRIAL INJURY, HE MAY BE TREATED BY THAT PHYSICIAN AND b)IF THE WORKER IS NOT RESPONDING TO TREATMENT OR IS OTHERWISE DISSATISFIED WITH THE FIRST SELECTED PHYSICIAN, HE MAY REQUIRE THE CARRIER OR EMPLOYER TO PROVIDE A LIST OF THREE OTHER PHYSICIANS IN THE REQUIRED SPECIALTY IN THE WORKER'S GEOGRAPHIC AREA FROM WHICH THE WORKER MAY SELECT A SECOND TREATING PHYSICIAN.

RECOMMENDATION No. 13

THE DIVISION OF WORKERS COMPENSATION SHOULD ACCUMULATE AND PUBLISH USUAL AND CUSTOMARY FEES CHARGED FOR SPECIFIC MODALITIES BY PHYSICIANS FOR USE IN EVALUATING THE PROPRIETY OF FEES CHARGED IN WORKERS COMPENSATION CASES.

RECOMMENDATION No. 14

THE GREATER USE OF PAIN CLINICS AS AN ACCEPTED MODALITY SHOULD BE ENCOURAGED AMONG CLAIM ADJUSTERS AND THE WORKER. THE COMPENSAITON BOARD SHOULD BE AUTHORIZED IN ADDITION TO THE AUTHORITY CONFERRED BY AS 23.30.095 (b) TO SUSPEND COMPENSATION TO THE INJURED WORKER FAILING TO COOPERATE WITH PAIN CLINIC TREATMENT.

RECOMMENDATION No. 15

EMPLOYERS/INSURERS SHOULD FURNISH RE-EMPLOYMENT PREPARATION SERVICES BY VOCATIONAL REHABILITATION SPECIALIST TO WORKERS ON TEMPORARY TOTAL STATUS FOR NINETY DAYS OR MORE WHO HAVE NOT RETURNED TO WORK BECAUSE OF THE EXPECTED RESIDUAL OR RESOLVING PHYSICAL EFFECTS OF THEIR COMPENSABLE INJURY OR DISEASE.

RECOMMENDATION No. 16

THE DIVISION OF WORKERS COMPENSATION SHOULD BE PROVIDED A SYSTEMS STAFF WHO SHALL PREPARE IN CONCERT WITH THE PRIVATE CARRIERS, THE SELF-INSURERS, THE NATIONAL COUNCIL ON COMPENSATION INSURANCE, AND THE DEPARTMENT OF OCCUPATIONAL SAFETY AND HEALTH, A DATA SYSTEM WHICH WILL ALLOW THE WORKERS COMPENSAITON DIVISION TO PROVIDE EMPLOYERS USEFUL INFORMATION TO ENABLE THEM TO CONTAIN THEIR WORK INJURY COSTS, DECREASE INJURY FREQUENCY AND SEVERITY AND TO EVALUATE THEIR SAFETY SYSTEMS AND WHICH WILL ALLOW THE DIVISION OF INSURANCE TO MAKE THE RATE MAKING PROCESS MORE RELEVANT.

RECOMMENDATION No. 17

AN ADDITIONAL TWO HEARING OFFICERS AND CONCOMITANT SUPPORT PERSONNEL SHOULD BE PROVIDED THE DIVISION. ALL DISPUTED CLAIMS SHOULD BE HEARD BY ONLY THE PROFESSIONAL HEARING OFFICER WHO DISCOVERS THE FACTS AND PREPARES AND ISSUES OPINIONS. ONLY APPEALS FROM THE HEARING OFFICER'S OPINION WOULD BE HEARD BY THE FULL BOARD. HEARINGS OUGHT THEN TO BE SCHEDULED IN A TIMELY WAY THROUGHOUT EACH WORK WEEK.

RECOMMENDATION No. 18

WE RECOMMEND THAT EACH INSURER OR EMPLOYER PROVIDE A DESCRIPTIVE BROCHURE TO EACH EMPLOYEE SETTING FORTH A CLEAR, CONCISE AND EASY TO READ EXPLANATION OF THE WORKERS' COMPENSATION SYSTEM AND THE INJURED EMPLOYEE'S ENTITLEMENTS UNDER THE SYSTEM.

RECOMMENDATION No. 19

A SECTION OF ANALYSIS AND REGULATION BE ESTABLISHED WITHIN THE DIVISION TO EVALUATE AND RECOMMEND ISSUANCE OF CERTIFICATES OF SELF-INSURANCE. THE DEPARTMENT SHOULD ALSO BE CHARGED WITH THE CONTINUOUS MONITORING OF AND DATA GATHERING FROM SELF-INSURERS IN A MANNER SO THAT THIS DATA CAN BE COMPARED TO THAT GATHERED FROM THE PRIVATE SECTOR.

RECOMMENDATION No. 20

CARRIERS AND EMPLOYERS SHOULD INSTITUTE THE PRACTICE OF USING HEARING REPRESENTATIVES FOR PREPARING AND PRESENTING THE MAJORITY OF ITS CASES. BEFORE THE WORKERS' COMPENSATION HEARING OFFICERS OR BOARD.

RECOMMENDATION No. 21

AS 21.18 SHOULD INCLUDE A PROVISION PERMITTING CARRIERS TO RECOGNIZE REMARRIAGE SETTLEMENT AND FINDINGS OF NO LIABILITY TO BE INCLUDED IN THE RESERVE SETTING. IF THERE IS A RELUCTANCE TO PERMIT THIS CHANGE FOR STATUTORY REPORTING PURPOSES, THEN AS 21.39 SHOULD INCLUDE A PROVISION REQUIRING ADJUSTMENT IN RESERVE FOR REMARRIAGE TO REFLECT, SETTLEMENT, REMARRIAGE AND FINDINGS OF NO LIABILITY.

RECOMMENDATION NO. 22

INTEREST RATE ASSUMPTIONS IN AS 21.18.090(3)(4) SHOULD BE INCREASED TO MORE NEARLY REFECT REALISTIC YIELDS ON INVESTMENTS. THE 7.5% ASSUMPTION USED FOR IMMEDIATE ANNUITY AND ENDOWMENT CONTRACTS IS APPROPRIATE. IF THERE IS RELUCTANCE TO PERMIT THIS CHANGE FOR STATUTORY REPORTING PURPOSES, THEN AS 21.39 SHOULD INCLUDE A PROVISION REQUIRING ADJUSTMENT IN RESERVE FOR REMARRRIAGE TO REFLECT THE 25% ANNUITY ASSUMPTIONS ON RESERVES.

RECOMMENDATIONS No. 23

IF, IN THE FUTURE, ANOTHER EXTRAORDINARY CONSTRUCTION PROJECT OF THE MAGNITUDE OF THE TRANS-ALASKA PIPELINE IS TO OCCUR WITHIN THE STATE, AND IF A SPECIAL WRAP-UP INSURANCE PROGRAM IS UTILIZED, WE RECOMMEND THE DIRECTOR OF THE DIVISION OF INSURANCE REQUIRE FOR THE PURPOSES OF WORKER'S COMPENSATION RATE MAKING, ALL PREMIUMS PAID, LOSSES INCURRED, AND EXPERIENCE REALIZED BY THIS PROJECT BE SEGREGATED FROM ALASKAN EXPERIENCE AS A WHOLE AND NOT BE INCLUDED IN GENERAL STATE RATE MAKING.

RECOMMENDATION NO. 24

THE DIRECTOR OF INSURANCE SHOULD ORDER THE SURCHARGE BE ELIMINATED FOR ALL RISKS IN THE ASSIGNED RISK POOL WITH ESTIMATED ANNUAL STANDARD PREMIUMS EQUAL TO OR LESS THAN $1500. FOR ALL RISKS, OTHER THAN AIR CARRIERS IN THE ASSIGNED RISK POOL PAYING ESTIMATED ANNUAL PREMIUMS OF GREATER THAN $1500 THE SURCHARGE SHOULD BE 10%.

RECOMMENDATION No. 25

WE RECOMMEND THAT THE ALLOWED EXPENSE LOADING FACTOR FOR THE SERVICING CARRIERS OF THE ASSIGNED RISK POOL BE NO LARGER THAN THAT ALLOWED BY THE NCCI FOR CARRIERS SERVICING RISK IN THE VOLUNTARY MARKET.

RECOMMENDATION No. 26

WE RECOMMEND THAT THE FUND BE AUDITED YEARLY BY INDEPENDENT ACTUARIAL CONSULTANTS AND THAT ALL PROJECTED REVENUES AND CLAIMS BE ESTABLISHED. IF THE EXPECTED LIABILITIES OF THE FUND EXCEED THE PROJECTED CARRIER REVENUES, THAN AN ADDITIONAL APPROPRIATION TO MAKE UP FOR THIS DIFFERENCE BE MADE FROM THE GENERAL FUND.

RECOMMENDATION No. 27

WE RECOMMEND THAT MEDICAL PAYMENTS ALONG WITH DISABILITY COMPENSATION PAYMENTS AFTER THE FIRST 104 WEEKS OF DISABILITY BE COVERED BY THE SECOND INJURY FUND.

RECOMMENDATION No. 28

WE RECOMMEND THAT ANY FIRST INJURY DOCUMENTATION ESTABLISHED PRIOR TO A SCOND INJURY EVEN IF DISCOVERED AFTER THE SECOND INJURY BE SUITABLE FOR ESTABLISHING THE SECOND INJURY FUND CLAIM.

RECOMMENDATION No. 29

WE RECOMMEND THAT THE SECOND INJURY FUND BE ALLOWED AND PROPERLY FUNDED TO MAKE LUMP SUM REIMBURSEMENTS TO ANY CARRIER OR EMPLOYER WHO PROVIDES A LUMP SUM SETTLEMENT TO AN INJURED WORKER.

RECOMMENDATION No. 30

THE DIVISION OF INSURANCE SHOULD PROMULGATE REGULATIONS ADEQUATE TO PERMIT CASH FLOW PROGRAMS FOR INSUREDS ON SIGNIFICANT PORJECTS WITH WRAP-UP POLICIES WITH ESTIMATED AGGREGATE PREMIUMS LARGE ENOUGH THAT THE RETROSPECTIVE PREMIUMS ON THE POLICY WOULD EFFECTIVELY COVER ALL LOSSES UP TO NO LESS THAN A $100,000 PER CLAIM RETENTION PLUS ALL EXPENSE AND REINSURANCE COST.

RECOMMENDATION No. 31

EMPLOYERS MEMBERS OF INDUSTRY TRADE ASSOCIATIONS EXPLORE THE POSSIBILITY OF CREATING SAFETY GROUPS AS A MEANS OF CREATING MORE SAFETY AWARENESS AND INCENTIVE AND TAKING ADVANTAGE THE ECONOMIES OF SCALE AVAILABLE FROM LARGER WORKERS' COMPENSATION POLICIES.

RECOMMENDATION No. 32

WE RECOMMEND THAT CARRIERS OTHER THAN CASUALTY CARRIERS BE ALLOWED TO OFFER PROGRAMS FOR WORKERS' COMPENSATION, THUS ALLOWING EMPLOYERS TO PUT TOGETHER A WORKERS' COMPENSATION PACKAGE UTILIZING HEALTH CARE INSURERS AND DISABILITY PROGRAM INSURERS WHICH MANY EMPLOYERS ARE ALREADY UTILIZING FOR OTHER EMPLOYEE BENEFITS.

RECOMMENDATION No. 33

WE RECOMMEND THAT THE DIVISION OF INSURANCE REQUIRE THE NCCI TO INVESTIGATE THE USE OF ACCIDENT YEAR STATISTICS RATHER THAN THOSE USED CURRENTLY WITH THE EXPECTATION THAT THIS DATA BASE WILL BE PUT IN PLACE AS QUICKLY AS PRACTICABLE.

RECOMMENDATION No. 34

AS 21.39 SHOULD BE AMENDED TO LIMIT WORKERS' COMPENSATION RATING BUREAUS TO PROMULGATING PURE LOSS CLASS RATES. CARRIERS SHOULD BE REQUIRED TO USE ONLY THE PURE LOSS RATES ON FILE PLUS EXPENSE LOADINGS WHICH COMPLY WITH THE CURRENT STANDARDS FOR RATE PROPRIETY.

IDENTIFICATION AND ELIMINATION OF CAUSES OF HIGH COST WORKERS' COMPENSATION INSURANCE TO ALASKA EMPLOYERS

I INTRODUCTION

Alaskan employers' justification for increasing and continuing disenchantment with workers' compensation can probably be best illustrated by the summary of the history of rate increases since September, 1957, set out in Exhibit 1, which identifies the components of increase due to adverse claim experience, due to law changes, and due to changes in the payroll base. These changes in rate level are aggregate average changes in manual rates. Some of the more than 500 classifications into which insureds are segregated for rating purposes have experienced larger increases and some smaller increases than the average. The total cumulative change in the workers' compensation rate between the years 1968 and 1978 is an increase of 132%. This 132% increase in rate may be directly attributed to a 47% increase due to adverse claims experience, an 86% increase due to law changes, and a 15% decrease due to the change that the NCCI effected in the payroll base. Prior to 1968, though rates did change, the cumulative effect of experience rate decreases and law change increases tended toward decreasing the effective rate which bottomed out in 1968 approximately 15% below 1957 levels. From 1968 to 1974 the rates gradually inched their way back to 1957 levels.

Since 1975, dramatic increases in cost have occurred engendering great concern among even the smallest Alaskan employer. The employers believe that this trend of ever increasing payroll costs must be broken. In order to determine the most effective way of containing workers' compensation costs, the employers in Alaska determined in early 1979 that a comprehensive review of the total system for paying and funding benefits for injured workers was in order and formed the Alaska Conference of Employers, Inc. who's objective it was to determine a strategy to reduce workers' compensation costs over the long term. To effectuate this objective they contracted with Richard L. Block & Associates to examine, identify, and evaluate strategies which will result in a "long term reduction in payroll related costs for the broadest base of Alaskan employers to a level commensurate with the payroll related costs for employers in the average of lower 48 states while preserving the legitimate entitlements to Alaska workers".[1] To achieve this end, this firm has surveyed employers, insurers, attorneys, health care providers and government agencies to develop a list of the possible problem areas related to the pressures generating these increased costs. As this list of problem areas was developed, each one was investigated with respect to its factual basis, the frequency of its occurrence and the cost impact attributable to it. For each identified problem area, a set of possible solutions were posed. With each proposed solution we have estimated where possible frequency or cost reductions can be expected from their adoption. Included are suggested administrative changes, health care and rehabilitation management changes, and legislative amendment.

EXHIBIT 1

WORKMEN'S COMPENSATION RATE LEVEL HISTORY

Date of Rate Change	Total % Change in Rate Level	Cumulative Total Change	Percent Due To Experience	Cumulative Change Due to Experience	Percent Due to Change in Payroll Base	Cumulative Change Due to Change in Payroll Base	Percent Due to Law Change	Cumulative Change Due to Law Change
09/30/57	-0-	100.0	-0-	100.0	-0-	100.0	-0-	100.0
10/01/57	-11.5	88.5	-11.5	88.5	-0-	100.0	-0-	100.0
10/01/58	- 8.8	80.7	- 8.8	80.7	-0-	100.0	-0-	100.0
08/01/59	+ 6.0	85.5	-14.6	68.9	-0-	100.0	+24.1	124.1
12/01/60	- 1.3	84.4	- 1.4	67.9	-0-	100.0	+ 0.1	124.2
12/31/61	+ 6.2	89.7	+ 6.2	72.2	-0-	100.0	-0-	124.2
12/31/62	- 0.4	89.3	- 0.7	71.6	-0-	100.0	+ 0.3	124.6
12/31/63	- 5.4	84.5	- 5.4	67.7	-0-	100.0	-0-	124.6
10/01/64	+15.1	97.2	+ 9.6	74.2	-0-	100.0	+ 5.0	130.8
09/01/65	- 0.3	96.9	- 0.3	74.0	-0-	100.0	-0-	130.8
10/01/66	-11.8	85.5	-13.0	64.4	-0-	100.0	+ 1.4	132.7
11/01/67	- 3.1	82.9	- 3.1	62.4	-0-	100.0	-0-	132.7
01/01/69	+ 7.2	88.8	+ 4.9	65.5	-0-	100/0	+ 2.2	135.6
*11/01/69	+ 1.6	90.2	+ 6.1	69.5	- 4.2	95.8	-0-	135.6
10/01/70	+ 5.4	95.1	- 1.2	68.6	-0-	95.8	+ 6.7	144.7
04/01/72	- 5.2	90.2	- 5.2	65.0	-0-	95.8	-0-	144.7
06/15/72	+15.8	104.4	-0-	65.0	-0-	95.8	+15.8	167.5
03/01/73	- 3.1	101.2	- 3.1	63.0	-0-	95.8	-0-	167.5
06/01/74	+34.2	135.7	+20.7	76.1	-0-	95.8	+11.2	186.2
+06/01/75	+49.9	203.5	+10.9	84.4	-0-	95.8	+35.2**	251.7
06/01/75	- 2.4	198.6	-0-	84.4	- 2.4	93.5	-0-	251.7
11/01/76	+ 3.7	206.0	- 8.2	77.5	-0-	93.5	+13.0***	282.4
02/01/77	+ 6.0	218.3	-0-	77.5	-0-	93.5	+ 6.0	301.5
++09/01/77	-18.6	177.7	-0-	77.5	-0-	93.5	-18.6	245.4
03/01/78	+ 5.0	186.6	+ 4.0	80.6	-0-	93.5	+ 1.0	247.8
+03/01/78	- 8.2	171.3	-0-	80.6	- 8.2	85.8	-0-	247.8
+06/01/78	- 0.8	169.9	-0-	80.6	- 0.8	85.1	-0-	247.8
+++10/01/78	+13.1	192.2	+13.1	91.2	-0-	85.1	-0-	247.8

*The basis of premium is payroll. Effective 11/01/69, the limitation on individual payroll per week was increased from $300 to $400.

**26.4% from SB 146 (CH. 83, SLA 1975) and /% applicable only for policies in force from June 1, 1975, through December 31, 1976, as a result of the retroactive benefit provisions of SB 400 (CH. 51, SLA 1974).

***The 10% decrease which would have resulted from SB 569 (CH. 252, SLA 1976) was more than off-set by three increases: 11% due to re-evaluation of SB 146; 11.1% due to the automatic increase in the limit on benefits from 80% to 100% of the average weekly wage; and 1.8% for a 5% loading for serious loss.

+Effective 06/01/75, the limitation on individual payroll per week was increased from $400 to unlimited. A transition period, part of the filing, scheduled full implementation of the change over a period of 3 years, later extended to 4 years.

++Initial rate impact of SB 131 (CH. 75, SLA 1977). Source: Workers' Compensation Division, Juneau, AK.

+++ Since Publications, on December 1, 1978 the NCCI requested and was granted an overall rate increase of 1.8 percent. (-1.5% due to experience + 3.4% due to law change)

National History And Background

Workers' compensation is a system for providing benefits in the form of wage replacement and medical care to victims of work related injury. The system is supported by employers' payments in the form of insurance premiums which are included in the price of the employers' product or service and passed on to the consumer. It was designed to replace employers' liability statutes and common law remedies and represents the first application in the United States[2] of the economic and legal principle of liability without fault.

In the late nineteenth century, the high industrial injury rate coupled with the difficulty of recovery under the existing common law system brought public sentiment for some form of statutory relief to a head. The first efforts came in the form of employers' liability statutes which removed or weakened the three defenses which were available to employers under the common law:

1. contributory negligence--an employee could not recover if his own negligence had been even partly responsible for the injury;

2. the fellow-servant doctrine--There could be no recovery if a fellow worker's negligence was a contributing cause of injury; and

3. assumption of risk--no award was allowed if the injury resulted from an inherent hazard of that employment of which the worker was, or should have been aware.[3]

Awards increased under the influence of employers' liability statutes, but the system proved satisfactory in only a few instances such as the case of the railroad workers. Public opinion and the almost unanimous recommendations of some 40 federal and state investigatory commissions called for systems of workers' compensation to replace the employers' liability laws. A worker would give up his prerogative to sue his employer in return for certain benefits. The objectives of the new compensation laws, generally reversals of the perceived shortcomings of the existing system, were:

1. To eliminate wasteful litigation and legal fees by removing the fault principle of liability and reducing the range of court discretion;

2. To provide predetermined, adequate and prompt benefits through the use of fixed scales which, when applied to objective features of the case would yield income replacement instead of lump sum damages;

3. To increase the certainty of payment by guarding against such contingencies as bankrupt employers;

4. To promote safety and health activities through the use of merit rating plans and other built-in incentives;

5. To lower overhead costs by broadening the base of coverage and passing on savings associated with a reduction in litigation; and

6. To increase the availability and use of medical and rehabilitation services.[4]

Germany had pioneered the first modern compensation system in 1884. Maryland enacted the first legislation to significantly embody the compensation principle in this country in 1902. The Maryland Act, like many other early state efforts, was declared unconstitutional. In 1908, Congress passed a compensation act to cover federal employees. Three years later, New York's compensation law (the first state act of general application) was held unconstitutional in the Ives[5] decision on the grounds of deprivation of property without due process of law. The Ives decision attracted fierce criticism from all quarters, and subsequent court decisions tended toward a more liberal view of compensation; however, the fear of unconstitutionality had been planted with the result that most state legislatures avoided the ideal, comprehensive, compulsory coverage in favor of fragmentary, elective plans which have fallen short of realizing the stated objectives.[6]

Some 40 states had been covered by workers' compensation by 1920 but it was not until 1948 that the last state (Mississippi) followed the trend. Generally, the actions of courts and legislatures have extended coverage to include a greater percentage of workers, included provisions for occupational disease and vocational rehabilitation, increased the level of benefits, instituted second-injury funds, strengthened industrial safety laws and, on the whole, liberalized workers' compensation benefits in each of the United States.[7]

State legislation dealing with workers' compensation in recent years has been strongly influenced by the work of the 1971-72 National Commission on State Workers' Compensation Laws. The Commission, pursuant to the Occupational Safety and Health Act of 1970, undertook "a comprehensive study and evaluation of state workers' compensation laws in order to determine if such laws provided an adequate, prompt, and equitable system of compensation".[8] The Commission found that "The inescapable conclusion is that state workers' compensation laws in general are inadequate and inequitable".[9] Neither federal administration nor control of the programs was recommended (except by a minority) but 84 recommendations were made for improvements in the state systems with some 19 of them considered "essential" for every state act and "particularly suitable for federal support". The 19 essential recommendations called for complete, compulsory coverage of all workers, full coverage of work-related diseases, unlimited medical care and physical rehabilitation services, employee selection of the state in which he would file a claim under certain conditions, and the establishment, in cases of death or total disability, of benefits not less than 66-2/3% of the wage of the injured worker, subject to a maximum no less than 100% of the state's average weekly wage, with no time limits.[10]

Payrolls covered by workers' compensation insurance hit an all-time high of 88% in 1975, up from 84-85% for all years back to 1959. The upgrading of the state programs in recent years and the persistent growth in medical and hospitalization costs have resulted in increased costs to employers. Exhibit 2 compares these costs annually for the nation.

The Interdepartmental Task Force, a group composed of representatives of the U. S. Departments of Labor and Commerce and the Office of Management and Budget had been working in the area of workers' compensation from the time the National Commission's report was received by the President. On May 12, 1974, the Task Force submitted its report to the President.[11] The White Paper on Workers' Compensation generally supported the recommendations of the National Commission, and recognized that these recommendations already had considerable impact. It outlined a program of immediate reforms with a series of minimum objectives to be accomplished by the states by the end of 1975. The objectives generally followed the National Commission's recommendations in the areas of coverage and benefit levels, but federal technical assistance was suggested in the development of guidelines for occupational disease coverage, benefit policy research, and the development and implementation of a model data system which would aid researchers in their efforts to assess the strengths and weaknesses of the various systems. Finally, the group proposed "a major program of research to analyze the fundamental issues and to develop options for further improvements".

The President established an Interdepartmental Workers' Compensation Task Force in 1974 to accomplish the broad research and assistance objectives set out in the White Paper and to document the states' progress in achieving the recommended improvements. The work of the task force represents a primary source of comprehensive, current information on the subject of workers' compensation.

The question of federal legislation in the field of workers' compensation remains open and will undoubtedly depend on reactions to the report of the task force which cannot be anticipated at this time. "Substantial progress" by the states along lines that have been indicated by various reports will be a considerable factor. At the present time it is clear that virtually no one has ruled out the possibility of some form of federal control.

Legislation has been introduced in the U. S. Congress for the last several years to federalize the workers' compensation program but there has never been sufficient support of these bills to move them beyond the committee level. Moreover, to date, no President has ever endorsed such legislation.

EXHIBIT 2

ESTIMATED COSTS OF WORKERS' COMPENSATION TO EMPLOYERS SELECTED YEARS, 1940-74

Year	Amount (in millions)
1940	$ 421
1946	726
1948	1,013
1949	1,009
1950	1,013
1951	1,185
1952	1,333
1953	1,483
1954	1,499
1955	1,532
1956	1,666
1957	1,734
1958	1,746
1959	1,869
1960	2,055
1961	2,156
1962	2,323
1963	2,510
1964	2,713
1965	2,908
1966	2,279
1967	3,655
1968	4,034
1969	4,460
1970	4,894
1971	5,193
1972	5,764
1973	6,772
1974	7,780

*Written premiums by private carriers and state funds and benefits paid by self-insurers increased by 5-10 percent to allow for administrative costs. Also includes benefit payments and administrative costs of federal system. Where necessary, fiscal year data converted to calendar-year data. Before 1959, excludes Alaska and Hawaii.

Source: 1) Alfred M. Skolnik and Daniel N. Price, "Workmen's Compensation Under Scrutiny," Social Security Bulletin (October 1974, January 1975, January 1976)

Developments in Alaska

The development of workers' compensation in Alaska has generally conformed to the trend which has prevailed in other states. The first act in Alaska, passed in 1915, covered the mining industry only, and was "permissive" in that it allowed both an employer and an employee to decide whether they wished to be covered. This original act was replaced in 1923 by another which was considerably broader in scope, and, from there, Alaska has moved into substantial compliance with all but five of the essential recommendations of the National Commission.[12]

The cost and benefits associated with workers' compensation in Alaska have been a subject of perennial concern to the legislature. In 1957, at the direction of the Territorial Legislature, Twenty-Third Session, the Legislative Council conducted a study to assess the potential impact of a bill which would have increased benefits but was vetoed by the Governor. The Council also concerned itself with a general review of rates and benefits, including a comparison with those in other jurisdictions, and discussed the theory and the pros and cons of a state industrial fund.

The National Council on Compensation Insurance, a "seasoned, nationally-known rate making organization..." supported by insurance companies, has operated in Alaska since 1947. Advisory rates were filed by the National Council on behalf of almost all carriers and approved or disapproved by the Commissioner (now Director) of Insurance. There had, however, been no "effective insurance regulatory agency prior to 1956..." and this had contributed to excessive rates being charged.[13]

The 1958 report contained testimony from the National Council on Compensation Insurance, the American Association of Compensation Insurance Funds and representatives of labor and the insurance industry. The Legislative Council concluded that rates had been higher than necessary and that improved benefits were in order. In view of recently instituted regulatory apparatus for the insurance industry and impending re-organization of the executive branch associated with the achievement of statehood, it was recommended that the establishment of a state fund be deferred and a re-appraisal conducted following re-organization in the light of new experience.[14]

In 1961, at the direction of the Second Legislature, the Legislative Council, in cooperation with the Departments of Labor and Commerce, held public hearings on the subject of a non-profit exclusive state fund and the workers' compensation insurance rates which were then in effect. Again testimony was taken from representatives of all concerned factions.[15]

At the time of the hearings, the overall rate level had risen by only 4-1/2 percent since the 1958 final report. A liberalization in benefits which tended to increase rates by 24.1 percent had become effective in the interim, but the effects were almost totally offset by favorable "experience" (see Exhibit 1).

The legislature again in 1965 introduced a bill to establish an exclusive state fund but it was not adopted. This represents the last significant interest of the legislature in the field of workers' compensation until 1975.

Prior to statehood, most of the workers' compensation insurance was written by Lloyd's of London. Even though some American companies began to make inroads into the market, particularly in special program areas, there were no domestic carriers organized under Alaskan law until 1967 when a charter was granted to Alaska Pacific Assurance Company. Since that time three other carriers have been chartered in Alaska, Industrial Indemnity of Alaska, Providence-Washington of Alaska, and the Alaska Insurance Company. For the last several years, the workers' compensation insurance has been written by admitted or licensed companies in Alaska. Today, only aviation workers' compensation insurance is written by insurance carriers not licensed by the State of Alaska. Only 31 employers presently are self-insured in accordance with AS 23.30.090. The vast majority of workers' compensation premium in Alaska (78 percent of earned premiums in 1975) is accounted for as premium of non-participating stock companies which are organized as profit-making ventures in the field of insurance and return no premiums to the insured in the form of dividends. Almost all the remaining 22 percent of the market is divided between participating stock companies which are organized for profit but do pay dividends and mutual companies which are organized as non-profit corporations owned by policyholders. Reciprocals (similar to mutuals) and miscellaneous companies account for an insignificant share. Alaska Pacific dominates the market, writing 61 percent of the 1978 premiums; the other three domestics together accounted for 16 percent of the total.

The present concern with the workers' compensation system in Alaska stems primarily from spectacular increases in premium costs borne by employers. Rates remained below their 1957 level until June of 1972; they did not rise more than 4-1/2 percent above that level until June of 1974. Liberalized benefit provisions enacted during that period which would have increased rates in the absence of other influences were almost exactly offset by improving experience (losses were consistently less than had been projected). Ignoring the effects of the payroll base change which indeed effects rates but did not impact employer costs, Alaskan workers' compensation rates between March, 1973, and September 1978, have increased 114 percent as a result of two factors: Changes in the law which have increased rates by 48 percent compounded with poor experience which has produced a 45 percent increase.

The principal cause of the law change factor was adoption, over the veto of Governor Hammond, of Senate Bill 146, the so-called "Croft Bill".

It is believed that this measure was significantly influenced by both the "Report of the National Commission on State Workers' Compensation Laws" and by the active advisory activities of a federal inter-agency task force representative from Seattle who visited Juneau during the 1975 legislative session and is said to have been intimately involved in encouraging the passage of the bill.

The measure, SB 146 (Ch. 83, SLA 1975) made the following significant changes:

a) A worker became entitled to a benefit equal to 66-2/3 percent of his wages at the date of injury and continuing for the period of total disability;

b) Permanent total benefits were payable for the life of the injured worker;

c) Death benefits were payable for the life of the surviving spouse except for remarriage and because of a quirk in the law, up to 90 percent of wages could be payable if the deceased worker left a widow and children and children of a prior marriage (an innovation wanting from the National Commission recommendations):

d) Permanent partial scheduled benefit maximums were doubled;

e) The limit on unscheduled permanent partial benefits was removed;

f) The maximum indemnity benefit was fixed at 100 percent of the state's average weekly wage with the maximum to increase at the following schedule:

1975	80.0%	of State's Average Weekly Wage
1976	100.0%	"
1977	133.3%	"
1979	166.7%	"
1981	200.0%	"

Rates effective on June 1, 1975, which were considerably higher than had been anticipated, coupled with adverse experience and an increase related to legislation from May 1974 (SB 400) which multiplied the cost of the 1975 changes, brought untold complaints to the Division of Insurance. This coupled with other concerns on the part of the then Director resulted in the first rate hearings to be held by a Director of the Division of Insurance in Alaska. The hearings were held November of 1975 in Ketchikan, Fairbanks and Anchorage.[16]

Subsequent to these hearings, the Director of Insurance issued Order 76-1 approving the June 1, 1975, rate filing. He felt that the requested increase of 49.9 percent was not excessive and was attributable to:

a) A change in experience since the previous filing of 11.3%

b) A reduction in allowance for loss adjustment expense of (0.4%)

c) An estimated increase in costs resulting from the May 22, 1975 change in workers' compensation benefits (SB 146) 26.4%

d) An estimated increase in costs resulting from the impact of the May 33, 1975 change in workers' compensation benefits on outstanding cases (SB 146) (1975) and SB 400 (1974) 7.0%

Additionally he designated the National Council on Compensation Insurance as the State's licensed rating bureau, placed a 15% surcharge on Assigned Risk Pool premiums, and ordered a refiling of rates which used assumptions more clearly reflecting Alaskan experience, economy, and socio-economic factors.

The Alaska Legislative Council Subcommittee on Workers' Compensation also held hearings in Anchorage and Fairbanks in December of 1975. Public testimony reflected concern with rates, and the bill which the committee had drafted with a view to providing relief became Chapter 252, SLA 1976. It tried to stem the tide of increasing cost by restricting benefits to be provided to injured workers who moved out of Alaska into areas with a lower cost of living.

To understand this proposal, which has no precedent in any other state workers' compensation statute, it is necessary to recognize some facts about the economy of Alaska in the period 1974-1977 which has come to be known as the "pipeline era"

The Trans-Alaska Pipeline System (TAPS) was a project undertaken by a consortium of North Slope oil producers as the only then viable means of moving oil from the field to the lower 48. The 799 mile long 48" line together with terminal, pump stations, and ancillary structures built substantially between 1974 and 1977, cost over 7 billion dollars and accounted for a 2.5 billion dollar payroll paid to 25,000 different workers who accounted for a work force of up to 14,000 working at any one time. It is said to have been the largest single construction project in the world to that date.

Most of the work force came from outside the State and most of the work force returned to their lower 48 origin when they were terminated or injured.

The pipeline labor contracts called for the payment of wages which were considerably higher than any wages paid for similar work in Alaska by any other employer. The impact of paying 66-2/3% of these high wages to injured workers who returned to the lower 48 meant that their compensation while injured was substantially larger than what they could make working in the lower 48 and a discrimination in comparative buying power with respect to those who were injured and remained in Alaska.

Thus the legislature tried to achieve some parity in benefits between the injured workers who remained in the State and those who left the State. As the issue was further studied it was found that the departure from the State of injured workers was not limited to pipeliners. Loggers, fishermen, air taxi pilots, construction workers and others followed the same pattern. Had other things been equal, the National Council estimated that this law change would have reduced rates by 10%.

The filing which followed that change in law resulted in an overall increase of 3.7 percent effective November 1, 1976. This increase was attributable to:

a) A 1976 experience review (8.2%)

b) The reevaluation of the initial rate impact of SB 146 (1975) 11.0%

c) The 1/1/76 increase in weekly benefit, SB 146 (1975) 11.1%

d) The rate impact of SB 569 (Ch. 252, SLA 1976) (10.0%)

e) The introduction of the 5% loading for serious loss contingency 1.8%

At the urgings of the business community of Alaska, smarting from continually increasing costs, and because of another unique factor in the Alaskan economy, Governor Hammond urged further modification of the benefit structure and SB 131 (Ch. 75 SLA 1977) was the result.

The other unique factor effecting the administration's decision to make a second attempt at containing the cost of workers' compensation was the impact the high cost was having on the bush community because of the rate increases affecting air taxi operators.

The air taxi operators had been suffering from extremely poor loss experience. Of all the credible workers' compensation rating classifications, the air carrier classifications had the highest loss levels per $100 of payroll and Alaskan air carrier operators were believed to have the worst accident record in the nation.

The inevitable result was that not one admitted carrier would write workers' compensation for an air carrier risk. That meant that air carriers purchased their insurance from either the Assigned Risk Pool, subject to the 30% surcharge imposed by Order 76-1, or from Lloyd's of London which charged an unregulated rate generally between the manual rate and the assigned risk surcharge rate, without experience modification, or purchased none at all. The rates ranged from $26 to $36 per $100 of payroll and settled at $34 per $100 of payroll between 1975 and 1977.

Of course, this had an immediate and crucially devastating affect on the natives in the bush who were wholly dependent upon the air taxi operator for food, necessities and transportation.[17] The bush caucus then justifiably welcomed legislation that would bring some cost relief to the air taxi operators.

The resulting legislation[18] which became affective September 1, 1977, made the following changes:

a) Death benefits were adjusted to phase out over a period of ten years after death of the worker except in certain circumstances;

b) A substantial offset for social security benefits;

c) A limit on unscheduled permanent partial disabilities;

d) Elimination of the retroactive affect of SB 400 (1974);

In August of 1977, following adoption by the legislature of SB 131, the Director of Insurance, issued Order 77-4 which disapproved the rate then being applied for by NCCI but indicated acceptance of a filing if it included the 17.6% decrease contemplated in the filing but included, in addition, removal of the 5% serious loss contingency factor and made adjustment of the classification covering policemen to reflect effects of SB 131. This was done and a rate decrease of 18.6% became effective on September 1, 1977.

Since that time to the present, adverse claims experience has eroded these gains. As this study will later point out, much of the rate increase attributable to "experience" is actually a system reaction to the inadequacies of the evaluation of the impact of law changes in previous years. In other words, although there is a 45% increase in rate attributable to "experience", there is little evidence to support the belief that there has been a substantial increase in severity or frequency of industrial accidents. Rather the reserve shortfalls, due primarily to under estimations of the true impact of the 1975 law is now being reflected in addition to reserves in the 1975, 1976 and 1977 accident years.

We find the State in a situation today where workers' compensation rates have effectively increased 114 percent since 1973. We can attack the increase in rates from two directions:

1) We may develop strategies to reduce the rates by improving claims experience, or,

2) We can develop strategies to change the existing benefit structure.

This document is premised on the belief that changes in law defining the entitlements of injured workers, modification of the approaches taken by the insurance industry in defining and pricing workers' compensation insurance and administrative changes in the workings of the governmental agencies impacting on the system will only be totally affective if looked upon as a total integrated cost containment program and if accompanied by changes in the attitude of injured workers towards this benefit system and attitude of employers toward their responsibilities as custodians of the workplace.

This report to employers is designed to make recommendations which balance the roles and responsibilities for cost containment among all those who impact on cost.

II. ESTABLISHING THE COST LEVEL OBJECTIVES

Benchmark States

The sizeable increase in manual rates for workers' compensation that has taken place in this State within the last ten years provides the impression to many that this increasing rate spiral is a phenomenon unique only to Alaska. It is a common perception among many Alaskan employers that these extremely high workers' compensation costs have tended to place the Alaskan employer at a competitive disadvantage with its counterparts in those states that vie with Alaska for markets. This hypothesis should be tested and to do this, a number of benchmark comparison states must be chosen. As initial criteria, it would be reasonable to choose as benchmark states those with comparable economic characteristics, similar demographic characteristics, similar industries, and ones that directly compete with Alaska for external markets.

Discussions with senior research personnel in the Department of Commerce and Economic Development and the Department of Revenue indicate that all of the criteria that we have established above are certainly suitable in establishing benchmark states except for the criteria dealing with market competition. They espouse the position that Alaska does not compete for external markets with other states. In logging, the constraint is not the fact that outside markets are predominating, but that Alaska's lumber harvest is controlled by the federal government. In the area of petroleum production, again, there is no particular competition since the market will absorb all the petroleum and petroleum products that Alaska produces regardless of workers' compensation costs. They did state, however, that there may be a potential problem with respect to outside businesses coming in to Alaska. Yet, it is also clear that any business paying an Alaska payroll must pay Alaska workers' compensation. Therefore, it is highly doubtful that the workers' compensation costs are key to any competitive disadvantage.

Still it is imparative that Alaska compare its workers' compensation costs with respect to similar states if employers here are to assure themselves that their system is equitable and fair.

Because of their proximity and the fact that they have many characteristics similar with respect to Alaska, Washington, Oregon, Montana, and California were chosen as benchmarks. Exhibit 3 summarizes the pertinent data with respect to the established criteria for these benchmark states.

Though these states have widely varying populations and areas when compared to Alaska, we do notice that they have major similarities. For example, the education levels of their populations were nearly identical, their major industries fall within mining, lumber, tourism, agriculture, fishing, manufacturing and petroleum. The ratio of their non-agricultural populations to their total population is similar, their leading industries for value added are

EXHIBIT 3

Base States Compared to Alaska for 1976

State	Area (Million Acres)	Population 1976 Est. (Thousands)	Map R Industries	% Illit-eracy	Median School Yrs Completed	% High School Graduate	Non-Agri Emplymt. (Thousands)
Alaska	365.5	382	2,3,5,7	1.5	12.3	79.6	172
California	100.2	21,520	2,3,4,5,6,7	1.1	12.7	75.0	8,153
Montana	93.3	753	1,2,3,4	0.6	12.6	72.5	251
Oregon	61.6	2,329	2,4,5	0.6	12.7	76.3	879
Washington	42.7	3,612	2,4,5,6	0.6	12.7	76.3	1,271

* (1)-Mining, (2)-Lumber, (3)-Tourism, (4)-Agriculture, (5)-Fishing, (6)-Manufacturing,

Ratio of Non-Agr.Pop. to Total Pop.	Fishing Catch (Ex.Vesl.Value) Million $)	Mineral Prob. Value (Million $)	Construction Contract Value (Million $)	Manuft. Value Added (Million $)	Leading Indusys. For Value Added*	Ratio of Columns 9+10+11+12 to 7
0.450	227	625	881	504	2,4	13,000
0.379	616	3,483	11,405	56,156	4,6	9,000
0.333	-0-	636	388	771	1,2,4,	7,000
0.377	49	113	1,234	5,392	2,4	8,000
0.352	81	187	3,480	7,297	2,4,6	9,000

(7)-Petroleum

lumber, agriculture and manufacturing, and finally, the ratio of the sum of their fishing catch value, mining product value, construction contract value, and manufacturing value added to their non-agricultural employment is similar. This final statistic is probably more interesting that it is creditable since it has not been weighted with respect to the relative employment in these various industrial categories.

We must keep clerly in mind our stated hypothesis: states with similar characteristics, similar industries, similar industrial mixes, and comparable statutory workers' compensation benefits should have similar aggregate employer costs. Each of the benchmark states will be investigated with respect to these parameters and contrasted against Alaska. Following this analysis, the decision whether Alaska has inordinant workers' compensation costs with respect to its nearest neighbors should be clear.

Benchmark State Costs

Having established Washington, Oregon, Montana and California as benchmarks for comparison with Alaska, it proves revealing to investigate workers' compensation costs in these states. Exhibit 4 presents a summary of the average earned compensation rate in Alaska and the benchmark states from 1973 through 1978.

The National Council on Compensation Insurance (NCCI) compiled average earned rates for all states which allow some form of private insurance for policy periods beginning between December 1, 1972, and July 1, 1974. The NCCI also reported all rate increases for these states through June 30, 1978. By multiplying the initial average manual rate times all the subsequent rate increases one obtains relatively reliable indicators of the comparative cost of workers' compensation in the comparison states.

It is important to remember a number of things about these data:

1. The average earned rate is total premium divided by the product of total payroll and 0.01 and is shown as dollars per $100 of payroll;

2. Each state's industrial mix contributes heavily to its workers' compensation costs even ideally all states should not have the same aggregate costs.

3. Most states increase rates annually though not all reported their 1978 rate increases which tends to deflate the actual cost in those particular states;

4. The policy period differs as much as several months from one state to the next which makes a comparison of all states in the same point in time slightly inconsistent, but the difference in a review over a long term is not regarded as significant.

5. Some competitive state funds give automatic reductions from the states average manual rate.

The data in Exhibit 4 illustrates that the cumulative rate of increase in workers' compensation costs in Alaska exceeds by 30% that found for the average cumulative rate of increase for all the benchmark states. Additionally, Alaska's present average earned rate exceeds the average for the benchmark states by 22%.

Employer class rates should also be compared. Exhibits, 5, 6, and 7 summarize comparative manual rates for the top 40 workers' compensation clases in the State of Alaska. Exhibit 5 compares the direct manual rates for the top 40 Alaskan classes to the benchmark states, Exhibit 6 compares each Alaskan and benchmark state's classes to the lowest class rate in each state. Exhibit 7 makes a similar comparison; however, normalizes all of the class rates to Alaska's lowest class rate.

Exhibit 5 establishes that Washington's rates are almost always equal to or slightly less than their Alaskan counterparts. Oregon rates, on the other hand, are almost uniformly higher; sometimes quite higher, than the corresponding Alaskan rate. The California comparison is inconclusive for no apparent trends appear to be evident.

Exhibit 6 offers an interesting comparison. Here each state's class rate is normalized to its own lowest class rate. In other words, each value indicates how many times larger the given class rate is to its lowest class rate. For example, in Alaska, if we compare the electrical wiring rate, 5190, to the clerical rate, we find it to be 11.25 times greater. In Washington, on the other hand, it is 7.28 times greater, in Oregon 12.48 times greater, in Montana 8.6 times greater, and in California 10.21 times greater.

Finally, Exhibit 7 compares these data slightly differently. Each class rate for each state is compared to Alaska's lowest class rate. For example, the carpentry construction class rate, 5645, in Alaska is 14.7 times greater than the clerical office employee rate. However, in Washington, this rate is 30.25 times greater, in Montana 11.19 times greater, and in California 18.07 times greater.

Cost of Living Differences

Exhibit 8 summarizes the comparative cost of living index for metropolitan areas in Alaska and the benchmark states. Alaska's costs compared to the benchmark states is much higher. In the case of the total budget it is approximately 42% higher. This affect alone nearly accounts for the 32% increase in Alaska's average earned rate or cost per one hundred dollars compared to that of the benchmark states.

A most startling anomaly found within all of these exhibits is the behavior exhibited by the State of Oregon. Referring to Exhibit 4 we see that Oregon's average cost per one hundred dollars is actually higher than Alaska's cost even with the difference in the cost of living. If we adjust the Oregon cost to the Alaskan cost of living we see that the average earned rate in Oregon would calculate as $7.98 compared to $4.79 for Alaska. This 67% difference should be accounted for!

EXHIBIT 4

1978 Earned Rates and Pre-1978 Rate Increases for Benchmark States

State	Policy Period	Average Manual Rate $/$100 Payroll	1973	1974	1975	1976	1977	1978	TOTAL	Present Average Manual Rate $/$100 Payroll
Alaska	10-01-73 9-30-74	2.52	-	1.342	1.499	1.037	.863	1.060	1.90	4.81
Oregon	5-01-74 4-30-75	3.60	-	1.027	1.099	1.294	1.098	-	1.603	5.77
Montana	4-01-74 3-31-75	3.03	-	-	1.212	1.101	.737	-	.983	2.97
California	1-01-74 12-31-74	1.98	-	1.116	1.129	1.199	1.115	1.046	1.762	3.49
Washington	1-01-74 12-31-74	1.51	-	-	.991	1.145	1.339	-	1.518	2.29

F/N: This report came from "A Report to the Minnesota Legislature and Government" 1979, p. 165.

EXHIBIT 5

WORKERS' COMPENSATION MANUAL RATES FOR 40 RISK CLASSIFICATIONS IN DOLLARS PER $100 OF PAYROLL (Absolute Rates) FOR ALASKA, WASHINGTON, OREGON, CALIFORNIA & MONTANA IN 1979

	ALASKA	WASHINGTON	OREGON	CALIF.	MONTANA
Government					
9410 Municipal & State Employees	3.11	2.46	3.87	2.52	2.66
7720 Police	5.46	11.28	7.24	14.41	3.97
Construction					
5645 Carpentry Construction	7.09	14.47	16.11	8.62	5.40
5403 Carpentry (NOC)	8.90	11.75	25.12	10.71	9.03
5213 Concrete Construction	9.14	8.82	15.09	8.76	6.95
5190 Electrical Wiring	5.41	4.36	5.62	4.38	3.15
5059 Iron or Steel Erection (2+)	31.89	9.98	34.13	17.73	15.90
6306 Sewer Construction	10.72	8.70	25.56	13.06	8.10
6217 Excavation	7.89	8.70	15.06	6.28	11.21
5474 Painting	8.09	9.91	11.34	8.16	8.39
5183 Plumbing	6.90	4.94	7.71	5.29	3.46
6233 Oil or Gas Pipeline Const.	10.17	8.70	12.26	8.28	6.41
5506 Street Paving	9.20	8.70	1.18	8.54	9.52
5507 Street Cleaning	10.06	6.52	17.64	9.51	7.98
Services					
8868 Churches	.55	.71	.65	1.25	.18
8833 Hospitals	1.37	3.17	2.34	2.98	.91
9052 Hotels	2.97	7.15	6.54	5.80	2.84
8601 Engineers, Architects, Consult.	2.09	.88	2.72	.90	1.11
8810 Clerical Office Employees (NOC)	.48	.60	.45	.43	.39
Trade					
8387 Auto Access. & Gas Stations	5.59	2.90	7.94	5.85	4.54
9079 Bars, Taverns, Restaurants	4.70	5.15	5.72	3.94	2.50
8742 Salesmen	.87	1.00	1.13	.82	1.29
8039 Stores-Department-Retail	1.54	2.89	-	2.35	1.16
8033 Stores-Meat-Groceries-Provisions	2.20	5.68	6.06	-	2.14
8017 Retail Stores	1.79	2.22	2.50	2.56	1.06
8391 Auto Garage & Repair	4.48	6.18	6.06	4.27	3.59
8227 Contractors-Permanent Yards	5.48	4.13	9.17	4.03	4.23
Transportation & Communication					
7423 Aircraft Operator (Non-Flying)	5.59	2.94	4.62	-	3.12
7422 Aircraft-Taxi-Sightseeing	28.09	-	30.34	-	6.69
7403 Aircraft Operator (Sched. Flts.)	5.46	1.60	3.45	-	2.01
7610 Radio & TV Stations	1.02	1.23	1.15	.89	.59
7600 Telephone Companies	2.25	2.00	3.39	3.44	1.71
7219 Truckmen (NOC)	11.94	10.12	14.77	10.78	9.01
7540 Electric Light & Power	4.84	3.00	7.68	-	4.39
Manufacturing					
2104 Seafood Processors	11.79	9.46	12.40	-	-
2702 Logging	52.46	13.69	31.69	19.26	29.56
4207 Pulp Mfg.-Chemical	5.27	6.72	8.48	-	2.38
Mining					
1165 Surface, Not Coal	9.09	7.15	8.34	10.58	6.62
6235 Oil or Gas Drilling	14.62	-	30.07	21.88	9.84
6216 Oil or Gas Lease Work	11.21	-	-	9.70	10.09

EXHIBIT 6

WORKERS' COMPENSATION MANUAL RATES FOR 40 RISK CLASSIFICATIONS ADJUSTED SO THAT CLASS 8810O = 1

	ALASKA N=2.08	WASHINGTON N=1.67	OREGON N=2.22	CALIF. N=2.33	MONTANA N-2.56
Government					
9410 Municipal & State Employees	6.47	4.11	8.59	5.87	6.81
7720 Police	11.36	18.84	16.07	33.58	10.16
Construction					
5645 Carpentry Construction	14.75	24.20	35.76	20.08	13.82
5403 Carpentry (NOC)	18.30	19.62	55.77	24.95	23.12
5213 Concrete Construction	19.01	14.73	33.50	20.41	17.80
5190 Electrical Wiring	11.25	7.28	12.48	10.21	8.06
5059 Iron or Steel Erection (2+)	66.33	16.67	75.77	43.31	40.07
6306 Sewer Construction	22.30	14.53	56.74	30.43	20.74
6217 Excavation	16.41	14.53	56.74	30.43	28.70
5474 Painting	16.83	16.55	25.17	19.01	21.48
5183 Plumbing	14.35	8.25	17.12	12.33	8.86
6233 Oil or Gas Pipeline Const.	21.15	14.53	27.22	19.29	16.41
5506 Street Paving	19.14	14.53	2.62	19.90	24.37
5507 Street Cleaning	20.92	10.89	39.16	22.16	20.43
Services					
8868 Churches	1.14	1.19	1.44	2.91	.46
8833 Hospitals	2.85	5.30	5.19	6.94	2.33
9052 Hotels	6.18	11.94	14.52	13.51	7.27
8601 Engineers, Architects, Consult.	4.35	1.47	6.04	2.09	2.86
8810 Clerical Office Employees (NOC)	1.00	1.00	1.00	1.00	1.00
Trade					
8387 Auto Access. & Gas Stations	11.63	4.84	17.63	13.63	11.62
9079 Bars, Taverns, Restaurants	9.78	8.60	12.60	9.18	6.40
8742 Salesmen	1.81	1.67	2.51	1.91	3.30
8039 Stores-Department-Retail	3.20	4.83	-	5.48	2.97
8033 Stores-Meat-Groceries-Provisions	4.58	9.79	13.45	-	5.48
8017 Retail Stores	3.72	3.71	5.55	5.96	2.71
8391 Auto Garage & Repair	9.32	10.32	13.45	9.95	9.19
8227 Contractors-Permanent Yards	11.40	6.89	20.36	9.39	10.83
Transportation & Communication					
7423 Aircraft Operator (Non-Flying)	11.63	4.91	10.26	-	7.99
7422 Aircraft-Taxi-Sightseeing	58.43	-	67.35	-	17.13
7403 Aircraft Operator (Sched. Flts.)	11.36	2.67	7.66	5.15	5.15
7610 Radio & TV Stations	2.12	2.05	2.55	2.07	1.51
7600 Telephone Companies	4.68	3.34	7.53	8.02	2.74
7219 Truckmen (NOC)	24.84	16.90	32.79	25.12	23.07
7540 Electric Light & Power	10.07	5.00	17.05	-	11.24
Manufacturing					
2104 Seafood Processors	24.52	15.80	27.53	-	-
2702 Logging	109.12	22.90	70.35	44.88	75.67
4207 Pulp Mfg.-Chemical	10.96	11.22	18.83	-	6.09
Mining					
1165 Surface, Not Coal	18.91	11.94	18.51	24.65	16.95
6235 Oil or Gas Drilling	30.41	-	66.76	50.98	25.19
6216 Oil or Gas Lease Work	23.32	-	-	22.60	25.83

EXHIBIT 7

WORKERS' COMPENSATION MANUAL RATES FOR 40 RISK CLASSIFICATIONS ADJUSTED SO THAT ALASKA CLASS 8810 = 1.00

	ALASKA	WASHINGTON	OREGON	CALIF.	MONTANA
Government					
9410 Municipal & State Employees	6.47	5.14	8.07	5.28	5.52
7720 Police	11.36	23.55	15.11	30.22	8.23
Construction					
5645 Carpentry Construction	14.75	30.25	33.61	18.07	11.19
5403 Carpentry (NOC)	18.30	24.52	52.42	22.46	18.72
5213 Concrete Construction	19.01	18.41	31.49	18.37	14.42
5190 Electrical Wiring	11.25	9.10	11.73	9.19	6.53
5059 Iron or Steel Erection (2+)	66.33	20.84	71.22	37.18	32.97
6306 Sewer Construction	22.30	18.16	53.34	27.39	16.80
6217 Excavation	16.41	18.16	31.42	13.17	23.25
5474 Painting	16.83	20.69	23.66	17.11	17.40
5183 Plumbing	14.35	10.31	16.09	11.10	7.18
6233 Oil or Gas Pipeline Const.	21.15	18.16	25.59	17.36	13.29
5506 Street Paving	19.14	18.16		17.91	19.74
5507 Street Cleaning	20.92	13.61	36.81	19.94	16.55
Services					
8868 Churches	1.19	1.49	1.35	2.62	.37
8833 Hospitals	2.85	6.62	4.88	6.25	1.89
9052 Hotels	6.18	14.92	13.65	12.16	5.89
8601 Engineers, Architects, Consult.	4.35	1.84	5.68	1.88	2.32
8810 Clerical Office Employees (NOC)	1.00	1.25	.94	.90	.81
Trade					
8387 Auto Access. & Gas Stations	16.63	6.05	16.57	12.27	9.41
9079 Bars, Taverns, Restaurants	9.78	10.75	11.94	8.26	5.18
8742 Salesmen	1.81	2.09	2.36	1.72	2.67
8039 Stores-Department-Retail	3.20	6.04		4.93	2.41
8033 Stores-Meat-Groceries-Provisions	4.58	12.24	12.64		4.44
8017 Retail Stores	3.72	4.64	5.22	5.36	2.20
8391 Auto Garage & Repair	9.32	12.90	12.64	8.96	7.44
8227 Contractors-Permanent Yards	16.40	8.61	19.14	8.45	8.77
Transportation & Communication					
7423 Aircraft Operator (Non-Flying)	11.63	6.14	9.64		6.47
7422 Aircraft-Taxi-Sightseeing	58.43		63.31		13.88
7403 Aircraft Operator (Sched. Flts.)	11.36	3.34	7.20		4.17
7610 Radio & TV Stations	2.12	2.56	2.40	1.86	1.22
7600 Telephone Companies	4.68	4.18	7.08	7.22	2.22
7219 Truckmen (NOC)	24.84	21.12	30.82	22.61	18.69
7540 Electric Light & Power	10.07	6.25	16.03		9.10
Manufacturing					
2104 Seafood Processors	24.52	19.75	25.88		
2702 Logging	109.12	28.62	66.93	40.39	61.29
4207 Pulp Mfg.-Chemical	10.96	14.02	17.70		4.93
Mining					
1165 Surface, Not Coal	18.91	14.92	17.40	22.18	13.73
6235 Oil or Gas Drilling	30.41		62.75	45.88	20.40
6216 Oil or Gas Lease Work	23.32	6.66		20.34	20.92

EXHIBIT 8

Comparative Cost of Living Index for Metropolitan Areas in Basis States (For a 4-Person Family with an Intermediate Budget)

Autumn 1978
Urban United States - 100

	Los Angeles	San Francisco	Seattle	Anchorage
Total Budget	95	104	100	141
Total Consumption	97	105	104	138
Food	97	101	100	122
Housing	116	104	104	163
Transportation	103	107	102	132
Clothing	93	108	111	117
Personal Care	97	118	116	135
Medical Care	125	116	111	170
Other Family Consumption	94	105	103	105
Personal Income Taxes	79	98	81	178

From BLS News
U.S. Dept. of Labor
Released 4/29/79
USDL 79-30

EXHIBIT 9

A COMPARISON OF UNIT STATISTICAL PLAN DATA
(Alaska, Oregon, Montana)

	DEATH			PT			MAJOR			MINOR		
STATE	Cost Per Case	Incidence Per $1 Million Payroll (3)	Cost Per $100 Payroll	Cost Per Cast	Incidence Per $1 Million Payroll (3)	Cost Per $100 Payroll	Cost Per Case	Incidence Per $1 Million Payroll	Cost Per $100 Payroll	Cost Per Case	Incidence Per $1 Million Payroll	Cost Per $100 Payroll
ALASKA	90,876	.039	.36	125,143	.0048	.06	22,616	.123	.28	4,206	.344	.28
OREGON	64,377	.016	.11	100,186	.0124	.01	30,014	.047	.14	4,539	1,219	.55
MONTANA	85,823	.016	.14	68,582	.0045	.03	17.189	.184	.32	3,944	.492	.19

A COMPARISON OF UNIT STATISTICAL PLAN DATA
(Alaska, Oregon, Montana)

	TT			C-MED			N.C. MED			TOTAL		
STATE	Cost Per Case	Incidence Per $1 Million Payroll (3)	Cost Per $100 Payroll	Cost Per Case	Incidence Per $1 Million Payroll	Cost Per $100 Payroll	Cost Per Case	Incidence Per $1 Million Payroll	Cost Per $100 Payroll	Cost Per Case	Incidence Per $1 Million Payroll	Cost Per $100 Payroll
ALASKA	713	2.63	.19	1,159	3.14	.36	95	7.16	.07	1,417	10.30	1.46
OREGON	499	3.79	.18	914	4.87	.45	57	12.26	.07	944	17.14	1.62
MONTANA	693	2.19	.15	1,102	2.88	.32	56	14.63	.08	703	17.51	1.23

F/N: This report came from "A Report to the Minnesota Legislature and Governor" 1979

Costs for Washington and California not available since the National Council does not accumulate data for those states.

In part we can do this if we refer to Exhibit 9. Presented here is data collected from the unit statistical plan reports by the National Council on Compensation Insurance. For the jurisdictions in our study, the exhibit represents: 1) the cost per case, 2) the incidents per one million dollars in payroll, and 3) the cost per one hundred dollars of payroll for seven compensable categories of workers' compensation. These are 1)death, 2) permenant total, 3) serious injury, 4) non-serious injury, 5) temporary total, 6) compensable medical, and 7) noncompensable medical.

Referring to the last column in the exhibit entitled "total" we find in comparing Oregon to Alaska, that the cost per workers' compensation case in Oregon is, as one would expect, less than the corresponding cost in Alaska; however, the overall frequency of incidents is considerably greater; but more importantly, the frequency of those types of incidents which are more costly in Oregon are greater. This results in a cost per one hundred dollars of payroll approximately 11% greater than that in Alaska. This single observation is not sufficient to account for the total anomoly.

Noting that the information in Exhibit 9 compares only the first reports of injuries for the two jurisdictions, the information cannot be interpreted as the complete liability of insurers in these jurisdictions.

Exhibit 10 lists the current premium and loss development factors for the same three jurisdictions. The loss factors demonstrate how subsequent experience increases or reduces the liability measured from the first report to ultimate. For the State of Oregon it is 1.371 and for the State of Alaska is 1.042, a difference of 31%. The implication is that Oregon ultimately under reserves to an extent of 31% more than does Alaska. If this is true, Oregon's rates have been adjusted by the NCCI to account for this under reserving history. Multiplying the 11% difference found previously by the under reserving factor difference of 31% produces a difference of 46% the lion's share of Oregon's anomalous rate posture.

Inherent Differences

The result found is perhaps somewhat fortuitous for we have not taken into effect any of the individual state characteristics which must also impact the manual rates. It is clear that transportation classes in the State of Alaska must be impacted by differences in climate, differences in conditions of roads, etc. Alaskan construction classes must be impacted by the remoteness of construction sites for medical services. And of course all the individual classes are dependent upon the industrial mix within each state. To relate the manual rates in each class to each state's individual characteristics would be a Herculean task if not an impossible one; we must simply be content with the observation that necessary differences in class rates will be found from state to state dependent upon their individual characteristics but that generally speaking Alaskas costs for workers' compensation represents an overall higher percentage of payroll expense than is found in the benchmark states given a level frequency of claims.

EXHIBIT 10

A COMPARISON OF DEVELOPMENT FACTORS
(Alaska, Oregon, Montana)

State	Effective Date	Premium 1st to 5th	Development 2nd to 5th	Loss 1st to ULT	Development 2nd to ULT
Alaska	11-1-76	1.014	1.007	1.042	.997
Oregon	7-1-77	1.078	1.007	1.371	1.250
Montana	10-1-77	1.112	1.020	1.038	1.008

F/N: This report came from "A Report to the Minnesota Legislature and Governor" 1979

If any tentative conclusion can be drawn from these exhibits, it is:

Compared to the benchmark states, Alaskan relative rates appears to be compressed and in some cases very much so! If this is true, Alaskan employers with high exposure are not paying their proportionate share.

If that conclusion is true, the implication is that some classes in Alaska, particularly those in less credible and less hazardous classes have historically been paying rates which are substantially higher than lower 48 counterparts partly because of the compression phoenomena and partly because of the disparity in benefit and experience levels. Whereas empoyees in other classes have been paying less than their counterparts because of the compression effect even though the benefit and experience levels indicate a higher rate should be paid. The further implication of this finding is that, as the rating system reacts to the actual by class loss experience, the higher hazard classes will see some moderate rate increases and the end result will be more realistic relativities among Alaskan classifications until all classifications are essentially uniformly higher than their benchmark state counterparts.

Some credence is lent to this tentative conclusion by the most recent rate filing submitted by the National Council and approved by the division of insurance which called for an overall rate increase of 1.8% spread among major hazard categories as follows:

manufacturing	.6%
contacting	10.7%
all other	(4.2%)

III STUDY APPROACH

The study has revealed that three basic ingredients are required in a comprehensive social program to make the program cost effective: incentive, relevance and competition.

Incentive: The history of most social programs, programs for providing legislatively determined benefits to a defined class to achieve a particular public policy objective, shows they are abused unless some incentive is imposed upon all involved in the program to pursue the same public policy objective.

For example, the workers' compensation system has multiple public policy objectives. Among them are:

1) prompt efficient compensation for medical costs and wage loss of injured workers.

2) promotion of safety to reduce the frequency and severity of industrial injury.

3) rapid restoration of the wage earning capacity of an injured worker and his early re-entry into productive employment.

This report evaluates the system's ability to achieve these principal objectives and makes recommendations which tend to increase the incentives of all participants in the system to work towards these objectives.

Relevance: Our analysis of the workers' compensation system suggests that many of its components are present in the system for reasons that no longer pertain or are not functioning as the component was intended or is currently needed. All functions in a good sound system should operate toward the principal objective, be relevant in operation and result to their intended purpose. To the extent certain components in the system are not functioning in a manner relevant to the intended result, recommendations are offered for their improvement.

Competition: If one accepts the basic premises of the free enterprise system, then the element of competition as an affective control of cost must be acknowledged. Our study reveals that there are several statutory and regulatory barriers to competition which have had the tendency to mask opportunities for potential savings. Recommendations are included which address increased competition in the workers' compensation system.

IV REORDERING INCENTIVES

This part of the report focuses on ways in which the incentives to abuse or overutilize the system may be substituted with incentives to greater safety, earlier return to work and less system utilization.

The payment of a wage replacement benefit in lieu of paying wages for work done has the potential for creating a disincentive to return to work. To understand this phenomenon in workers' compensation, a review of the benefit structure is in order.

Statutory Benefit Structure

There are six specific categories of workers' compensation benefits provided in Alaskan statutes each dependent upon the amount of time lost and upon the nature and severity of the worker's disability.

If a worker finds himself injured but is able to return to work within three days at the same employment with no loss in wages, he is assigned the status of a medical only claimant.The only liability against the employer is the total amount of medical costs incurred by the injured worker for his injury.[19]

If the injury is reasonably severe and the healing period takes longer than three days and does not permit the worker to return to work during the period of healing, he is classified as a temporary total disabled. During the period of healing, this worker receives medical benefits equal to the total of all medical costs and receives 66-2/3 % of his average weekly wage at the time of injury for the duration of the healing period. If, however, the injured worker finds himself able to return to work, but not at the same job or same wages, he is assigned the status of a temporary partial disabled. This worker receives not only his total medical costs, but also compensation for 66- 2/3% of the difference in wages for the period of disability up to a maximum period of two years.[20]

An injured worker who, after reaching medical stability, is totally incapacitated by his disability is classified as a permanent total disabled. This worker receives not only his total medical expenses, but wage compensation at 66 2/3% of his prior injury wage for the rest of his life.[21]

If a worker is killed on the job, or subsequently dies from a work related injury, the workers' compensation benefits depend upon whether the deceased worker has beneficiaries. If there are beneficiaries, compensation is paid to them for a specific period of time. If there are no beneficiaries, a payment is made by the employer or carrier to the Second Injury Fund.[22]

The last status an injured worker can assume is that of a permanent partial disabled. This status is somewhat complicated. It is divided into two categories of injuries; scheduled and unscheduled. A scheduled injury is a simple loss, or loss of function of, a body member. An unscheduled injury is any chronic incapacity which disables a worker permanently, but is not a loss, or loss of function, of a body member. In both cases, the employer is liable for total medical expenses and compensation. Medical expenses are paid for the duration of the disability, whereas compensation may not exceed a maximum depending upon the type of disability.[23]

The simplest way to illustrate both the values of the current workers' compensation benefits, their maximum value, and the legislative changes in these benefits will be to refer to Exhibit 11. Exhibit 11 indicates both the value of the Alaska benefit for each disability classification and the changes in this benefit brought upon by legislative action between 1975 and the present. State by state comparisons for 1979 have been prepared by the United States Chamber of Comerce.[24]

If nothing else, Exhibit 11 amply evidences the startling changes in benefits that have occurred between 1975 and the present. It reflects how quickly and to what degree the State of Alaska has attempted to reach compliance with the National Commission's recommendations on workers' compensation benefit structures.

Maximum Benefits

A close examination of the United States Chamber's of Comerce indicates that the only area of great difference between Alaska and the benchmark states is the size of the maximum weekly compensation payments. Currently, in Alaska, the maximum weekly compensation payment is 167% of the State's average weekly wage, whereas, in Oregon, it is based on 100%, in Montana 100% or 50% depending upon disability, in Washington 75%, and in California at $154, without regard to that state's average wage.

Exhibit 12 illustrates how the compensation maximum is driven in Alaska, Washington, Oregon, Montana and California. Here are compared the average weekly wages and the multiplicative factors used to determine the maximum weekly compensation. Not only does Alaska have an exceptionally large average weekly wage in comparison to the benchmark states, but it also has the largest multiplicative factor for determining the maximum weekly compensation.

Exhibit 13 compares maximum compensation benefits and net take-home pay for an Alaskan worker. It illustrates what has been happening and is projected to happen from 1977 to 1981. The last three columns in this table are particularly interesting: column 4 annualizes the maximum weekly compensation, column 5 represents that annual wage or salary above which an injured worker would realize less than 66-2/3% in workers' compensation benefits, and column 6 provides an estimate of the annual net take-home pay for workers earning column 4 salaries. The net take-home is calculated

EXHIBIT 11

State of Alaska
Changes in Workers' Compensation Laws
1975 - 1979

	Prior to 5/22/75	5/22/75 12/31/75	1976	1977	1978	1979
BENEFITS						
Medical	Unlimited					
Permanent Partial						
Scheduled	$1,050-$21,840	$2,100-$43,680				
Unscheduled	65% of diff. between AWW & WEC	66-2/3% of diff. between AWW & WEC		9/1/77 Limit set at $60M		
Permanent Total	65% AWW $30M aggregate limit w/TTD & TPD	66-2/3% AWW				
Death	65% AWW to max. $75M	66-2/3%-90% AWW to widow for life: to children to majority		9/1/77-Ltd. to 66-2/3%: to children to majority: to widow w/10 year phase out unless over 52		
Temporary Total	65% AWW $30M aggregate limit w/PPD & TPD					
Temporary Partial	65% of diff. between AWW & WEC $30M aggregate limit w/ PPD & TTD					
Maximum Disc. %		7/75-80% SAWW	100% SAWW	133-1/3% SAWW	133-1/3% SAWW	166-2/3% SAWW
SAWW	$248.00	$248.00	$357.59	$414.00	$456.00	$392.73

Max. Dix. Pmt.	$175.00	$198.40	$357.59	$552.00	$608.00	$655.00
OFFSETS						
Out-of-State			8/76 Prorata reduction in periodic pmt. if o/s 90 days			
Social Security				9/77-Allowed reduction of benefits by 1/2 SS Retirement & Survivor benefits. 9/77-Allowed reduction of disability benefits to reduce combin. of benefits to 80% AWW		
RETROACTIVE APPL.		All Benefil increases made applicable to o/s cases.	8/76-Limited affect of retro to perm. totals & cases 2 yrs. old.			

LEGEND

AWW	= Average Weekly Wage for Worker
SAWW	= State Average Weekly Wage
WEC	= Wage Earning Capacity
Perm. Partial-Scheduled	= Loss of Member
Perm. Partial-Unscheduled	= Partial or Total Loss of Use of Part of Function
TTD	= Temporary Total Disability
TPD	= Temporary Partial Disability

DATE OF PREPARATION: 10/9/79
SOURCE: State Workers' Compensation Laws.

EXHIBIT 12

Average Weekly Wages, Maximum Workers' Compensation Benefits For Alaska, California, Oregon, and Washington

1979

State	Average Weekly Wage ($)	Maximum Weekly Comp. Benefit ($)	Fraction of Avg. Weekly Wage
Alaska	393	656	1.67
California	NA	154	NA
Oregon	242	242	1.00
Montana	188	188*	1.00*
		94*	0.50**
Washington	251	188	0.75

From Workers' Compensation Department of e states.

*Compensation for Total Disability and Indemnity

**Compensation for Permanent Partial Disability

NA Not Applicable

EXHIBIT 13

Comparison of Maximum Workers' Compensation Benefits with Estimated Net Annual Take-Home Pay

Year	State Avgrage Weekly Wage	Maximum Weekly Compensation	Maximum Annual Compensation	Annual Cut-Off Salary*	Estimated Annual** Net Take-Home
1977	414	552	28,704	43,034	29,604
1976	456	608	31,616	47,400	32,458
1979	393	655	34,067	51,074	34,546
1980	405+	675	35,107	52,634	36,055
1981	445++	890	46,280	69,385	44,522

*Salary above which worker receives less than 66-2/3% in workers' compensation benefits.

**Gross net of federal withholdings, state withholdings, FICA for a married worker with one child. (All years based upon 1977 withholding schedule).

+Division of Research and Analysis, Department of Labor estimate

++1979 value increased ten percent for inflation.

assuming the worker is married with one child and his only withholdings are federal income taxes, Alaska State income taxes and social security taxes. Other year net salaries were calculated using current withholdings schedules. Clearly, workers in high income brackets are earning nearly as much in workers' compensation benefits as they realize in net take-home pay. Our research, particularly interviews with claim adjustment professionals, and studies detailed later indicates that this creates a definite disincentive to return to work. Risk managers for self-insured risks in this state have observed that, particularly with respect to seasonal work or work that is subject to economic cycles, the high level of award based on high salaries creates a definite incentive to refrain from taking full-time employment at lower salary levels even though, were the person not injured, the lower paying salary would be welcome employment.

To the extent the 66-2/3% benefit results in more take-home than what could be generated by working, the system is operating counter to its intended purpose.

Exhibit 14 presents the percent distribution of money income, wages and salary for persons over 14 in Alaska for 1975, prepared by the Census Population Survey, Income Division of the United States Bureau of Labor. Exhibit 15 illustrates our extrapolation of this distribution to 1979. In preparing the extrapolation increases in the Anchorage Consumer Price Index over the period 1975 to 1979 were used, the total worker population was kept constant, and linearity within each salary range was assumed. All of these assumptions are somewhat tenuous; however, we feel the conclusions reached are still valid. We tested them against estimates of principal research personnel[25] of the Alaska Department of Commerce and Economic Development and found equivalence. In 1979, 83 percent of all workers would have been entitled to 66-2/3% of their salary if they were injured even if the maximum compensation had been only 100% of the State's average weekly wage. The salary range data are not detailed enough at the high end to determine exactly how high a percentage of the current worker population would be entitled to 66-2/3% of their wage, but national figures indicate that if the maximum compensation is 150% of the nation's average weekly wage, that fewer than 6% of the qualified workers would receive less than two-thirds of their weekly wage as compensation benefits. Department of Commerce and Economic Development personnel estimated that in Alaska fewer than 14% would receive less than two-thirds of their weekly wage as benefits if the State's maximum compensation were set at 100% of the State's average weekly wage. Currently, the maximum compensation is set at 166-2/3% of the State's average weekly wage leading to probably fewer than 1% of qualifying workers receiving less than 66-2/3% of wages as benefits. This factor is set to escalate to 200% in 1981!

We recognize that the purpose of the system is to replace buying power to assure that even if disabled the injured worker can still provide the necessities of life to his family.

EXHIBIT 14

Percent Distribution of Money Income, Wage and Salary for Persons Over 14 in Alaska for 1975

(Numbers in Thousands)

	Total	$1-1999	$2000-3999	$4000-5999	$6000-7999	$8000-9999	$10,000 11,999	$12,000 14,999	$15,000 19,999	$20,000 24,999	$25,000 & Over
Number (Employees over 14 yrs.)	213	40	22	20	16	17	14	18	21	15	30
Percent	100	18.8	10.3	9.4	7.5	8.0	6.6	8.4	9.9	7.0	14.1

EXHIBIT 15

(Estimated for 1979)

	Total	$1-1999	$2000-3999	$4000-5999	$6000-7999	$8000 9999	$10,000-11,999	$12,000-14,999	$15,000-19,999	$20,000 24,999	$25,000 & Over
Number (Employees over 14 yrs.)	213	35	22	19	16	16	14	14	24	17	36
Percent	100	16.4	10.3	8.9	7.5	7.5	6.6	6.6	11.3	8.0	16.9

Census Population Survey, Income Division, U. S. Bureau of Labor.
(Telephone conversation with Mr. George Patterson.

Perhaps part of the reason for setting maximum limits on benefits in the first place was a recognition that above a certain level, income is discretionary and the importance of a mandatory income replacement for the discretionary portion was less important.

Our investigation suggests that in Alaska, there is no definite dollar value of income to support necessities, that is, not every family or wage earner pays the same for food, shelter, clothing, utilities, etc. Rather, as incomes go up, so does the dollar amount expended on necessities although the proportion of the increased dollars spent on necessities may be less. For example, people receiving higher wages pay more for rent, or home mortgages, food and clothing and the expense levels are not easily adjusted downward in the event of an industrial injury. Accordingly, while we recommend that the 66-2/3% replacement factor be capped at 100% of the State's average wage, recognition should be given to the need to replace some portion, but a lesser portion of the higher level of wages.

RECOMMENDATION No. 1

THE ESCALATING MAXIMUM BENEFIT SCHEDULE ADOPTED IN AS 23.30.175 BE ABANDONED AND IN ITS PLACE THERE BE ADOPTED THE FOLLOWING SCHEDULE:

1. 66-2/3% OF THAT PORTION OF WAGES UP TO 150% OF THE STATES AVERAGE WEEKLY WAGES, AND

2. 40% OF THAT PORTION OF WAGES FALLING BETWEEN 150% AND 200% OF THE STATES AVERAGE WEEKLY WAGES, AND

3. 20% OF THAT PORTION OF WAGES FALLING BETWEEN 150% AND 300% OF THE STATES AVERAGE WEEKLY WAGE.

4. NO BENEFIT WILL ACCURE FOR ANY WAGES EARNED IN EXCESS OF 300% OF THE STATES AVERAGE. WEEKLY WAGE.

For an example of how this would be calculated, consider an injured employee whose wages were, at the time of injury, $1000 per week. The State's average weekly wage is $393 per week. Presently the indemnity benefit maximum is $655 per week.

Under this recommendation the worker would recieve:

66-2/3% of wages up to 150% of the State's average weekly wage ($589.50) = $393.00.

Plus, 40% of wages falling between 150% of the State's average weekly wage ($589.50) and 200% of the State's average weekly wage ($786.00) = $78.60,

Plus, 20% of wage falling between 200% of the State's average weekly wages ($786.00) and 300% of the State's average weekly wage ($1,179.00) = $42.80.

$393 + $78.60 + $42.80 = $514.40

Which is 130.8 % states average wage

51.4% of the workers gross salary

74.3% of the workers take home salary
(see Exhibit 13)

Permanent Partial Disability

The focus of the Alaska workers' compensation system is today primarily monetary. Much time and money is spent on searching for disability, describing it, labeling it, giving it percentage ratings, and disputing negative findings. During this process the Alaska system delivers the highest temporary total disability payments in the nation to aid those who incurred this occupational disability. At the end of the search in which workers, physicians, attorneys, insurers, rehabilitators, and bureaucrats vigorously participate, lie permanent disability awards and lump sum settlements which place a monetary value on a worker's impairment, as if it were a saleable commodity.

Unfortunately, this notion that the primary responsibility of worker's compensation is to provide a liberal schedule of benefits has perverted what must be the ultimate goal of an effective worker's compensation system. To return the injured worker to gainful employment as soon as possible by maximizing his occupational abilities and opportunities and preventing or minimizing the degree of occupational disability and secondary gains of the system.

There are at least three basic myths inherent in the system in which otherwise intelligent men and women believe. The first myth is founded in the mistaken notion that injury causes disability, even though the list of scheduled injuries legally makes certain injuries automatic, bona fide disabilities. A table in our law, in effect, puts a price tag on parts of a man's body. It ignores the fact that a worker's reaction to his injury and the degree to which his injury disables him are very personal and individual matters. It does not identify his abilities or account for how his problems affect his ability to do his job. Conceivably, there are some workers whose physical impairment would result in virtually no occupational handicaps, or whose occupational handicaps could be resolved with very little accommodation or who after much physical or vocational rehabilitation were left in a better vocational position than the one they left.

Consider the double-below-the-knee amputee who requalified to be a Navy pilot, the quadriplegic who returned to being the managing editor of a large newspaper, or the logger who hopped back to camp even before his artificial leg arrived from the prosthetist. These catastrophic injuries resulted in minor occupational disabilities. On the other hand, there are today many Alaskan workers bowed by backpain who fail to ever return to work, and some like the woman whose burn scar on her hand kept her prisoner in her own home, who permit the fact of injury to consume their attitude toward life.

The second myth, perpetuated by this money-centered system, is that money is the primary secondary gain for the compensation claimant. The fact is that a man's injury purchases much more than a mere paycheck. "It's his ticket to increased self-esteem" explains Dr. Edward M. Colbach, an industrial psychiatrist involved in assessing and treating workers' compensation claimants in Oregon.[26] An injury report may turn around the life of a forgotten worker stuck in a deadend job with little attention or recognition from even his family. "Why that piece of paper will get the attention of his family, his boss, neighbors, fellow workers, insurance adjusters, doctors, and lawyers! The guy's a celebrity," says Colbach. When the compensation system comes along and tells such to a person that he will do everything possible to stay disabled should come as no surprise.

The story leads to the third myth which promotes the idea that most injured workers, particularly those with back pain, are conscious fakers or malingerers. Although this is true in a few isolated instances, the majority of those who focus on their pain and have few, if any, objective findings, are merely choosing an honorable way out of an unacceptable situation. On an unconscious level, their pain allows them to avoid the prospect of unemployment, rejection, anonymity. Society sees occupational disability assigned to an occupational accident or illness as an acceptable thing. The tragedy of the system is not found solely in employers' draining coffers, but in wasting human resources in the forms of chronic invalids produced by the system.

As our expensive system demonstrates, the answer comes not in wage replacement alone, but is provided in understanding the disability process together with an active program to minimize disability or to prevent it from happening in the first place. This program requires that we recognize disability as a continuing process which did not always begin at the moment of harm when the injury allegedly occurred. The program requires, according to Colbach, that we use three tactics engaged by the military to combat battle fatigue: <u>immediacy</u>, <u>proximity</u>, and <u>early return to duty</u>. Futhermore, we must identify the true enemies to cost containment and occupational ability: <u>time</u> and <u>inactivity</u>. Money is not the only incentive to disabiltiy, defined by Eleanor Ross as "the individual's response to the summation of the emotional, economic and social factors arising out of his industrial accident or occupational disease."[27] Money merely facilitates this time loss and inactivity.

Weekly compensation payments help make disability attractive and socially acceptable. A man can support his family and be sick at the same time in an age when his well brothers are sitting on the unemployment bench.

The system encourages the delusion that these payments will last forever. Many claimants make a new career out of collecting compensation. These payments become powerful reinforcers for idleness. The law provides for built-in resistance to any return to gainful activity and spawns litigation whenever there is a new finding of cessation. It allows the worker to take his own time in recovering because it provides no time frame for expected recovery or re-employment.

However, understanding the disability process and taking early steps to minimize this process is only the first part of the solution to this expensive problem in Alaska. The second part of the solution rests in an active re-employments program. FINDING JOBS FAST for the injured workers is important.

Alaska's current approach to permanent disabilities is to divide the question, classify permanent disabilities as either total or classify them as partial. Under law, a worker is presumed a permanent total disabled if he loses both hands, or both arms, or both feet, or both legs, or both eyes, or any two of them, in the absence of conclusive proof to the contrary. In all other cases permanent total disability status is determined in accordance with the facts. It is our opinion that there is absolutely no need in the law for the presumptive permanent total classification. Clearly, many individuals who have lost more than one body member can be reremployed with good earning potential. Certainly, determining permanent total disability status in accordance with the facts should be sufficient.

The second category, that of permanent partial disability, is in Alaska, as it is in all other states a status filled with paradoxes. Workers' compensation theoritists have never been able to reach concensus on whether this classification addresses its concerns to physical impairments or is concerned with claimants who have a class of disabilities causing them wage loss. Currently, Alaska's present classification tries to do both. It attempts to camouflage the payment for impairment by couching the benefits in terms of lost wages. This, in our opinion, is an unnecessary complication, an evasion of the truth, and serves to complicate and probably enhance the amount of litigation attendant to these types of disabilities. The incredibly detailed grocery list of scheduled injuries present in current law serves as a launching platform for litigation. The mere existence of this list probably serves as a motivator to attorneys who are fighting for increased benefits for their clients.

Good medical practice recognizes that results and recovery times from industrial injuries are different from thoses of noncompensable injuries. Medical modalities are only one route of effecting these results. So many other factors interplay in a man's recovery that care of the workman can no longer be an isolated perogative of the medical world. In workers' compensation, according to Rolland Martin, M.D. Author of the book Occupational Disability," care now

involved the preservation of a workmans' economic life and the continuation of his dues-paying membership in society".[28] Care of the worker must therefore be a team effort involving cooperation, communciation, and coordination among the many different disciplines and professions concerned with returning the worker to employment. To change the approach to compensation and reinstill the incentive to exit the system we believe, recognition should be first given to paying an injured worker for his impairment; then the wage loss impact of his disability could be directly addressed. The impairment schedule should be very simple. Only the loss of a hand or an arm, a leg or a foot, loss of some degree of vision, and some degree of hearing should qualify. The award for any of these impairments should be equivalent to no more than one year's prior injury wages or salary. A loss of more than one member would increase the award proportionately.

The wage loss component in either permanent disability category, either permanent partial or permanent total should be identical; the injured worker should be required first to have reached maximum medical improvement or medical stability as established by the attending physician. At this time the claimant should be classified as a permanently disabled worker. However, to receive compensation benefits, the worker would be required to fully register with the State of Alaska's Employment Services in a manner similar to that now required for workers drawing unemployment insurance benefits. He would receive compensation benefits on a strict wage loss basis, 66-2/3% of the difference between prior injury average wages and current wages, subject to the weekly maximum set forth in Recommendation #1. Maximum dollar amount of the award should be set at three years of the injured worker's prior to injury wages or salary. Subsequent to this three year period, if the injured worker is classified as a permantly totally disabled he should receive, again, only 66-2/3% of his average prior injury wages or salary. If during the three year period the injured person has made an effort to seek employment and is unable to find any job, a determination can be made that he is permanently and totally disabled which would entitle him to the weekly indeminity, 66 2/3 of his average wage, the weekly maximum, for life, subject to the weekly maximum in recommendation #1.

During the three year period, compromise and release agreements should be discouraged for the compensation portion of the benefit. However, subsequent to the three year period, we see no reason why they should not be allowed. Additionally, we feel that compromise and release agreements should be permitted to dismiss any future medical payment liability for any claimant in this category. The Board still should have the authority to approve compromise and release agreements to assure that they are in the best interest of the injured worker.

We emphasize that extreme care must be given to the drafting of the legislation with respect to the permanent disability categories. We must assure ourselves that the mechanisms designed to catapult a malingering worker out of the system can not be perverted.

RECOMMENDATION No. 2

AS. 23.30.180 SHOULD BE REPEALED TO ELIMINATE PRESUMPTIVE PERMANENT TOTAL STATUS. ALL WORKERS CLASSIFIED AS PERMANENTLY DISABLED SHOULD BE PAID COMPENSATION BASED STRICTLY ON ACTUAL WAGE LOSS. IN OTHER WORDS, THAT COMPENSATION BE 66-2/3% OF THE DIFFERENCE BETWEEN PRIOR-TO--INJURY AVERAGE WEEKLY WAGES AND CURRENT WEEKLY WAGESE SUBJECT TO THE WEEKLY MAXIMUM. IF IT IS IN THE BEST INTEREST OF THE INJURED WORKER, COMPROMISE AND RELEASE AGREEMENTS WITH LUMP SUM SETTLEMENTS SHOULD BE AVAILABLE.

RECOMMENDATION No. 3

THE PRESENT SCHEDULED PERMANENT PARTIAL DISABILITY LIST IN AS 23. 30.190 SHOULD BE ELIMINATED AND A VERY SIMPLE IMPAIRMENT SCHEDULE ADOPTED. THE IMPAIRMENT SCHEDULE SHOULD ONLY ADDRESS THE LOSS OF A HAND OR AN ARM, A FOOT OR A LEG, LOSS OF VISION IN PART OR IN WHOLE, AND LOSS OF HEARING IN PART OR IN WHOLE.

THE IMPAIRMENT AWARD SHOULD EQUAL 52 WEEKS OF COMPENSATION. LOSS OF MORE THAN ONE MEMBER SHALL INCREASE THE AWARD PROPORTIONATELY.

RECOMMENDATION No. 4

DISABILITY COMPENSATION SHOULD BE 66-2/3% OF THE DIFFERENCE BETWEEN THE AVERAGE WAGES EARNED AT THE TIME OF INJURY AND ANY CURRENT WAGES PRESENTLY BEING EARNED SUBJECT TO THE WEEKLY MAXIMUM. AND THE DUBLICATION BETWEEN TEMPORARY AND PERMANENT DISABILITY AWARDS SHOULD BE ELIMINATED.

The wage earning capacity of the injured worker is truly a subjective determination that is based strictly upon conjecture. little argument can arise around wages currently being earned.

The Effect of Compensation on Healing Time.

The type of awards conferred by this system results in extension of benefits over time beyond what is truly necessary and is a counter incentive to exiting the system.

Several studies compare treatment results between compensated and non-compensation patients. Those on compensation received more treatment, had longer disability periods and less satisfactory results than their conterparts.

Finneson[29] analyzed 623 patients with low back pain who were managed conservatively. Those without secondary gain (some form of monetary benefit) averaged a total disability interval of 16 days for a specific pain episode, whereas those patients receiving compensation or expecting monetary awards averaged 36 days of total disability. 72 out of 1000 surgically treated patients with herniated lumbar discs were classified as having had unsatisfactory results. These 1000 patients broke down to 657 nonsecondary gain patients, with 34 or 5% unsatisfactory results and 343 secondary gain patients with 38 or 11% unsatisfactory results.

An older study looked for differences that might be related to compensation among 509 patients treated for low back injuries at Baylor University Hospital.[30] Here are some of the findings: Only 55.8% of the 272 patients receiving compensation were rated as improved at the ime of discharge as compared to 88.5% of the 237 patients not receiving compensation. Futhermore, the mean number of treatments received by the compensation group greatly exceeded that of the non-compensation group. Some patients in the non-compensation group responded well to conservative management byt others appeared to have difficulty within their basic personality structure. Their study can be summarized by the following 33% less objective evidence of impairment, received nearly twice as many physical therapy treatments, and experienced 14% less long-term improvement compared with similar patients not receiving compesation.

Professor AL. Nachemson took a critical look at current methods of treatment of low back pain and concluded that of patients with episodal backache, 60% recovered in three weeks and 90% in two months, irrespective of management in the general population.[31]

Back disorders and rehabilitation achievement which were examined in another found that rehabilitation achievement among 175 study population (study composed of admissions to the Ohio Rehabilitation Center because of back impairments during 1956-1960) is not primarily a function of the degree of severity of physical impairments.[32] It found greater proportions of the non-achievers among those reporting income from pensions and insurance and support from family and close relatives (other than spouse and children) which may indicate an influence of dependency inclinations. It noted a tendency toward greater rehabilitation achievement among the more skilled. It discovered that the most frequently diagnosed reasons for negative motivation were "satisfaction of dependency inclinations" and "anticipation of ccompensation", which accounted for factors affecting low achievement, but cautioned that post-discharge employment is influenced by other factors in addition to achievement in the rehabilitation program: labor market conditions, fear of reinjury, subsequent compensation, and discriminatory attitudes toward employing the handicapped.

In 1970-1971, the Society of Actuaries compared two types of disability insurance policies called Loss-of-Time insurance. The first type of policy was long-term in nature but the other type paid benefits for no more than two years during any one period of continuous disabililty. The study published the results of surveys from 138,795 claims from 13 leading insurance compainies which showed the following:

> For the two year policies, the actual days of disability per 100 insureds were 63% of that expected, compared to 99% for the long-term policies. The relative second-year cost for the short-term policies was 64% of that expected, compared to 100% for the long-term policies.[33]

John H. Miller, consulting actuary to the Ways and Means Committee of the United States to the 94th Congress, stated some of what can be learned about the motivation of beneficiary recipients from these statistics:

> "When a person enjoys the economic protection of a disability income policy with benefits assured for two years of continuous disability, he or she does not face the immediate crisis of existence without income. If the benefit amounts are adequate, the family of the disabled person is assured sufficient income to purchase the necessities of life. However, they all live with the realization that this is a temporary respite and that either the economic disability must be overcome or some other solution found.
>
> The fact that the days of disability in the second year are so much fewer under the shorter benefit period policy than when long-term benefits are provided indicates that the many insured under the former manage to resume work, either b recovery or by attaining rehabilitation. Doubtless the fea of not being able to return to the former job or of losing one's skills or having one's experience blunted by idleness, motivates many to return to work without waiting for the two year policy limitation to be used up.
>
> On the other hand, if there is no limitation on benefits prior to age 65, the disabled person may fear to make the effort of returning to work lest he lose his claim to these disabililty benefits and then subsequently lose his job.[34]

RECOMMENDATION No. 5

THE MAXIMUM COMPENSATION BENEFITS WHICH A PERMANENTLY DISABLED WORKER MAY BE ALLOWED SHALL BE NO GREATER THAN THREE YEARS OF COMPENSATION BENEFIT UNLESS THAT PERMANENTLY DISABLED WORKER IS, SUBSEQUENT TO THE THREE YEAR PERIOD, DETERMINED TO BE PERMANENTLY TOTALLY INJURED. IN THIS CASE BENEFITS SHALL EXTEND FOR LIFE.

RECOMMENDATION No. 6

EACH PERMANENTLY DISABLED INJURED WORKER SHOULD BE REQUIRED TO FULLY REGISTER WITH THE EMPLOYMENT SERVICE, PURSUE JOB REFERRALS, AND REPORT ANY WAGES EARNED DURING A PRIOR TWO WEEK PERIOD.

IF THE INJURED WORKER DOES NOT REPORT TO THE EMPLOYMENT SERVICE FOR JOB REFERRALS OR REPORT HIS PRIOR TWO WEEKS EARNINGS, THE EMPLOYMENT SERVICE SHALL CONTACT THE DIVISION OF WORKERS' COMPENSATION WHO WILL NOTIFY EITHER THE CARRIER OF THE EMPLOYERS TO SUSPEND BENEFITS SHALL BE REINSTATED AFTER A WORKER REPORTS TO THE EMPLOYMENT SERVICE AND REPORTS HIS PRIOR TWO WEEK WAGES.

RECOMMENDATION No. 7

EACH INJURED WORKER WHO OBTAINS A JOB REFERRAL WILL BE EXPECTED TO OBTAIN AN INTERVIEW. IF WITHIN A THREE YEAR PERIOD THE INJURED WORKER HAS RECEIVED 10 JOB REFERRALS AND IS NOT EMPLOYED, THE EMPLOYMENT SERVICE WILL CONTACT THE DIVISION OF WORKERS" COMPENSATION WHO WILL NOTIFY THE CARRIER OR THE EMPLOYER TO CEASE BENEFITS. IF ON THE OTHER HAND, THE PERMANENTLY DISABLED WORKER, WITHIN THE THREE YEAR PERIOD OF TIME HAS NOT OBTAINED 10 JOB REFERRALS, THIS WILL PERMIT A DETERMINATION OF PERMANENT TOTAL DISABILITY IN ACCORDANCE WITH THE FACTS.

RECOMMENDATION No. 8

PRIOR TO AN EMPLOYEE BEING CLASSIFIED IN A PERMANENT DISABILITY STAT' , IT WOULD BE IN THE BEST INTEREST OF THE EMPLOYER DURING THE PERIOD THE INJURED WORKER IS REACHING MAXIMUM MEDICAL IMPROVEMENT, (I.E., DURING THE PERIOD HE IS IN THE TEMPORARY TOTAL STATUS) THAT ALL EFFORTS TOWARDS JOB, VOCATIONAL AND PHYSICAL REHABILITATION BE MADE. IF REHABILITATION AND MAXIMUM MEDICAL IMPROVEMENT CONINCIDE, THE POTENTIAL COMPENSATION LIABILITY WILL BE MINIMIZED.

Average Weekly Wage

Currently, in Alaska, the average weekly wage at the time of injury is not necessarily the wage the injured worker was making on the job at the time of his injury. The law allows the average weekly wage to be the highest wage earned by this worker in any one of the three years immediately prior to injury. This allows the worker to claim a wage not necessarily representing the job in which he is currently employed. There is no question that this is patently unfair to the employer with whom the injured worker is currently employed and results in the system compensating for other than the impact of the injury.

This anamoly in the law came about during the 1977 effort to recognize that many injured workers earn higher wages during their working weeks in recognition of the seasonality of their work or the weeks on/weeks off scheduling of work particularly for these workers who camp at major construction projects.

The impact of allowing the worker to choose the most favorable of the last three years is to permit "boom" period wage bases to be used in respect of injuries occuring as much as three years after the "boom".

RECOMMENDATION No. 9

AS 23.30.220 (1) SHOULD BE AMENDED TO READ "THE AVERAGE WEEKLY WAGE IS CALCULATED BY DIVIDING 52 INTO THE TOTAL WAGES EARNED, INCLUDING SELF-EMPLOYMENT, IN THE TWELVE MONTHS PRECEDING THE INJURY."

Filing Time Limitations

In Alaska a claim may be filed within two years after knowledge of a job related disability or, in the case of death, within one year after death, or two years after the last compensation payment. If the injury is a latent one, there are no time limits whatsoever. These limitations are quite generous when compared to those of California, Oregon and Washington. In California, for disability, the limitation for filing a claim is one year from the date of injury or last furnishing of compensation benefit. For death, it is one year after death up to 240 weeks after injury. In Oregon, it is within one year after the date of accident, last payment of compensation or last date of medical services and in Washington, it is simply within one year after injury or death. The difficulty that extended filing periods present in Alaska is that so long as the econony moves through periods of heavy construction activity followed by periods of slack, the unemployed worker will, during the slack period tend to "remember" and file on old alleged injuries.

The existence of extended filing periods imposes upon insurance carriers the obligation of establishing reserves for unreported claims for the full term of the filing period thus tending to maintain a higher assumed loss cost.

RECOMMENDATION No 10

AS 23.30.105 SHOULD BE AMENDED TO PROVIDE FOR SUBTANTIALLY SHORTER FILING PERIODS TO SIX MONTHS AFTER VOLUNTARY PAYMENTS HAVE TERMINATED BUT IN ANY EVENT NO LATER THAN TWO YEARS AFTER INJURY.

OffSets

When the first workers' compensation laws were adopted these benefits constituted almost the entirety of the employment benefit package. However, since this time, employers have instituted numerous benefits in addition to workers' compensation for their employees. Presently, most employers carry health benefit plans, accrued vacation leave plans, and sick leave plans. All pay social security and unemployment benefits and most provide for additional retirement benefits. Some companies even provide disability income plans for injuries incurred off the job. A problem perceived by many employers is that of unintended interaction between the various benefit plans. They feel different benefit plans are compounding and thus providing larger benefit packages than had been intended by the employer at certainly greater cost. In recognition of this problem, in 1977 the Alaska legislature amended the workers' compensation statutes to allow an offset to workers' compensation benefits for one half of the survivors and old age social security benefits. The workers' compensation benefit was reduced by the amount of social security disability benefits such that the combination of workers' compensation and social security disability benefits do not exceed 80% of the injured workers' average weekly wages at the time of injury.

There still remains several areas of duplication of the benefits provided by workers' compensation and those to which an injured worker is entitled from other systems. For example, if an injured worker is obtaining benefits from a company's medical leave program, it is reasoned that the amount of medical leave benefit should be offset against any workers' compensation benefits. There is a counter-agrument to this position. Suppose a worker becomes injured on the job and medical leave benefits are offset against workers' compensation benefits. Assume that the period of injury for this worker exceeds the medical leave to which the worker is entitled. This would mean that a subsequent non-work related accident, injury or illness would not be covered by a medical leave to meet a work related injury which, by statute, is supposed to be covered by workers' compensation benefits. A similar argument may be used in the case of offsetting workers' compensation benefits with accrued vacation leave benefits. For many companies, accrued vacation leave is a booked company liability to again, offsetting worker's compensation benefits with an accrued cost of his work related injury.

On the other hand, an unemployment insurance offset similar to the social security offset makes sense. However, the occurance of a dual workers' compensation benefit and unemployment insurance benefit in Alaska is indeed very small since a worker receiving workers' compensation benefit would be ineligible to receive un-employment insurance benefits except in one instance. If a worker were receiving unemployment insurance benefits and subsequently filed a legitimate workers' compensation claim, be would be entitled to receive both benefits under current Alaskan Law. The incidence of this happening is considered quite small by senior personnel at the Employment Security Division of the Alaska Department of Labor.

There is also some merit to the argument that retirement pension benefits received subsequent ot the age of retirement by a worker who is also receiving a workers' compensation benefit, should, in some manner, be offset against the workers's compensaiton benefit. Currently, the workers' compensation benefit is primary. There is ample case law indicating the retirement benefit is a contractual obligation of the employer to the employee and cannot be reduced by the amount of workers' compensation benefit. Some consideration, however, should be given to the idea of offsetting the pension benefit against the workers' compensation benefit.

RECOMMENDATION No. 11

WE RECOMMEND THAT OFFSETS SIMILAR TO THOSE PROVIDED BY SOCIAL SECURITY AGAINST WORKERS COMPENSATION, BY PROVIDED FOR FOR UNEMPLOYMENT INSURANCE BENEFITS AND RETIREMENT PROGRAM BENEFITS.

Medical Management In Alaska

The worker's compensation system in Alaska is very expensive indeed. The key to cost containment can be found in closely defining the limits of responsibilities which the employer/insurer has to the injured worker and then living within those definitions. It also rests in communicating the responsibillity the injured worker has to himself.

Right now the system is filled with open endings. For instance, temporary total disability, according to AS 23. 30. 185, "shall be paid to the employee during the continuance of the disability". Just when this disability ends is the subject of many contrversies before the board. The statutes set a two year limit on medical care which can and usually is extended. Often, palliative treatment extends the so-called "healing period" ad infinitum.

Futhermore, in these depressed economic times, the system finds itself paying for the unavailability of work, which has become an "important determinent of earning capacity". (Hewing v Alaska Workman's Comp. Bd., Sup. Ct. Op. No. 916, 512 P2d 896, 1973). AS 23. 30. 210 directs the board "to consider any other factors or circumstances in the case which may affect his (an employee's) capacity to earn wages in his disabled condition".

A factor often considered is the question of pain. Even though the statutes make no allowance for pain and no mention of it, even though pain is an intensely subjective and personal experience, and even though it is unrelated to the severity of injury, it is given weight in determining wage earning capacity.

As part of the research of this project we analyzed workers compensation claims in Alaska. The results of that study will be available in a supplement to this report. In our study, 74% of the sampled claimants incurred a time loss of less than 10 weeks, with 8.7 weeks being the average time loss. After that half-way point, the 26% left had a much slower rate of recovery. However, only 4% of the total worker's compensation population sampled took over 50 weeks time to recover. It is those 4% who are more likely to develop permanent total disabilities. Among those are persons with injuries so severe that they will legitmately support a time loss of over 50 weeks. Among those 4% are those who are more inclined to develop occupational disabilities and pain behavior. Identifying the future 4% is extremely difficult. Therefore, developing alternatives to disability and unemployment as soon as possible are important deterrents to costly chronic compensation.

An examination of the dimensions of the worker's compensation system in Alaska reveals that the system is relying on medical solutions to occupational problems. It is trying to solve unemployment of injured workers with large doses of physical therapy or compensory indemnity. It is confusing occupational disability and physical impairment. Alaska has merely stuck a medical finger in the dike to prevent injured workers from seeping into personnel offices and union halls.

This medical search is not as humane as it would appear on the surface. In the long run it is contributing to occupational disability. It is teaching Alaska's compensation claimants to be and stay sick. It is replacing the work habit with the doctor habit. It is creating an acceptable alternative to unemployment. And it takes time, the most expensive and damaging ingredients in this disabling process.

A far better alternative to looking for solely medical answers is to institute a re-employment program for injured workers in concert with their medical treatment. This term is to be substituted for "rehabilitation", which has connoted formal retraining. Understandably, the term "rehabilitation" strikes fear in the heart of any employer or insurer who envisions two or more years of indemnity payments, for a half-finished college program. It is hardly more attractive to an injured worker who can't envision himself sitting in a classroom after years of participating in the school of life and work. It is rightfully scorned as a convenient and acceptable postponement to facing the return to work. Therefore, rehabilitation, used in this way, is disabling to workers who may really only need the services of a well-designed re-employment program. And it adds time.

Another gross deficiency in the system is lack of information provided the worker. From the outset, he does not know what is expected of him. He is provided little information about his employment status, how long it will take him to recover, or how to find his way through the system. There are no acceptable printed

instructions, no central guide he can trust. When he meets a dead-end in the maze of bureaucracy he contacts an attorney for direction, which delays his recovery. The system is so open-ended and filled with ambiguities that an attorney can delay a resolution to the disabling process for a considerable time and time is devastating!

This lack of communication is accentuated by perceived employer attitudes toward the injured employee of apparent disinterest and disbelief which contributes to the worker's anger which interferes in the healing process and his motivation to return to work. And, of course, this mix of reaction adds time.

Therefore, the solutions to the problems of occupational disability and cost containment are functions of time. Time allows for a worker to focus on his injury instead of returning to work. Time allows for indemnity payments to mount. Time increases the likelihood of more medical treatment. In time, depression is replaced by anger and anxiety is replaced by acceptance and lowered expectations. In time, symptoms can be exaggerated. Also, time cuts off alternatives for the worker and the insurer, alike, in minimizing the process of occupational disability. Thus, the solution to cost containment in the whole meilieu of worker's compensation is a race against the clock.

The following recommendations are designed to provide a time frame in which certain events will happen and to close some of those open endings. Caution should be taken thathis cannot be a cookbook approach, but one tailored to minimizing and preventing occupational disability in each injured worker. The recommendations are really aimed at reducing the number of hard-core chronically disabled population who are more likely to develop permanent total disabilities by changing the incentives that now contribute to the extention of time.

Choice of Physician

One of the most frequent criticisms, of the role of the physician in the workers' compensation system.

Our study indicates that the economies of the system set up incentives to overindulge the midical component of the system.

When the physician knows that he can prescribe care which will be fully compensated by a financially reliable source, there is no check on use of the medical benefits. Thus the incentives of injured workers to stay subject to the system together with the injureds' right to select the physician has tended to premit "doctor shopping" and a perhaps unconsicious marriage of interests between the physician and claimant to extend their mutual dependence upon the system.

Several recommendations follow which have as their intent the shifting of the incentives to one of earliest weaning from the compensation system.

RECOMMENDATION No. 12

THE EMPLOYER, OR CARRIER SHOULD BE ALLOWED TO DESIGNATE THE PANEL OF PHYSICIANS FROM WHICH THE INJURED WORKER MUST SELECT HIS TREATING PHYSICIAN. THE PANEL SHOULD INCLUDE AT LEAST TWO PHYSICIANS IN EACH GEOGRAPHIC AREA FROM EACH RECOGNIZED MEDICAL SPECIALTY. THERE SHOULD BE TWO EXCEPTIONS TO THIS RULE; a) IF THE INJURED WORKER HAS SEEN A FAMILY PHYSICIAN OR A PHYSICIAN IN THE SAME SPECIALTY AS REQUIRED FOR THE INDUSTRIAL INJURY FOR ACTUAL TREATMENT WITHIN THE ONE YEAR PRECEDING THE INDUSTRIAL INJURY, HE MAY BE TREATED BY THAT PHYSICIAN AND b) IF THE WORKER IS NOT RESPONDING TO TREATMENT OR IS OTHERWISE DISSATISFIED WITH THE FIRST SELECTED PHYSICIAN, HE MAY REQUIRE THE CARRIER OR EMPLOYER TO PROVIDE A LIST OF THREE OTHER PHYSICIANS IN THE REQUIRED SPECIALTY IN THE WORKER'S GEOGRAPHIC AREA FROM WHICH THE WORKER MAY SELECT A SECOND TREATING PHYSICIAN.

This recommendation is born from the observation that there appears to be no real medical management of worker's compensation patients in Alaska. It is imperative, for quality care and cost containment, that one person be in charge of directing a patient's care and that person be the physician who is assuming the risks and responsibility for treating the person. Alaska's liberal policy of completely free and open choice of physicians results in duplicate treatment, concurrent treatment by physicians with differing philosophies of care, lack of coordinated treatment, tremendous time loss, and in some cases, a medical search which takes patients on medical shopping sprees for the elusive "cure" to pain, for higher eligibility ratings, or for more time on compensation. Employers and insurers are paying for this expensive and wasteful process.

AS 23.30.095 prohibits interference with physician selection, although the board is empowered to intervene, "if, in their judgment, care of treatment or both can best be administered by the selection of another physician". This is but one example of the board's being required to deal with a complex medical question with no professional expertise in medical matters among them. Moreover, the law allows the employee to change to another physician "in accordance with rules prescribed by the board". To our knowledge, no such rules now exist or have ever been promulgated. Therefore, the law itself, blatantly discourges any attempts at medical management.

One word of caution should be inserted here. Physicians should not be selected on the basis of their fees. Rather the most important criteria are that they be interested in the problem of the industrially injured and that they recognize that their medical treatment can prevent or encourage the sick role.

Physician's Fees

The Worker's Compensation Borad should be privy to the prevailing charges for procedures occurring in different cities and communities in Alaska to be used in deciding disputed cases. Physician's fees, which are according to AS 23.30.095 subject to regulation by the board are now paid without question because the board has no direct knowledge of the prevailing fees for procedures.

This is not to imply that there shou'd be a set fee schedule. It is not to imply that physicians are pervasively overcharging worker's compensation claimants although during this study examples were brought to our attention where fees were changed when workers' compensation availability was identified. It is not to imply that because of the voluminous paper work and litigious nature of industrial injuries that physicians are not justified, on occasion, in charging extra for their time and risks in taking care of these patients. However, there should be documentation of the usual and customary charges for medical services in respect to treating worker's compensation claimants and these charges should not be different from what other privately insured or uninsured persons are charged.

Fees are not particularly responsible for the cost of medical care. More important is the sheer volume of care, particularly physical therapy, the lack of coordinated care, duplication of services, and number of physicians seen.

Many insurers of medical plans already monitor physicians usual and customary fees since their medical policies provide benefits dependent upon "usual and customary" fees. The state of Alaska Department of Health Education and Social Service and the Division of Insurance both have access to usual and customary fee profiles, which could be useful in this regard.

RECOMMENDATION No. 13

THE DIVISION OF WORKERS COMPENSATION SHOULD ACCUMULATE AND PUBLISH USUAL AND CUSTOMARY FEES CHARGED FOR SPECIFIC MODALITIES BY PHYSICIANS FOR USE IN EVALUATING THE PROPRIETY OF FEES CHARGED IN WORKERS COMPENSATION CASES.

Palliative Care vs. Curative Care

The law should distinguish between palliative treatment and curative treatment. Treatment beyond that which enables a person to reach his maximum functional ability should be discouraged, except for catastrophic cases.

Treatment beyound this point offers persons so clined a license for disability and encourages the sick role. Attending a physician becomes for them a job, a social experience, too much of a good thing is occupationally disabling and should not be supported by employers or insurers whose duty is to get the claimant back to the work habit instead of the doctor habit.

Data in the supplement to this report covers only that contained in the files in Juneau. The final report filed in Juneau has the last available medical total at the time the claim was closed. It does not reflect the thousands of dollars many closed claims chalk up in a lifetime of doctors visits which are often of a palliative nature. One claim we examined had an additional $12,000 of bills tacked on in the absence of a permanent partial disability rating. Another person in Fairbanks was receiving physical therapy costing $1500 per month after a quarter of a million dollar settlement.

Often the chief complaint which functional persons have is that of chronic pain. This pain is an activity rather than a sensation in those whose pain behavior persists well beyond the time when the injury to the body tissue has healed. With time the relationship between physical findings and pain behaviors often is obscured. However, the claimant engages in this activity which he learns in order to obtain desired results the attention of a physician, the care and sympathy of a spouse, and other objectives, not the least of which are financial rewards in the form of compensation payments. The fact that some pain activity is "learned" does not mean that it is any less painful. However, it does not entitle the claimant to worker's compensation benefits for the duration of his pain.

An alternative to this practice would be to make treatment in a pain clinic a part of the settlement. Many pain clinics across the country do not accept worker's compensation claimants in their program because patients expecting secondary gains do not respond to treatment.

RECOMMENDATION No. 14

THE GREATER USE OF PAIN CLINICS AS AN ACCEPTED MODALITY SHOULD BE ENCOURAGED AMONG CLAIM ADJUSTERS AND THE WORKER. THE COMPENSATION BOARD SHOULD BE AUTHORIZED IN ADDITION TO THE AUTHORITY CONFERRED BY AS 23.30.095(b) TO SUSPEND COMPENSATION TO THE INJURED WORKER FAILING TO COOPERATE WITH PAIN CLINIC TREATMENT.

This chapter has dealt with the comprehensive topic of incentives; reordering the economic interests of the injured worker so that his incentive is shifted from one of prolonged dependence upon the system to one of earliest possible return to productive employment with no loss in essential buying power for the full period of legitemate inability to work; reordering the incentives of the physicians from overutilization of a readily available and guaranteed reimbursement system to one of providing, without limit, or excessive external control, all appropriate modalities without waste and minimizing recovery time and providing incentives to the employer to reincorporate the worker into productive employment.

V MAKING THE SYSTEM ELEMENTS MORE RELEVANT

This chapter isolates several components of the system and evaluates whether they are operating most effectively to serve their intended purposes. To the extent the system components have been allowed to fall into a posture of not being up to the current challenge recommendations are offered to make them meet todays' and tomorrows needs.

Post-injury Employment:

The lack of employment among permanently disabled worker's compensation claimants must be regarded as a national disaster area. "A closed claim is a good claim" is a joking matter until one reads studies of the economic impact of permanent injury on workers hurt on the job.

One of the earliest of the most recent studies is one conducted in 1966.

Here were reported interviews with almost 900 men in New York and New Jersey who suffered a permanent work injury equivalent to loss of a thumb. Almost 80% of the injured returned to work in equivalent or better jobs than the ones held prior to injury. Return to work with the pre-injury employer was a key positive factor in post-injury employment. Men who were labor market "failures" were more likely to be older, less educated, less skilled, Black or Puerto Rican.

A nationwide survey of closed claims[35] found that the percentages not working ranged from 22% to 49%, and are far in excess of what would be expected, even allowing for normal unemployment and the fact that a few women may have quit work to keep house and a few men may have retired early. All of the claims had been judged capable of working by the worker's compensation system. However, the survey indicated that about two-thirds had returned to work after their injury at some point and subsequently stopped working. Some of the causes include the following:

1. Little effort to provide vocational rehabilitation.

2. High levels of litigation creating long delays in which claimants attempt to show maximum disability in order to receive a more generous award.

3. Likely discrimination against disabled workers by employers, although this is difficult to document directly. In the study, about 25% of the claimants were not rehired by their employers despite relatively low disability rates.

A review of these studies conclude that a surprisingly high percentage of permanently partially disabled former worker's compensation clients not working is due to problems within the worker's compensation system and the labor force rather that the direct effect of injury or illness. The study further concluded actual loss of work due to a disabling injury or illness is a complicated phenomonen that is dependent on the interaction of many factors: the injury or illness; the worker's personal characteristics such as age, education, sex, and race; the worker's motivation; the general level of economic activity; and the extent of discrimination that a disabled worker will encounter.

Rehabilitation of Worker's Compensation Claimants

At a two day conference[36] on the industrially injured, George P. Sawyer, Assistant Vice President and Manager of the Medical Services of Liberty Mutual Insurance Company mentioned several salient points to consider with respect to rehabilitation and industrial cases.

Three have particular merit:

1. Since accidents are sudden in onset and the objective of the system is to bring optimum relief, both physical and financial, in the shortest possible time, early contact is essential and prompt decisions a must.

2. Compensation claimants who have drawn benefits for a long time often adjust their lifestyle to the new but lower level of income. Once this happens they face the uncertain choice of substituting income produced by work effort or guaranteed tax free income for the duration of disability, not an easy decision.

3. For industrial injuries, prolonged vocational retraining may be a "cop-out". It is possible that a claimant will enter the program as an acceptable alternative to facing the reality of return to work. It is a safe way for a counselor to work within the system and defer coming to grips with the key issue--finding safe, productive employment within the abilities of the client.

Sawyer delivered some harsh criticism about the effectiveness of state Divisions of Vocational Rehabilitation in delivering rehabilitative services to injured workers. He assigned their lack of sustained interest in industrial cases and their lack of expertise in rehabilitating them to the transitory emphasis of programs supported by public funding of special categories of handicapped. He called for specialists trained for worker's compensation to handle rehabilitation because they are better attuned to recognize the needs of the patient and can develop a solid relationship with employers in the community.

Much talk has centered around rehabilitation counselors' unrealistic planning, lack of knowledge about the needs of mature, experienced workers, and proneness to prescribe sterotypical, expensive, and unnecessary training programs. Much of the problem seems to lie in the difference in philosophical and program objectives and orientation between the goals of the National Commission and the goals of state DVR's.

The National Commission clearly states that expenditures that do not enhance a worker's earning capacity should not be the responsibility of the employer. It states that industry should not be required to pay for benefits that raise a worker's earning capacity significantly above that which he had prior to injury. On the other hand, the federal state system of vocational rehabilitation operates under the premise that their job is to restore disabled workers to the fullest possible physical, mental, and economic usefullness. This difference was noted by Michigan's Director of the Division of Vocational Rehabilitation at the National Training Conference at which Sawyer spoke.

Eleanor Ross addressed the conference of the National Training Institute in Chicago in the wake of her ambitious and extensive research project for the International Association of Industrial Accidents Boards and Commissions (IAIABC). In it, she noted that of those states having cooperative agreements with state-federal Vocational Rehabilitation programs and Worker's Compensation Boards, it was the opinion of only 10 Worker's Compensation Boards or Commissions across the country that public vocational rehabilitation programs were providing adequate services.

Although the National Commission in 1972 encouraged cooperative agreements between Worker's Compensation Boards and State Divisions of Vocational Rehabilitation professional and business and industrial employers have become increasingly aware of the gaps that exist in state rehabilitation programs. Funding limitations, shortages of personnel trained to handle worker's compensation cases and mandates of legislation for client eligibility are some of the reasons that most State-Federal vocational rehabilitation programs remain incompatible with the worker's compensation system.

The fact is that there is little evidence that the State-Federal Division of Vocational Rehabilitation has sought to alter its mechanism to accommodate the needs of the industrially injured. However, the private for profit rehabilitation organizations are now emerging to develop delivery systems that are more responsive to the philosophy of Worker's Compensation and the employer/carrier. By focusing on a narrow segment of the handicapped population, private-for-profit vendors have an advantage in offering specialized services in a more timely and personalized fashion.

The President of International Rehabilitation Associates, George Welch, established maximum medical recovery at the earliest possible time as the first objective of private sector rehabilitation. He saw medical management as the keystone to the entire rehabilitation process. By hastening medical recovery he figures one can accelerate the whole process of getting back to work. In this way rehabilitation can control medical and lost wage costs which are two significant factors in achieving cost containment.

Welch's argument for cost containment is demonstrated by statistical studies and many narrative reports by the International Rehabilitation Association which purports to have conducted a study of 60,000 claims demonstrating that rehabilitation is cost-effective.[37]

Oregon's Field Service Program claims to have shaved off an average of three weeks time loss from claims due to their early intervention program aimed at preventing occupational disability and their active re-employment program.[38]

Technektron, in California, has recently finished an unpublished study of the cost-effectiveness of early rehabilitation in terms of reducing the hard-core of long-term disability beneficiaries.[39]

Dupont's Affirmative Action program to ease employees into the same or similar jobs following the recovery of an accident-related injury has documented that rehabilitation can be cost effective.[40]

It makes sense that if early intervention will speed up the recovery process or at least reduce the disability process, if early rehabilitation efforts will deter those with low back pain in the absence of objective findings from seeking relief from solely a medical source and keep them focused on returning to work (even with pain), if this effort will result in reduction of medical costs, if rehabilitation is directed at re-employment rather than extensive retraining in a timely fashion, then the expenditure will more than justify itself.

However, if the system is used by employers/insurers as a last ditch effort to place the man with a functional overlay, or postpone employment by planning a long-term training program, or if the system is offered only as a convenient closing tool, it will likely be ineffective and expensive. If rehabilitation is offered to a claimant whose disability income benefits approach take-home pay for working, it is fostering a significant portion of the injured worker population who can literally then not afford returning to work. If rehabilitation is offered to these same injured workers who appreciate from the beginning that the indemnity benefit shall not go on forever, who realize that they will be expected to function in a defined period of time, then rehabilitation will be far more acceptable as an aid in returning to work. It would appear from both the available literature and from this firms' own review of case files that the rehabilitation effort expended upon alaskan injured workers is not wholly relevant. It is directed at a form of "status quo ante" rehabilitation rather than restoring economic productivity; at providing a college education where a job in which the worker may find pride in meaningful productive employment will do.

Essentially we find "vocational restoration " to be a more descriptive term for the way in which we believe the current state federal and private "vocational rehabilitation" service and resources ought to serve.

Re-employment preparation

The following guidelines should be used to insure that injured workers in need of services of a professional vocational rehabilitation organization shall be assisted in obtaining re-employment services or re-employment preparation that is feasible, for which there are good prospects for continuing gainful employment, and which in other respects appears to be a reasonable solution to restoring the injured worker as soon as possible to a condition of self-support and maintenance:

1. Vocational training will be provided only when the worker's inability to return to work is the result of a vocational handicap arising from his disabling occupational injury or disease. When possible, a vocationally handicapped worker should be trained in a job related to his former regular employment and in a setting where he has the potential to be hired.

2. A program to provide skills which would enable the worker to function at an employment level above his pre-injury level will not be undertaken unless the higher level is the only employment for which the worker can be trained.

3. Vocational rehabilitation should emphasize early return to work. Therefore, where more than one resource offers a program consistent with the worker's vocational objective, the worker should be placed in the program which allows him to achieve his vocational objective the soonest. Formal school training shall be the very last alternative.

4. Extensive re-employment assistance and disability prevention shall be the mission of the vocational rehabilitation effort In all applicable cases, direct placement will be attempted as a first choice by actual job development, provision of job leads, teaching job search skills and providing other practical re-entry assistance.

Disability prevention services ought to be designed to prevent the system itself from causing long-term total disabilty, by providing a maximum help in a defined period of time, by providing information covering the worker's rights and responsibilities, facilitating communication, coordination, and cooperation between parties, and providing opportunities for work therapy, job try-outs, work samples, even before the worker is medically stationary.

Re-employment assistance could include payment of union initiation fees purchase of tools or equipment necessary to enable a worker to accept an offered job, payment of moving expenses necessitated by the acceptance of an offered job, and any other assistance which will practicably and economically facilitate a worker's return to work prior to becoming medically stationary and remove obstacles to the worker's re-entry into employment such as funding worksite modifications or paying a new employer for training.

RECOMMENDATION No. 15

EMPLOYERS/INSURERS SHOULD FURNISH RE-EMPLOYMENT PREPARATION SERVICES BY VOCATIONAL REHABILITATION SPECIALIST TO WORKERS ON TEMPORARY TOTAL STATUS FOR NINETY DAYS OR MORE WHO HAVE NOT RETURNED TO WORK BECAUSE OF THE EXPECTED RESIDUAL OR RESOLVING PHYSICAL EFFECTS OF THEIR COMPENSABLE INJURY OR DISEASE.

Second injury funds may be used for providing re-employment assistance up to a maximum of $5,000 per eligible worker who has been recommended by a vocational rehabilitation organization which cannot place the injured worker in conventional means.

The second injury fund ought to provide re-employment assistance to the following qualified persons if approved by the administrator of the second injury fund:

1. Injured workers who have not returned to work as a result of a compensable injury for over three months and is still on temporary total disability status.

2. Injured workers who have demonstrable physical impairments resulting from the occupational injury or disease which by accepted medical principles would appear to be permanent.

3. Injured workers who are unable as a result of the occupational injury or disease ot return to the former place of employment of same type of work.

4. Injured workers who are able to return to former employment but not sufficiently recovered to achieve acceptable levels of productivity.

5. Injured workers who have a substantial obstacle to employment.

The Workers' Compensation Claims System

Administration of the workers' compensation claims system is somewhat tedious and for that reason the system is functioning in a not relevant manner. There are four major players, the Workers' Compensation Board, the insurance company adjusters, the courts and the attorneys.

Workers' Compensation Board

The Workers' Compensation Board is comprised of six members appointed by the Governor with the Commissioner of Labor or his designated representative serving as chairman. Exhibit 16 lists the current Board members, their addresses, their time of appointment, and the date their appointment ends. Resume's for these members are not available from the State of Alaska. The Board is further subdivided into three panels each consisting of two members and a Department of Labor representative. Separately, each panel serves an Alaskan region: Northern, South Central and Southern. Each of the panels must have, as its appointed members, a representative from labor and a representative from management. The appointed members must be confirmed by the full legislature sitting in joint session. They are considered part-time employees of the State of Alaska and are paid $50.00 per day or part of day for every day they sit in hearing or in travel to and from hearings. They also are allowed per diem and transportation expenses.

Responsibilities

According to the mission statement in the Workers' Compensation Division budget submittal, the Board is charged with five major goals: 1) to insure that employees who have become injured in their employment receive prompt medical care at no cost to the worker, 2) to insure the injured worker compensation for loss of wages during disability, 3) that vocational rehabilitation, if necessary, is provided to enable the worker's return to gainful employment, 4) to resolve disputes regarding workers' compensation claims, and 5) to insure that the Alaskan working community is aware of its rights and responsibilities under the workers' compensation system. The Board relies upon the staff of the Division of Workers' Compensation to provide the clerical and technical support necessary to assure that the goals of the Board are achieved. The staff specifically monitors work related injuries and diseases and medical and indemnity payments to workers, provides the technical support for hearings arising out of disputed claims, determines qualifications to self-insure, administers the Second Injury Fund and collects and summarizes statistical data regarding industrial injuries.

The Workers' Compensation Act

The Workers' Compensation Act itself is quite complicated, but to further compound the difficulties, it has undergone major changes in the last five years.

It establishes very definite time constraints on workers, employers, and insurance companies. For example, an employer must file, within ten days of knowledge, a report of each injury or occupational disease; a doctor must file a report of treatment; and the insurance carrier must file a notice of payment or controversion with 14 days of employer knowledge and a report on all final payments. Board opinions following hearings are required to be filed within 20 days of the close of hearing. To monitor these

EXHIBIT 16

CURRENT WORKERS' COMPENSATION BOARD MEMBERS

Name/Address	Date of Appointment	Term Ends	Profession	Labor/Management
Ms. Jan Baughman P.O. Box 60674 Fairbanks, AK 99706	9-18-79	7-1-80	Manager Fairbanks AGC Office	Management
Mr. Thomas Chandler 1217 Water Street Ketchikan, AK 99901	7-9-65	7-1-82	Retired Buissnessman, Ketchikan	Management
Mr. M.M. (Bud) Langbert 522 Glacier Avenue Fairbanks, AK 99701	8-24-79	7-1-82	B/A of Local #302 Union Rep.	Labor
Mrs. Ann S. Pittenger Hotel Captain Cook P.O. Box 2280	8-24-79	7-1-81	Personnel Mgr. Hickel Hotels	Management
Mr. Jim Robinson c/o State District Council of Laborers	9-13-77	7-1-82	President-Alaska District Council of Laborers	Labor
David W. Richards Route 5, Box 5258	7-20-77	7-1-80	Journeyman Carpenter Local-Foreman, Supt. Trades	Labor

requirements of the Act, the Workers' Compensation Division must maintain meticulous files regarding each injury. To further insure th the system is working efficiently and managed well, the Board and Division should maintain an adequate information management system.

Staff and Budget

The orkers' Compensation Division currently has a staff of 16 full and part-time personnel. In addition, it has the services of two staff from the Fisherman's Fund and four others from the Second Injury Fund. An organization chart for the Workers' Compensationn Division is provided in Exhibit 17.

The Division is currently operating under an authorized budget of $1,220,000. Exhibit 18 displays the increases in budget from fiscal year 1975 through fiscal year 1979, contrasted against the increased hearing workload of the Division for this same time period. The budget for the Division has increased by 77 percent, whereas, its hearing workload has more than doubled.

Clearly, this unparalled growth in workload versus budget growth has taken its toll. As we noted, first payment of compensation to the employee by either the employer or insurance company following an injury must take place within 14 days; the Division indicates that this has occurred only 30 percent of the time in fiscal year 1978. The employer is mandated to file a report of injury within 10 days of injury; the Division indicates this has only occurred 46 percent of the time in fiscal year 1978. The Act stipulates that the Board must issue a decision within 20 days of a hearing; decisions actually have followed the hearing by approximately 98 days.

Much of the increased workload is attributable to pipeline related activity and this might be expected to fall off as those claims are resolved. Indeed as shown in Exhibit 19 the 1979 workloads are down from 1978 and 1980 workloads should be reduced even further.

Unfortunately, for the State's workload, further "boom" type growth lies ahead with the advent of significant activities which should blossom with major projects for mid-1980, including the Northwest Gas Line, the State's several bonded projects and further work on the Trans-Alaska Pipeline.

Capabilities

The Division is well aware of the discrepancies between actual and mandated performance. They have neither the manpower nor the budget to assure that the law is obeyed. The full-time employees of the Division who manage the Anchorage and Fairbanks offices and the Deputy and Director of the Division act as designated chairperson of the Workers' Compensation Board. They must prepare its findings, conclusions of law and decisions. However, their positions also require them to attend to the day to day administra-

EXHIBIT 17

WORKMANS' COMPENSATION DIVISION
DEPARTMENT OF LABOR

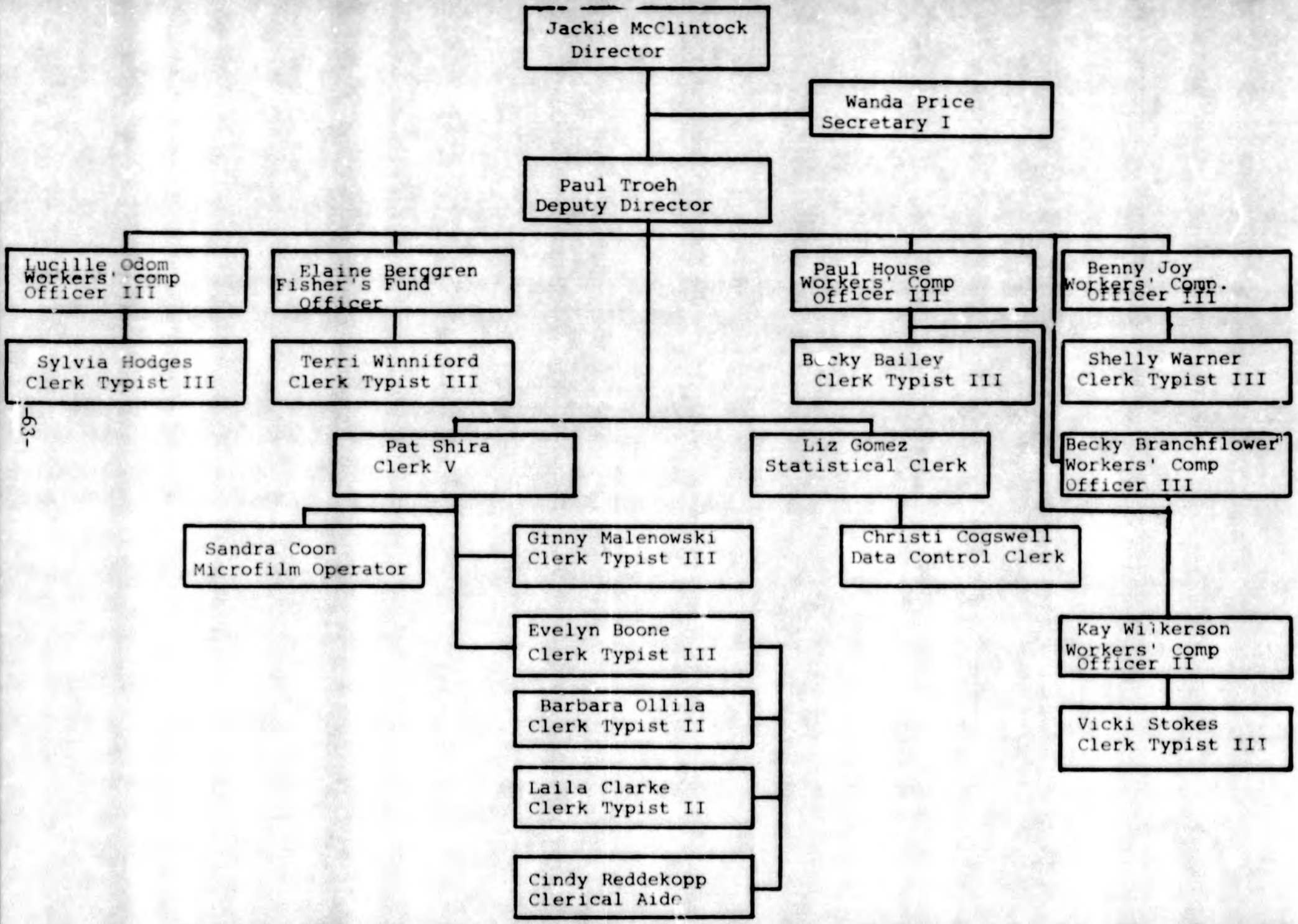


EXHIBIT 18

PERCENT INCREASE IN HEARING WORKLOAD
CONTRASTED AGAINST BUDGET INCREASES
FOR DIVISION OF WORKERS' COMPENSATION
FY 1975 through FY 1979

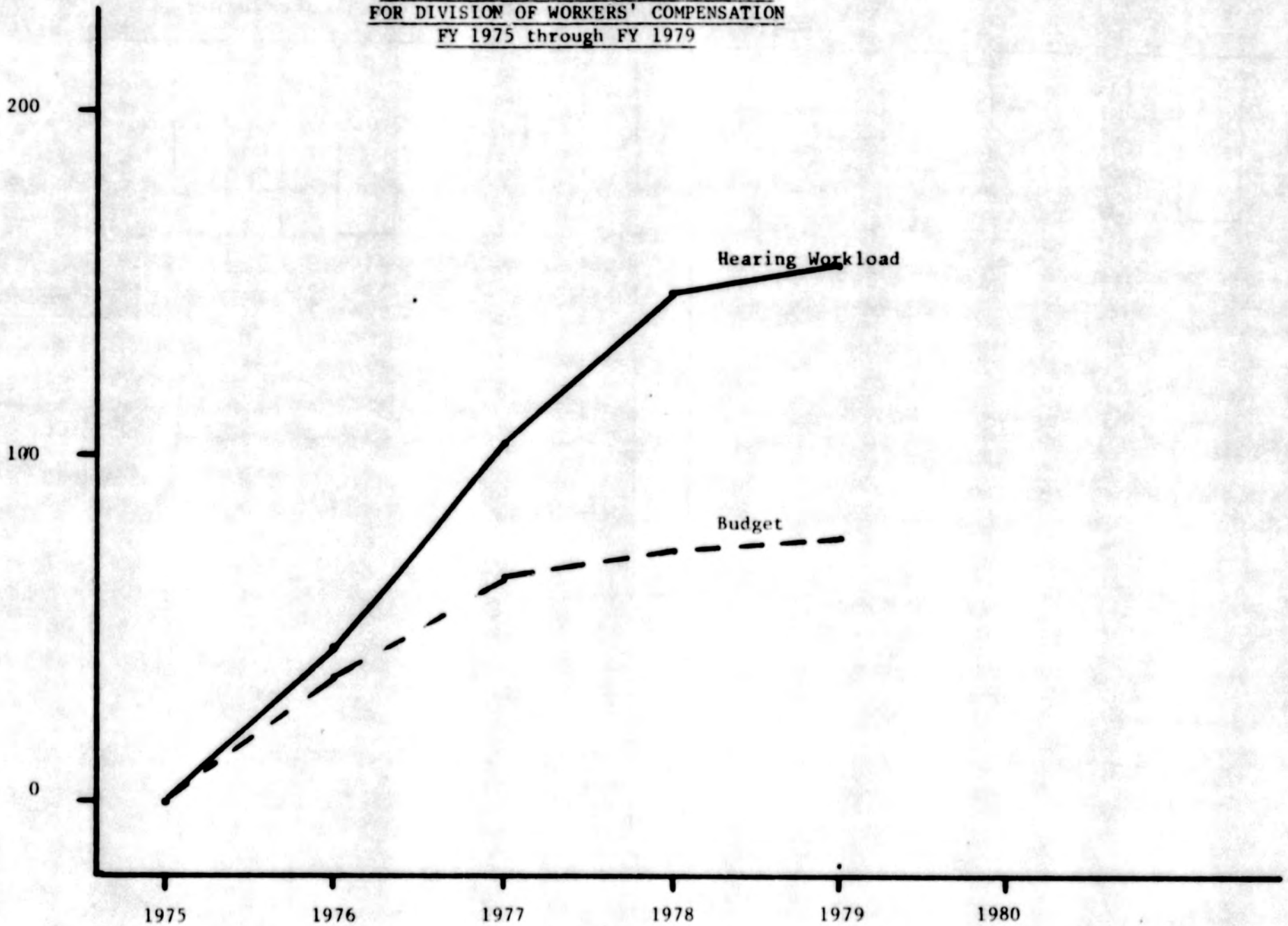
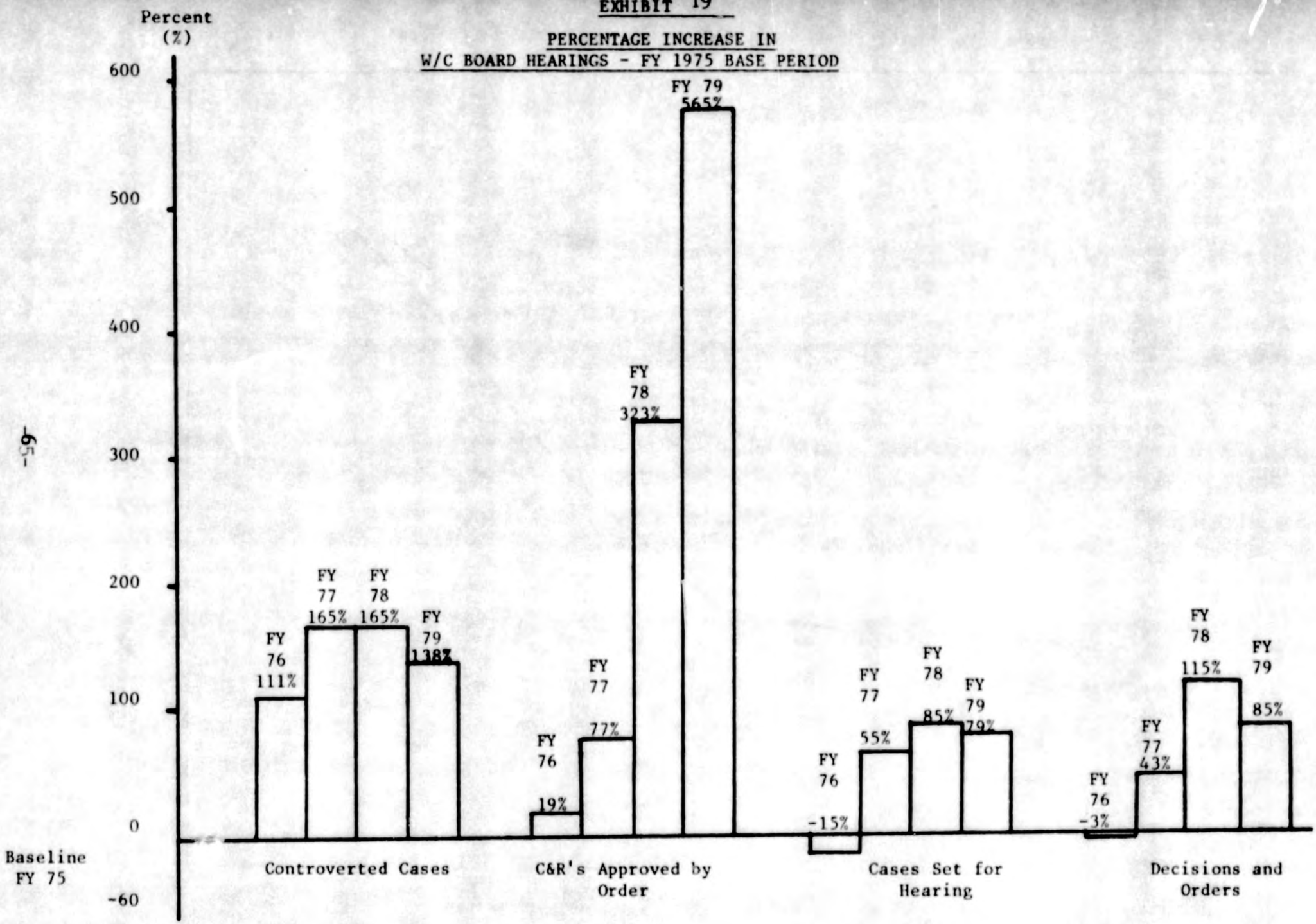


EXHIBIT 19

PERCENTAGE INCREASE IN
W/C BOARD HEARINGS - FY 1975 BASE PERIOD



tion of their respective offices. Here they must oversee and frequently participate in the processing of the thousands of claims, advising of injured workers, insurance companies and employers as to the provisions of the law and procedures. This dicotomy of responsibility is placing severe strain on the system. Senior personnel with the Division indicate that they cannot plan an active role in serving the public's right to know. Of course they try to answer every question received, but from a reactive posture. It would be more helpful to be able to make sure fires don't happen rather than rush to put them out. The only active public relations and information disemination role currently performed by the Division is the publication of two modest brochures: one on workers' compensation and the other on the Fisherman's Fund. These are available at the Division on request.

Data Systems

Data collected by the Division serves primarily to fulfill requirements placed upon the State Department of Labor by the federal government. The data retrieval system which is in place could be an extremely valuable tool; however, the source documents are the first report of accident, some physicians' reports and the final report of payment. These reports come to the Division on such a sporadic basis and over such a long period of time that the data themselves are really not very useful to management for loss control. Additionally we also find some gaps in the data system. Presently, for example, there is no method enabling correlation of medical costs for the various classifications of disability. No baseline data for medical costs for similar injuries outside the workers' compensation system are kept; therefore, comparative cost and time loss studies cannot be made. It is our understanding that the Division is investigating their data system and trying to improve its utility perhaps by placing it on line with the State's computer system. The Division indicates that it is studying the Washington State data collection system to see if it is applicable to the needs of the State of Alaska. We have no knowledge about the Washington system; whether it will serve the needs cited above remains an open question. Even if the system goes on-line, the above problems will not be rectified for the source documents are too late, contain too little information, and are usually of questionable validity.

Currently, all private insurance companies are providing data to the National Council on Compensation Insurance through the unit statistical plan which could serve as source data for the State's management data system. We do not believe that it would be too great a burden to request the same data the carriers submit to the National Council to be submitted to the State's management data system. Of course, to make the data complete it would be necessary to assure that the self-insurers in the State submit comparable data to the Division. We recognize that the data needed by the State and that needed by the National Council are not identical; however, we believe the State and the National Council could develop a data system satisfactory to both.

An appropriate management data system would offer the following opportunities of benefit to employers.

a) The Division of Workers' Compensation could advise the employer community with respect to improved loss cost containment and improved safety programs. They could present reliable comparative data with respect to medical treatment costs, and indemnity costs allowing employers to more effectively manage their injury problems.

b) Continuous recognition and highlighting of injury frequencies and severities by employer class would allow employers to develop strategies to contain injury losses, and enable better and more directed efforts from the State Division of Occupational Safety and Health. This could prove to be the most significant area in which workers' compensation cost could be contained in the long term.

c) It is a widely held impression that claims for workers' compensation track increases and decreases in unemployment within the State. A number of adjusters have indicated to us that they know when a job is going to end or when winter is approaching by simply monitoring the number of worker's compensation claims filed. The obvious conclusion, therefore, is that the claims are fraudulent; workers' compensation benefits are far superior to unemployment benefits. National data collected in Exhibit 20 do not support this point. Claims appear to follow the normal activity expected for the job season. The State has no qualitative data with which to measure the validity of the malingering assumption. If there is merit to the assumption quality data would show it, define the extent of it and pin point the most critical areas for attention.

d) There is a wide spread lack of confidence in the data upon which the National Council on Compensation Insurance formulates into rates. Although, as this report notes later, the basic structure of the National Council rating approach is sound, subject to some later enumerated deficiencies. There is no sound basis in objective creditable data to validate the National Council information or, more importantly, to apply local data to temper the affect of National Council data manipulation on Alaska rate making. For example, were there to be a local data base of claims by classification available to employers, legislators, labor unions and other, more meaningful judgements could be made with respect to the quality of rate making, and rate approvals.

RECOMMENDATION No.16

THE DIVISION OF WORKERS' COMPENSATION SHOULD BE PROVIDED A SYSTEMS STAFF WHO SHALL PREPARE IN CONCERT WITH THE PRIVATE CARRIERS, THE SELF-INSURERS, THE NATIONAL COUNCIL ON COMPENSATION INSURANCE, AND THE DEPARTMENT OF OCCUPATIONAL SAFETY AND HEALTH, A DATA SYSTEM WHICH WILL ALLOW THE WORKERS' COMPENSATION DIVISION TO PROVIDE EMPLOYERS USEFUL INFORMATION TO ENABLE THEM TO CONTAIN THEIR WORK INJURY COSTS, DECREASE INJURY FREQUENCY AND SEVERITY AND TO EVALUATE THEIR SAFETY SYSTEMS AND WHICH WILL ALLOW THE DIVISION OF INSURANCE TO MAKE THE RATE MAKING PROCESS MORE RELEVANT.

Impact of Delay in Hearings and Rulings

Clearly, the Workers' Compensation Board and its staff are endeavoring to fulfill the goals and objectives of the workers' compensation system. It is equally clear that the workload and the funds made available to the Division are not compatible. The Division is unable currently to meet the simple time constraints set by law. The delays currently being experienced are placing a significant financial burden on several elements within the system.

Interviews with experienced claims adjusters indicate that the brunt of the burden of hearing and ruling delay falls upon the injured claimant. If a case or claim is controverted by the insurance company, all payments cease at that point. If the hearing and subsequent opinion requires a period of time five times greater than that mandated by law, this only results in the injured claimant receiving no compensation for this period of time. Therefore, some injured workers are partially funding the delay. If it is finally determined that the employer is obligated to pay the claim, or the disputed portion, the employer must pay interest on the full award which is an increased expense because of the delay in getting a decision. On the other hand, if a worker receives compensation five times longer than he should have during a delay, the employer is experiencing another unnecessary expense.

RECOMMENDATION No. 17

AN ADDITIONAL TWO HEARING OFFICERS AND CONCOMITANT SUPPORT PERSONNEL SHOULD BE PROVIDED THE DIVISION. ALL DISPUTED CLAIMS SHOULD BE HEARD BY ONLY THE PROFESSIONAL HEARING OFFICER WHO DISCOVERS THE FACTS AND PREPARES AND ISSUES OPINIONS. ONLY APPEALS FROM THE HEARING OFFICER'S OPINION WOULD BE HEARD BY THE FULL BOARD. HEARINGS OUGHT THEN TO BE SCHEDULED IN A TIMELY WAY THROUGHOUT EACH WORK WEEK.

Employee Information

Simply targeting the time deadlines established by law, however, is only one important goal of the Workers' Compensation Division. It should be assuring that every worker and every employer in the State thoroughly understand benefits and the responsibilities that are attendant with workers' compensation. Hopefully, misunderstandings of the system by both workers and employers would be minimized, thus reducing the concomitant anxieties which are associated with misunderstanding if meaningful inormation were available to all employers and workers. Here we would hopefully note a reduction in controverted claims and the cost attendant to them.

In California, there is a voluntary system supported largely by the cognitive effort of State employer associations and the State workers' compensation insurers, wherein the workers' compensation insurers provide in sufficient quantity to all employers, brochures describing the workers' compensation system, which each employer provides each new hire. They also distribute to each injured person a brief descriptive brochure of how to proceed with filing a claim and what that person's legitimate entitlement are. We believe such a program in Alaska would contribute to a lessening of litigation arising from misunderstanding. Speed up the adjudicatory, and then perhaps shorten the disability period.

RECOMMENDATION No. 18

WE RECOMMEND THAT EACH INSURER OR EMPLOYER PROVIDE A DESCRIPTIVE BROCHURE TO EACH EMPLOYEE SETTING FORTH A CLEAR, CONCISE AND EASY TO READ EXPLANATION OF THE WORKERS' COMPENSATION SYSTEM AND THE INJURED EMPLOYEE'S ENTITLEMENTS UNDER THE SYSTEM.

Monitoring Self-Insurers

An additional responsibility of the Workers' Compensation Board is to grant certificates of self-insurance to those employers within the State of Alaska who choose to insure their workers' compensation liability themselves rather than through private carriers. AS 23.30.075 provides that any employer choosing to self-insure shall furnish the Board satisfactory proof of his financial ability to pay directly the compensation provided for. If the employer elects to pay directly, the Board may, in its discretion, require the deposit of an acceptable security, indemnity or bond to secure the payment for compensation liabilities as they are incurred. AS 23.30.090 provides that if an employer has complied with the provisions of Chapter 23 relating to self-insurance, the Board shall issue him a certificate which shall remain in force for a period fixed by the Board. These are the extent of the criteria established by law for self-insurers. Currently, an application for a certificate of self-insurance includes minimal financial data from the requesting employer. Premium and loss values for the three years prior to application is requested and anticipated gross income and net

income for the current year is sought. Occasionally balance sheets are requested so that some indication of corporate net worth is before the Board. Discussions with management of the Workers' Compensation Division indicates that the Division is not staffed with the technical expertise to rigorously evaluate applications for self-insurance. Additionally, no rigorous criteria exists for either approving or denying applications for self-insurance. Some concern exists with respect to the Board's role in granting certificates of self-insurance. In a letter dated January 29, 1979, John L. George, then Acting Director of the Division of Insurance, wrote Paul Troeh, Deputy Director of the Workers' Compensation Division, regarding proposed qualifications for Workers' Compensation self-insurance. Here John George stressed "it is imparative, therefore, that those who are granted permission to self-insure, genuinely have a risk which, within relatively narrow parameters, is predictable and whose average losses can be easily absorbed annually much as insurance premiums would be absorbed". Additionally, he stated "permission to self-insure must not be granted to those who have inadequate spread of risk predictability and understanding of the principles of self-insurance". He further went on to indicate that the Board must look at the financial security of the employer which will back the self-insurance program. The employer should show adequate financial data, history, integrity and liquidity to assure the ability to pay claims now and in the future. Minimum qualifications, he stressed, must at least require a surety bond and when appropriate, evidence of excess statutory insurance coverage. He went on to note that posting an adequate bond does not relieve the Board of its responsibility to thoroughly screen applications for self-insurance, but rather, acts as an additional safeguard in the system. He noted that the Board must be careful to analyze the reasons for the employer's desire to insure. In this regard, the statistical analysis will prove beneficial. Most employers and some municipalities feel that self-insurance is cheaper and therefore plunge into it without regard for the potential of serious loss and ultimate solvency of the employer. He suggested some minimum qualifications for workers' compensation self-insurance wich are fully set out in his letter.

It is our understanding that no action has taken place on these recommendations. We believe that most, but not necessarily all o the criteria contained in the insurance divisions letter are valid.

Essentially the division of workers' compensation ought to assure that only those that truly possess the financial strength to absorb the full, and true cost of workers compensation injuries be permitted to do so.

We believe it would be detremental to the concept of self-insurance were the division to permit a self-insurer to become insolvent and thus unable to pay claimants. At the same time the requirements ought to be open enough to permit self-insurance by the truly financialy able without costly and unnecessary regulatory burdens.

We do feel that data parallel to that kept by private carriers must also be kept in comparable form for self-insurers in order to monitor self-insured continued qualification and to have information on losses equivalent with that obtainable from insurers. Specific comments about self-insurance as a cost saving technique are made later.

RECOMMENDATION No. 19

A SECTION OF ANALYSIS AND REGULATION BE ESTABLISHED WITHIN THE DIVISION TO EVALUATE AND RECOMMEND ISSUANCE OF CERTIFICATES OF SELF-INSURANCE. THE DEPARTMENT SHOULD ALSO BE CHARGED WITH THE CONTINUOUS MONITORING OF AND DATA GATHERING FROM SELF-INSURERS IN A MANNER SO THAT THIS DATA CAN BE COMPARED TO THAT GATHERED FROM THE PRIVATE SECTOR.

Role of Attorney

In examining the litigation process we find an amazing and "non-relevant" practice which is costly and not wholly cost justified; the use of lawyers at hearings to represent the employers and carriers.

There is no doubt that lawyers are essential to the proper presentation of a case made complex by the presence of legal issues or cases which are appealed to the Superior or Supreme Court system. On the other hand the system has lost sight of the fact that it was originally intended to be a simple administrative procedure providing a rapid and equitable determination of what few factual issues were in dispute.

Our research and review of this issue with the State of Alaska Department of Labor has turned up no requirement that either the injured or the employer must be represented by counsel.

Experience of carriers in other states, particularly California has demonstrated that carrier employed hearing representatives can expertly handle substantially all cases for the employees at significant defense cost savings.

We do not believe that injured workers should be represented by other than lawyers if they are represented at all. We believe cost savings can be achieved by making the system more easily accessible to claimants expediting their benefits and properly informing them of their rights. Hopefully, for the majority of the cases independent counsel would not be necessary. When it is however, it should be provided only by licensed attorneys.

RECOMMENDATION No.20

CARRIERS AND EMPLOYERS SHOULD INSTITUTE THE PRACTICE OF USING HEARING REPRESENTATIVES FOR PREPARING AND PRESENTING THE MAJORITY OF ITS CASES, BEFORE THE WORKERS COMPENSATION HEARING OFFICERS OR BOARD.

Hopefully, adoption of these few recommendations will make the rehabilitation and claims administration systems as well as the governmental agencies that oversee the system more relevant to comtemporary needs.

VI. COMPETITION IN THE WORKERS' COMPENSATION SYSTEM

Although ultimately, in all cases, the cost of the system is borne by the consumer as incrimental price adjustments made by employers in their costs of goods and services, employers bear the direct impact of the system costs, thus the cost of the worker's compensation system is most appropriately investigated by investigating those who pay the benefits and bills. In Alaska, there are four major entities having that responsibility: the private insurance companies, the assigned risk pool, the Second Injury Fund, and the self-insured employer.

What is not fully utilized however, is the power of competition to make the participants in the system more efficient and give the employer some bargaining power in the market place.

There follows a series of analyses and recommendations which have as their motivation stimulating competition within the system.

Private Carriers

The principal occupant of the servicing field is the private insurance carrier. To understand how to develop competition among private carriers some basic background is necessary.

Earned Premium

The premium to be focused on here is the net direct earned premium. Earned premium refers to that portion of premiums which should be allocated to the year in question on a pro rata basis according to the portion of the policy period that falls in that year. For example, $50.00 in calendar earned premium would be generated in calendar year 1971 by a policy selling for $100.00 and running from July 1, 1971 through June 30, 1972, whereas $100.00 for a policy covering the one year period 7/1/71 to 6/30/72 would be allocated entirely to the policy year 1971 if we chose to look at a policy year basis. Net direct earned premium is earned premium minus returns to policy holders in the form of premium discounts and through experience and retrospective rating plans. In this discussion both policy year premiums and calendar year premiums will be considered since these are the data bases utilized by the National Council on Compensation Insurance for rate making.

Premiums are expected to cover all expenses, all losses, and company profits.

In the insurance industry, expenses are divided into two components: those expenses associated with claim losses and all other expenses. Company expenses other than loss expenses are those associated with servicing policies, those to generate new business, and, of course, all other normal expenses associated with operat-

ing a business. These expenses are included in proposed rates as a function of the earned premium and are budgeted as a fraction of it. The NCCI has currently established this expense component as 31.7%. This value derives its basis from the experience of stock companies and is revised periodically to reflect their most recent experience. Within this component, a nominal percentage, 2.5% is reserved for underwriting profit. This value appears to be quite small; however, other allowances for profit have been allowed as will be discussed later.

Loss Expenses

Expenses associated with loss are, of course, the losses themselves, and all expenses both allocated and unallocated associated with adjusting these losses. In the most recent filing, October, 1979, the NCCI set the loss adjustment expense factor at 11.5 percent, for 1979, down 1% from last year. Exhibit 21 traces the last three years history in both the expense loading factor and the loss adjustment factor for all the carriers in the State of Alaska and for national experience as a whole. The actual loss adjustment expense factor fluctuates between 10.0 percent and 12.0 percent.

Incurred Losses

The largest component in the rate is the payments for claims or monies which are reserved to pay claimants the workers' compensation benefits established by law. In the vernacular of the industry, these losses are referred to as incurred losses and fall into two categories: 1) adjusted losses or losses in the process of adjustment and 2) incurred, but not reported (IBNR). The first category includes the liability for future payments on losses which have already been reported to the company. There are three general kinds of such future payment activity: payments on currently pending claims, additional payments on closed claims, and payments on claims which will be subsequently reopened. The second category of loss liabilities includes the liability for future payments on claims which have already happened but have not yet been reported and recorded in the company records but for which the carrier is obligated by law to set aside a reserve. In other words, those losses generally designated as incurred losses for a given period, refer to losses that are paid during that period plus the outstanding reserves at the end of the period, minus the reserves at the beginning of the period and the reserves include reserves for the unpaid portion of known losses and an estimate of expected but unreported losses.

Investment Income and Operating Profit

It is the reserve component of the incurred losses and the reserves established for unearned premium which provides the vehicle for the major part of the insurance carriers' operating profit. Since these reserves are established for very long term liabilities, they

Exhibit 21
Expense Loading and Loss Adjustment Factors
For Top Ten Alaskan Carriers, All Alaska Carriers, and
National Experience Between 1976 and 1978

Carrier	1976 Percent of Market	1976 Loss Adj. Expense Factor %	1976 Expense Loading (%)	1977 Percent of Market	1977 Loss Adj. Expense Factor %	1977 Expense Loading (%)	1978 Percent of Market	1978 Loss Adj. Expense Factor %	1978 Percent Loading (%)
ALPAC	45.5	10.4	24.4	56.5	13.2	18.8	60.5	8.9	17.4
Prov. Wash.	11.8	9.5	50.7	10.1	10.8	19.9	8.9	10.2	34.0
Ind. Indem.	8.3	13.5	23.0	7.9	16.6	18.5	5.7	19.5	21.9
Emp. of Wau.	4.4	10.3	18.9	4.0	12.9	14.7	4.9	11.7	15.8
Home	4.3	8.7	26.1	1.7	9.2	20.3	2.6	11.2	18.3
Fire. Fund	3.8	11.9	24.5	3.9	11.1	20.0	1.7	10.8	21.1
Amn. I.C.	3.6	11.9	24.5				1.2	10.4	20.2
Fid. Cas. N.Y.	1.3	8.0	23.0						
Travelers	1.2	6.4	21.0	1.9	7.9	21.3	1.9	7.9	21.5
Com. U.I.C.	1.2	11.6	25.3						
Aetna				1.8	8.8	19.7			
Assoc. Ind.				1.7	11.1	20.0			
Ideal				1.1	14.6	7.6			
Contin.							1.0	14.2	22.2
INA							1.7	9.0	17.4
	85.4	10.5	27.7	90.6	12.8	18.8	90.1	10.0	19.5
All Alaskan Carriers	100.0	10.7	27.5	100.0	12.8	19.3	100.0	9.7	19.6
All Alaskan Carriers w/o ALPAC	54.5	11.0	30.1	43.5	12.3	19.9	39.5	10.9	23.0
National Carriers	-	10.7	23.7					11.5	18.7

are capable of being invested in reasonably high interest bearing longer term instruments. It is this investment income which makes up the "lion's share" of the carrier's operating profit. Additionally, this income is not directly considered for rate determinations, the argument being that the 2.5% factor for underwriting profit is so marginal that it is unreasonable to utilize the investment income component in rate making. If the NCCI were to consider investment income in the revenues utilized in rate making, the carriers argue that the underwriting profit factor would have to be increased significantly to reflect reality. There is probably some merit in this position.

Before leaving the concept of loss reserves, it should be noted that they are also statutorily set to insure carrier solvency. AS 21.18.090 (3)(4) states that for all workers' compensation claims under policies written more than 3 years before the statement is made, the reserves shall be the present value at 4 percent interest of the determined and estimated future payments; and for all workers' compensation claims under policies writeen in the 3 years immediately preceding the date the statement is made, the reserves shall be 65% of the earned compensation premiums of each of the three years, less all loss and loss expense payments made in connection with the claims on the policies written in the corresponding years; but in the first year of the 3 year period, the reserves shall not be less than the present value at 4 percent interest of the determined and estimated unpaid compensation claims under policies written during the year. These are very prudent and conservative reserving policies which have been established to support the primary goals of the Division of Insurance which is to enable the Alaska insurance consumer to obtain insurance coverage from financially sound companies at rates which are adequate, not excessive, and non-discriminatory.

There is no question, that establishing reserves at the present value assuming 4 percent interest is indeed a very conservative approach to reserving and is perhaps justified for statutory financial reporting purposes. We do not believe this approach should be the same one utilized for establishing reserves <u>for the purpose of calculating insurance rates.</u>

Our investigation of reserving practices has revealed that on most all serious cases, carriers are setting and reporting for rate making purposes reserves calcuated as the arithmetric projection of expected case payout. For example if a thirty five year old worker is rendered permenantly and totally disabled, his benefit could be, in addition to temporary disability and medical expense, a permenant disability award equal to 66 2/3 of his weekly wage projected forward for his life expectency; which may be as much as 30 years.

($650 x 52 x 30 = $1,014,000).

As a matter of fact that amount will never be paid!

a)The carrier deposited onl $670,000 in a 5% interest bearing investment it could pay the 33,500 annual obligation and at the workers death still have the initial investment, or

b) The carrier could as most often happens, enter into a lump sum settlement agreement with the worker for substantially less than the posted reserve, or

c) The carrier could, and today more frequently does, purchase for a reduced amount an annuity contract from a life insurer which pays the weekly indemnity.

For some reason, workers compensation reserves are not factored by anticipated remarriage, settlement or findings of no liability.

It is true, that ultimately the true cost including later reserve deductions, finds its way into the rate making but until the true cost is recognized by the carrier, the more conservative reserve is used in rate making. This tends, in a growing and cyclical economic enviornment such as Alaska, to exascerbate loss trends, skew loss code statistics and artificially increase losses on more recently reported years' experience.

In 1978 the legislature recognized the change in trend for interest rate assumptions, even for statutory reserving purposes when it permitted life insurers higher interest rate assumptions in the reserve valuation and nonforfeiture provisions of the Alaska Insurance Code.[43] The interest rate assumptions for immediate annuities, the policy most analogous to a workers' compensation claim payout is 7.5%.

The rationale for permitting higher interest assumptions in life insurance reserving is equally, if not more compelling for workers' compensation reserving and certainly for workers' compensation rate making.

RECOMMENDATION No. 21

AS. 21.18 SHOULD INCLUDE A PROVISION PERMITTING CARRIERS TO RECOGNIZE REMARRIAGE SETTLEMENT AND FINDINGS OF NO LIABILITY TO BE INCLUDED IN THE RESERVE SETTING. IF THERE IS A RELUCTANCE TO PERMIT THIS CHANGE FOR STATUTORY REPORTING PURPOSES, THEN AS. 21.39 SHOULD INCLUDE A PROVISION REQUIRING ADJUSTMENTS IN RESERVES USED FOR RATE MAKING TO REFLECT, SETTLEMENT, REMARRIAGE AND FINDINGS OF NO LIABILITY.

RECOMMENDATION No. 22

INTEREST RATE ASSUMPTIONS IN AS. 21.18.090(3)(4) SHOULD BE INCREASED TO MORE NEARLY REFLECT REALISTIC YIELDS ON INVESTMENTS. THE 7.5% ASSUMPTION USED FOR IMMEDIATE ANNUITY AND ENDOWMENT CONTRACTS IS APPROPRIATE. IF THERE IS RELUCTANCE TO PERMIT THIS CHANGE FOR STATUTORY REPORTING PURPOSES, THEN AS. 21.39 SHOULD INCLUDE A PROVISION REQUIRING ADJUSTMENT IN RESERVE FOR REMARRIAGE TO REFLECT THE 25% ANNUITY ASSUMPTIONS ON RESERVES.

Exhibit 22 traces the growth in workers' compensation written premium, earned premium and incurred losses in Alaska from 1972 through 1978. Superimposed on these trends is the growth in the State's average weekly wage. From the carrier's point of view, these trends suggest impending disaster. There is no question that the earned premium and incurred loss curves appear to be coalescing. However, here too we must approach initial conclusions with some caution. Prior to 1978, the National Association of Insurance Commissioners, the provider of these data, did not show IBNR in the incurred loss component. Thus, the apparent coalescing of the curves in 1978 is actually due to the increase in the incurred losses due to inclusion of the IBNR reserves. This change in data base makes it very difficult to determine historical trends in the profitability history of carriers of workers' compensation. This is not the first time that we have run into this type of change which has made a rigorous analysis of the financial history of workers' compensation very difficult. However, since IBNR reserves are considered a component of incurred losses in the rate making process, it is probably more realistic to include this reserve component in the studies of carrier profitability published by the National Association of Insurance Commissioners. Unfortunate indeed it is that these changes in data base are not explicitly recorded in the published documents, therefore allowing analysts to adjust tables in such a manner as to obtain comparability.

Effect of TAPS

The size and complexity of the Trans-Alaska Pipeline project that superimposed itself upon the normal working climate of Alaska between 1975 and 1977, caused affects which rippled through the entire economy of the State of Alaska. Its effects on workers' compensation costs in the State of Alaska were quite profound; some of these will be discussed here and others will be discussed when we investigate the rating process itself.

As the Alyeska premium and loss data entered the NCCI data base, the NCCI formula which is aiming at a 68+% permissable loss ratio tended to drive up the rates even though Alyeska was not paying manual rates or fixed charges for their coverage, and even though the adverse experience in the Alyeska project was not being experienced, or at least to the same degree by non-included employers.

Exhibit 23 summarizes aggregate loss ratios (i.e., the ratio of incurred losses to earned premium) for the years 1976 through 1978 for carriers in Alaska and for the carriers net of ALPAC and net of Alyeska business. Net of ALPAC business, the loss ratios for the industry in 1978 fell from 95.8 to 71.1 percent, in 1977 fell from 70.9 to 66.5 percent and rose in 1976 from 74.1 to 77.8 percent. Because of a data base change, we cannot make a clearcut conclusion based on trend; however we can see that the Alyeska phenomena has a significant impact on the workers' compensation system. So much so that in 1978 the loss ratios with and without ALPAC business differed by as much as 35%, this itself suggest

EXHIBIT 22

WORKERS' COMPENSATION EARNED PREMIUM AND
INCURRED LOSSES CONTRASTED WITH ALASKA'S AVERAGE WEEKLY WAGES
1972-1980

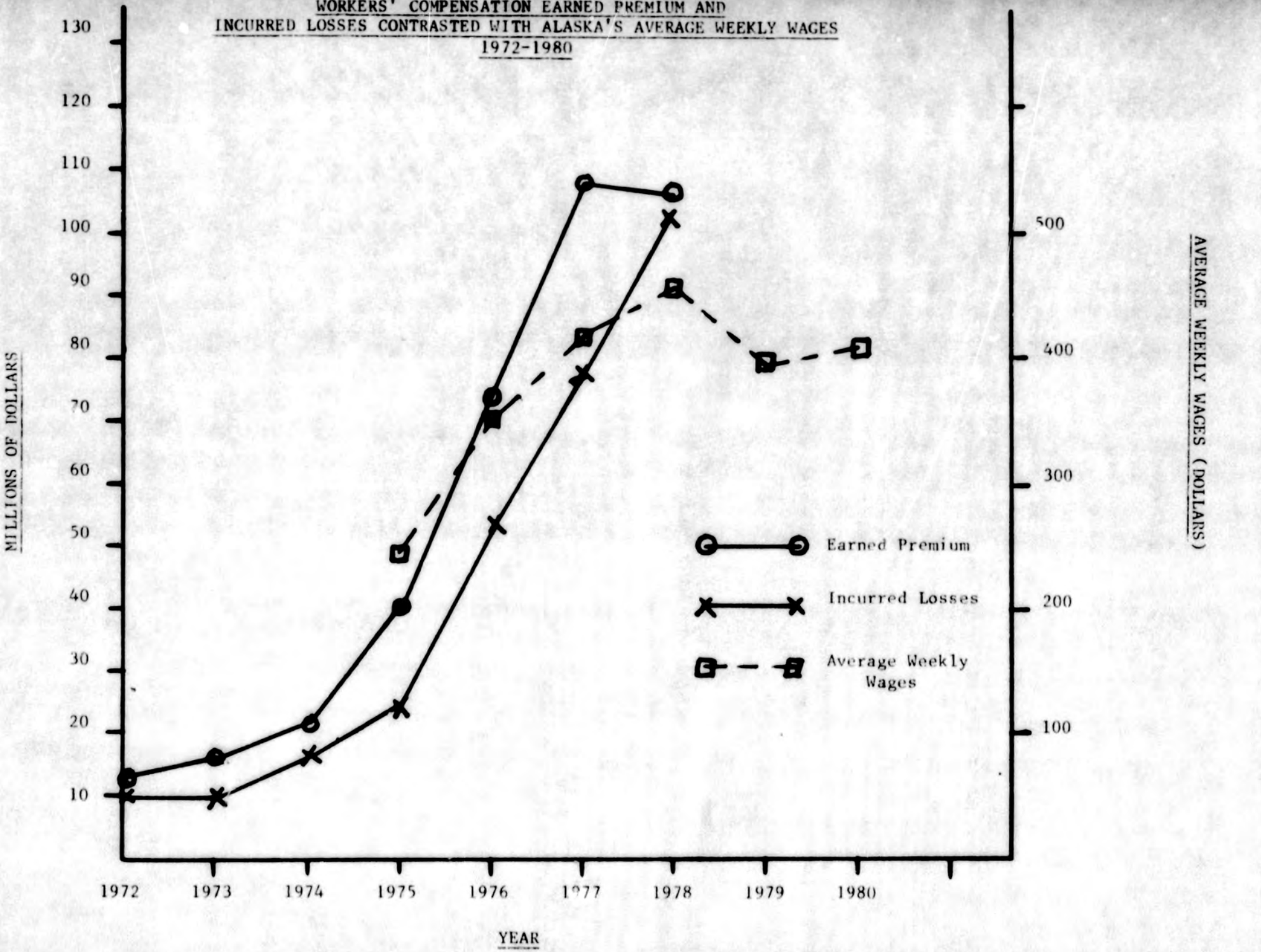


EXHIBIT 23

Aggregate Loss Ratios For
Alaska Carriers Including
ALPAC, Net of ALPAC, and
Net of TAPS for
1976 - 1978

Year	Loss Ratio With ALPAC	Net of ALPAC	Net of TAPS
1976	74.1	77.8	72.0
1977	70.9	66.5	64.2
1978	95.8	71.1	103.0

that projects of this scope or magnitude should be segregated from other normal Alaskan projects. Workers' compensation premiums, and loss experience such projects should be separated totally from the State experience as whole and not be utilized in the calculation of rates for the rest of the Alaskan employers. The size of these projects is so large that they can be looked upon as quasi state experience by themselves and, therefore, should be rated in that manner.

RECOMMENDATION No. 23

IF, IN THE FUTURE, ANOTHER EXTRAORDINARY CONSTRUCTION PROJECT OF THE MAGNITUDE OF THE TRANS-ALASKA PIPELINE IS TO OCCUR WITHIN THE STATE, AND IF A SPECIAL WRAP-UP INSURANCE PROGRAM IS UTILIZED, WE RECOMMEND THE DIRECTOR OF THE DIVISION OF INSURANCE REQUIRE FOR THE PURPOSES OF WORKER'S COMPENSATION RATE MAKING, ALL PREMIUMS PAID, LOSSES INCURRED, AND EXPERIENCE REALIZED BY THIS PROJECT BE SEGREGATED FROM ALASKAN EXPERIENCE AS A WHOLE AND NOT BE INCLUDED IN GENERAL STATE RATE MAKING.

Assigned Risk Pool

Those employers who find it impossible to obtain workers' compensation insurance within the voluntary market, more specifically, have been turned down for insurance by two carriers, may petition the assigned risk pool for insurance coverage. For the privilege of being assigned to the pool, the employer pays a surcharge of 8% if he is not an air carrier risk, or 15% if he is. The pool will assign his policy to one of the servicing carriers. Currently, the servicing carriers of the assigned risk pool are: Alaska Pacific Assurance Company, Employer Mutual Liability Insurance Company of Wisconsin, Fireman's Fund Insurance Company, Industrial Indemnity Company and Providence Washington Insurance Company of Alaska. The assigned risks are distributed homogeniously across the servicing carriers with approximately 450 risks assigned to each carrier. For servicing assigned risk policies, the carrier collects the premium for each risk in advance and remits approximately 63% of it to the pool to cover losses and expenses incurred by it. The remaining 37% of the premium is retained by the servicing carriers and is utilized to cover their expenses of servicing the assigned risk policies. This 37% expense loading for the assigned risk pool compares with an aggregate expense allowance of 31.7% in the voluntary market.

If the employer in the assigned risk pool generates an annual premium of $1,500, or more, he qualifies for experience modification just as if he were in the voluntary market. Good experience predicates a premium lowering; poor experience results in a premium increase. Additionally, all employers in the Assigned Risk Pool realize premium discounts depending upon the size of their premium in excess of $1,000 as they would if they were in the voluntary market. If the risk is small enough, the manual

provisions for minimum premium and expense constant are applied to the cost to cover the increased expense percentage to handle small accounts. Yet, no matter where in the Assigned Risk Pool one finds himself, the surcharge is 8% or 15%.

Exhibits 24 through 27 present statistics for the Assigned Risk Pool from, in some cases, 1961, the year of inception, to present. Exhibit 24 shows the growth in the number of risks placed in the Assigned Risk Pool. The influence of Alaska Pipeline activity is clearly in evidence. Exhibit 25 traces additional Assigned Risk Pool growth trends. Compared here are new risks applying, renewal business, risks afforded coverage, and coverage refused by the employer. Exhibit 26 compares earned premium versus incurred losses and for the Assigned Risk Pool from 1970 through 1978. For every year from 1972 except 1975, the earned premium exceeded the incurred losses. However, on netting out the service carrier allowances, it is found that for every year except 1974, the Assigned Risk Pool experienced a loss. Exhibit 27 traces the cumulative percent of total risks and total premiums generated from specified annual premiums. The air carrier problem is one of special significance and will be dealt with separately below.

Out of the 1917 risks serviced by the Assigned Risk Pool in 1978, approximately 1186 paid premiums of $1,500, or less, (62%). These risks generated $607,000 in premium out of a total premium of $5,520,000 (11% of premium).

Small Risk Surcharge

One of the most unfortunate phenomena in workers' compensation market distribution has been the general unwillingness of the voluntary market to accept small risks. The general attitude of many carriers has been that small business generates so little premium, even after applying expense constants and minimum premiums that the cost of servicing and the risk of loss made the small risk unattractive. Accordingly, most small businesses are placed in the assigned risk pool simply because they are small, not because they are necessarily a poor risk. The result is that small risks are paying an 8% surcharge only because of their size.

In 1977 and 1978, the Division of Insurance discussed implementing a small risk incentive program to encourage the carriers to voluntarily write the small risk. The essence of the program was an assigned risk pool assessment credit measured by the number of small risks originally written in the pool voluntarily written by the carriers. The carrier response was to establish their own small risk voluntary writing program and the Division of Insurance deferred implementation of its program to give the carriers' program a chance to operate.

The number of small risks in the pool over time is shown in Exhibit 28. It would appear that despite the good intentions of the carriers, a large number of small risks still are left with the Assigned Risk Pool as their only market choice.

EXHIBIT 24

EMPLOYER GROWTH IN THE ALASKAN ASSIGNED RISK POOL

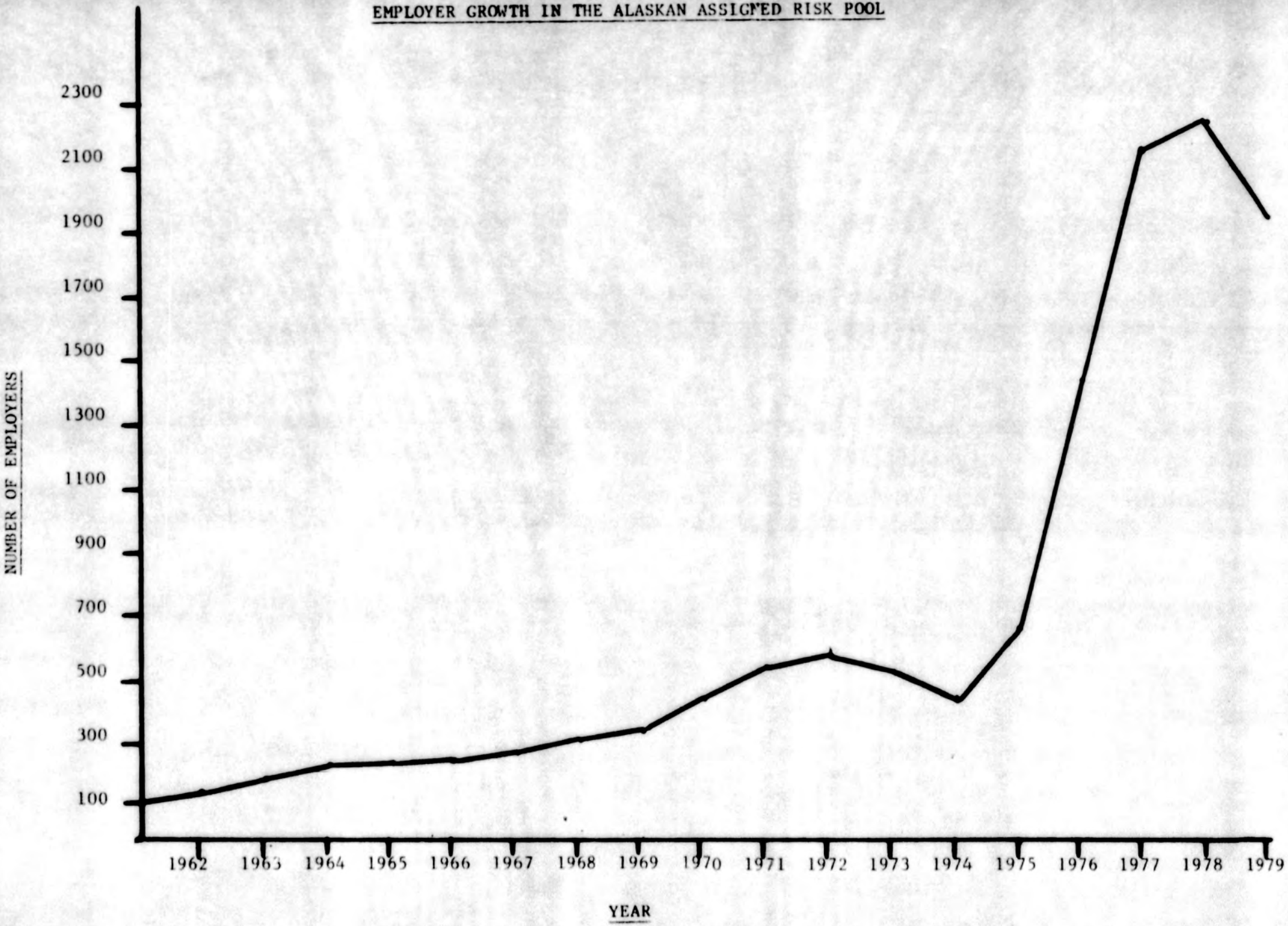


EXHIBIT 25

(ASSIGNED RISK POOL GROWTH TRENDS)

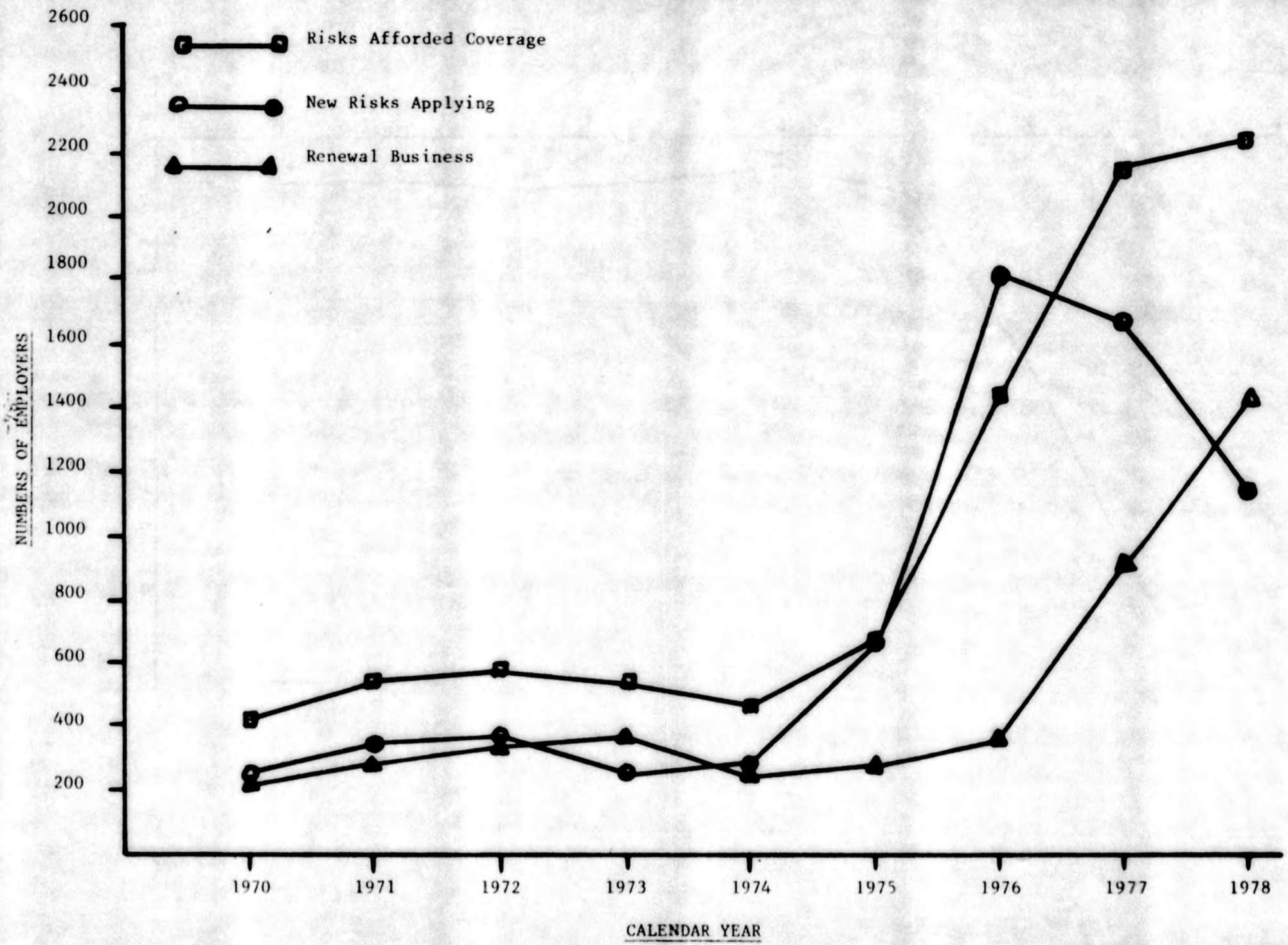


EXHIBIT 26

ASSIGNED RISK POOL CHARGES
IN EARNED PREMIUM AND INCURRED LOSSES

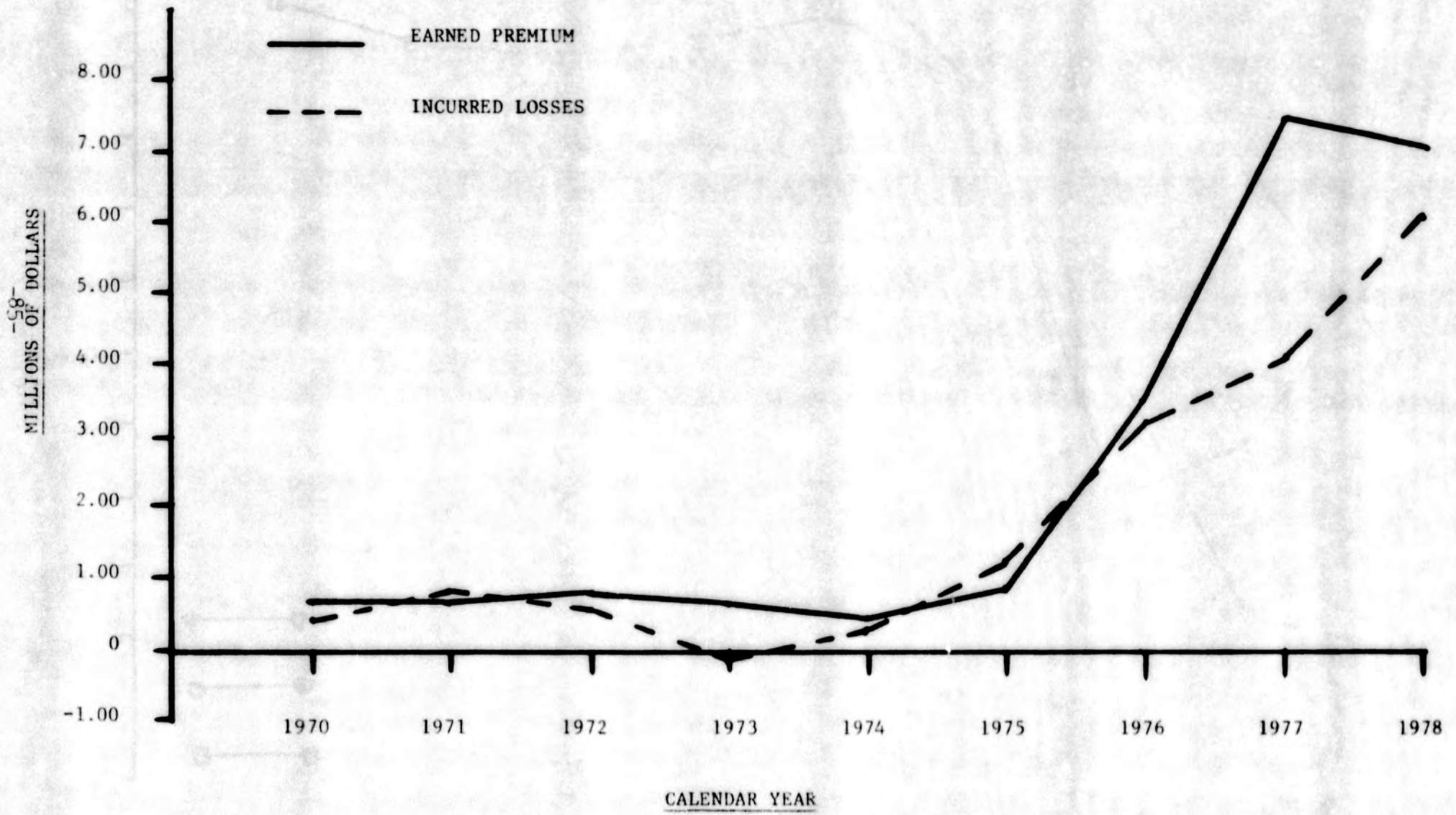


EXHIBIT 27

CUMULATIVE PERCENT OF TOTAL RISKS GENERATING AND TOTAL PREMIUM GENERATED FROM MANUAL PREMIUMS EQUAL OR LESS THAN PREMIUM INDICATED FOR FY 1978

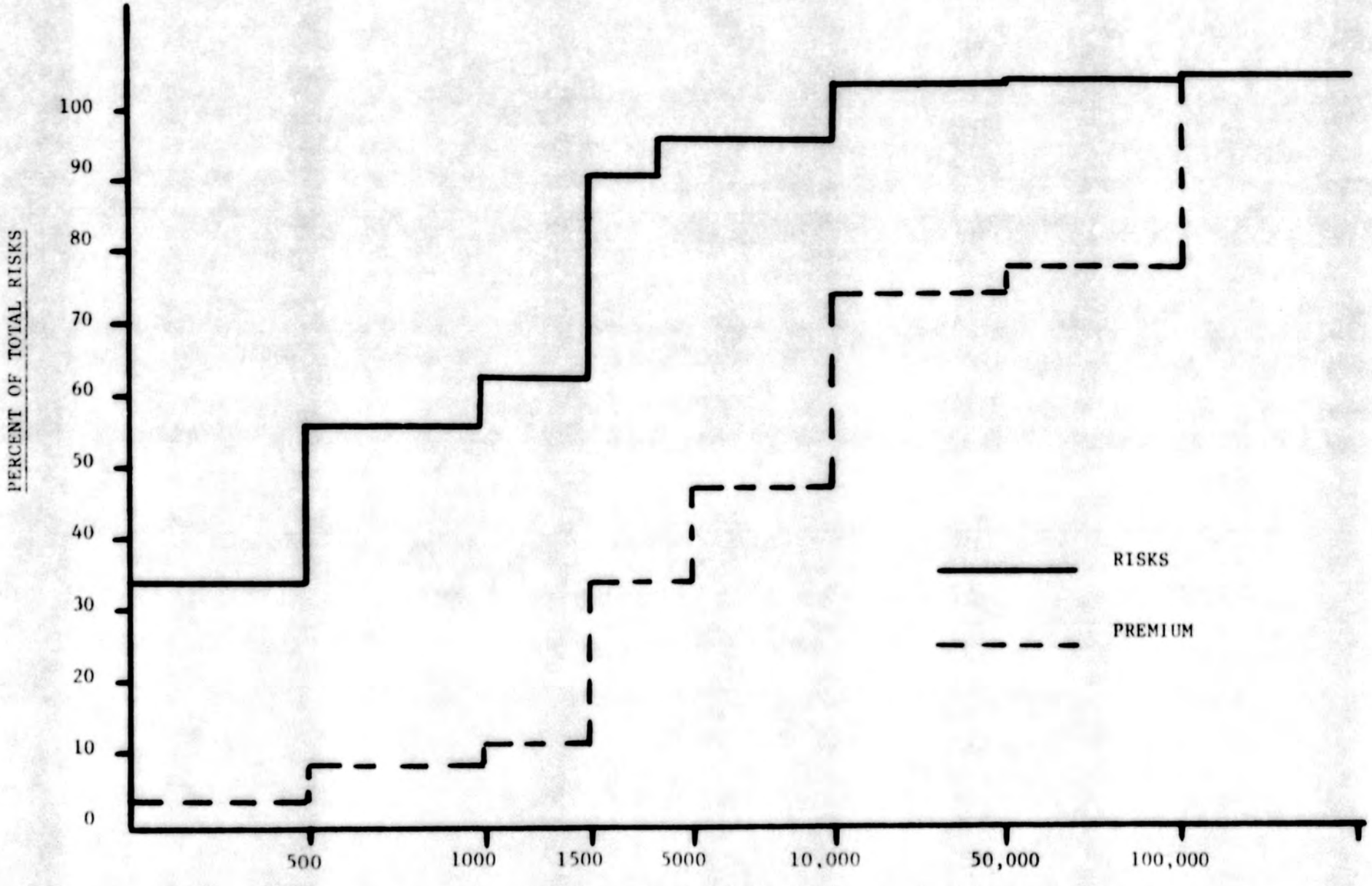


EXHIBIT 28

Small Risk For Alaska
Assigned Risk Pool
1975-1978

Year	Total Number of Risks	Number of Risks Paying <$1500/yr.	Total Premium For ARP	Premium From Risks <$1500/yr.	% of Risks <$1500/yr.	% Small Risk Premium <$1500/yr.
1975	673	503	1,135,957	178,134	74.7	15.7
1976	1,649	1,048	5,879,869	462,828	63.6	7.9
1977	2,165	1,274	7,093,520	655,055	58.8	9.2
1978	1,917	1,186	5,518,015	606,989	61.8	11.0

It is believed that the small risk should not pay a surcharge intended for the poor risk simply because the risk is small. By eliminating the 8% surcharge on those risks paying $1500 or less, in annual premium, a total savings of $45,000 would accrue to these risks (approximately $40.00 per risk per year). This savings would decrease the total premium generated by the Assigned Risk Pool by 1%.

Although the objective of all of our research has been to find ways to lower cost, we believe it is important to recognize that ultimate lower cost for the broadest base of Alaskan employers may be achieved by proper allocation of costs among employer classifications which may result in cost increases for some in order to bring equity among all. Larger risks which, we assume go to the pool because of the character of the risk, should pay a surcharge large enough to create an enhanced incentive to improve the safety measures taken by the risk to reduce losses and to more approximately charge premiums in proportion to propensity to incur loss. Accordingly, an increase in surcharge is believed appropriate for the larger risks. Raising the surcharge on non-air carrier risks in the pool paying $1500 or more per year in premium by 2% to a total of 10% would increase pool revenue by approximately 1.8%.

RECOMMENDATION No. 24

THE DIRECTOR OF INSURANCE SHOULD ORDER THE SURCHARGE BE ELIMINATED FOR ALL RISKS IN THE ASSIGNED RISK POOL WITH ESTIMATED ANNUAL STANDARD PREMIUMS EQUAL TO OR LESS THAN $1500. FOR ALL RISKS, OTHER THAN AIR CARRIERS IN THE ASSIGNED RISK POOL PAYING ESTIMATED ANNUAL PREMIUMS OF GREATER THAN $1500 THE SURCHARGE SHOULD BE 10%.

Pool Servicing Fee

The pool servicing carriers are currently paid 37.5% of assigned risk premium as compensation for the expenses of handling the assigned risk accounts.

The usual expense component paid to servicing carriers, from which all expenses, including commissions, is paid is 41.7%. In Order 77-4, the Director of Insurance ordered the rate of surcharge set back to 8% and 15%. Simultaneously, the Director ordered the servicing carrier fee adjusted so that it did not exceed 41.7% of the premium without the surcharge, in other words, the surcharge went entirely to fund losses. This effectively lowered the expense loading to approximately 37% of total premiums.

Earlier we showed that actual expense data indicated that in the aggregate, the carriers are experiencing an actual expense cost of 24% of premium. The NCCI rate filings reflect an allowance of 31.6% of premium. We believe that it is unfair to burden the employers with excessive expense cost in the pool by permitting a

larger than apparently necessary expense reimbursement to the servicing carriers. We suggest reducing the service carrier allowance from the present 37% to 30%. The potential premium applied against losses will increase by 7.8%.

RECOMMENDATION No. 25

WE RECOMMEND THAT THE ALLOWED EXPENSE LOADING FACTOR FOR THE SERVICING CARRIERS OF THE ASSIGNED RISK POOL BE NO LARGER THAN THAT ALLOWED BY THE NCCI FOR CARRIERS SERVICING RISKS IN THE VOLUNTARY MARKET.

Net operating losses in the pool in 1978 were 23% of net earned premium. By implementing all of the above suggestions, the operating loss could have been reduced to 14.4% of earned premium. The allocated assessment against all carriers in the Assigned Risk Pool could have been diminished.

The Second Injury Fund

Though it is one of the payors in the workers' compensation system here in Alaska, it is not an equal partner as are the private carriers, the Assigned Risk Pool and the self-insurers. Actually, the Second Injury Fund plays two important roles in the workers' compensation system: 1) it acts as a reinsurer to employers who have second injury liabilities and 2) it serves to enhance the opportunity for handicapped individuals and previously injured workers to find employment. The first instance is covered in Alaska statutes by AS 23.30.205. Here it is stated:

> "a) If any employee who has a permanent physical impairment from any cause or origin incurs a subsequent disability by injury arising out of and in the course of his employment resulting in compensation liability for disability that is substantially greater by reason of combined effects of the pre-existing impairment and subsequent injury or by reason of the aggravation of the pre-existing impairment than that which would have resulted from the subsequent injury alone, the employer or his insurance carrier shall in the first instance pay all awareds of compensation provided by this chapter, but the employer or his insurance carrier shall be reimbursed from the Second Injury Fund for all compensation payments subsequent to those payable for the first 104 weeks of disability."

The section proceeds to state that if the death of an employee was contingent upon a pre-existing physical impairment again the employer or his insurance carrier shall be only liable for 104 weeks of beneficiary benefits. Further, it is required that the employer establish, by written records, that he had knowledge of the permanent physical impairment before the subsequent injury and that the employee was hired or retained in employment after the employer had acquired this knowledge. A very comprehensive list of prior injuries or disabilities are defined as being a permanent physical impairment. Within this list of specific conditions is a general one which says a condition which will support

a rating of disability of 200 weeks or more if evaluated according to standards applied in compensation claims falls within the definition.

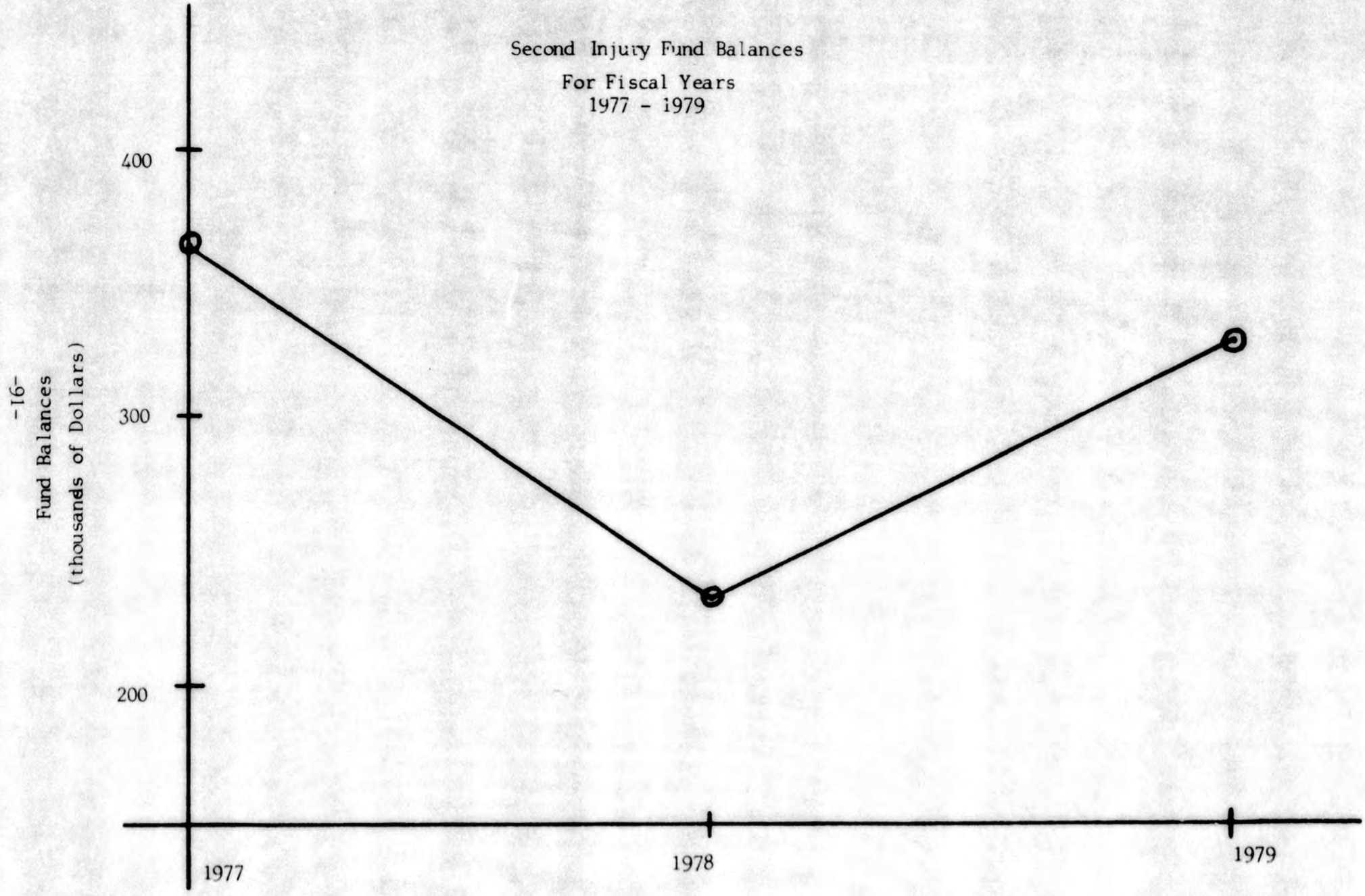
In the second instance, AS 23.30.040 states that the Second Injury Fund may be used to provide the vocational retraining and rehabilitation of a permanently disabled person whose condition is a result of a compensable injury. The expenses for retraining or rehabilitation may be paid out of all funds in the Second Injury Fund which exceed a balance of $10,000. The individual being retrained or rehabilitated may receive compensation from the Second Injury Fund for maintenance in a sum which the Board considers necessary during the period of retraining and rehabilitation but not exceeding $100.00 per month. The total expenditures for maintenance, training, rehabilitation and necessary transportation may not exceed $5000.00 for any one person.

The Second Injury Fund itself was established under AS 23.30.040. It is funded by the private insurance carriers within the State of Alaska. If an employee suffers a compensable injury which results in a permanent partial disability, the employer or his insurance carrier shall, in addition to the compensation provided for, pay into the Second Injury Fund, a lump sum equal to 8% of the total compensation to which the employee is entitled for the permanent partial disability. If the employee suffers death during employment and is at the time of his death unmarried and leaves no children or dependents, the employer is required to pay to the Second Injury Fund the sum of $10,000 for the sole benefit of those entitled to participate in the fund. Subsequent to the fund balance reaching $400,000, these carrier or employer contributions are no longer necessary.

Exhibit 29 traces the Second Injury Fund balance from 1977 through 1979. We see that at no time has the fund balance exceeded $370,000 and actually has oscillated around $300,000.

In our conversations with claims adjustment personnel of the private carriers and with some senior management personnel of the Second Injury Fund, we have discovered that there is some likelihood that the Second Injury Fund in the near future will be unable to pay all its obligations. The potential claims against the Second Injury Fund which have been identified by the carriers exceed the current fund balances and its estimated income. To date, we have been unable to quantitatively document this discovery. It has been brought to our attention, however, by senior claims personnel among the private carriers that the Second Injury Fund is quite slow in responding to requests for reimbursement. One of the major complaints is that when a carrier settles a compensation claim by a compromise and release agreement and a lump sum settlement, it is unable to obtain lump sum reimbursements from the Second Injury Fund. Senior management personnel of the Second Injury Fund confirm that their cash flow is insufficient to reimburse lump sum settlements.

Exhibit 29


Second Injury Fund Balances
For Fiscal Years
1977 - 1979
400
300
200
Fund Balances
(thousands of Dollars)
1977
1978
1979

It appears curious to us that the Second Injury Fund has as a specific objective the enhancement of employment opportunities of the handicapped, yet is funded entirely from revenues derived from worker injuries. If the Second Injury Fund were only to be used to enhance the re-employment opportunities of injured workers, this singular funding would be justified However, since it is not dedicated to the single purpose of enhancing the re-employment opportunity for the occupationally injured, it is apparent that there should be additional or alternative funding avenues. Since it is State policy to encourage the hiring of the previously handicapped in addition to the previously injured, it is reasonable to fund the Second Injury Fund partially from State General Fund revenues. This suggestion is definitely contrary to tradition since there is no state in the Union which makes a general fund contribution to their Second Injury Fund.

RECOMMENDATION No. 26

WE RECOMMEND THAT THE FUND BE AUDITED YEARLY BY INDEPENDENT ACTUARIAL CONSULTANTS AND THAT ALL PROJECTED REVENUES AND CLAIMS BE ESTABLISHED. IF THE EXPECTED LIABILITIES OF THE FUND EXCEED THE PROJECTED CARRIER REVENUES, THAN AN ADDITIONAL APPROPRIATION TO MAKE UP FOR THIS DIFFERENCE BE MADE FROM THE GENERAL FUND.

As noted above, the Second Injury Fund is only liable for disability compensation payments subsequent to 104 weeks for any claimant whose second injury is proved to have been exacerbated by a prior injury. Medical payments from these injuries are not covered by the language currently in the law. We are unable to determine why the Second Injury Fund differentiates between compensation payment reimbursement and medical payment reimbursements. In fact, we have been unable to obtain a suitable rationale for not having medical payments also reimbursable.

RECOMMENDAITON No. 27

WE RECOMMEND THAT MEDICAL PAYMENTS ALONG WITH DISABILITY COMPENSATION PAYMENTS AFTER THE FIRST 104 WEEKS OF DISABILITY BE COVERED BY THE SECOND INJURY FUND.

Also noted above is the fact that in order to use the Second Injury Fund, an employer is required to have written knowledge of a claimant first injury prior to his second injury. In order to utilize the second injury fund employers must require their job applicants to take a physical or complete a medical questionaire in order to meet the requirement of prior written notice.

This is added expense to the employer and also smacks of documenting the very discrimintion against the previously injured the second injury fund was designed to prevent.

RECOMMENDATION No. 28

WE RECOMMEND THAT ANY FIRST INJURY DOCUMENTATION ESTABLISHED PRIOR TO A SECOND INJURY EVEN IF DISCOVERED AFTER THE SECOND INJURY BE SUITABLE FOR ESTABLISHING THE SECOND INJURY FUND CLAIM.

Finally, if it is deemed by the Workers' Compensation Board that a compromise and release agreement with a lump sum settlement is in the best interest of an injured worker, there is certainly no reason why this type of settlement should be discouraged in the case of a second injury claimant.

RECOMMENDATION No. 29

WE RECOMMEND THAT THE SECOND INJURY FUND BE ALLOWED AND PROPERLY FUNDED TO MAKE LUMP SUM REIMBURSEMENTS TO ANY CARRIER OR EMPLOYER WHO PROVIDES A LUMP SUM SETTLEMENT TO AN INJURED WORKER.

Self-Insurers

Alaska Law as does the law in 45 other states and the District of Columbia, permits employers' self-insurance for industrial injuries to employees.

Self-insurance in workers' compensation simply means that the employer himself pays all workers' compensation claims up to a certain amount from his own funds. The claims procedure, benefit schedules and other statutory workers' compensation provisions are unaffected. The difference is simply that the self-insurer may himself administer the system or (in most states) he may contract on a fee basis with a self-insurance management service. Though reserves may be established for future payments, the employer retains use of those funds in the interim.

Self-insurance statutes differ but they typically provide considerable latitude to a State Department of Labor or Division of Workers' Compensation in determining which enterprises will be permitted to self-insure Applicants must submit financial and workers' compensation experience data and are required to provide guarantees of their workers' compensation reserves in the form of negotiable securities, cash, and surety bonds in some combination. Coverage up to a certain amount per occurrence is often stipulated and many self-insurers meet this requirement by carrying commercial reinsurance above their own "retention". This is analogous to a deductible. Though some states purport to follow a "formula" in decisions on self-insurance applications, case by case determinations, based upon a firm's financial resources and reputation, the type of business, the potential for serious disasters, the scent of mergers or dissolution, past workers' compensation experience and a number of other factors, are the rule.

The proportion of workers' compensation coverage provided by self-insurers as compared to commercial insurers and state funds, varies from state to state. Benefits paid by self-insurers are roughly 12% of the national total. This proportion has been gradually declining since 1939 in the face of competition from commercial retrospectively rated plans involving experience rating and premium discounts, and, in some cases, from state funds. The average self-insurer has a payroll of several millions of dollars and is a manufacturer, an energy firm, a major retailer or a public body.

A number of advantages are said by self-insurers' organizations to be characteristic of self-insured workers' compensation programs. Safety programs are claimed to be more extensive and effective than those of the average commercially insured employer. Self-insurers are also said to be more responsive to the individual injured worker, though they also litigate more claims than do either state funds or commercial insurers. A major advantage of self-insurance is that employers retain their workers' compensation reserves until payout is necessary.

Self-Insurance in Alaska

Alaska self-insurers currently number 31 and the workers' compensation benefits paid by these insurers in 1977 and 1978 were approximately 3.6% of the total payment made by private carriers. A schedule of those permitted to self-insure is attached as Exhibit 30.

Alaska's self-insurance enabling statute (AS 23.30.075) like those of other states allows considerable discretion to the Department of Labor and its Division of Workers' Compensation in approving self-insurance applications. Some states insist on a certain minimum figure in payroll or capital assets for self-insurers. Arizona, for example, required $750,000 annual payroll.

Alaska, however sets no flat minimums. Those firms which the Department determines are good self-insurance risks may be requirerd by the Workers'Compensation Board, at its discretion, to deposit an acceptable security, indemnity or bond, to secure the payment of compensation liability as they are incurred. Currently, there are no staff with the Division of Workers' Compensation whose sole responsibility is the assessment and analysis of requests to become self-insurers. In addition, there are no criteria in place to allow anyone within the Division of Workers' Compensation or for that matter, on the Board to make a decision to grant or deny a certificate of self-insurance.

EXHIBIT 30

SELF INSURED EMPLOYERS IN ALASKA

Alaska International Industries
(Alaska International Air, Alaska International Constructors, Weaver Brothers & Valdez Alaska Terminals)

Alyeska Pipeline Service Company

Amfac, Inc.
(Amfac Mortgage Corporation, Fred Harvey, Inc., Amfac Foods, Inc. dba Pacific Pearl Seafoods, Amfac Distribution)

Amoco Production Company
Standard Oil Company of Indiana

Municipality of Anchorage

Bethlehem Steel Corporation

Canadian National Railways

Chevron U.S.A., Inc.

Chicago Bridge & Iron

Collier Carbon & Chemical

Consolidated Freight

Fairbanks, City of

Foss Alaska Lines, Inc.
(Foss Launch & Tug, Foss L&T)

Getty Oil Company
(formerly Skelly)

Graybar Electric Company

International Harvester

Juneau, City & Borough

Kenai Lumber

Loomis Corporation
(Alaska Orient Van Line Service, Stanley Smith Security, etc.)

Louisiana-Pacific Corporation

Mobil Oil Corporation
(Includes Cook Inlet Pipe Line Co.)

Montgomery Ware

Pay'n Save Corporation

Safeway Stores, Inc.

Sea-Land Services, Inc.

Sears Roebuck & Company

Shell Oil Company

Standard Oil Company of California

Union Oil Company of California
& Union Chemical Division
(formerly Collier Carbon & Chemical)

Western Electric

Western Geophysical Co. of America
(Litton Industries)

Western Union

State of Alaska

Except for the knowledge that there are 31 self-insurers in the State of Alaska and the fact that some fraction of these occasionally report their quarterly paid losses to the Division of Workers' Compensation, the State of Alaska has poor knowledge of what self-insurers do in this State. In 1977, fewer than two-thirds of the self-insurers even reported quarterly their paid losses. In 1978, this fraction fell to fewer than one-half. The Division collects no expense or reserve data, and therefore has no comparable data base between self-insurers and the private carriers. We have determined, from the Division of Revenue, that the self-insurers in Alaska paid an aggregate payroll of $503,000,000 in 1978. From the extremely sketchy data provided the Division of Workers' Compensation, it appears that these self-insurers paid about $0.34 per $100.00 of payroll towards their workers compensation liability. This value certainly falls considerably below the average cost in the private market of approximately $4.00 per $100.00 in Alaska. This would tend to suggest that self-insurance is indeed considerably less costly than insuring within the private market. However, the reserving and administrative practices of self-insurers are sufficiently different from those of commercial insurers that we must approach this conclusion very carefully. Self-insurers are often said to reserve less than commercial insurers and their administrative costs are generally reported to be lower, as low as 10% in comparison with the 31.6% for commercial insurers. If this is so, one has no good way of comparing self-insurers with risks in the private market as to degree of hazard. We suspect that even if we did have more data, that the practices of self-insurers in reserving and administering workers' compensation are so different from those of commercial insurers that comparison would still not be easily accomplished.

Reserving and Administrative Cost Differences

The meanings of the terms used as measures in workers' compensation insurance are even different between the self-insurer and the commercial insurer. Reserves for commercial insurers are a specific proportion of premium, received from the employer and invested against future payments on current claims and potential future claims on an actuarial basis. Reserves for self-insurers, on the other hand, are merely a balance sheet item. The self-insuring firm must simply have assets which justify the Division of Workers' Compensation decison that"reserves" are available in an amount equal to outstanding liabilities or some projected liability. How the self-insurer calculates its outstanding liability and what it does with the money are not routinely regulated by the State of Alaska. These monies are available for other operations and are subject, of course, to other corporate obligations. The availability of these funds is one of the major attractions of self-insurance to employers. The trade off, of course, is that such reserves are less secure than those of commercial insurers. Additionally, self-insurers tend to understate their reserve requirements. The savings in reserve costs by self-insurers could be dangerous skimping; however, firms of the magnitude of the typical self-insurer may be able to reserve in this way without ill effect. But the purpose of comparing self-insurers cost to commercial rates is to isolate savings which can be replicated for those now commercially insured. Even if under reserving of the kind observed among some

self-insurers were a desireable method of cost saving for larger firms, the savings represented could not be duplicated among smaller firms without considerably increasing their financial risk.

Commercial insurers, on the other hand, may be said to have an incentive to overstate necessary reserves since a rate increase will presumably provide the requisite revenues and consequently additional investment income will be gained. Therefore, employers in the private insurance market may be paying higher premiums just to provide accelerated cash flow for his private insurer.

Administrative cost comparisons between self-insurers and commercial insurers are also similarly difficult to make. Self-insurers as we have stated, do not provide information to state agencies on their cost breakdowns, if indeed they actually have such information. There are reasons, in any case, why such data would not be comparable to those of commercial insurers. Self-insurers do not make profits on their workers' compensation coverage. They do not have acquisition costs, nor do they (in most states) pay premium taxes. They often operate without calculating hidden costs such as space, or workers' compensation related time of those in safety work or in the legal department. For example, several of the claimed advantages of self-insurance (better claims work, greater safety effort, more claim challenges) would clearly require higher rather than lower administrative costs, though they may reduce losses, unless these are not being directly charged to the self-insurance program as costs. Though a 10% administrative cost estimate for the self-insured is often encountered, it is not clear what, if any, actual data supports this figure and what costs are included in it.

Comparing the putative 10% administrative cost ratio claimed by some self-insurers with the 31.6% maximum expense loading permitted for commercial insurers is thus a very deceptive practice; the apparent costs of self-insurance are higher, some costs of commercial insurers are not borne by self-insurers, the expense ratio of commercial workers' compensation insurance to a typical large self-insurer, eligible for premium discount, would usually be on the order of 20% rather than 31.6% , and the full amount of the commercial premium is tax deductible for the employer as a business expense while self-insurance reserves generally are not.

Though it is impossible to calculate "real" cost ratios for self insurance versus commercial insurance even on single firm basis, a number of factors suggest that there is on average, a parity of costs which is overcome in particular instances by circumstances which make one or the other more attractive to a specific firm. Indeed, many of the most knowledgeable people in self insurance the professional managers of self-insurance programs believe that a commercial, retrospective, discounted workers' compensation policy is competitive with self-insurance in purely cost terms for most employers who self-insure. This is increasingly so as insurance companies permit quarterly and even monthly premium payments rather than requiring annual prepayment of the premium.

What has been learned form the comparison of self-insurance with insured plans is that a significant saving can be enjoyed by employers if they could pay their premiums as a self-insurer pays claims; that is, as the carrier pays claims rather than as it incurs or establishes reserves per claims.

Use of cash flow plans is not advised for most risks since the credit problem facing insurers from such a plan would jeoprodize carrier solvency and raise the price of coverage for those purchasing insurance in the traditional manner.

For those insureds, however which are large enough to be self-insured but wish the protection of an insurance company insurance policy, the cash flow concept ought to be permitted.

To make such a concept permissable in Alaska the Director of Insurance must agree to allow the premium receivable as an admitted asset provided the receivables are guaranteed by an irrevokable and unconditional bond or bank letter of credit.

RECOMMENDATION No. 30

THE DIVISION OF INSURANCE SHOULD PROMULGATE REGULATIONS ADEQUATE TO PERMIT CASH FLOW PROGRAMS FOR INSUREDS ON SIGNIFICANT PROJECTS WITH WRAP-UP POLICIES WITH ESTIMATED AGGREGATE PREMIUMS LARGE ENOUGH THAT THE RETROSPECTIVE PREMIUMS ON THE POLICY WOULD EFFECTIVELY COVER ALL LOSSES UP TO NO LESS THAN A $100,000 PER CLAIM RETENTION PLUS ALL EXPENSE AND REINSURANCE COST.

Safety Groups

In 1977, as part of the total package of workers compensation reforms, and principally at the urging of the Alaska Air Carriers Association, the legislature amended As 21.36.190, the fictious group law, to permit safety groups provided certain conditions were met.

The advantage of a safety group is that a group of employers with essentially homogenious business activity may purchase their insurance collectively and have the advantage of the lower expense components available to large insureds.

For example, if an individual home builder has an estimate payroll of $100,000, his manual standard premium would fall in the range of $4,000 to $7,000. The home builder would be entitled to a modest premium discount, an experience modification and perhaps a tabular retrospective adjustment.

On the other hand, if all of the homebuilders in the state formed a safety group meeting the strictures of AS 21.36.190, which in fact are not complicated, it is possible an estimated annual premium of $1,000,000 or more would be generated which would

entitle the group to a large premium discount, lower "basic premium" charge included in the retrospective premium with a resulting over all lower shared cost. The risk, of course, is that the group would also share the cost of debit retrospective adjustments because of the losses of the group; members of the group without losses may be called upon to share in the losses of other members.

Generally speaking the grouping has resulted in overall savings for the very few groups currently in effect in Alaska, primarily the Alaska Loggers Association and for groups in effect in the "lower 48".

So many industries, particularly in contractor and construction classes already have trade associations which provide the vehicle for such groupings but to date there have been no groups formed since the adoption of the new law.

The law provides that the fictitious group law (which prohibits group preperty and casualty insurance) does not prohibit a workers compensation safety group if the group:

1) has a contitution and by-laws;

2) incorporates a safety program;

3) as a group has preferred characteristics over similar risks written on an individual basis; and

4) has filed and received approval form the director for the rating program to be applied to the group.

The key to the workability of the program is having a viable and effective safety program. In this way the safety incentive is shared by all the numbers of the group. Here is a way the competitive and the incentive element in the compensation system work together to achieve state objectives.

RECOMMENDAITON No.31

EMPLOYERS MEMBERS OF INDUSTRY TRADE ASSOCIATIONS EXPLORE THE POSSIBILITY OF CREATING SAFETY GROUPS AS A MEANS OF CREATING MORE SAFETY AWARENESS AND INCENTIVE AND TAKING ADVANTAGE. THE ECONOMIES OF SCALE AVAILABLE FROM LARGER WORKERS COMPENSATION POLICIES.

Alternate Insurance Mechanism to Provide the Statutory Benefit

Offsetting workers' compensation benefits with health benefits and other disability benefits opens up a whole new area of concern. Currently, statutorily required workers' compensation benefits may be provided through only two mechanism, that of self-insurance

and that of purchasing workers' compensation insurance from casualty insurers. We feel that this procedure is too inflexible. If the risk manager for an employer wishes to provide all or some of the statutorily required workers' compensation benefits through mechanisms other than pure self-insurance, or purchasing workers' compensation insurance from a casualty insurer, he should be given that opportunity. He should be able to put together a workers' compnesation benefit package utilizing health benefit programs and disability benefit programs that are being provided for other circumstances.

There is a likelihood that for the large employers, frequently the self-insurer, that some savings may be experienced under these circumstances. Many of the carriers providing health benefit programs and disability programs have loss adjustment expense factors considerably lower than those of casualty insurers currently providing workers' compensation insurance. Therefore, by mixing and matching, a facile risk manager could conceivably put together a workers' compensation benefit package untilizing those insurers providing other benefit packages for his employees at a cost lower than that of providing workers' compensation insurance separately. We should caution, however, that many employers, particularly the small ones, might not be able to find insurers other than the present casualty insurers who would provided coverage of their workers' compensation liability. We are well aware that the current loss expense adjustment factors for health providers and non-occupational disability insurance providers is indeed lower (sometimes much lower) that those of casualty carriers now providing the workers' compensation coverage. We also realize that if one were to place the burden of providing the open-ended workers' compensation benefit coverage on health insurance carriers, there could be, an upward pressure on their loss adjustment factors. Therefore, in the minds of those who there could be sizeable savings by providing workers' compensation benefits through carriers presently utilized for health benefits and non-occupational disability benefits, we advise caution. These purported savings might indeed prove illusory. Still, to provided maximum flexibility and freedom to the risk managers in the State of Alaska, they should be allowed to utilize whatever mechanisms they can to provide the statutorily required workers' compensation benefits.

RECOMMENDATION No. 32

WE RECOMMEND THAT CARRIERS OTHER THAN CASUALTY CARRIERS BE ALLOWED TO OFFER PROGRAMS FOR WORKERS COMPENSATION, THUS ALLOWING EMPLOYERS TO PUT TOGETHER A WORKERS COMPENSATION PACKAGE UTILIZING HEALTH CARE INSURERS AND DISABILITY PROGRAM INSURERS WHICH MANY EMPLOYERS ARE ALREADY UTILIZING FOR OTHER EMPLOYEE BENEFITS.

Ratemaking

Prior to February 17, 1976, Alaska effectively had open competition rating in workers' compensation. Subsequent to that date the National Council on Compensation Insurance became licensed as a rating organization pursuant to AS 21.39.060. Effective with all policies newly issued after March 31, 1976, or renewing after March 31, 1976, on an anniversary of a previously issued policy, all carrier members of the NCCI were ordered to use and apply the rates, plans, schedules, and classifications of the NCCI in strict accord with the NCCI rules. Scheduled rate plans could be filed, but had to be based on objectably determined criteria. Scheduled credit rate adjustments could not exceed in the aggregate 15% of the manual rate adjusted for experience modifications. Scheduled debit rate adjustments could not exceed in the aggregate 20% of the manual rate adjusted for experience modifications.[41]

Concurrent with establishing National Council on Compensation Insurance as the licensed rating bureau, the Director of Insurance designated it to be the statistical agency for the Division of Insurance with respect to underwriting experience and workers' compensation insurance.[42] All carriers authorized to write workers' compensation insurance in Alaska were ordered to submit premium, payroll, loss and expense information to the National Council on Compensation Insurance in accordance with the National Council unit statistical plan in response to their periodic calls for data. These orders were promulgated on the belief that the availability of workers' compensation markets would be broader if carriers could be attracted to the state by the knowledge that the rate making system produced useful statistics and that there was a disciplined administration of a fair and objective, yet flexible and adaptable rate law. Since this time, the National Council on Compensation Insurance has served Alaska as its licensed rating bureau and as its statistical bureau.

Methodology

To meet this responsibility the National Council on Compensation Insurance has established over 500 employer classifications and manual rates for each one of these classifications. They have designed an experience modification plan, a number of retrospective insurance plans, and a complex data collection mechanism. The data which are collected serve two functions: 1) to serve as a basis for determining the absolute magnitude of workers' compensation rates in the State and 2) to determine the relative magnitudes of the rates for each employer classification. Having established this prodigious data base, the National Council performs its own statistical processes upon the data to derive the absolute rates, the relative rates, and the increase or decrease in rates as the data suggest.

Very simply, the National Council collects in the aggregate, the total premium paid in the State, the total losses incurred in the State and studies all of the expenses associated both with the premiums and with the losses. Having established expense factors for both premiums and losses, having obtained prior years loss data and historical loss behavior, and projecting expected premium from past experience and current law, the Council estimates what the expected loss ratios will be (i.e., the ratio of incurred losses to expected earned premium). If this ratio is greater than a pre-accepted value, then there is an indicated need for an increase in rate; if this ratio falls below the pre-accepted value (currently 0.684), then there is an indication for a decrease. The magnitude of either the increase or decrease is simply the ratio of the indicated loss ratio to the accepted loss ratio. From this starting point, the NCCI then distributes this aggregate increase across all of the employer classification resulting in new manual rates for each employer in the State.

In addition to acquiring data to allow it to establish absolute rates and relative employer class rates, the NCCI also utilizes unit statistical plan data to develop experience modification factors for qualifying employers in the State of Alaska. If an employer in the State of Alaska pays an annual premium in excess of $1500 per year, he qualifies for experience modification. His manual premium is modified either upward or downward according to his own experience over the past three year period. If the insured develops favorable experience, he receives a reduction in his manual premium; if the insured develops unfavorable experience a debit will apply. The experience rating modification will apply to the forthcoming year. It should be noted here, however, that adverse experience is limted with respect to its size both to single occurrences and multiple occurrences to assure that the insured will not suffer an overwhelming burden if during the prior three year period he suffered a catastrophic loss. This being the fact, not all adverse experience is directly attributable to the employer who incurs it.

Since the NCCI utilizes anticipated expenses in its rate making, it also recognizes the fact that there is a reduction in expenses (as a percentage of premium) incurred by the carrier as the premium size of the insured increases. Premium discounts have been established. Currently, they are as follows:

Standard Premium		Premium Discounts
First	$1000	0.0%
Next	$4000	9.4%
Next	$95,000	14.7%
Over	$100,000	16.3%

Data Base and Time Lags

The National Council on Compensation Insurance uses two data bases in their rate making determinations: policy year data and calendar year data. Policy year loss data are valued 18 months after inception date of the policy and reported to the NCCI two months later. At the very least, the lag in policy year data is 20 months. At this time of evaluation there are cases where total benefit cost is not yet known. An estimate is made upon the facts known at the time. For open claims a second report is required one year later. If losses are still open as of the second evaluation date, a third report is required in the following year and similarly fourth and fifth reports if any losses still remain open. Policy year data inherently contains a sizeable time lag.

Calendar year data is more current than policy year data, but also includes several inadequacies. It includes all premiums earned and losses incurred during the calendar year regardless of the effective date of the policies producing the data and thus can contain prior year adjustment which do not necessarily reflect current period trends. In the Woodward-Fondiller study for the Legislative Affiars Agency, in February 1977,[43] several procedural changes for the determination of rate levels in calculating class rates were suggested. They cited accident year data as being inherently more accurate than calendar year data and certainly more recent than policy year data. Therefore, they felt that accident year data should replace the mixture of policy year and calendar year data currently used by the NCCI. Woodward and Fondiller indicated that accident year statistics are used in California, Washington and West Virginia. To our knowledge, the NCCI has not responded to this particular suggestion either through implementing it or refuting it.

RECOMMENDATION No. 33

WE RECOMMEND THAT THE DIVISION OF INSURANCE REQUIRE THE NCCI TO INVESTIGATE THE USE OF ACCIDENT YEAR STATISTICS RATHER THAN THOSE USED CURRENTLY WITH THE EXPECTATION THAT THIS DATA BASE WILL BE PUT IN PLACE AS QUICKLY AS PRACTICABLE.

Though we have some argument with the utilization of policy and calendar year premium and loss data, we also recognize that the NCCI goes to extreme lengths to treat this data in such a manner to obtain statistically the most creditable values possible. It is other factors which enter into the rate making which we feel are adjustment expense factors is a questionable procedure. Neither, describe or derive the expense loading factors which they promulgated. Though they are supposed to be functions of past-histories, the NCCI has not proved their case. As seen earlier in this report actual expense loading factors obtained for the Alaska industry over the last three years have deviated significantly from the 31.6% presently established. We recognize that some of this

deviation can be explained away by invoking the premium discount; however, again, we are not certain whether the entire difference between the average 24% experienced over the last three years for expenses and the 31.6% can be explained through the use of the premium discount. Including anticipated expenses, underwriting profits, expected premium discounts and all other similar concerns as factors in rate making is at best confusing and at worst misleading.

More importantly, however, no insurance carrier in fact performs exactly like the statistical average. Each carrier has the capacity to become more or less efficient better or less effectively managed, provide better or worse service; and thus operate at a higher or lower expense level than is allowed for in the rate.

The justification for bureau rate making lies in the fact with which we fully concur, that no carrier has adaquate loss data to creditably make a statistical projection of loss cost.

The bureau provides a consolidated mechanism for aggregating statistics about loss and providing the carrier members with a pure loss (loss exclusive of claim and overhead expense)factor by classification which becomes the underpinning for the ultimate rate.

The same rationale, however, does not pertain to company operating expenses. An insurance carrier ought to be required to compete on price as to the expense portion of the premium.

Because the NCCI is the statutory statistical agency for the workers' compensation system in the state of Alaska and also is the statistical agency for carriers and is also funded by all of the private carriers writing workers compensation insurance in Alaska, the NCCI is placed in the untenable situation when their rate proposals contain subjective decisions on profits and the fraction of premium which should be allocated to expenses for the insurance industry. This conflict requires that the Division of Insurance have some check on the values proposed. Presently, the State of Alaska has no data system in place which will allow them to obtain information to determine whether the values proposed are indeed correct. To obtain these data and do the appropriate analysis would be a prodigious feat indeed; one which the division is not truly equiped to do and one which we feel truly should lie outside the purview of the divison of insurance. The conflict of interest which we cited above would be removed to a large degree if the expense components are separated from the determination of pure loss rates. We believe the division is currently staffed with professionally qualified personnel sufficent to determine whether an expense factor for a carrier is adaquate for that carrier and whether an expense schedule is discrimatory. To accomplish this, the National Council should be required to promulgate only pure

loss rates and the carriers should be required to adhere to the pure loss rates so promolgated. Then each carrier should be allowed and required to add to the pure loss rate what-ever expense component it feels is necessary to meet in expenses, except that the rating standard that rates may not be inadaquate, excessive or discrimnatory should be enforced by the Division of Insurance. To assure compliance the Division should require each carrier to make a filing or be prepared upon rate audit to demonstrate that the expense component being charged by the carrier is adaquate to cover their actual expenses based upon financial data filed with the division.

RECOMMENDATION No. 34

AS 21.39 SHOULD BE AMENDED TO LIMIT WORKERS COMPENSATION RATING BUREAUS TO PROMULGATING PURE LOSS CLASS RATES. CARRIERS SHOULD BE REQUIRED TO USE ONLY THE PURE LOSS RATES ON FILED PLUS EXPENSE LOADINGS WHICH COMPLY WITH THE CURRENT STANDARDS FOR RATE PROPRIETY.

This chapter has offered several approaches to stimulating the development of alternatives for employers to meeting their statutory obligations under the labor code.

It is the opinion of this firm that if the incentives are reordered, systems are made more relevant and competitive altenative offered the employer, that significant savings will over time be realized.

FOOTNOTES

1 Proposal of Richard L. Block and Associates to Alaska Conference of Employers Inc. January 18, 1979.

2 Workers Compensation, the feasibility of Establishing a State Fund." State of Alaska, Legislative Affairs Agency, 1977.

3 Herman Somers and Anne Somers, Workmen's Compensation (New York, N.Y.: John Wiley and Sons, Inc., 1954) pp. 17-37.

4 Ibid.

5 Ives V. South Buffalo Railway Company, 201 N.Y. 271, 94 N.E. 431 (1911).

6 Marcus Rosenblum, ed, Compendium on Workmen's Compensation (Washington, D.C.; National Commision on State Workmen's Compensation Laws, 1973), pp. 17-18.

7 Abner Brodie, "The Adequacy of Workmen's Compensation as Social Insurance: A Review of Developments and Proposals", 1963 Wisconsin Law Review, 57, January 1963, pp. 62-80.

8 U.S. Code Citation Published 91-596(Dec. 29, 1970) 84 Stat 1590.

9 The Report of the National Commission of State Workmen's Compensation Laws, Washignton, D.C., July 1972.

10 Ibid.

11 Department of Labor, Department of Commerce, Department of Health, Education, and Welfare and Department of Housing and Urban Development, White Paper on Workers's Compensation.

12 Interdepartmental Workers' Compensation Task Force Reports on State Workers' Compensation Progress Regions 1 through 10, Employment Standards Administration, Regional Administrators Conference. No. 9-12, 1957, San Antonio, Texas.

13 Alaska Legislative Council, A final report on the Workmen's Compensation Study, Publication No. 23-4 (Final).

14 Ibid.

15 Transcript of Proceedings, Public Hearings on Workmen's Compensation, Hearings conducted by the Alaska Legislative Council, Department of Commerce and Department of Labor, Juneau, Alaska, August 24, 25, and 26, 1961.

16 For a more complete description of the circumstances surrounding the hearings of November, 1975, and the Director's findings, see Division of Insurance Order 76-1. Two volumes of testimony were taken at the hearings and have been transcribed by the Division.

17 Block, Richard L., The Utilization and Regulation of the Surplus Line Business in Alaska, The Forum Volume XIV No. 4 spring 1979.

18 Chapter 75 SLA 1977.

19 AS 23.30.095. AS 23.30.150.

20 AS 23.30.185.

21 AS 23.30.180.

22 AS 23.30.215. 23.30. 040.

23 23 AS 23.30.190.

24 U.S. Chamber of Commerce, Analysis of Workers' Compensation Laws, Washington D.C., 1979.

25 David Reaume, Principle Economist, Department of Commerce and Economic Development.

26 Colbach, Edward M. "Being sick is doing well." Willamette Week (July 24, 1978).

27 Ross, Eleanor, Better Now than Never."Proceedings of the National Training Institute on the Industrial Injured.

28 Martin, Rolland. Occupational Disability, Illinois: Charles C. Thomas, 1975.

28 Finneson, Bernard E. "Psychosocial Consideration in Low Back Pain: The "Cause and Cure of Industry Related Low Back Pain." Orthopedic Clinics of North America. Vol. 8, No. 1 (January, 1977).

30 Ibid.

31 Nachemson, A.L. "Proceedings: Treatment of Low Back Pain--A criticial Look at Current Methods." Journal of Bone and Joint Surgery (British). Vol. 57, No. 2 (May, 1975), p. 262.

32 Nagi, Sadd Z.; Burk, Richard D.: Potter, Harry R. "Back Disorders and Rehabilitation Achievement." Journal of Chronic Disability. Vol. 18 (1965), pp.181-197.

33 Grossman, Howard I. "A New Concept of Disability." Journal of Rehabilitation (July, August, September, 1979), p.41.

34 Miller, J.H. Preliminary report on disability insurance. Public Hearing before the Subcommittee on Ways and Means. 95th Congress, 2nd Session, May 17, 21,24; June 4, 11, 1976.

35 Cooper and Company, Follow up Survey, 976. In "Workers' Compensation Reform; Challenge for the 80s" by Ronald Conley, Ph.D. and John Noble, Ph.D. American Rehabilitation, Vol. 3 (1978), pp. 19-26.

36 Sawyer, George P. "Vocational Rehabilitation and the Industrially Disabled," Proceedings of National Training Institute on the Industrailly Injured. (October 13-14, 1976), p. 23-32.

37 Welch, George T. "The Relationship of Rehabilitation with Industry," Journal of Rehabilitation. (July, August, September, 1979), p. 65-70.

38 Alverson, Norman, Letter to Marjorie T. Linder, Oregon: Workers' Compensation Department of Field Services Division, October 20, 1979.

39 Kleeman, Michael Teele-interview. Technektron, San Francisco, November 5, 1979.

40 Wolfe, J. "Disability is no handicap for DuPont. Alliance Review. Winter 1973-74.

41 Order 76-1 Department of Commerce for the State of Alaska, Divisiono of Insurance 1976.

42 Ibid.

43 Woodward and Fondiller, Workers' Compensation Rates In Alaska, Legislative Affairs Agency, State of Alaska, 1977.

ERRATA
Exhibit 21

1977

Loss Adj. Expense Factor %	Expense Loading (%)
11.0	19.2

Footnote: Date taken from NAIC profitability reports. Loss adjustment expense have been normalized to incurred loss. Expense loading is reported sales and income expenses, boards bureaus and taxes (Ex F.I.T.) plus 2.5% for profit.