PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT

Following generally accepted management practices, this is an exception report. The report highlights those items that are in need of improvement because they are being performed inefficiently, ineffectively or uneconomically, or are entirely out of control, redundant or no longer need to be performed in line with providing citizens of the State needed and essential services. For obvious, practical reasons this report does not highlight all of the positive things the agency has done or is doing but focuses its attention on the needed improvements.

Readers of this report can obtain an understanding of the scope of the audit by reading Section I entitled "Scope and Objectives"; printed on yellow paper.

Major audit recommendations and conclusions reached by the auditor may be obtained with a minimum of reading by turning to Section II "Summary" also printed on yellow paper.

Appendix I "Summary of Recommendations" includes in one place all of the changes recommended by the auditor and is found on the green pages.

Section III "Findings-Analysis-Recommendations" provides detailed data regarding the auditor's findings and provides the rationale that lead to the auditor's conclusions and recommendations; printed on white paper.

Appendix II "Proposed Legislation" contains the auditor's proposals regarding the need for new or revised legislation printed on yellow paper.

Appendix III "Fiscal Impact" of the report recommendations printed on the pink pages.

Additional appendices are included as necessary to provide a more in-depth look at subject matters discussed in the report.

The last appendix of the report contains agency comments on the audit report.

For the reader's convenience, a "Table of Contents" can be found on the pages immediately following this "Foreword".

A glossary of unusual words or terms used in this report can be found in the Appendix.

This report has been compiled based on a systematic and objective appraisal by the auditor of the management practices of the Buckner Rehabilitation Center. A detailed examination and analysis was made of the three basic management functions essential to the faithful, efficient and effective performance of all operating entities, i.e., the management planning function, the actual everyday operations functions, and management's review of how well the operations' function is performing in accordance with its planned performance.

The audit findings are the result of data obtained by means of (1) various budget requests and operating reports; (2) numerous documents, reports and studies in the field of rehabilitation; (3) interviews with personnel of the Buckner Rehabilitation Center, Department of Labor and Industries; (4) staff visits to the Buckner Rehabilitation Center, Department of Labor and Industries; and (5) staff visits to five public and private rehabilitation centers.

This report to the Washington State Legislature has been reviewed and approved by the Legislative Budget Committee after it had heard testimony from the Legislative Auditor and his staff, reviewed written comments submitted by interested agencies regarding the audit and listened to oral testimony both pro and con presented by all parties wishing to be heard on this subject during the public meetings held for that purpose.

All personnel contacted were most helpful and cooperative in furnishing the auditor information needed for the development and completion of this report. The Department of Labor and Industries Medical Consultant, A. Dean Johnson, M.D., was particularly helpful in providing medical advice to the auditor. Their assistance contributed greatly to the preparation of the program review and is gratefully acknowledged.

This audit was conducted by Richard Mueller, Senior Management Auditor on the staff of the Legislative Budget Committee.

THOMAS R. HAZZARD
Legislative Auditor

Approved by Legislative Budget
Committee January 22, 1979

REPRESENTATIVE FRANK J. WARNKE
Chairman
Legislative Budget Committee

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SECTION I

SCOPE AND OBJECTIVES

SCOPE:

The scope of this audit will encompass a review of functions being conducted by the Buckner Rehabilitation Center. This audit did not evaluate the Field Vocational Rehabilitation Staff Services provided by the Vocational Rehabilitation counselors in offices throughout the State.

OBJECTIVES:

The purpose of this audit is to determine how faithfully, efficiently and effectively programs of the Buckner Rehabilitation Center, Department of Labor and Industries, are being administered. The following major audit objectives have been established:

1. To determine to what degree the Buckner Rehabilitation Center's goals, objectives and programs are in compliance with legislative intent.

2. To determine if the Buckner Rehabilitation Center's programs are operating in an efficient and economical manner that provide optimum performance in its day-to-day conduct of business.

3. To determine how effectively the Buckner Rehabilitation Center is providing the basic services it has been chartered to provide.

4. To determine if the Buckner Rehabilitation Center is providing a needed service that is relevant to the requirements of responsible and efficient State government.

5. To identify problem areas, program deficiencies and redundancy; make recommendations for improving performance and recommend changes or additions to existing statutory authority.

6. To identify potential dollar savings that can be achieved by improvement in the Center's policies, programs and goals.

7. To determine to what degree the Buckner Rehabilitation Center has progressed toward achievement of the 1977-79 biennium goals.

SECTION II

SUMMARY

A. BACKGROUND

During the 1957 legislative session $1,000,000 was appropriated from the Medical Aid Fund for purchase or construction of a Department of Labor and Industries rehabilitation center, for industrially injured workers. This appropriation caused the purchase of an 8-1/2 acre site at 32nd Avenue, South and Alaska Street - Seattle, and the construction of a rehabilitation facility of 38,000 square feet with the capacity of 150 patients per day. The facility was opened on January 5, 1959.

During the 1959 legislative session $425,000 was appropriated from the Medical Aid Fund to construct and equip a rehabilitation center dormitory. This appropriation caused the construction of a 98 bed residence hall with occupancy beginning in October 1961.

Overview

Buckner Rehabilitation Center
(Agency Estimates)

Fiscal Year	Actual Expenditures	Estimated Expenditures	Allotted FTE's	Patients Discharged
1978	$2,113,000		110*	449**
1979		$2,406,000	110	
1980		2,449,000	110	
1981		2,469,000	110	

B. MAJOR CONCLUSIONS AND RECOMMENDATIONS

The Buckner Rehabilitation Center management and staff are doing an adequate job of administering the Department of Labor and Industries' rehabilitation programs.

The real problems of Washington's industrially injured workers' rehabilitation are outside of Buckner's management responsibility.

(2)

- There are not enough patients to utilize the Buckner facility and patient referrals to Buckner are 100% controlled by industrial insurance management in Olympia.

* The actual FTE's used during Fiscal Year 1978 were 100.8

** It is not known how many of the patients discharged were returned to "gainful employment".

- The majority of the patients referred to Buckner (by industiral insurance management in Olympia) are not motivated to be rehabilitated. The only reason many of the patients are agreeing to participate in a rehabilitation program may be because they will lose their compensation benefit check if they do not.

1. Specific areas of weakness not within Buckner's Management Responsibility are --

The Buckner Rehabilitation Center operational reporting system is confusing to someone who is not familiar with Buckner's activities.

Owing to the infinitely wide variety of services in rehabilitation activites, it is impossible to set down concisely the details of the kind of reporting system which the Assistant Director of Industrial Insurance should have put before him if he is to keep in touch with what is going on. The most effective method may be to prepare a summary of what seems of interest and importance, and for the Assistant Director then to make his choice, adding and omitting items which he personally feels he wants to know.

Buckner does have a few key figures which in themselves reflect the overall efficiency with remarkable exactness. For example:

- percentage of Buckner patient capacity per day used and room capacity per day occupied, gives a good index of the utilization of the facility.

- the following checks on labor utilization may be found to be of value -

  - ratio of direct labor, to patients discharged;

  - ratio of direct, to indirect labor; and

  - ratio of clerical labor, to patients discharged.

- the following checks of program effectiveness may also be found to be of value -

  - ratio of patients returned to gainful employment, to patients discharged;

  - ratio of patients no longer receiving time loss compensation benefits, to patients discharged; and

  - ratio of patients active in the job market, to patients discharged.

The "key figure" of the Buckner Rehabilitation Center may already be known or it may have to be discovered by investigation. In either case, when this figure is ascertained, the results should be recorded regularly.

1. The Buckner Rehabilitation Center facility program is only available to industrially injured workers, even though the facility is only 29 percent utilized.

*This audit recommends that the Center programs be made available to any disabled person in the State, on a cost reimbursement basis.

It costs less to provide rehabilitative services at private and other public rehabilitation centers.

Generally the same services offered at Buckner are available at a lower cost in private and/or other publicly run rehabilitation centers and these centers do have open capacity to handle Buckner's patient load.

The effectiveness and utilization of Buckner's programs is so low that the Auditor questions the need for the services being provided and the need for the facility itself.

The audit recommends that the Office of Financial Management determine if the present use of the Department of Labor and Industries' Buckner Rehabilitation Center is in the best interest of the State, and if not, how can the State better use the Buckner facilities.

The majority of Buckner's patients may not be motivated.

Although complex and difficult to assess, the auditor believes motivation is an important component of rehabilitation and subsequent employment.

The applicants for disability insurance or compensation benefits find themselves in a dilemma. On the one hand, the applicant undergoes various examinations and evaluation for the purpose of obtaining disability benefits. His orientation over a period of time is in the direction of emphasis upon limitations, and his major concern is in presenting these limitations in a way that maximizes his chances for obtaining the benefits. On the other hand, the applicant is asked to consider his capacities and assets and to mobilize them for the sake of rehabilitation. As one observer put it in connection with workmen's compensation:

> *"... Something is wrong with a system that produces conflicts of interest on the part of an injured worker whose future depends upon maximum restoration of health, but whose immediate attention is focused upon financial recovery."*

---

* The Legislative Budget Committee rescinded this recommendation.

2. Some of the areas within Buckner's management responsibility that need review are ---

Buckner work orientation programs are redundant, expensive and their effectiveness appears low.

The audit recommends that Buckner's management closely review these programs, exploring the alternatives of using work orientation programs delivered on a contractual basis by outside public and private organizations and other State agencies, before expanding their present work orientation programs.

The Buckner Rehabilitation Center staffing level is excessive when compared to the patient load.

The audit recommends that Buckner's management review the present staffing, reducing it where appropriate, so that it is equal to their 1962 ratio of staff to patients discharged.

3. A few options available which may, or may not, improve State rehabilitation service and costs are ---

OPTION A

Continue operating Buckner with the Department of Labor and Industries management; update interagency agreements with the Department of Social and Health Services and the Department of Employment Security; reduce staffing to a more cost effective level and open the use of Buckner's programs to all disabled people in the State, on a cost reimbursement basis.

Most Likely Outcome

This approach has been tried off and on for the past 20 years. There probably will be very little change in facility utilization, as DSHS, informally, has expressed dissatisfaction with the way the rehabilitation programs have been operating and would not likely refer many clients. (An alternative to this option may be to write legislation which would require DSHS to use Buckner.) Service cost per patient discharged would reduce, but would later creep back up unless strict controls and definitions on ratios of staffing level to patients discharged were implemented and enforced.

OPTION B

Continue operating Buckner with the Department of Labor and Industries management; implement a "Buckner Rehabilitation Facility Familiarization/Sales Program" addressed to physicians, Olympia industrial insurance management, and claims adjudicators; implement

more sophisticated patient referral and scheduling techniques.

Most Likely Outcome

This approach has been tried off and on for the past 20 years with little success. There probably will be very little change in cost and utilization of the facility.

OPTION C

Transfer management responsibility of Buckner to the Department of Vocational Rehabilitation, DSHS and implement interagency agreements between DSHS and the Department of Labor and Industries.

Most Likely Outcome

The probability that utilization of Buckner would increase is fair and therefore, cost per patient discharged may decrease as the Division of Vocational Rehabilitation appears to have enough clients in need of such a facility. Most likely the number of Department of Labor and Industries' patients will reduce to the number who are motivated and who really need a specific program being offered at the Center. There may be a slight increase in the Department of Labor and Industries' patients going to "outside" rehabilitation centers, but this would be more than offset by a decrease in Division of Vocational Rehabilitation patients going to "outside" rehabilitation centers.

There is some question of whether Buckner can ever consistently meet the rehabilitation costs per patient of "outside" centers. In any event, the Department of Labor and Industries rehabilitation budget would reduce substantially, but there may be an equal increase in the DSHS rehabilitation budget.

OPTION D

Sell the Center, or use it, for something other than rehabilitation.

Most Likely Outcome

This is probably the most cost effective option for the State and would be consistent with the activities of 45 out of 50 states. Our State does have enough private/public rehabilitation centers to handle the small number of Department of Labor and Industries' patients serviced at Buckner. (There is some doubt whether the majority of the Buckner patients really need the rehabilitation services they are presently receiving - 90% of them may never be referred to an "outside" facility.)

SECTION III

FINDINGS-ANALYSIS-RECOMMENDATIONS

A. BACKGROUND

Vocational rehabilitation is among the oldest of all Federal grant-in-aid programs. Originating in 1920, the National Civilian Vocational Rehabilitation Act was designed to serve World War I crippled veterans but was soon expanded to include workers injured in industrial accidents. In fact, the first Washington State Vocational Rehabilitation Program, instituted in 1933, was funded with $5,000 to retrain the injured workmen.

From 1933 to 1948, industrially injured workers in need of rehabilitation were referred to the Division of Rehabilitation, now within the Department of Social and Health Services.

In June 1948, on an experimental basis, the Department of Labor and Industries rented a facility in downtown Seattle to be used as their own rehabilitation center.

During the 1957 legislative session $1,000,000 was appropriated from the Medical Aid Fund for purchase or construction of a rehabilitation center, including equipment and land. This appropriation caused the purchase of an 8-1/2*acre site at 32nd Avenue, South and Alaska Street - Seattle and the construction of a rehabilitation facility of 38,000 square feet with the capacity of 150 patients per day. The facility was opened on January 5, 1959.

During the 1959 legislative session $425,000 was appropriated from the Medical Aid Fund to construct and equip a rehabilitation center dormitory. This appropriation caused the construction of a 98 bed residence hall with occupancy beginning in October 1961.

Rehabilitation Center programs now include:

---

* Approximately 1 acre was later sold to the Commission for the Blind, where a small office building was built.

PHYSICAL SERVICES

Physical Restoration

Offers therapeutic modalities and a series of light to heavy exercises and activities to increase strength, ranges of motion and endurance. Can include TENS training. Requires 6 hours a day, 5 days a week for an average of 5 to 6 weeks based on progress.

Amputee Services

The AMPUTEE PROGRAM is designed to offer the amputee the necessary services in three different categories:

1. Treatment-management, training and care of the amputee, and of the problems related to the injury.

2. Evaluation-assessment of the client's needs and prosthetic skills, and the prosthetic Check-Out.

3. Clinic-orthopedic, medical, and psychiatric evaluation of amputees to assist the attending physician with case management, prosthetic prescription, and checkout.

Body Mechanics

Body mechanics offers information and instruction about correct body movements in daily life/work/play activities. Emphasis on understanding, the skeletal structure, posture, and efficient performance of tasks enables the client to function without undue physical strain.

Physical Capacity Evaluation

The PHYSICAL CAPACITY EVALUATION PROGRAM is designed to document the injured worker's current physical abilities. The Referral Source will be provided with objective information which can be related to the demands of a job, and supply information helpful in determining a rehabilitation plan.

PSYCHOLOGICAL SERVICES

Orientation

Pain Orientation

Discussion of pain problems with suggestions for coping with pain. ¼ hour daily for 5 days.

Industrial Insurance Information

Covering rights and responsibilities under the industrial insurance laws. Requires ¼ hour daily for 5 days.

Psychological Intervention

Includes psychological evaluation and counseling for injured workers seen at the Center. The consulting psychologist may recommend to Olympia's Medical authorizers that extended psychotherapy should be approved. Frequently referral is made to community agencies when the problem is not one which can be covered by industrial insurance.

Recreation

This program utilizes leisure skill activities to promote self-worth, growth and development of the individual, or to provide purposive intervention in an emotional or social behavior to bring about a desired change. In addition, emphasis is placed on informing the claimant on how to obtain satisfying leisure skill activities in their home community.

PSYCHOLOGICAL SERVICES (con't)

Pain Management

Teaches the injured worker with chronic pain to function in a more normal manner by reducing as much as possible the effects of pain upon behavior. Includes physcial therapy, occupational therapy, relaxation training, recreational program and psychological counseling if needed. Whenever commuting distances make it possible the injured worker's family is directly involved in the program. There are classes held twice weekly covering topics relating to anatomy and physiology, pain and stress management as well as others which relate to pain management.

VOCATIONAL SERVICES

Vocational Testing

The TESTING PROGRAM is designed to provide services to administer and score a wide variety of standardized tests to assist the Referral Source in determining a rehabilitation plan.

Work Evaluation

Assists injured workers to make decisions about vocational direction based on an understanding of interests, needs, assets, limitations and potential. Requires 6 hours daily for 15 days.

Career Life Planning

Career/Life Planning is a group educational effort for the injured worker who finds it necessary to change occupations. It emphasizes the need of the worker to make his/her own decisions after exploring and analyzing his/her skills, interests, values and goals.

VOCATIONAL SERVICE (con't)

Work Confidence

Provides realistic and meaningful work activities to increase tolerance, self worth and physical function. Requires 1½ to 7 hours daily for 5 to 10 days.

Counseling

Identifying reemployment barriers with the injured worker.

Establishing a rehabilitation plan of action through exploration of vocational options.

Giving encouragement and support for change and growth.

Job Development

Placing in the hands of injured workers labor market information, job seeking strategies.

Soliciting job opportunities for the more seriously disabled.

Negotiating with former and new employers for job openings.

Career Preparation

Strengthening, building individual capabilities and assets.

Nurturing, encouraging personal self-development and change.

The entire program is financed by the Medical Aid Fund. Premium rates for payments to the Medical Aid Fund are based upon the medical aid expenditures of each industry class or subclass. Each firm pays the rate assigned to the class to which it belongs. The cost of the medical aid premium is paid one-half by the worker and one-half by the employer.

The table below shows the growth of rehabilitation operating expenditures for benchmark years:

	Center Rehabilitation Expenditures	Field Vocational Rehabilitation Expenditures	Total Center and Field Expenditures	Center Patients Discharged
Calendar Year				
1925	$ 19,201	---	---	N/A
1948*	78,907	---	---	160
1959**	284,531	---	---	680
Fiscal Year				
1962	377,101	---	---	736
1977	923,804	$ 16,732	$ 940,536	727
197	981,700	168,477	1,150,177	727
197	1,039,598	479,177	1,518,773	553
197	1,097,492	451,761	1,549,253	609
197	1,155,388	643,470	1,798,858	525
1977	1,213,284	837,176	2,050,460	447
1978	1,271,180***	841,820***	2,113,000	449
1979	1,467,660 (est.)	938,340	2,406,000 (est.)	N/A
1980	N/A	N/A	2,449,000 (est.)	N/A
1981	N/A	N/A	2,469,000 (est.)	N/A

(3)*

The number of patients which were actually rehabilitated, as a result of these expenditures, is not available.

The types of injuries for which patients are being referred for rehabilitation are as follows:

---

* A rehabilitation facility is rented.

** The Buckner Rehabilitation Center is opened.

***Buckner management estimates

Exhibit 1

Types of Injuries For Which Patients Are Being Referred For Rehabilitation

Type of Injury	1954		1978	
	Number	Percent	Number	Percent
Back and Neck	131	34%	1,603	63%
Upper Extremity			274	11
Injury to Arm	42	11		
Injury to Hand	34	9		
Amputation of Arm	7	1		
Partial Amputation of Hand	15	4		
Lower Extremity			284	11
Injury to Leg	86	23		
Injury to Foot	16	4		
Amputation of Leg	9	3		
Partial Amputation of Foot	1	--		
Other; Head and Trunk Injuries			122	5
Injury to Skull or Cranium	4	1		
Injury to Thorax and/or Should Girdle	23	6		
Injury to Pelvis	12	3		
Multiple			263	10
TOTALS	384*	100%	2,546**	100%

* Includes 55 patients referred for center treatment but treatment not feasible.

** Most of these patients did not receive center treatment, since only 449 patients were discharged in Fiscal 1978.

B. PLANNING FUNCTION

1. Introduction

The planning function is the foundation upon which good management relies to assure that expenditures of resources will be made in an efficient and economical manner while contributing to the effective achievement of legislative intent and the goals and objectives of the system.

The system level planning function should consist of three major activities: (1) development of time-phased quantified objectives established for the purpose of assuring that the system's programs are directed toward realization of established goals; (2) development and documentation of a plan including a system of controls that will provide an efficient and effective means by which achievement of the established objectives may be realized; and (3) development of a set of performance standards that will provide a basis for measuring the degree of success achieved through implementation of the plan.

Examination of the planning function as it relates to the Buckner Rehabilitation Center includes a review of plans that have or should have been developed as a means of achieving economical, efficient and effective utilization of resources.

Of specific concern to the auditor was evidence of the following: (1) compliance with legislative intent; (2) evidence of existing goals and objectives; (3) documented program plans; (4) existence of performance standards; and (5) existence of a reporting system that permits comparison of planned with actual performance.

2. Legislative Intent

a. Findings

There is a statute that deals specifically with the rehabilitation center:

> 51.36.050 Rehabilitation center--Contracts with self-insurers. *The department may operate and control a rehabilitation center and may contract with self-insurers for use of any such center on such terms as the director deems reasonable.*

The 1972 National Commission on State Workmen's Compensation has made the following recommendations regarding rehabilitation services:

		Is The Rehabilitation Center In Compliance
R 4.2	We recommend there be no statutory limits of time or dollar amount for medical care or physical rehabilitation services for any work-related impairment.	Yes
R 4.3	We recommend that the workmen's compensation agency have discretion to determine the appropriate medical and rehabilitation services in each case. There should be no arbitrary limits by regulation or statute on the types of medical service of licensed health care facilities which can be authorized by the agency.	Yes
R 4.4	We recommend that the right to medical and physical rehabilitation benefits not terminate by the mere passage of time.	Yes
R 4.5	We recommend that each workmen's compensation agency establish a medical-rehabilitation division, with authority to effectively supervise medical care and rehabilitation services.	Intent has been carried out
R 4.6	We recommend that every employer or carrier acting as employer's agent be required to cooperate with the medical-rehabilitation division in every instance when an employee may need rehabilitation services.	Yes
R 4.7	We recommend that the medical-rehabilitation division be given the specific responsibility of assuring that every worker who could benefit from vocational rehabilitation services be offered those services.	Yes
R 4.8	We also recommend that the employer pay all costs of vocational rehabilitation necessary to return a worker to suitable employment and authorized by the workmen's compensation agency.	No
R 4.9	We recommend that the workmen's compensation agency be authorized to provide special maintenance benefits for a worker during the period of this rehabilitation. The maintenance benefits would be in addition to the worker's other benefits.	Intent has been carried out

b. Evaluation and Conclusions

The Buckner Rehabilitation Center service is not a legislated activity. The intent of the Legislature is that the Department of Labor and Industries may operate and control a rehabilitation center if money is appropriated for this purpose.

3. There Are a Limited Number of Objectives and No Program Plans

a. Findings

Five goals and four objectives were documented in the 1977-79 agency budget request (Appendix V).

Monthly goals for new referrals to the rehabilitation center and clients completing rehabilitation service in the physical, emotional and economic programs are itemized.

There does not appear to be any program plans on how these objectives are going to be achieved, and the auditor's discussions with various rehabilitation staff indicate that there is confusion over what their objectives really are.

AUDITOR'S NOTE:

The 1979-81 biennium goals and objectives are an improvement over the previous biennium.

A letter dated October 20, 1978 to Buckner's Superintendent from the Assistant Director of the Industrial Insurance Division addresses Buckner's goals, objectives and programs plans quite well.

b. Evaluation and Conclusions

In the auditor's judgment there are a limited number of objectives compared to the number of rehabilitation programs being offered.

Only one of the four objectives in the 1977-79 biennium budget request, contain a measurable achievement within a given schedule; however, the monthly objectives are measurable for a specific time period.

The auditor concludes that an attempt has been made to establish objectives consistent with executive policy and legislative intent, but improvements can still be made in two areas:

1) clearly defined, measurable, and scheduled objectives that contribute toward attainment of the goals;

2) objectives should be developed for each rehabilitation program being offered.

Specific and measurable goals and objectives for rehabilitation are increasingly important. They should be used as important criteria in assessing the efficiency and effectiveness of the rehabilitation facility, programs, staff and contribute to the emphasis upon selectivity of the type of programs to be offered.

4. More Performance Standards Are Needed

a. Findings

In all fairness, the agencies "monthly goals" for the rehabilitation center's physical programs, emotional programs and economic programs are performance indicators which are explicitly stated to permit direct measurement. However, there are no standards established to measure the degree of effectiveness toward achievement of the organization's (1977-79 biennial budget request) objectives or the other services the rehabilitation center offers.

There are also no performance standards which could provide a means of measuring efficiency of an individual and/or group performance.

In addition, it does not appear that there is any documented criteria to determine whether workmen's compensation claimants really need physical and/or vocational rehabilitation services.

b. Evaluation and Conclusions

The auditor is aware of the problems of uses of performance measures in rehabilitation programs and the arguments and counter arguments against various interpretation of the measures; yet some type of effectiveness measures are essential if judgment is to be rendered in the degree of achievement realized toward meeting the original objective.

Performance measures, along with other modes of monitoring and evaluation, can be used in rehabilitation programs to address the issues of: who is served, how well, and with what final results (that are attributable to the program).

There are three major roles that performance measures can potentially play in a rehabilitation program:

1) providing information for program improvement (the traditional role);

2) providing information for outside justification and "program defense"; and

3) helping to raise new issues, educate participants, and constructively channel conflicts.

Performance standards are readily available for almost all the rehabilitation programs being offered by the center (copy included in Appendix V). These standards were developed by the Washington Association of Occupational Therapist and Washington Association of Physical Therapist, and are being used by all hospitals under the jurisdiction of the Washington State Hospital Commission.

The auditor concludes that these standards should also be used at Buckner to assist management in determining the proper staffing level.

Example of How Private Hospital Uses Performance Standards to Determine Staffing Levels for Occupational Therapist and Physical Therapist

Performance standards for:

° Physical Therapist

1 Physical Therapist averages 16 patients per day (16 treatment units)

° Occupational Therapist

1 Occupational Therapist averages 20 patients per day (20 treatment units)

Application of these standards at Buckner Rehabilitation Center:

Given the above standards and a 37 patient load per day for physical therapy and occupational therapy, then:

Physical Therapist (PT) Staffing

$$\frac{\text{37 Treatment Units Needed}}{\text{16 Treatment Unit Standard Per PT}} = 2.3 \text{ PT}$$

Conclusion:

Three Physcial Therapists are needed. The present staffing to handle 37 patient load per day is 13 Physical Therapists.

Occupational Therapist (OT) Staffing

$$\frac{\text{37 Treatment Units Needed}}{\text{20 Treatment Unit Standard Per OT}} = 1.8 \text{ OT}$$

Conclusion:

Two Occupational Therapists are needed. The present staffing to handle 37 patient load per day is 11 Occupational Therapists.

5. Budget Appears to be too High

a. Findings

The rehabilitation center does follow instructions published by the Office of Financial Management regarding budget development, but workload indicators and standards are not used to develop and support each segment of the budget.

	1977-79 Biennium Budget
Salaries	$ 2,930,745*
Personal Services Contracts	126.126
Goods and Services	470,440
Travel	99,000
Equipment	32,271
Employee Benefits	450,708
	$ 4,109,290

Employee cost is 82 percent of the entire budget.

The average number of patients using the dormitory each day was 22 (Fiscal Year 1978). During Fiscal Year 1978 the average number of patients that used the Buckner Rehabilitation Center each day was 44. To service these patients the center was staffed as follows:

* Salary increase adjustments are not part of the $2,930,745.

Administration

Rehabilitation Center Supt.	1
Medical Consultant	3
Administrative Assistant	1
Clerical Supervisor I	1
Secretary I - Shorthand	1
Clerk Steno II	3
Clerk Typist III	2
Clerk Typist II	7*
Dictation Machine Trans.	4*
Clerk II	1
Clerk I	1
Medical Treatment Adj. II	2*
	27

Maintenance

Plant Manager	1
Custodian	1
General Repairman	1
House Keeper I	1
House Keeper II	3
House Keeper III	1
Caretaker	1
Laundry Worker I	1**
Laundry Worker II	1
	11

Total Overhead Labor 38

Buckner Rehabilitation Center Program

Psychologist III	1
Therapist Supervisor	1
Occupational Therapist I	9
Occupational Therapist II	1
Occupational Therapist III	1
Physical Therapist I	9
Physical Therapist II	2
Physical Therapist III	2
Manual Arts Therapist	1
Manual Arts Therapist Asst.	2
Industrial Therapist Asst.	3
Industrial Therapist Aid	1
Recreation Leader	1
Industrial Fitness Program/Man.	1
Supervisor Work Evaluator	1
Work Evaluator	1
Industrial Group Relation Spec.	1
Hospital Attendant	2
Total Direct Labor	40

TOTAL REHABILITATION CENTER DIRECT AND OVERHEAD FTE's 78

Vocational Rehabilitation Program, Field FTE's

Vocational Rehab. Admin. II	1
Vocational Rehab. Asst. Supt.	1
Vocational Rehab. Supervisor	3
Vocational Rehab. Coun. III	8
Vocational Rehab. Coun. II	17
Vocational Rehab. Coun. I	1
Vocational Service Coord.	1
	32

During the Fiscal Year 1978 the average number of patients that used the center was 44 each day; this translates to a ratio of almost two staff for each patient. The ratio of maintenance staff to patients using the dormitory, is one staff for each two patients using the dormitory, and the ratio of administrative staff to average patients per day, using the services, is a one to 1.6 relationship.

* There are two Clerk Typist II's, two Dictation Machine Trans.'s, and Medical Treatment Adj. II's positions in Olympia. These six positions work in the Buckner Rehabilitation Center Referral unit.

** This position was not filled in Fiscal Year 1978, but the agency 1979-81 biennium budget request indicates that it was allotted and it is estimated to be filled in Fiscal Year 1979, 1980 and 1981.

The source of revenue for the rehabilitation of industrially disabled workers program is the Medical Aid Fund. This fund is financed one-half by the employer and one-half by the worker.

AUDITOR'S NOTE:

A letter dated October 20, 1978 to Buckner's Superintendent from the Assistant Director of the Industrial Insurance Division addresses Buckner's 1979-81 biennium budget requirements and suggests that they be again reviewed, however, the budget request has already been forwarded to the Office of Financial Management.

b. Evaluation and Conclusions

The rehabilitation center is attempting to develop their budget according to established procedures, however, it is quite weak and unclear in the workload/output section.

The auditor concludes that the budget of a facility staffed at 78 FTE's to service an average of 44 patients per day is excessive.

Overhead		
Administration	27 FTE's	
Maintenance	11 FTE's	
		49%
Direct Labor		
Buckner Center	40 FTE's	51%
	78 FTE's	100%

c. Recommendation

*RECOMMENDATION 1

It is recommended that the Department of Labor and Industries justify the Buckner Rehabilitation Center's 1979-81 biennium budget staff levels at the 46th Legislature's Budget hearings, by using a ratio of staff level to patient discharged, as a measure; it is further recommended that the 1979-81 biennium staffing level be adjusted to equal the Fiscal Year 1962 ratio of staff to patients discharged.

* Amended by LBC (see amended wording in Appendix I, Summary of Recommendations).

(The intent of this recommendation is to return Buckner to the same productivity that it demonstrated in 1962.)

6. Span of Management Control is Marginal

a. Findings

The rehabilitation center does have an organizational structure which identifies all personnel and establishes their authoritative relationships (see Appendix V).

The rehabilitation center overall management ratio to non supervisory personnel is 1 to 6.8, however, when the auditor reviewed in detail each position's span of management control, it revealed:

- Vocational Administration II - span of management control is one to three.
- Therapist Supervisor - span of management control is one to three.
- Administrative Assistant II - span of management control is one to two.

b. Evaluation and Conclusions

The overall span of management control is marginal at 1 to 6.8.

The second level of supervision, that is the Vocational Administrator II, Therapist Supervisor and Administrative Assistant II positions span of management control are not acceptable at one to three or one to two. If this second level supervision did not exist, the Superintendent would have eight first line supervisors reporting to him rather than the present three, second level supervisors. A span of management control of one to eight is acceptable.

7. Reporting System

a. Findings

The rehabilitation center is using a computerized Rehabilitation Activity Reporting System (RARS) that keeps track of claimants, enables management to evaluate workloads and provide a statistical overview of rehabilitation services.

The Rehabilitation Activity Reporting System has been in partial operation since May 1976 and it replaced an earlier hand counting system. The system objectives are:

1) Remove activity reports from MIST.
2) Provide reports to line staff.
3) Provide visibility for supervision.

4) Provide completions reports.
5) Provide statistics for management.
6) Provide an index to caseloads.
7) Maintain timeliness.
   FUTURE EXPANSION (Requires an interface with Claims Master System)
8) Enhance referral process. (Automatic Referral)
9) Provide follow-up and feedback. (Automatic periodic follow-up report)

Objectives eight and nine appear to be the most important part of the entire system, however, neither has been achieved.

There is also a monthly rehabilitation services report which is developed from various statistics in RARS.

b. Evaluation and Conclusions

In the auditor's judgment the RARS and monthly rehabilitation service report is doing an adequate job, although they are a bit confusing. Certainly, improvements can be made and the current management team is well aware of the problem areas and is taking corrective actions.

The following changes in the monthly reporting system are suggested for the benefit of top management's overall visibility of the various Buckner programs being administered.

Divide the present monthly rehabilitation services report into four separate groups.

	FTE's Used	Clients Discharged	Ratio Of FTE's Used To Clients Discharged
Group 1 Report			
Rehabilitation Programs -			
Physical Restoration			
° Capacity Evaluation	____	____	____
° Body Mechanics	____	____	____
° Amputee	____	____	____
Psychiatric Orientation -			
° Pain Management	____	____	____
° Intervention	____	____	____
Overall Totals	____	____	____

Group 1 Report (continued)

Average Client Load Per Day ____

Center Client Load Per Day Capacity 150

Present Slots Open for Clients _____

Present Backlog of Clients _____

Previous Month; Clients That Are -

Off Time Loss _____

Returned to Work _____

	FTE's Used	Clients Discharged	Ratio Of FTE's Used To Clients Discharged
Group 2 Report			
Work Evaluation Unit Programs -			
Work Orientation			
° Work Evaluation Program	____	____	____
° Career Life Planning Program	____	____	____
° Job Seeking Skills Program	____	____	____
° Job Readiness Program	____	____	____
Overall Totals	____	____	____

Present Slots Open for Clients _____

Present Backlog of Clients _____

Previous Month; Clients That Are -

Off Time Loss _____

Returned to Work _____

	FTE's Used	Clients Discharged	Ratio Of FTE's Used To Clients Discharged
Group 3 Report			
Field Vocational Counselor Program -			
Activities You Wish to Measure			
	____	____	____
	____	____	____
	____	____	____
Overall Totals	____	____	____
Present Slots Open for Clients		____	
Present Backlog of Clients		____	
Previous Month; Clients That Are -			
Off Time Loss		____	
Returned To Work		____	

	FTE's Used	Clients Discharged	Ratio Of FTE's Used To Clients Discharged
Group 4 Report			
Overhead Labor			
Administration Activities	____	From Center ____	From Center ____
Maintenance Activities	____	From Residence Hall ____	From Residence Hall ____
Average Clients Load Per Day Staying at Dormitory			____
Residence Hall Capacity Per Day			98

C. OPERATIONS FUNCTION

1. The Buckner Rehabilitation Center Facilities and Programs Should Be Available to All Disabled People in the State

a. Findings

1) The Rehabilitation Center is Operating at 29 Percent of the Capacity it was Designed For

a) The Rehabilitation Center was built to handle an average of 150 patients per day. During Fiscal Year 1978 the average patient load per day was 44.

b) The rehabilitation center administration has liberally estimated their programs to be 40% utilized, given their present staff level. The auditor has converted their data, (patient hours) to "patient days" and has determined the utilization of each of the rehabilitation center programs during July, August and September 1978.

Center Programs	Percent of Possible Patient Days Used First Quarter Fiscal 1979
Physical Services	
Restoration Program	58%
Capacity Evaluation Program	20
Body Mechanics Program	20
Amputee Program	20
Psychological Services	
Orientation Program	60%
Pain Management Program	20
Intervention Program	14
Vocational Services	
Testing Program	25%
Work Evaluation Program	50
*Work Confidence Program	17
*Career Development Program	13
TOTALS	
Average patient days used each day in July, August and September 1978	36 patient days
Average patient days available each day at center	90 patient days
Overall center utilization	40%

* These programs were not operational on October 2, 1978; see pages 38, 39 and 40 concerning Buckner Work Orientation programs.

A review of all statistics made available to the auditor indicated that the center has never operated at near its capacity of 150 patients per day. Generally, it has averaged between 35 and 50 patients per day.

2) The Rehabilitation Dormitory is Operating at 22 Percent of the Capacity it was Designed For

a) The average number of patients using the dormitory each day was 22 during Fiscal Year 1978. The facility was designed to handle 98 patients per day.

3) Only Five Percent of the Fiscal 1979, First Quarter Patients Have Been Returned to Gainful Employment

a) Rehabilitation Activity Reporting System (RARS)

Month	Total Patients Returned To Work	Total Patients Completing Rehabilitation Program	Percent Returned To Work
July 1978	4	125	3%
August 1978	7	66	11
September 1978	3	82	4
Total	14	273	5%

AUDITOR'S NOTE:

These statistics were not readily available and required quite a bit of interpretation of RARS. A later check (60 days later) of their accuracy was done by inquiring on the status of the August 1978 claims by the "on line" automated records management system, computer. This inquiry indicated that two of the August 1978 claims which were coded "return to work" were in fact still on time loss compensation. Of course, this could also mean that these claimants were working and collecting time loss compensation at the same time.

The point of this discussion is that the five percent figure is liberal and it may be more like three percent have really returned to work.

AUDITOR'S NOTE: (continued)

The "return to work" measure is not the only way to measure the effectiveness of Buckner, however, it is Buckner's primary goal for the biennium. Another measure of effectiveness may be "claimants active in the labor market" and/or "claimants off of time loss". Using the "active in the labor market" criteria, the effectiveness of Buckner was 14 percent for August 1978.

4) It is Costing Over $30,000 to Rehabilitate a Patient to the Point Where He Can Be Gainfully Employed

a) "The goal of rehabilitation services is to provide evaluation, treatment, vocational counseling, job placement, psychological services and extended vocational services as needed by injured workmen to accelerate their return to gainful employment as provided by the Industrial Insurance Act."

b)

Month	Rehabilitation Expenditures	15 Month Time Loss at $578 Per Month	Total Patients Returned To Work	Average Cost Per Patient
July 1978	$ 175,348			
August 1978	132,745			
September 1978	129,141			
Total	$437,234	$8,670	14	$31,850

5) It is Costing Substantially Less to Provide Rehabilitation Services At Other Rehabilitation Centers

a) It is Costing $132 Per Day to Provide Rehabilitation Services to an Average Patient at Buckner

(1) Rehabilitation Center Actual Costs for Fiscal Year 1978

Program Operating Expenditure Summary, Report No. 41

(Fiscal Year 1978)

Expenditure By Object	Center	Field Vocational Rehabilitation Program	Total Center and Field
Salaries and Wages	$ 969,705	$ 508,900	$ 1,478,605
Per. Service Con. Contracts	51,454		51,454
Goods and Services	257,728		57,728
Travel	21,048*	21,049*	42,097
Equipment	36,565		36,565
Employee Benefits	177,648	93,230	270,878
TOTAL ALL OBJECTS	$1,514,148**	$ 623,179	$ 2,137,327***

This may be converted to an average cost of $5,801 per day to operate the center, ($1,514,148 ÷ 261 days per year). During Fiscal Year 1978 there was an average of 44 patients being provided service each day; therefore; it costs an average of $132 per day to provide these services ($5,801 ÷ 44 patients). The average cost per patient discharged in Fiscal Year 1978 was $3,372 ($1,514,148 ÷ 449 patients discharged).

(2) The kinds of service provided are "outpatient rehabilitation services" with 63 percent of the patients having back injuries (see Background section, Exhibit 1).

(3) It is Costing Substantially Less to Provide Rehabilitation Services at Other Rehabilitation Centers

(a) The auditor and the Department of Labor and Industries' medical consultant toured five different rehabilitation centers in the State. Although exact cost of rehabilitation services provided by these centers has not been audited by the Legislative Budget Committee staff, hospital statistics indicate that these services are costing:

* Estimated one-half to center and one-half to field by auditor.

** Buckner's management believe the total rehabilitation center expenditures are $1,377,725, rather than $1,514,148 noted in the management accounting system report No. 41. The average cost per day using their figure is $120 per day, rather than the auditor's $132 per day cost.

***It is not clear why this figure does not reconcile with the actual Fiscal Year 1978 expenditures of $2,113,000 noted in the 1979-81 biennium budget request.

Private Hospital Example of three different rehabilitation patients -

	Length of Stay		
	35 day stay	$3,150	
	29 day stay	2,610	
	19 day stay	1,710	
Total	83 days	$7,470	$89 per day

The $89 per day includes physical therapy, occupational therapy, psychologist cost, speech therapy, doctor cost, social service cost and overhead.

Private Hospital Example of:

Outpatient:

Full program cost for physical therapy	$40-50 per day
Full program cost for occupational therapy	$20-30 per day

Inpatient:

Average total inpatient cost	$1,200-1,300 per week

(4) The Division of Vocational Rehabilitation (DSHS) spent $18,410,576 - Fiscal Year 1977 and served 32,147 patients for an average cost per patient of $573 - compared to the Department of Labor and Industries' cost per client of $3,372 (Fiscal Year 1978). Admittedly, the patient services may be different in many cases, however, the single most costly method of rehabilitating clients used by the Division of Vocational Rehabiliation is the sheltered workshop. There costs were as follows:

Fiscal Year	Cost	Client Served	Cost Per Client
1976	$3,024,000	1,855	1,630
1977	3,044,000	1,801	1,690
1978	4,237,000	1,800 est.	2,354 est.

The primary purpose of the sheltered workshop is to provide on-the-job training evaluation, temporary remunerative employment and competitive placement for the handicapped or disadvantaged individual. A sheltered workshop provides employment full or part-time in an industrial setting within a sheltered environment; here the employee is trained, counseled, prepared for employment and placed in the competitive job market.

An added innovation to the sheltered workshop is extended sheltered employment (ESE). Extended sheltered employment is described as a service which provides remunerative employment for an indefinite period of time for disadvantaged or handicapped persons - regardless of age, color, creed or sex - who have not attained minimum work standards in comparison with the competitive labor market.

6) There Are Very Few Patients Waiting For Rehabilitation Services

a) The "referral backlog" of 1,051 clients (as of November 1, 1978) is not the number of patients waiting to get into a program at the rehabilitation center. These 1,051 clients are waiting to see a field vocational counselor.

Since the patient waiting list is minimal, the scheduling of patients into the various center programs is quite informal and is usually done on a "request basis" from the program's first line supervisor.

b) Agency budget requests have repeatedly led the Legislature to believe that the "need for rehabilitation service is equivalent to the number of injuries which extend more than 120 days beyond injury dated". Therefore, additional patients would soon be referred to the center.

Patient increases, however, have never materialized in spite of using a number of different rehabilitation program advertising and client referral techniques.

7) The average delay, from date of injury to patient evaluation for entry into a Buckner Rehabilitation program is 15 months.

Average Delay For 1978

	July	August	September	October
Injury to Referral	13.5 months	14.1 months	11.1 months	14.3 months
Referral to Evaluation	1.5	1.8	2.2	2.5
	15.0 months	15.9 months	13.3 months	16.8 months

15.25 months

8) An estimated 63 percent of the rehabilitation patients have some sort of "back strain" injury.

9) Industrially Injured Workers May Not Be Motivated To Return To Work

The majority of the rehabilitation patients may not be voluntary patients. They may be at the rehabilitation center because they have been told to attend; if they refuse to attend, their Time Loss compensation payments may be stopped.

The absentee rate is averaging 25 percent (Fiscal Year 1978) and the return to gainful employment is five percent. The absenteeism rate is so excessive during the Christmas holidays that Buckner shuts down during the week of Christmas.

Questionnaires sent to Washington State Physicians and former Buckner patients indicated:

> Physician Questionnaire Conclusion: The major reason for long term disability in injured workers with minor injuries was psychological.
>
> Patient Questionnaire Conclusion: The patients referred to Buckner by physicians and/or department adjudicators may be being sent there because they do not know what else to with them and/or it is a last ditch effort to get the patient back to work before he is given a pension settlement.

Industrial Insurance Management say that the primary reasons why Olympia adjudicators refer patients to the center is for a "vocational evaluation" (what job or jobs can this person perform with his present disability).

10) It Appears That Approximately 8 Percent of Doctors in the State Are Referring Patients to the Center

Fiscal Year 1978 referral records indicate that 27 percent of the Center referral's came from M.D.s (368 physican referrals out of 1,359 total Center referrals) comparing the 368 referrals to the 4,500 licensed M.D.s in the State gives a ratio of one to 12; that is, one center referral per yer to every 12 licensed M.D.s. Therefore, the auditor has concluded that only one out of 12 M.D.s are referring patients to the Center.

There is a tool available which can determine the need for rehabilitation services, but the Department of Labor and Industries is not making full use of it. A monthly reporting system, from the attending physician to the Department of Labor and Industries, was implemented in the Spring of 1978. This "case profile" report documents, among other things, rehabilitation services needed by the industrial injured worker. The weakness in the report is not all physicians are using it and the adjudicators do not have easy access to it.

11) There are a Number of Rehabilitation Centers in the State Which Can Provide Rehabilitation Services at a More Reasonable Cost

There are ten rehabilitation centers or pain clinics in the State:

a) University of Washington Hospital, Seattle
b) Harborview Medical Center, Seattle
c) Good Samaritan Hospital, Puyallup
d) Children's Orthopedic Hospital, Seattle
e) Northwest Hospital, Seattle
f) Providence Medical Center, Seattle
g) Valley General Hospital, Renton
h) Sacred Heart Medical Center, Spokane
i) Saint Elizabeths, Yakima
j) Swedish Hospital, Seattle (Pain Clinic)

Although specific statistics are not available from the Department of Labor and Industries, the auditor estimates that approximtely 50 percent of the Department of Labor and Industries' rehabilitation business is already referred to these ten hospitals rather than to Buckner.

Five of the ten facilities were visited by the auditor and all indicated that they could accept more Department of Labor and Industries' patients without expanding their present facility. Three our of five centers are planning expansion, two are going to double their capacity.

One of the centers indicated they could handle 60 percent of the 675 Buckner patients served (60 percent x 675 = 405 patients).

AUDITOR'S NOTE:

The Buckner 1979-81 biennium budget request indicates that 675 patients were served in Fiscal Year 1978. The auditor's review of other records indicated that 479 patients were discharged in Fiscal Year 1978. Why the patients discharged is 29 percent less than the patients served is not clear. In the auditor's judgment, the measure for Fiscal Year 1978 is 479 patients discharged.

12) There are Only Three Other States in the Country Which Have Rehabilitation Centers, Specifically for Industrially Injured Workers

a) Nevada - has just recently (August 1978) opened up a rehabilitation center and Oregon has a rehabilitation center which they opened in 1976. Rhode Island has had a rehabilitation center for a number of years.

A report published on August 11, 1978 by the City Club of Portland has recommended that the Oregon center be closed. The study indicated that the facility duplicated treatment programs available elsewhere through other private and government agencies and in fact does a poor job in rehabilitation. They felt that continuing to operate this facility is a waste of State resources.

b) There are five other states which own and operate rehabilitation centers, however, these states do not specifically limit the use of their rehabilitation services to just industrially injured workers. The five states are: Arkansas, Georgia, Pennsylvania, Virginia and West Virginia.

13) Mutilating Injuries, Head, and Spinal Cord Injuries, Drug Related Pain Patients and Wheel Chair Patients are Not Accepted at Buckner

The center does not have a nursing staff or nursing facilities; and they are not staffed properly for diagnosis or treatment of pain (operant pain) problems.

The two medical consultants do not have proper experience and/or credentials in physical medicine.

It is not clear why the center does not accept wheel chair patients.

14) Medical Professions Criticism of Rehabilitation Center

DEPARTMENT OF LABOR AND INDUSTRIES

INTEROFFICE COMMUNICATION

To:

Date: November 9, 1978

From: A. Dean Johnson, MD
Medical Consultant

Office: Medical Services

Phone:

Subject: Medical Profession Criticism of Rehabilitation Center

1. Not on Medical Model.
2. Not timely (average delay -- 11 months?).
3. Mutilating injuries, head, and spinal cord injuries not accepted (No nursing facilities).
4. Not staffed properly for diagnosis or treatment of Pain Behavior (operant pain) problems.

Recommendations:

1. Change operation to Medical Model.
2. Explore the alternatives to Department operation of a Rehabilitation Center.

ADJ:hs

15) Interagency Agreements for Rehabilitation

The Department of Labor and Industries and the Department of Social and Health Services, Division of Vocational Rehabilitation have had interagency agreements in the past that have provided rehabilitation services for industrially injured, vocationally handicapped workers consistent with the Department of Labor and Industries and Department of Social and Health Services, Division of Vocational Rehabilitation policies, goals and objectives.

The Department of Labor and Industries appears to have, also, had interagency agreements with the Department of Employment Security in the past. However, at the writing of this topic (September 1978) the auditor could find no evidence of active (signed) interagency agreements between the Department of Labor and Industries; Department of Social and Health Services, Division of Vocational Rehabilitation; and the Department of Employment Security.

b. Evaluation and Conclusions

The five percent effectiveness of rehabilitation services suggests that the proper amount of screening for rehabilitation services is not being done. To be eligible for services offered, a person must have a "physical and/or mental disability" which interferes substantially with suitable employment, and must offer a reasonable expectation that after providing vocational rehabilitation services, he will be capable of engaging in gainful employment.

One of the areas of greatest need is that concerned with the development of criteria for the selection of referrals with appropriate potentials for the full utilization of the available rehabilitation services. It is the auditor's judgment that if this were more adequately done, there would even be less patients admitted to the center, however, their effectiveness rate would improve.

Although complex and difficult to assess, the auditor believes motivation is an important component of rehabilitation and subsequent employment. The findings suggest that by far, the majority may not be motivated. The applicants for disability insurance or compensation benefits find themselves in a dilemma. On the one hand, the applicant undergoes various examinations and evaluations for the purpose of obtaining disability benefits. His orientation over a period of time is in the direction of emphasis upon limitations, and his major concern is in presenting these limitations in a way that maximizes his chances for obtaining the benefits. On the other hand, the applicant is asked to consider his capacities and assets and to mobilize them for the sake of rehabilitation. As one observer put it in connection with workmen's compensation:

> *"... Something is wrong with a system that produces conflicts of interest on the part of an injured worker whose future depends upon maximum restoration of health, but whose immediate attention is focused upon financial recovery."*

The auditor concludes that the center is not being used effectively and cannot be as long as it is limiting itself to only industrially injured patients.

There are a number of options available which may, or may not, improve state rehabilitation services and costs.

OPTION A

Continue operating Buckner with the Department of Labor and Industries' management; update interagency agreements with the Department of Social and Health Services and the Department of Employment Security; reduce staffing to a more cost effective level and open the use of Buckner's programs to all disabled people in the State, on a cost reimbursement basis.

Most Likely Outcome

This approach has been tried off and on for the past 20 years. There probably will be very little change in facility utilization, as DSHS, informally, has expressed dissatisfaction with the way the rehabilitation programs have been operating and would not likely refer many clients. (An alternative to this option may be to write legislation which would require DSHS to use Buckner.) Service costs per patient discharged would reduce, but would later creep back up unless strict controls and definitions on ratios of staffing level to patients discharged were implemented and enforced.

AUDITOR'S NOTE:

Buckner's management and staff are doing an adequate job of operating the rehabiliation programs.

The real problems of Buckner's industrially injured workers' rehabilitation are outside of their control -

Problems

- There are not enough patients to properly utilize the Buckner facility and patient referrals to Buckner are 100 percent controlled by Industrial Insurance management in Olympia.
- The majority of the patients being referred to Buckner, by Olympia Industrial Insurance management, are not motivated to be rehabilitated. The only reason many of the patients are agreeing to participate in Buckner Rehabilitation programs is because they will lose their "Time Loss Compensation Check" benefit if they do not.

OPTION B

Continue operating Buckner with the Department of Labor and Industries management; implement a "Buckner Rehabilitation Facility Familiarization/Sales Program" addressed to physicians, Olympia Industrial Insurance management, and claims adjudicators; implement more sophisticated patient referral and scheduling techniques.

Most Likely Outcome

This approach has been tried off and on for the past 20 years with little success. There probably will be very little change in cost and utilization of the facility.

OPTION C

Transfer management responsibility of Buckner to the Division of Vocational Rehabilitation, DSHS and implement interagency agreements between DSHS and the Department of Labor and Industries.

Most Likely Outcome

The possibility that utilization of Buckner would increase is fair and, therefore, cost per patient discharged may decrease as the Division of Vocational Rehabilitation appears to have enough clients in need of such a facility. Most likely the number of Department of Labor and Industries' patients will reduce to the number who are motivated and who really need a specific program being offered at the center. There may be a slight increase in the Department of Labor and Industries' patients going to "outside" rehabilitation centers, but this would be more than offset by a decrease in the Division of Vocational Rehabilitation patients going to "outside" rehabilitation centers.

There is some question of whether Buckner can ever consistently meet the rehabilitation costs per patient of "outside" centers. In any event, the Department of Labor and Industries rehabilitation budget would reduce substantially, but there may be an equal increase in the DSHS rehabilitation budget.

OPTION D

Sell the center, or use it, for something other than rehabilitation.

Most Likely Outcome

This is probably the most cost effective option for the State and would be consistent with the activities of 45 out of 50 states. Our State does have enough private/public rehabilitation centers to handle the small number of Department of Labor and Industries' patients serviced at Buckner. (There

is some doubt whether the majority of the Buckner patients really need the rehabilitation services they are presently receiving - 90 percent of them may never be referred to an "outside" facility.)

c. Recommendations

*RECOMMENDATION 2

It is recommended that the Department of Labor and Industries' Buckner rehabilitation programs be opened to all disabled people in the State and that the appropriate costs for these services be charged to the patient.

RECOMMENDATION 3

It is recommended that the Office of Financial Management working with the Department of Labor and Industries and the Department of Social and Health Services determine if the rehabilitation services being provided by the Department of Labor and Industries and the Buckner facility itself are cost beneficial for the State of Washington. This review should answer the question "Is a separate rehabilitation facility really needed for industrially injured workers, and if not, is there any other or better use for this facility?"

It is further recommended that the results of this review be forwarded to the Legislative Budget Committee and the Legislature.

2. Why Haven't Industrially Injured Workers Returned To Work

a. Findings

1) There were 226 questionnaires mailed to physicians in 1975 by the Department of Labor and Industries, 110 of these were returned and 106 of these answered the following question as indicated:

What do you think is the major reason for long term disability in injured workers with minor injuries?

Reason for Disability -

- Medical Reasons 13%
- Vocational Reasons 11%
- Psychological Reasons 76%

* LBC rescinded.

2) The auditor sent a questionnaire to 75 former patients of the Buckner Rehabilitation Center, who had been discharged for approximately six months.

Twenty-one questionnaires were returned. Four of these indicated they had returned to work; the other 17 had not for various reasons.

The former patients answered the following question as noted:

Question - If you are not working, why haven't you found a job?

- *"Not released yet by doctor."* (This claimant has been without work for 23 months.)
- *"I am still in constant pain in the lower back and right back."* (Claimant has been out of work for more than 12 months.)
- *"I haven't been released for work yet, as I am not able to work yet."* (Claimant has been out of work for more than 12 months.)
- *"My back is still bad."* (Claimant has been out of work for more than 36 months.)
- *"Unable to, as still recuperating from disc operation. Cannot lift anything on a job yet."* (Claimant has been out of work for more than 24 months.)
- *"I am on a six month training program. If there is not opening after that?*
- *"Still under doctor's care."* (Claimant has been out of work for more than 36 months.)
- *"I can't work because I have permanent nerve damage to my left shoulder, and I cannot lift it over my head with any weight on it, nor can I pick up any weight with it. I have two fingers and a thumb permanently without feeling in them. I am a professional cook, but I cannot cook anymore for a living. So since the Department of Labor and Industries didn't see fit to retrain me, because I am 59 years old, I am now being sent to school by DVR for retraining, so that I can support myself again."* (Claimant has been out of work for more than 12 months.)

- *"(1) Still injured (too limited by injury). (2) I wasn't rehabilitated. (3) I am returning to Rehabilitation Center for final evaluation."* (Claimant has been out of work for more than 12 months.)

- *"Because I have lumbosacral disc herniation with a left side raidiculopathy, which makes it hard to work."* (Claimant has been out of work for more than 12 months.)

- *"Physically not capable of working."* (Claimant has been out work for more than 12 months.)

- *"Unable to work."* (Claimant has been out of work for more than 24 months.)

- *"Cannot return to old job. Going to school."* (Claimant has been out of work for more than 12 months.)

- *"I am going to school to retrain myself, since the State wouldn't help me."* (Claimant has been out of work for 4-1/2 years.)

- *"Unable to do work I had been doing, because of back injury."* (Claimant has been out of work for more than 12 months.)

- *"Not able to - still under doctor's care."* (Claimant has been out of work for more than 24 months.)

- *"Still under doctor's care. After four operations, another operation is still possible."* (Claimant has been out of work for more than 12 months.)

- *"For the simple reasons, I am still having trouble with my arms."* (Claimant has been out of work for one to three months.)

3. Buckner's Work Orientation Programs Are Redundant, Expensive and Appear to Be Uneffective

a. Findings

Buckner has a work evaluation unit with a staff of eight. The unit administers four programs. Only two of them were operational on October 2, 1978.

Buckner's Work Orientation Programs

1) Work Evaluation Program

Objective: Determine what kind of work the client can do with his present physical and mental abilities.

Annual Capacity: 252 clients per year (as of October 2, 1978).

Cost: 39 staff hours per client.

Actual Practice on October 2, 1978: Operating at 33 percent of capacity or 84 clients per year, with a cost of 116 staff hours per client.

Effectiveness: Accurate statistics of exactly what clients obtain jobs as a result of this program are not available.

2) Career Life Planning Program

Objective: In group meetings clients analyze their own skills and determine how they can use them for different types of employment.

Annual Capacity: 234 clients per year (as of October 2, 1978).

Cost: 2 staff hours per client (Not Audited).

Actual Practice: No statistics available, however, supervisor indicates the classes are always full.

Effectiveness: Accurate Statistics --- Same as 1) ---.

3) Job Seeking Skills Programs

> AUDITOR'S NOTE:
>
> As of October 2, 1978 this program was not operating.

Objective: Educate client on -

- Where and how to look for a job.
- Resume and job applications forms.
- Interviewing techniques and video-tape mock interviews.
- Actually develop a resume for each client, type and send to his home.

Estimated Annual
Capacity: 416 clients per year.

4) Job Readiness Training Program

> AUDITOR'S NOTE:
>
> As of October 2, 1978 the Supervisor was in the process of creating a market for this program.

Objective: Exactly the same as job seeking skills program (client education on job seeking strategies), plus, actually solicite job opportunities for client and help him fill out the job application.

Estimated Annual
Capacity: 38 clients per year.

Since 1972, the Department of Employment Security has been assigned the responsibility for administering various Work Orientation Programs. Currently, the list includes Employment Orientation, Career Change, Mentally Retarded/Severely Disabled and Ex-Offender Programs. This series of experimental programs has provided statewide job preparation, labor market awareness and job placement assistance to over 26,723 unemployed residents of the State with over 10,934 permanent job placements since its inception - effectiveness of 41 percent.

Legislation has provided that program services be delivered on a contractual basis by public or private organizations through a competitive bidding process with performance specifications and penalties for nonperformance by the contractor.

During the audit, plans were announced by the Department of Social and Health Services (DSHS) to introduce job training for welfare recipients - a program whose training curriculum duplicates the Employment Orientation subprogram.

Employment Security's Work Orientation Program Overview

1) Employment Orientation

This subprogram is designed to teach unemployed persons how to find suitable work. As a core-type program, it is found in some form within each of the other three subprograms. The course involves several

aspects of the job hunt; incentives to get and retain a job; skills inventory; application completion; resume writing; labor market analysis; job search techniques; interviewing; and job development. Contractors provide for the delivery of a curriculum designed to teach clients in a classroom atmosphere, usually in small groups, for a total period of 20 to 40 contact hours. There are contractor followups scheduled subsequent to training normally at 30 and 60 days. The performance stipulation within the contract requires that 35 percent of class graduates (those completing 50 percent of the course) must be placed in unsubsidized employment within 60 days of the completion of that class. (Unsubsidized employment is that which is not supported by funds from another State/Federal program, i.e., CETA funded jobs.)

The maximum cost per client per contract for services to be provided within Fiscal Year 1978 ranged from $38 to $162.

It is estimated that from July 1, 1974 through June 30, 1979, 13,038 unemployed persons will have attended the Employment Orientation Program. In the first half of the 1977-79 biennium, 3,750 persons completed the course with 1,401 being placed in unsubsidized employment. This placement rate, 39 percent, compares favorably with the required rate of 35 percent set for minimum contract performance.

2) Career Change

This subprogram is for persons who have been employed, who are now unemployed and who, in order to again become productively employed, must make a career change. It is intended to primarily serve persons who have become unemployed due to a sudden change over which the had no control, such as a health problem, technological change, or economic factor which causes significant change in an industry or area. An increasing need has been identified for the Displaced Homemaker category: the individual who has spent a majority of his/her adult life working in the home for a substantial number of years providing unpaid household/nurturing services for family members, and has been displaced in their middle years from this role and left without a source of financial security because of separation, divorce, the death of spouse, or the loss of family income. Other acceptable categories could be the military retiree or dischargee who has no employment upon release, or the seasonal worker who wishes to undergo a career change due to the seasonality of his/her occupation (i.e., seasonal farmworkers).

The range of services includes: an orientation to Career Change workshop consisting of up to 40 hours of discussion dealing with changing life styles, management of change, stress, changing roles and affect upon family relationships, coping with anger, hostility, fear, depression, relaxation techniques, process of aging, money/credit management,

and crisis management; testing and diagnostic enrollment services in which client needs and skills are assessed and work history and employment barriers are identified and the process of decision-making is identified; an individualized plan of service is developed including short and long-range employment goals and the steps to attainment of these goals; support group sessions and one-to-one counseling; temporary placement; a job search strategies workshop where job finding methodologies are provided (this is the Employment Orientation module); support services; and a component for vocational training. An estimated 15 percent of those Career Change clients will participate in vocational training. The performance stipulation for these contracts provides that of those participants enrolled in the program, at least 60 percent will complete, achieve a valid Career Change placement and remain in that employment for a minimum of 60 days.

Maximum costs per client per contract for services to be provided during Fiscal Year 1978 ranged from $358 to $863. The Career Change Program was approved in July 1975 and was implemented in 1976. In the 1977-79 biennium, $940,100 of State funds were awarded to nine public or private contractors, serving a minimum of 1,317 persons in 17 counties planning to place a minimum of 790.

3) Severely Disabled/Mentally Retarded (MR/SD)

This subprogram is designed to empower handicapped individuals to develop, identify and have confidence in their own skills, experiences and attitudes through a program of employment preparation.

Scope of the Handicapped Placement Program includes: diagnostic orientation and testing, where an individualized plan of service is developed to place the client in employment consistent with his/her abilities and needs; consideration for support services vital to employment and job retention; direct guidance individually and/or in small groups concerning the techniques of job finding; employer/employee relationships, especially as it pertains to putting their handicaps into perspective, as it affects or stereotypically is expected to affect their employability, affirmative action laws; tutorial assistance, as needed, to acquire functional abilities; highly individualized job development and placement assistance; securing employer support through education efforts; and intensive followup support.

The performance stipulation for these contracts provides that of those participants enrolled, 50 percent will complete, be placed and remain employed for a minimum of 90 days. Maximum cost per clients per contract for services to be provided during 1978 ranged from $950 to $1,400.

The MR/SD subprogram began in 1974, with a $170,000 appropriation. In the 1977-79 biennium, $275,000 was identified for the Mentally Retarded/Severely Disabled. When this amount proved to be insufficient to respond to the service level demanded of the program, $75,000 was transferred from the 1977-79 Employment Orientation budget to the MR/SD Program. The working budget for MR/SD in 1977-79, therefore, was actually $350,000.

Four contracts were awarded in November 1977, which served 151 persons and placed 86 in nine months of the 1978 fiscal year. For Fiscal Year 1979, the Deparment of Employment Security awarded another four contracts and plans to serve a minimum of 235 persons.

Exhibit 4

Employment Orientation Activity Analysis FY 1978

CONTRACTOR	ENROLLMENT EFFECTIVENESS			PLACEMENT EFFICIENCY				EXPENDITURES/COSTS**					
	REQUIRED	ACHIEVED/%		REQUIRED	ACTUAL	CONT. REQ.	ACTUAL REQ.	TOTAL AMT.	TOTAL COST	COST PER	COST PER	COST PER	COST PLACE
	A	B	C	D	E	F	G	H	I	J	K	L	
ABERDEN J.S.C.	360	205	/57%	126	76	21%	37%	$17,290	$9,456	$48	$46		$124
C.S.N.W.	296	314	/106	104	110	37	35	35,520	33,942	120	108		308
ELLENSBURG J.S.C.	123	97	/ 79	43	55	44	57	19,926	13,782	162	142		250
GRANT CO. C.A.C. *	229	15	/ 7	92	6	3	40	16,768	968	73	64		141
GRIFFIN BUS. COL.	307	190	/ 62	107	68	22	36	30,084	17,375	98	71		255
INTERACTION INC.	959	965	/101	336	356	37	37	94,941	74,470	99	77		209
NW HUMAN RESOURCES	160	42	/ 25	56	10	6	24	16,000	3,301	105	90		380
RAYMOND J.S.C.	120	54	/ 45	42	10	8	19	4,560	1,456	38	26		145
RENTON J.S.C.	275	182	/ 66	96	59	21	32	20,625	12,275	75	67		208
SPOKANE O.I.C.	30	7	/ 23	11	2	7	29	1,500	267	50	38		133
TREND SYSTEMS Total:	1430	1315	/ 92	501	592	41	45	171,600	139,428	120	106		235
THURSTON	181	191	/106	63	93	51	49	21,680	21,792				
CLARK	184	154	/ 84	64	55	30	36	22,080	16,278				
SPOKANE	233	193	/ 83	82	79	34	41	27,960	20,616				
RENTON/FRANKLIN/ WALLA WALLA	225	200	/ 89	79	111	45	56	27,000	21,492				
YAKIMA	192	166	/ 86	67	81	42	49	23,040	18,032				
COWLITZ	166	144	/ 87	58	77	46	53	19,960	14,928				
SNOHOMISH	249	267	/107	87	96	39	36	29,920	26,289				
YAKIMA O.I.C.	112	51	/ 46	39	20	18	39	12,096	4,166	108	81	208	
OPER. EMER. CTR.	700	68	/ 10	245	17	2	25	70,000	5,610	100	82	330	
LISANDER YOUTH ULTD.*	50	65	/130	18	20	50	29	5,994	5,940	103	91	297	
PROGRAM TOTALS:	5151	3570	/ 69%	1816	1402	27%	39%	$516,896	$322,944	$101	$90	$230	

Colum A B C D E F G H I J K L

* Contracts discontinued during 1978.
** Does not include 9% E.S. administrative costs.

Exhibit 5
Career Change Activity
December 1977 thru August 1978

CONTRACTOR	ENROLLMENT 9 MONTHS MIN.	PREDICT	ACHIEVE	PLACEMENT 8 MONTHS PREDICT	ACHIEVE	COMPLETION 6 MONTHS PREDICT	ACHIEVE/%	EXPENDITURES/COSTS TOTAL AWARD	TOTAL SPENT	COST ENR.	COST/ENR ACHIEVE	COST COMP.	COST 75-77
INTERACTION	112	53	68	28	26	35	19/54%	$86,500	$36,284	$770	$554	$1279	$987
RAYMOND J.S.C.	12	6	6	3	0	4	0/ 0	4,308	1,518	358	253	-	-
OPER.ENER.CTR.	101	48	21	26	2	32	0/ 0	86,500	14,425	858	687	-	-
YAKIMA O.I.C.	100	47	27	25	3	32	2/ 6	86,500	14,564	863	539	4879	909
GRIFFIN BUS.COL.	75	35	43	19	0	2	0/ 0	41,500	5,979	550	139	-	-
C. S. N. W.	124	59	76	31	22	39	8/21	86 500	32,087	695	422	2687	1150
OLY.ED.SERV.	44	21	17	11	10	14	4/29	35,000	9 371	790	551	1570	-
LOW.COL. C.A.C.	63	30	40	16	12	20	8/40	40,950	23,459	650	586	1965	654
TREND SYSTEMS Tot.	665	313	341	168	91	210	60/29	346,000	89,183	520	262	996	-
MODERN (W.W.)	166	78	93	42	25	2	22/42	86,500	22,687	520	244	691	719
CAPITOL (Oly)	167	79	57	42	20	53	14/26	86,500	13,789	520	242	660	914
TACOMA	166	78	122	42	27	52	15/29	86,500	32,313	520	265	1443	-
KINMAN (Spo)	166	78	69	42	19	52	9/17	86,500	20,393	520	296	1518	-
TOTALS	1296	612	639	327	166	410	101/25%	$813,758	$226,865	$673	$444	$1505	
COLUMN	*A*	*B*	*C*	*D*	*E*	*F*	*G H*	*I*	*J*	*K*	*L*	*M*	

Exhibit 6

Mentally Retarded/Severely Disabled
Subprogram Activity During Fiscal 1978

CONTRACTOR	ENROLLMENT EFFECTIVENESS REQ.	ENROLLMENT EFFECTIVENESS ACH. / %	PLACEMENT EFFICIENCY REQ.	PLACEMENT EFFICIENCY ACH. / %	COMPLETION EFFICIENCY REQ.*	COMPLETION EFFICIENCY ACH. / %	TOTAL AWARD	EXPENDITURES/COSTS** TOTAL SPENT	COST ENR.	COST ACH.	COST PLACE	COST COMP.	COST 1976
INTERACTION	40	47/118%	24	30/125%	21	16/ 76%	$ 31,000	$ 31,000	$1116	$ 660	$1033	$1724	$1123
COUNSELING SERV. NORTHWEST	44	61/139%	31	31/100%	28	11/ 39%	$ 35,000	$ 34,648	$1085	$ 568	$1117	$2804	-
SPOKANE COUNTY ASSOC FOR RET. CITIZENS	21	22/105%	11	22/200%	10	17/170%	$ 28,168	$ 26,650	$1400	$1211	$1211	$1392	$1560
BLUE SKY CONSULTANTS (contract discontinued)	40	21/ 53%	(20)	(16/ 80%)	(18)	(12/ 66%)	$ 31,000	$ 11,167	-	-	-	-	$1534
TOTALS/AVERAGES	145	151/103%	-	- -	-	- -	$125,168	$103,465	$1200	$ 813	$1120	$1973	-
Columns	A	B C	D	E F	G	H I	J	K	L	M	N	O	P

*.89 of total contract activity.
** Does not include 9% E.S. administrative costs.

b. Evaluation and Conclusions

It appears that the Work Orientation Programs delivered on a contractual basis by approximately 30 public or private organizations through a competitive bidding process with performance specifications and penalties for nonperformance by the contractor, are more efficient, effective and economical than the Work Orientation Programs delivered by Buckner.

The auditor concludes that the Buckner Work Evaluation Unit is an expensive and redundant activity, and further, that a more cost effective and program effective service can be obtained outside of State government.

c. Recommendation

RECOMMENDATION 4

It is recommended that the Department of Labor and Industries review the efficiency, effectiveness and economy of Buckner's Work Evaluation Unit before expanding this unit's programs; it is further recommended that the Department explore alternatives to providing these same services by using the State Department of Employment Security's Work Orientation Programs and DSHS, Division of Vocational Rehabilitation programs. The results of these reviews should be forwarded to the Legislative Budget Committee and the Legislature.

SUMMARY OF RECOMMENDATIONS

	Assigned Completion Date
RECOMMENDATION 1	
It is recommended that the Department of Labor and Industries justify the Buckner Rehabilitation Center's 1979-81 biennium budget staff levels at the 46th Legislature's Budget hearings, by using a ratio of staff level to patients discharged per year, as a measure.	July 1, 1979
NOTE: If the 1962 ratio is used, the requested 1979-81 biennium staffing level of 104.5 FTE's (for the entire rehabilitation of industrially injured workers program) would be reduced to 64 FTE's.	
(The intent of this recommendation is to return Buckner to the same relative productivity it demonstrated in 1962)	
RECOMMENDATION 2	
See Footnote.*	
RECOMMENDATION 3	
It is recommended that the Office of Financial Management working with the Department of Labor and Industries and the Department of Social and Health Services determine if the rehabilitation services being provided by the Department of Labor and Industries and the Buckner facility itself are cost beneficial for the State of Washington. This review should answer the question "Is a separate rehabilitation facility really needed for industrially injured workers, and if not, is there any other or better use for this facility?"	July 1, 1980
It is further recommended that the results of this review be forwarded to the Legislative Budget Committee and the Legislature.	
RECOMMENDATION 4	
It is recommended that the Department of Labor and Industries review the efficiency, effectiveness and economy of Buckner's Work Evaluation (work orientation) Unit before expanding this unit's programs' it is further recommended that the Department explore alternatives to providing these same services by using the State Department of Employment Security's Work Orientation Programs and DSHS, Division of Vocational Rehabilitation programs. The results of these reviews should be forwarded to the Legislative Budget Committee and the Legislature.	May 1, 1979

* LBC rescinded this recommendation. Refer to LBC Minutes of January 22, 1979.

APPENDIX II

SUMMARY OF PROPOSED LEGISLATION

No legislation is proposed at this time.

APPENDIX III

FISCAL IMPACT

The total fiscal impact resulting from implementation of the audit recommendations cannot be precisely determined because this will depend on the various plans and implementation techniques employed by the Department of Labor and Industries. However, we are convinced that through the implementation of Recommendation 1, the State will realize a minimum cost savings of approximately $723,000 per year.

APPENDIX IV

DEFINITIONS

F.T.E. - Full-Time Equivalent staff year (hours paid divided by 2,088 hours).

GOAL - A desired state of affairs based upon current knowledge and values.

LEGISLATIVE INTENT - Involves the purpose of the Legislature in enacting legislation. It is the expression of the Legislature's attitude toward the range of behavior within which it expects administrators to act, or specifies the specific behavior expected by the Legislature. (It is considered that a law may have an expression of "legislative intent" whether it has been passed as an initiative measure by the people or by the Legislature.)

OBJECTIVES - A desired quantifiable achievement with a specific time frame and which will contribute toward attainment of goals as stated by legislative intent or Executive pronouncement.

OCCUPATIONAL THERAPY - A health profession which contributes to the independence and well-being of an individual through the use of purposeful activities, planned and directed to bring about specific changes in physical and/or emotional behavior. Its value lies in the fact that the patient who is kept rationally busy develops and maintains a healthy mental and physical time which materially aids recovery and shortens convalescense.

PRODUCTIVITY - The actual rate of output or production per unit of time worked.

PROGRAM PLAN - What must be done, by whom and when, in order to achieve the objective.

PHYSICAL THERAPY - A health profession which administers physical therapy to patients through the use of physical, chemical and other properties of heat, light, water, electricity, scientific message and therapeutic exercises.

REHABILITATION - A generic term covering the continuous medical, paramedical and vocational processes through which a person who has been disabled by congenital causes, injury or illness can, to the extent possible, achieve his full acceptance as a working member of society and becomes an integral part of it.

SPAN OF MANAGEMENT - The number of subordinates a superior can effectively manage.

APPENDIX V

EXHIBITS

Exhibit 2

Goals and Objectives
1977-79 Biennium

GOALS AND POLICIES

The goal of rehabilitation services is to provide evaluation, treatment, vocational counseling, job placement, psychological services as needed by injured workmen to accelerate their return to gainful employment as provided by the Industrial Insurance Act.

Goal 1

Increase the medical/vocational and field evaluation referrals to the Rehabilitation Services.

Objective 1

To provide for an increase from 3,600 referrals in 76/77 to 6,000 in 78/79. This is to be accomplished by the development of an appropriate referral system based on policies jointly by rehabilitation services and workers' benefit section without increase of staff at the Rehabilitation Center.

Goal 2

Complete the development of a Statewide network of Field Vocational Rehabilitation services.

Objective 2

Because early vocational counseling is often the best medicine for many injured workers, it is planned to make available to each Department District Office, counseling staff to provide needed Field Vocational Services. The development of the capability of the Field Vocational staff to process 3,840 rehabilitation requests annually will be based on an average Field Vocational staff of 38 working counselors and four supervisory personnel.

Goal 4

Continue to improve the productivity of the Center's comprehensive program.

Objective 3

Expansion of the array of Center services to include comprehensive treatment and physical restoration, work evaluation, expanded psychological services including pain management, and group counseling programs to facilitate career development choice and job seeking skills will reduce dependency on compensation systems and facilitate early return to the labor market. Continued refinement of systems to measure physical, emotional and economic impacts as a result of rehabilitation services will provide reliable indicators of the efficiency of these systems.

Goal 5

Develop and refine a coordinated service delivery system between Center and Field Vocational staff operations.

Objective 4

Through early and timely identification of rehabilitation need, the combined services of the Field Vocational staff and the Center comprehensive services will be coordinated to provide a continuum of rehabilitation services without interruption or delay tailored to meet the individual need of the injured worker.

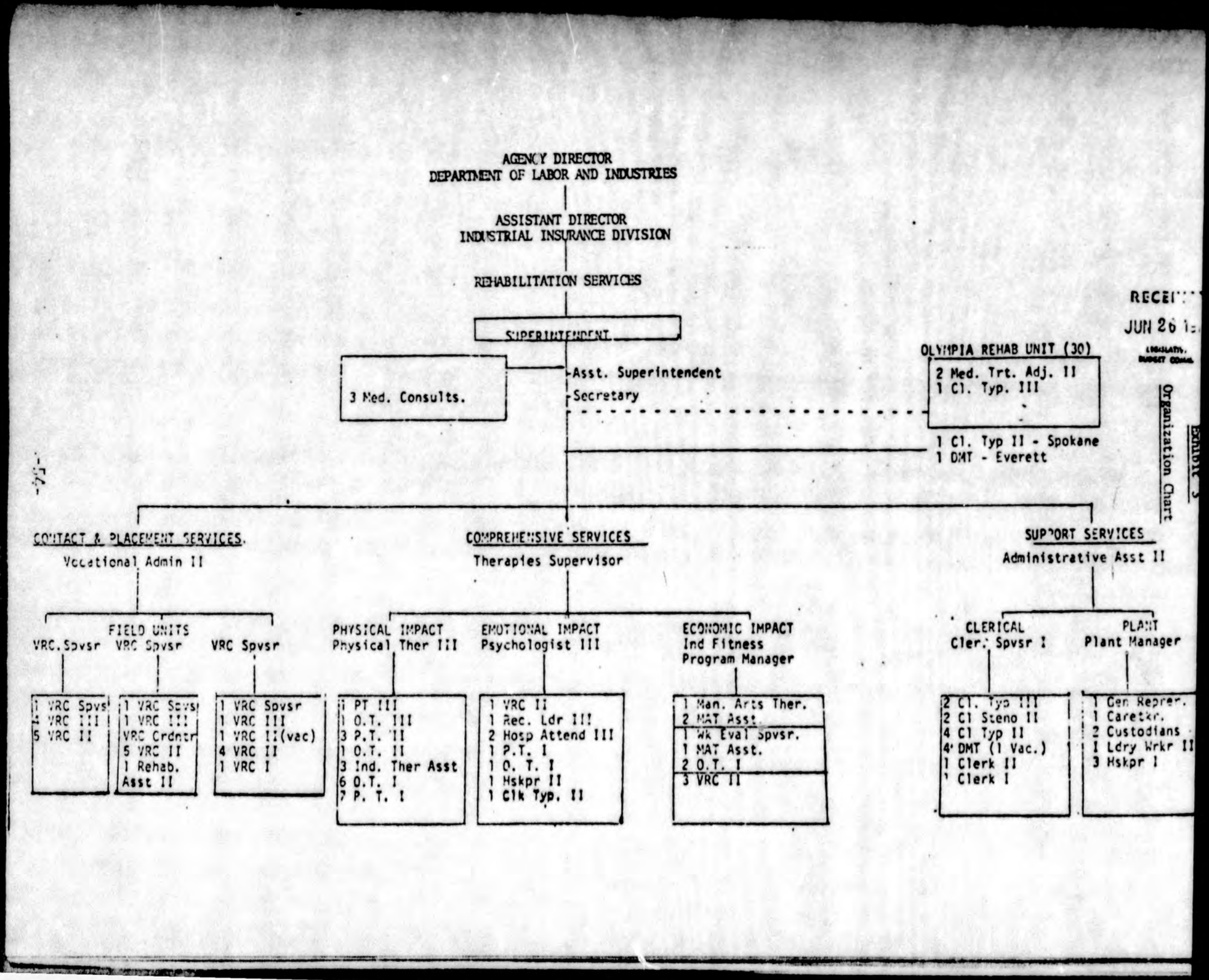

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Exhibit 3
Organization Chart

-77-

WASHINGTON STATE HOSPITAL COMMISSION
ACCOUNTING AND REPORTING MANUAL

PHYSICAL THERAPY RELATIVE VALUES *

7200 PHYSICAL THERAPY

NOTE: Separate noncontiguous areas requiring individual treatment or other special procedures will be allowed at full unit value for each area.

CODE NUMBER	DESCRIPTION	UNIT VALUE	EACH ADDED 15 MINUTES
DIAGNOSTIC SERVICES			
95831	Muscle testing, manual, with report, up to 15 minutes.	1.0	
	Each Additional 15 minutes, rounded to nearest 15 minutes.		.4
95842	Electrical testing: reaction to degeneration; chronaxy; galvanic/tetanus ratio; with report, up to 15 minutes.	1.0	
	Each additional 15 minutes, rounded to nearest 15 minutes.		.4
95851	Range of motion measurements with report, up to 15 minutes.	1.0	
	Each additional 15 minutes rounded to nearest 15 minutes.		.4
95900	Nerve conduction and velocity; up to 30 minutes with report.	1.6	
	Each additional 15 minutes, rounded to nearest 15 minutes.		.4

* Developed in cooperation with the Washington State Physical Therapy Association, Inc.

CODE NUMBER	DESCRIPTION	UNIT VALUE	EACH ADDED 15 MINUTES
MODALITIES			
97000	Single modality to one area: any machine that does not require the full time physical presence of a physical therapist - 15 minutes.	.8	
	Each additional 15 minutes, rounded to the nearest 15 minutes.		.2
	a. Infra Red	.8	.2
	b. Mechanical traction	.8	.2
	c. Paraffin	.8	.2
	d. Whirlpool (non-sterile)	.8	.2
	e. Diathermy - Microwave	.8	.2
	f. Hot/Cold packs	.8	.2
	g. Therapeutic electrical stim-unattended	.8	.2
	h. Vasopneumatic pressure devices	.8	.2
	i. Contrast baths	.8	.2
PROCEDURES			
97100	Single procedures to one area: operation requiring physical presence of physical therapist, 15 minutes.	1.0	
	Each additional 15 minutes, rounded to nearest 15 minutes.		.2
	a. Exercise	1.0	.2
	b. Ultraviolet	1.0	.2
	c. Ultrasound	1.0	.2
	d. Functional training	1.0	.2
	e. Gait	1.0	.2
	f. Iontophoresis	1.0	.2
	g. Manual traction	1.0	.2
	h. Massage	1.0	.2
	i. Mats	1.0	.2
	j. Tilt Table	1.0	.2
	k. Wall weights	1.0	.2
	l. Therapeutic electrical stim (attended)	1.0	.2

CODE NUMBER	DESCRIPTION	UNIT VALUE	EACH ADDED 15 MINUTES
97200	Combination of any number of modalities and/or procedures up to 30 minutes.	1.4	
	Each additional 15 minutes, rounded to nearest 15 minutes.		.4
97220	Hubbard tank up to 30 minutes.		
	Each additional 15 minutes, rounded to the nearest 15 minutes.		.4
	a. Non-sterile	2.0	.4
	b. Non-sterile with exercise	2.4	.4
	c. Sterile	3.0	.4
	d. Sterile with debridement	3.6	.4
97230	Whirlpool up to 30 minutes		
	Each additional 15 minutes, rounded to nearest 15 minutes.		.4
	a. Sterile	2.0	.4
	b. Sterile with debridement	2.6	.4
97240	Pool up to 30 minutes.	1.6	
	Each additional 15 minutes, rounded to nearest 15 minutes.		.4
97250	Group activities up to 30 min./per person.	.4	
	Each additional 15 minutes, rounded to nearest 15 minutes.		.1

CODE NUMBER	DESCRIPTION	UNIT VALUE	EACH ADDED 15 MINUTES
TESTS AND MEASUREMENTS			
97705	Prosthetic and Orthotic evaluation with report up to 30 minutes.	1.6	
	Each additional 15 minutes, rounded to nearest 15 minutes.		.4
97708	Activities of daily living (mobility evaluation) with report, up to 30 minutes.	1.6	
	Each additional 15 minutes, rounded to nearest 15 minutes.		.4
97720	Tests and/or measurements for strength, dexterity or stamina with report up to 15 minutes.	1.2	
	Each additional 15 minutes, rounded to nearest 15 minutes.		.4
	a. PRE (Progressive Resistance) b. Neural Development c. Perceptual Motor and/or Sensory Motor d. Total joint replacement		
97740	Kinetic activity (balance and coordination) evaluation with report up to 30 minutes.	1.6	
	Each additional 15 minutes, rounded to nearest 15 minutes.		.4
MISCELLANEOUS			
97750	A. Home evaluation or instruction up to 30 min.	1.6	
	Each additional 15 minutes rounded to nearest 15 minutes.		.4
	Mileage per 5 mile increments	.1	

August 1975

CODE NUMBER		DESCRIPTION	UNIT VALUE	EACH ADDED 15 MINUTES
97799	A.	Patient assessment with written report up to 30 minutes.	1.6	
		Each additional 15 minutes, rounded to nearest 15 minutes.		.4
	B.	Consultation: Physician, Health Facility, Intermediary, Legal, up to 30 minutes	2.0	
		Each additional 15 minutes rounded to nearest 15 minutes.		1.0
	C.	Conferences up to 15 minutes.	1.4	
		Each additional 15 minutes, rounded to nearest 15 minutes.		.4
		1. Case conference 2. Staff conference		
	D.	Instruction up to 15 minutes.	1.4	
		Each additional 15 minutes, rounded to nearest 15 minutes.		.4
		1. Inservice 2. Student		

VALUE SYSTEM CODE INTERPRETATION
OCCUPATIONAL THERAPY

CODE NUMBER	INTERPRETATION
98000	CONSULTATION: Discussion and development of treatment needs with other professionals concerning clients that are not currently referred to Occupational Therapy. This may include but is not limited to reading charts, advising professionals about treatment needs and documentation of information.
98001	SCREENING: Reviewing potential client's case to determine need for evaluation and treatment. Will include discussion with professional/client advocates and at least interviewing client or the administration of screening evaluations.
98005 98006 98010	INDIVIDUAL FUNCTIONAL EVALUATION: Assessment of performance abilities and limitations in these areas: 1. Self Care Skills 2. Cognitive-Sensory-Motor Functions a. Cognitive functions b. Sensory Stimuli Interruptation c. Motor functions d. Integration abilities 3. Psychological Functions 4. Work Performance 5. Social Performance 6. Miscellaneous
98015	GROUP EVALUATION OF FUNCTION: Assessment of the above items listed in the Individual Evaluation which can be appropriately evaluated within a group setting of three or more clients.
98020	SELF CARE SKILL DEVELOPMENT: Improvement of skills or teaching compensation techniques for the performance of tasks which include feeding, swallowing, functioning of oral structure, dressing, hygiene, grooming, object manipulation, organization of daily tasks, manipulation of transactions (paying bills, purchasing items, using transportation facilities), self-ranging, adjusting to changes, ability to seek and use help, following through of tasks, daily management, methods of writing, use of communication devices, visually impaired movement learning, nutritional planning, and use of supplemental disease information.

CODE NUMBER	INTERPRETATION
98025	DRIVERS PROGRAM: Includes but is not limited to actual performance in transferring into and out of vehicle, operation of vehicle, modification of equipment, assistance and arrangement of road test.
98030	HOME/COMMUNITY REHABILITATION PROGRAM: Time used to write up and instruct in the use of a comprehensive home program. Does not include actual home visit.
98035	ENVIRONMENTAL ADAPTATION: Limiting or compensation for, architectural barriers and safety hazars through the design and minor reconstruction, or advice in the construction, or mounting of, ramps, bars, handles, supports, etc.
98040	COGNITIVE FUNCTIONS: Includes stimulation and directions in the performance of activities such as: comprehension, concentration, problem solving, conceptualization, verbal communication, time management, association, retention, attention, perception, matching, sequencing, direction following, quality control, reality orientation, and the integration of learning.
98045	NEUROMUSCULAR DEVELOPMENT: Includes training in balance of power, general tolerance, coordination, head-neck-trunk control; sitting, kneeling, standing, and crawling tolerance; reciprocal movement, substitution, resistive exercise, inhibiting of abnormal reflexes, developing device tolerance, equilibrium responses, compensation techniques, muscle strengthening, basic instruction in neurophysiology in relation to movement and relaxation, functional range of motion, graduated movement training, sequenced movement patterns, normalization of tone, joint range, and stimulation to increase awareness and response.
98050	BODY MECHANICS/MOBILIZATION TECHNIQUES: Includes programs to train or develop ability for tasks related to transfers, bed mobility, techniques to reduce stress, protection of joints, energy conservation, safety considerations, positioning, adaptive physical motions and wheelchair control.
98055	GROSS MOTOR ACTIVITIES: Includes specific or general exercise programs, coordination, balance, and bilateral skills, graded resistive device programs, basic relaxation techniques, activities to improve general motor planning, muscle tone and endurance.

CODE NUMBER	INTERPRETATION
98060	FINE MOTOR ACTIVITIES: Development of training in skills preparatory to functional tasks. These include but are not limited to hand function, manual dexterity, joint function, eye-hand coordination, reciprocal movement, grasp, pinch, endurance and tolerance of fine motor abilities, and use of equipment.
98065	ORTHOTIC-PROSTHETIC DEVICE PROGRAM: Includes fitting, development of wearing tolerance, efficiency of functions, minor modifications, training in the use of, and proper cleaning and maintenance. Does not include fabrication of device.
98070	ASSISTIVE/ADAPTIVE DEVICE PROGRAM: Includes modification, development of tolerance, and training in the self-care assistive equipment. Does not include fabrication.
98075	SENSORY INTEGRATION FUNCTIONS: Includes tasks to improve function in specific motor planning skills, concepts of body schema, accuracy, perception, discrimination, proprioception, kinesthesa, sensory status (touch, pressure, temperature), auditory response, stereognosis, posture, visual-spatial relationships, vestibular stimulation and developmental tasks.
98080	PSYCHOLOGICAL FUNCTIONS: Includes the development/training of tasks and skills involved in the display of emotional states and feelings, coping behaviors and defenses, self-identity and self-concept. Coping behaviors: Includes the development of ability to sublimintae drives, find sources of need gratification, tolerate frustration and anxiety, experience gratification, control impulses, confront issues, set limits, test reality, modify behavior patterns, accept and give feedback, plan routines, and set realistic goals Self Identity and Self Concept: Includes perceiving self-needs, feelings, conflicts, defenses; differentiation of self-needs and expectations from those of others; identifying areas of self-competence and limitations; accepting responsibility for self; coping with success and failure; perceiving sexuality of self, having self respect; having appropriate body image; viewing self as being able to influence events.

CODE NUMBER	INTERPRETATION
98085	WORK SKILL PERFORMANCE: The development of, or compensation for, work habits, workmanship, actual work skills of the student, homemaker, or employee/employer. Program includes the transferring and adapting of previous, or newly learned, skills to the available situations, development of work simplification techniques and, at times, volunteer placement.
98090	PARENTING SKILLS PERFORMANCE: Program includes tasks to teach developmental milestones, skills in use of age appropriate activities, methods of effective family communication, behavior, and practice in setting limits.
98095	SOCIAL PERFORMANCE: Includes the development or training of specific functional dyadic and/or group interaction skills and the transfer of these skills to the environment. Dyadic interaction: Includes relationships to peers, subordinates, and authority figures; demonstration of trust, respect, and warmth; perceiving and responding to needs and feelings of others; engaging in and sustaining interdependent relationships; and the communication of feelings. Group interaction: Includes performing tasks in the presence of others; sharing tasks; cooperating and competing with others; fulfilling a variety of group membership roles; exercising leadership skills; perceiving and responding to the needs of group members; ability to exercise rights as renter, patient, employee, and consumer; and the use of community resources.
98100	SUPPORTIVE ACTIVITIES: Includes the performance of general play and leisure time activities, such as: games, sports, hobbies, and social activities.
98105	MAINTAINING/MANAGEMENT PROGRAM: Includes time used to write up and instruct client in use of a program to sustain and protect existing functions. Does not include continued implementation of program.
98110	MINIMAL SUPERVISED TREATMENT: Situation where client is able to carry out treatment program with only periodic checks from therapist.
98115	CLIENT ADVOCATE TRAINING/INSTRUCTION: Time spent instructing client advocate to support, or continue to carry out, treatment program.

CODE NUMBER	INTERPRETATION
98120	MISCELLANEOUS OCCUPATIONAL THERAPY CHARGE: Specific charges not included above that must be justified by a written report. If an item is commonly used, it must be assigned a category number by the Hospital Commission.
98125	COMBINATION CHARGE: Used when more than one category of treatment is used within a 15-minute period of time.
98130	CONCURRENT CHARGE: Used when two or more therapists are involved in the full length of treatment time. This charge used by the second therapist.
98135	MILIEU RESPONSIBILITIES: Time spent in milieu centered group activities with clients.
98140	CONFERENCES: Includes meetings with professionals, client advocates (family, friend, continued care agencies, etc.) to discuss needs, treatment, and discharge plans of referred clients.
98145	DOCUMENTATION: Includes time spent writing initial, continuing, and discharge information in the legal record. Does not include time in writing specific home programs or client advocate instructions.
98150	FABRICATION OF DEVICES: Includes time used to design, cut, form, make major modifications of adaptive, orthotic, and/or prosthetic equipment.
98155	EQUIPMENT: Cost plus overhead of specific adaptive, orthotic or prosthetic equipment prescribed and/or ordered for client. Special charge/by report.
98160	TRAVEL TIME/MILEAGE EXPENSE: Cost for time and transportation. Special charge/by report.
98165	PLANNING TIME: Time spent to prepare for specific treatment programs.
98170	STUDENT TIME: Not necessarily a charge but a record of time spent orienting and supervising student involvement in programs. Does not include field work students affiliating at the facility.
98175	SPECIAL TRAINING/INSERVICE: Includes time spent (within and outside of the service facility) informing or instructing groups (other than referred clients) in specific treatment programs or OT philosophies.

SPECIAL CHARGE/BY REPORT: Must submit a written explanation for specific amount or item charged.

September 1976

APPENDIX VI

AGENCY COMMENTS

I. SUMMARY

The following listing indicates in summary form responses to the recent Performance Audit of the Department of Labor and Industries - Buckner Rehabilitation Center.

Recommendation Number	Agency Response	Auditor's Recommendation
1	PC*	Reword
2	DNC*	NC*
3	C* (L&I) C (DSHS) C (OFM)	NC
4	PC	NC

* KEY:
C = Concur
PC = Partially Concur
DNC = Do Not Concur
NC = No Change to Original Recommendation

II. TEXT OF "PARTIALLY CONCUR" AND "DO NOT CONCUR" COMMENTS

A. RECOMMENDATION 1

It is recommended that the Department of Labor and Industries justify the Buckner Rehabilitation Center's 1979-81 biennium budget staff levels at the 46th Legislature's Budget hearings, by using a ratio of staff level to patient discharged, as a measure; it is further recommended that the 1979-81 biennium staffing level be adjusted to equal the Fiscal Year 1962 ratio of staff to patients discharged.

(The intent of this recommendation is to return Buckner to the same productivity it demonstrated in 1962.)

1. Agency Response

Partially Concur — *The several detailed provisions respecting the Rehabilitation Center program are a part of the Department's existing budget package developed in response to OFM guidelines. Some questions exist as to the recommended Legislative Budget Committee staffing level. The existing OFM budgetary process carries with it appropriate scrutiny of the programs' requirements, goals and objectives and the needed means with which to accomplish these ends. Accordingly, for these several reasons, the Department respectfully declines to completely concur with this recommendation.*

2. Auditor's Comments

The audit findings indicate the Department apparently did not scrutinize the 1979-81 biennium budget request for the Rehabilitation of Industrially Disabled Workers program for the purpose of determining cost effectiveness; and that this program has been over staffed and under utilized for years.

The intent of this recommendation is to return Buckner to the same ratio of staff, to patients discharged, (productivity) it demonstrated in 1962. In 1962, Buckner had been operating for three years and had a staffing ratio of 1 staff for every 14 patients discharged per year.

Before Buckner was opened the Department rented a rehabilitation facility and their staffing ratio was 1 staff for every 25 patients discharged per year. Since the opening of Buckner in 1959, the ratio of staff, to patients discharged, has continually declined -- from a high of 1 to 17 to a low of 1 to 6 in 1977 and 1978.

The auditor's recommended 1979-81 biennium staffing ratio of 1 to 14 suggest that the 1979-81 biennium budget request for Rehabilitation of Industrially Disabled Workers program staffing, be reduced from 110 FTE's to 64 FTE's.

It is proposed that this recommendation be reworded as follows:

RECOMMENDATION 1

It is recommended that the Department of Labor and Industries justify the Buckner Rehabilitation Center's 1979-81 biennium budget staff levels at the 46th Legislature's Budget hearings, by using a ratio of staff level to patients discharged per year, as a measure; ((~~it is further recommended that the requested 1979-81 biennium staffing level of 110 FTE's be reduced to 64 FTE's to equal the 1962 ratio of one staff to 14 patients discharged per year.~~))

NOTE: If the 1962 ratio is used, the requested 1979-81 biennium staffing level of 110 FTE's would be reduced to 64 FTE's.

(The intent of this recommendation is to return Buckner to the same relative productivity it demonstrated in 1962.)

B. RECOMMENDATION 2

It is recommended that the Department of Labor and Industries' Buckner rehabiliation programs be opened to all disabled people in the State and that the appropriate costs for these services be charged to the patient.

1. Agency Response

Do Not Concur — *The recommendation to open the facility to "all disabled people" appears contrary to existing law. In order to clarify the legal aspects of this area, an opinion from the Attorney General's Office has been solicited with respect to the present legal ability of the Department to offer the Rehabilitation programs to "all disabled people" on a fee basis.*

2. Auditor's Comments

The statute that deals specifically with the rehabilitation center is:

> 51.36.050. Rehabilitation center--Contracts with self-insurers. *The department may operate and control a rehabilitation center and may contract with self-insurers for use of any such center on such terms as the director deems reasonable.*

An informal conversation with the Attorney General's Office, regarding the above statute, suggest that they may issue an opinion which will only allow the Buckner Rehabilitation Center to be used by industrially injured workers.

The intent of this recommendation is to provide rehabilitation services to the community and at the same time generate more revenue and improve the extremely low utilization (29%) of the Buckner facility. It is not the intent of this recommendation to change the Number One priority of the Buckner Rehabiliation Center:

> The goals of rehabilitation services is to provide evaluation, treatment, vocational counseling, job placement, psychological services as needed by injured workmen to accelerate their return to gainful employment as provided by the Industrial Insurance Act.

When a facility is as under utilized and overstaffed as this one is, it should not turn away prospective customers who are willing to pay for the services they receive. The Department has done this.

No change to this recommendation is proposed and legislation is recommended in Appendix II.

C. RECOMMENDATION 4

It is recommended that the Department of Labor and Industries review the efficiency, effectiveness and economy of Buckner's Work Evaluation (work orientation) Unit before expanding this unit's programs; it is further recommended that the Department explore alternatives to providing these same services by using the State Department of Employment Security's Work Orientation Programs and DSHS, Division of Vocational Rehabilitation programs. The results of these reviews should be forwarded to the Legislative Budget Committee and the Legislature.

1. Agency Response

Partially Concur

Exploration of alternatives of the work evaluation programs from other sources, including, but not limited to, Employment Security work orientation programs, and the Department of Social and Health Services, Division of Vocational Rehabilitation programs, also appears desirable. A quality analysis may not realistically be completed within the 90 days suggested.

The Department further feels such analysis could and should be a logical part of study pursued under Recommendation 3 supra with results to be shared with the Legislature and the Legislative Budget Committee.

2. Auditor's Comments

Any further, extensive, analysis of the Buckner Work Evaluation unit and the State Department of Employment Security's Work Orientation programs is not needed.

This performance audit has already reviewed Buckner's Work Evaluation unit (page 38, 39, and 40) and the Legislative Budget Committee performance audit of the Department of Employment Security Work Orientation Programs, Report No. 78-12, dated December 15, 1978 has already reviewed the work orientation programs.

What is needed from the Department now is to review these audits and determine how many clients they have for each of the three general programs discribed on pages 40, 41 and 42 of this audit and then make the appropriate arrangements with the Department of Employment Security to provide these services.

No change to this recommendation is proposed.

STATE OF WASHINGTON
Dixy Lee Ray
Governor

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Olympia, Washington 98504
Gerald J. Thompson, Secretary

December 28, 1978

The Honorable Frank J. Warnke, Chairman
Legislative Budget Committee
Insurance Building
Olympia, Washington 98504

Dear Representative Warnke:

Re: Performance Audit -
Buckner Rehabilitation Center
Department of Labor and Industries

The department has carefully reviewed Recommendation No. 3, and our comments are set forth below in the required format.

Recommendation	Agency Position	Comments
3	Concur	Although DSHS concurs in the recommendation, there are two questions under the recommendation, and only one seems appropriate for DSHS involvement. The first question, "Is a separate rehabilitation facility really needed for industrially injured workers?" should probably be answered by Labor and Industries and the Office of Financial Management. The second question, "Is there any other or better use for this facility?" should involve DSHS.

Sincerely,

GERALD THOMPSON
Secretary

STATE OF WASHINGTON

Dixy Lee Ray
Governor

DEPARTMENT OF LABOR AND INDUSTRIES
General Administration Building, Olympia, Washington 98504

December 26, 1978

TO: Thomas R. Hazzard, Legislative Auditor
Legislative Budget Committee

FROM: John C. Hewitt, Director
Department of Labor and Industries

SUBJECT: Performance Audit - Rehabilitation Center of the Department of Labor and Industries

The position of the Department of Labor and Industries with respect to the Legislative Budget Committee's recommendations regarding the Rehabilitation Center are attached for your review.

John C. Hewitt
Director

JCH:ki
enclosure

RECOMMENDATION	AGENCY POSITION	COMMENTS
1	Partially Concur	The several detailed provisions respecting the Rehabilitation Center program are a part of the Department's existing budget package developed in response to OFM guidelines. Some questions exist as to the recommended Legislative Budget Committee staffing level. The existing OFM budgetary process carries with it appropriate scrutiny of the programs' requirements, goals and objectives and the needed means with which to accomplish these ends. Accordingly, for these several reasons, the Department respectfully declines to completely concur with this recommendation.
2	Do not concur	The recommendation to open the facility to "all disabled people" appears contrary to existing law. In order to clarify the legal aspects of this area, an opinion from the Attorney General's Office has been solicited with respect to the present legal ability of the Department to offer the Rehabilitation programs to "all disabled people" on a fee basis.
3	Concur	Pursuit of such recommendation would appear to be desirable and such cost-benefit analysis in conjunction with the suggested agencies will be pursued, consistent with available resources from designated agencies. Results of the review shall be forwarded both to the Legislative Budget Committee and the Legislature.
4	Partially Concur	Exploration of alternatives of the work evaluation programs from other sources, including, but not limited to, Employment Security work orientation programs, and the Department of Social and Health Services, Division of Vocational Rehabilitation programs, also appears desirable. A quality analysis may not realistically be completed within the 90 days suggested. The Department further feels such analysis could and should be a logical part of study pursued under Recommendation 3 supra with results to be shared with legislature and Legislative Budget Committee.

STATE OF WASHINGTON

Dixy Lee Ray
Governor

OFFICE OF FINANCIAL MANAGEMENT

House Office Building, Olympia, Washington 98504 206/753-5450

Orin C. Smith, Director AL-01

RECEIVED
JAN 9 1979
LEGISLATIVE BUDGET COMM.

January 8, 1979

MEMORANDUM

TO: Thomas R. Hazzard, Legislative Auditor
Legislative Budget Committee

FROM: Orin C. Smith, Director for.

SUBJECT: Performance Audit - Buckner Rehabilitation Center

This is in response to your request for our comments regarding your recommendation # 3 as detailed in your preliminary report covering the performance audit of the Buckner Rehabilitation Center.

State below in your suggested format is our position on your recommendation:

Recommendation	Agency Position	Comments
Recommendation # 3	Concur	Action on recommendation will be taken immediately.

OCS:sw

FACTS ABOUT THE LEGISLATIVE BUDGET COMMITTEE

The Legislative Budget Committee, a statutory joint committee of the Legislature, is composed of eight Senators and eight Representatives equally divided between the two major political parties. The Committee staff, headed by the Legislative Auditor, undertakes studies, surveys and performance audits concerning: (1) economy, efficiency and effectiveness of State programs and agency operations; (2) whether appropriations have been expended in accordance with legislative intent; (3) general fund revenue trends; and (4) other topics which may be assigned by the Legislature. Assistance may also be provided to standing committees of the Legislature and to individual legislators in areas of Committee staff expertise. Committee studies of program economy, efficiency and effectiveness (performance audits) are mandated relative to state agencies and state programs and may also be undertaken as to local government entities and programs where state grants or shared revenues are involved.

The 1977 Legislature assigned additional responsibilities to the Committee which include the conduct of program and fiscal reviews of state agencies, programs or statutes scheduled for termination under the Washington Sunset Act of 1977.

The regular performance audits undertaken by the Committee staff include reviews of program goals and objectives of state agencies to determine how faithfully state agencies are conforming with legislative intent. These audits are intended to provide, for legislative review, objective analyses of the economy, efficiency and effectiveness of state agency management.

During legislative sessions a portion of the Committee staff is available to assist standing committees of the Senate and House in providing objective and factual data on the economic outlook, an independent estimate of general fund revenue and such other assistance in areas of staff expertise as may be requested. In addition, a fiscal note library is maintained for easy reference by legislators and legislative staff interested in the fiscal impact of proposed bills. Staff members also appear as witnesses before various standing committees to explain or support Committee recommendations for legislative action.

The Legislative Budget Committee staff also maintains a central control file of personal services contracts for use in preparation of summary reports as directed by the Committee. In addition, the Legislature has directed that spending from unanticipated federal, state or local revenues by state agencies should be monitored by the Committee staff. A regular report of such spending is provided to the Committee and other interested parties.

The Committee meets on a monthly basis during the interim period between legislative sessions, or more often when circumstances indicate the desirability or necessity of additional meetings. The Committee reports directly to the Legislature, making recommendations for legislative consideration and action.

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

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT

STATE OF WASHINGTON

Chapter 51.04 Industrial Insurance

Public assistance recipient receiving industrial insurance compensation, recovery by department: RCW 74.04.530–74.04.580.

RCW 51.04.010 Declaration of police power——Jurisdiction of courts abolished. The common law system governing the remedy of workers against employers for injuries received in employment is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the worker and that little only at large expense to the public. The remedy of the worker has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage worker. The state of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workers, injured in their work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this title; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this title provided. [1977 1st ex.s. c 350 § 1; 1972 ex.s. c 43 § 1; 1961 c 23 § 51.04.010. Prior: 1911 c 74 § 1; RRS § 7673.]

RCW 51.04.020 Departmental functions, generally. The director shall:

(1) Establish and promulgate rules governing the administration of this title;

(2) Ascertain and establish the amounts to be paid into and out of the accident fund;

STATE OF OREGON

GENERAL PROVISIONS

656.001 Short title. ORS 656.001 to 656.794 may be cited as the Workers' Compensation Law.
[1965 c.285 §1; 1977 c.109 §1]

656.002 [Amended by 1957 c.718 §1; 1959 c.448 §1; 1965 c.285 §4; 1967 c.341 §2; 1969 c.125 §1; 1969 c.247 §1; 1973 c.497 §1; 1973 c.620 §1; repealed by 1975 c.556 §1 (656.003, 656.005 enacted in lieu of 656.002)]

656.003 Application of definitions to construction of chapter. Except where the context otherwise requires, the definitions given in this chapter govern its construction.
[1975 c.556 §2 (enacted in lieu of 656.002)]

656.004 Preamble to Workers' Compensation Law. The State of Oregon recognizes that the prosecution of the various industrial enterprises which must be relied upon to create and preserve the wealth and prosperity of the state involves the injury of large numbers of workers, resulting in their partial or total incapacity or death, and that under the rules of the common law and the provisions of the statutes now in force an unequal burden is cast upon its citizens, and that in determining the responsibility of the employer on account of injuries sustained by his workers, a great and unnecessary cost is now incurred in litigation which cost is divided between the workers, the employers and the taxpayers, who provide the public funds, without any corresponding benefit, to maintain courts and juries to determine the question of responsibility under the law as it now exists, and that the state and its taxpayers are subjected to a heavy burden in providing care and support for such injured workers and their dependents, and that this burden should, in so far as may be consistent with the rights and obligations of the people of the state, be more fairly distributed as provided in ORS 656.001 to 656.794.

656.005 Definitions. (1) "Administrative Fund" means the fund created by ORS 656.612.

(2) "Average weekly wage" means the Oregon average weekly wage in covered employment, as determined by the Employment Division of the Department of Human Resources, for the last quarter of the calendar year preceding the fiscal year in which the injury occurred.

(3) "Beneficiary" means an injured worker and the [illegible] of an injured worker living in a state of [illegible] donment for more than one year at the t[illegible] the injury or subsequently is not a be[illegible] ary. A spouse who has lived separat[illegible] apart from the worker for a period o[illegible] years and who has not during that [illegible] received or attempted by process of l[illegible] collect funds for support or maintenan[illegible] considered living in a state of abandonm[illegible]

(4) "Board" means the Workers' Co[illegible] sation Board.

(5) "Carrier-insured employer" mea[illegible] employer who provides workers' compens[illegible] coverage with a guaranty contract insure[illegible]

(6) "Child" includes a posthumous ch[illegible] child legally adopted prior to the inju[illegible] child toward whom the worker stands i[illegible] parentis, an illegitimate child and a step[illegible] if such stepchild was, at the time of the [illegible] ry, a member of the worker's family [illegible] substantially dependent upon the worke[illegible] support. An invalid dependent child is a [illegible] for purposes of benefits, regardless of ag[illegible] long as the child was an invalid at the ti[illegible] the accident and thereafter remains an i[illegible] id substantially dependent on the worke[illegible] support. For purposes of this chapter[illegible] invalid dependent child is considered to [illegible] child under 18 years of age.

(7) "Claim" means a written reques[illegible] compensation from a subject worker or s[illegible] one on the worker's behalf, or any compe[illegible] ble injury of which a subject employer [illegible] notice or knowledge.

(8) (a) A "compensable injury" is an [illegible] dental injury, or accidental injury to prost[illegible] ic appliances, arising out of and in the co[illegible] of employment requiring medical service[illegible] resulting in disability or death; an injur[illegible] accidental if the result is an accident, whe[illegible] or not due to accidental means.

(b) A "disabling compensable injury" i[illegible] injury which entitles the worker to compe[illegible] tion for disability or death.

(c) A "nondisabling compensable injury[illegible] any injury which requires medical serv[illegible] only.

(9) "Compensation" includes all bene[illegible] including medical services, provided fo[illegible] compensable injury to a subject worker or [illegible] worker's beneficiaries by a direct responsib[illegible] ty employer or the State Accident Insura[illegible]

Workers' Comp
Appt. (3)

Remarks of Minnesota State Senator Steve Keefe at Legis 50 Conference on June 14, 1979

We have had workers' compensation in Minnesota for about 65 years. I think every state in the Union has had it for more than 50 years. So you wouldn't think a return to the old system would be seriously considered anymore. But, as a matter of fact, whenever times get tough in Minnesota for either labor or business on workers' compensation issues, one side or the other starts saber-rattling about going back to tort liability. And while I think it is just saber-rattling, I must admit that Florida a year ago put a sunset clause on their workers' compensation law and if they hadn't reformed it this year, it would have expired June 1st and they would have been back to tort liability. That is the system workers' compensation replaced.

Tort liability was the only system for recovering for industrial accidents up until that time, just as now it is the only system for recovery in medical malpractice cases, in products liability cases, and in many states, in automobile insurance cases. As a matter of fact, workers' compensation was the first "no fault" insurance system. It was reform that was supposed to help both employers and employees by trading off size of recovery for certainty. So while there might be fewer huge awards, there would be more small awards and while large awards for pain and suffering might not be obtained, every worker's real economic losses would be reimbursed.

I presume that there was a certain amount of controversy over the years. We have a Study Commission Report in Minnesota from 1924

on the problems of workers' compensation. But the problems we are dealing with today really began in the late 50's and early 60's when benefit levels started to lag badly behind the cost-of-living. In Minnesota, the maximum weekly benefit stayed at $45 for more than 10 years in the 60's, even though the cost-of-living was escalating rapidly. This led to the establishment of the National Commission on Workers' Compensation, with which we are all familiar, and their 19 essential recommendations and 87 general recommendations. Essentially they were directed at reforming the benefit system and improving the level of benefits to workers. In the course of that process workers' compensation became, at least in Minnesota, the number one issue for organized labor. It has tremendous emotional appeal--after all we are dealing with widows and orphans and crippled workers. And it also has tremendous economic impact--over $300 million in Minnesota alone last year.

And benefit levels in most states, including Minnesota, were woefully inadequate by the end of the 60's. In the 70's though things started to change politically. With the moral force of the National Commission recommendations, the implied threat of federal standards, a dedicated lobbying effort on the part of organized labor and the election of a whole new crop of post-Watergate liberal legislators, workers' compensation benefits began to rise all over the country. This benefit rise began to put pressure on premiums. At the same time, premiums for other kinds of casualty insurance--auto insurance, product liability, medical malpractice and so on--were being pushed up by forces

that were presumably being felt in workers' compensation, as well.

As a result, by the mid-70's employers who had at first acquiesced to proposed legislated benefit increases for the most part were beginning to resist. Workers' compensation premiums had been a small part of an employer's budget, one he took for granted as a normal fixed overhead cost. But with the premium increases workers' compensation was no longer a small item. It was becoming a flag item at Board of Directors meetings. The insurance industry in Minnesota asked for a 70 percent increase in 1978 and 38 percent increase in 1979. Workers' compensation rapidly became the number one business issue as well as the number one labor issue and everybody began pointing his finger at everyone else. Labor says it's insurance company profits, insurance companies say it's excessive benefit levels, employers blame lawyers and liberal judges, and the Legislature is expected to solve the problem.

Of course, there is no shortage of simple minded solutions. You can cut benefits, you can nationalize the insurance industry, you can get better judges or limit legal fees. What few suggestions are politically palatable are of questionable utility.

In the past the Minnesota Legislature had relied on an advisory council of business and labor and insurance people to recommend compromise workers' compensation bills that everybody could support. The trouble was, the advisory council could no longer reach a compromise. Labor wanted one thing, business wanted

another and the insurance companies seemed to be uncertain what to do.

As a result, in 1977, as part of the Omnibus Workers' Compensation Bill, Minnesota established a Study Commission of 16 members from the Legislature, state agencies, employer groups, employee groups and insurance companies. We held 40 meetings over two years and heard from over 200 witnesses from six different states. We visited four other states and a Canadian province and talked to people from four others. Like every Commission, our job was to develop a consensus and we did come up with 57 recommendations in every area from benefits, to medical fees, to litigation, administration and insurance regulation.

At that point we ran into a slight setback, the 1978 General Election. The Democratic Governor, who had been following our deliberations very closely, was turned out of office. As a result, the Insurance Commissioner, who had served on the Commission, was replaced. The Commissioner of Labor and Industry, who served on the Commission, was replaced. The chief workers' compensation lobbyist for the Minnesota Association of Commerce and Industry retired, and the chief workers' compensation lobbyist for the A.F.L.-C.I.O. retired. But, maybe worst of all, the former House Democratic leadership found itself faced with a tied House of Representatives--67 Democrats and 67 Republicans. Of the House members who served on the Study Commission, only one was left on the Labor Committee that was to hear the bill.

Now let me tell you. If you haven't enjoyed a State Legislature with one House exactly tied between the two parties, then you haven't lived. As a matter of fact, it became a truism that between the 2 to 1 Democratic Senate, the Republican Governor and the tied House, if your bill didn't offend somebody who had the power to kill it, there probably wasn't much in it. So we started from scratch with our Study Commission Report and our 57 recommendations and tried to build a new consensus in the Legislature dealing with new lobbyists for business and labor, both of whom had almost no experience in workers' compensation law. What is amazing is that we were able to pass 49 of the 57 recommendations.

Now it wasn't easy. At one point with 52 hours left to go before the Constitutional deadline at the end of session, the Conference Committee on workers' compensation was recessed for 48 hours because the House conferees were deadlocked. The final bill passed the Senate at 11:55 p.m. and was on it's way to the House Floor when the clock tolled midnight and everybody turned into pumpkins. As it turned out, it didn't matter that it didn't get to the House in time because a near-fist fight had broken out on the House Floor over a resolution on a special election (which will be held this Tuesday) which could give control of the House to the Democrats. Anyhow, as a result of that mele, the Omnibus Transportation Bill, the Omnibus Energy Bill and the Omnibus Workers' Compensation Bill failed to pass the House during regular session. A Special Session was held two days later, however, and the Workers'

Compensation Bill passed with one "no" vote in the Senate and with three "no" votes in the House.

Of the four votes against it, two were liberal Democrats and two were conservative Republicans.

The bill, as I said, consisted of 49 of the 57 Study Commission recommendations and a couple of minority reports. It is really very interesting what we were able to pass, and what we weren't able to pass. In fact, I think the political lessons we learned may be even more important than the workers' compensation lessons we learned.

First, was in the area of litigation. Probably the most important and interesting finding of the Study Commission was the importance of litigation to premium costs. This finding came out of a comparison between Minnesota and Wisconsin. It was a very interesting comparison to us because in Minnesota and Wisconsin the benefit levels are very similar. Both have a maximum weekly benefit of 100 percent of the average weekly wage, and, as you can imagine, the average weekly wages are very close in Minnesota and Wisconsin. The industrial mix is very similar in both states and, as a matter of fact, the accident rates in both states are very similar. And yet, Wisconsin's workers' compensation premiums average one-half the level they are in Minnesota. As you can imagine, we found this baffling. We analyzed every difference we could find between Minnesota and Wisconsin in an attempt to find out what the reason was. In fact, in a detailed analysis of where the dollars go, whether to medical benefits, major

permanent-partial, minor permanent-partial, death and so on, there was only one area where there was a substantial difference between Minnesota and Wisconsin. That area was what they call "loss development". If you don't already know what "loss development" is, please don't ask me to try to explain it at this time of night. Just let me say that the difference is, in Minnesota the insurance company claims adjustors tend to underestimate the size of their losses at first as compared to the same claims adjustors working in Wisconsin. As a matter of fact, over five years from the date of the policy, Wisconsin's claims tend to grow by about 2 percent where in Minnesota they grow by over 50 percent. That accounts for 85 percent of the difference in premiums between Minnesota and Wisconsin.

So we asked a claims adjustor. We had one testify before the Study Commission who worked in both states and we said to him, "why is it that you seem to estimate your claims so accurately in Wisconsin and you get them so wrong in Minnesota?" He told us that with the same case in Wisconsin and Minnesota, if you think the employee is rehabilitated and ready to go back to work and you cut him off, in Wisconsin that's the last you hear of it and in Minnesota you wind up in Court.

That was very interesting because there had been an article in Business Week Magazine just that summer that compared Wisconsin to Illinois. They were pointing to Wisconsin as an example of a model system and Illinois as an example of a system in trouble. They said the big difference was a 30 percent litigation rate in Illinois, while in Wisconsin the litigation rate was only 2

percent. This led us to try to collect data from all 50 states to compare litigation rates. Well, of course, we found we couldn't get comparable data from all 50 states, but we did find 17 states. The data we used was the number of Requests for Hearing compared to the number of First Reports of Injury, that is, how many accident victims wound up at least asking for a hearing in front of a Workers' Compensation judge. We figured once you get to asking for a hearing you have a lawyer and you are fighting it out. Even if the hearing isn't held, chances are it was a case that was settled at least in part by the threat of litigation.

We compared that data and we found that the rate of litigation competes with the benefit level as the most important factor in determining premium levels. In fact, we found states with higher benefit levels than Minnesota's which had lower litigation rates and they had lower average premiums. And we found states with higher litigation rates, but lower benefit levels, and they still had higher premiums.

In Wisconsin the litigation rate was barely 2 percent. In Minnesota it was almost 10 percent. In some states, it went as high as 30 or 40 percent. Now remember, this is supposed to be a "no fault" system adopted to avoid litigation and yet we found in Minnesota litigation in 10 percent of the cases.

Why should that add so much to the cost of workers' compensation? Well, as a matter of fact, there was a study on the subject done by the California Workers' Compensation Institute under Allen Tebb. That's an insurance industry sponsored research institute

and they do excellent work. They looked into the problem of litigation in California and found not only that litigation produces it's own direct related costs, court costs, attorneys fees, etc., but also that the average litigated case was much more expensive than the average non-litigated case, at least in part because litigation delays rehabilitation and postpones the return to work. Nobody ever gets well while his case is pending.

Now the question is how do we influence that litigation rate? Obviously, there are socio-economic factors over which we in the Legislature have very little control. You are a lot more likely to get sued for any reason if you live in Los Angeles County than if you live in rural Iowa. But those differences don't apply to the Minnesota-Wisconsin situation. I doubt if there are two states in this Union more alike than Minnesota and Wisconsin.

According to Business Week the way Wisconsin keeps their litigation down is by having an unusual activist state administration of the Workers' Compensation Laws. And they do. They have very tough rules about the first contact from the employer or insurer after the first report of injury. They require insurance companies to deliver the first check within 11 days of the report of injury and when an insurance company has it's license renewed one of the things the Insurance Commissioner considers is their record of service to workers' compensation claimants. In addition, the state mandates a vigorous activist rehabilitation system, talking to people, working with them, getting them back to work. They have an excellent brochure which the state sends out to accident victims right after the accident explaining to them their rights

and responsibilities under the workers' compensation law, what benefits they are entitled to and how to make sure they get those benefits. They have whole series of schedules of various degrees of disability defining what constitutes such and such a percent of the back or such and such a percent of hearing, which resolves a lot of tough questions before they ever get to court.

That fits with the conclusion of the Tebb Study in California, which recommended to California insurers that they could reduce litigation by getting into an active, sympathetic, early intervention, rapid rehabilitation program. The Tebb Study concluded that the way to save money in workers' compensation was to get people back to work quickly. They found that litigants were for the most part people who didn't understand the workers' compensation system; if they knew they were covered by workers' compensation when they were hurt, (and many of them didn't) they didn't have any idea what the benefits were, or how to apply for them. Many of them had other alienation problems. They might have an English language difficulty or an education problem. They weren't well equipped to take care of themselves. So what happened? They turned to an attorney. That also fit with the testimony we got from rehabilitation counselors who told us that if you get to an injured worker the first few weeks after the injury, while he is still thinking in terms of work, and not in terms of being a workers' compensation recepient, your chances of being able to rehabilitate that worker and get him back on the job quickly, are substantially improved. If it takes you more than six months to get him back to work, you have almost no chance at all.

And finally it fit with the testimony of self-insured employers. They said the main reason they were self-insured was because they thought it improved employee relations. By rapid contact with the injured employee they made him know that the company still cared about him, they were able to mesh workers' compensation with other benefit programs, and they were able to get the employee back to work more quickly.

Now this was a marvelous conclusion for us to reach because it is an entirely palatable solution to the workers' compensation problem from a political point of view. It is not only better from the point of view of the employer to get the employee back to work quickly, because it saves him money, it is also better from the point of view from the employee, because no matter how generous the benefit system is, the employee is always economically better off working than he is on workers' compensation.

So our Study Commission adopted a whole series of recommendations designed to reduce litigation and encourage rehabilitation. We mandated and funded a brochure like Wisconsin's for employees whenever there is a first report of injury. In fact, we did them one better and funded a brochure for employers as well to explain their rights and responsibilities under workers' compensation. We even require a notice to be posted on bulletin boards in plants explaining rights and responsibilities of employees under workers' compensation. We passed tougher regulations on delivery of first checks, passed strong incentives for employees and employers to get them involved in on-the-job training programs including protection from liability for re-injury of workers'

compensation injuries. We mandated a whole series of objective schedules to be promulgated in the regulations to solve litigation problems before they get to court and we passed a very broad rehabilitation statute designed to stress early intervention and rapid return to work.

All those changes were easy to pass through the Minnesota Legislature. The problem, politically, was the benefit reform. We found in the Minnesota benefit structure a number of minor factors that seemed to work toward litigation and against rehabilitation. So we recommended changing a number of benefit details. For example, in Minnesota the lump sum for a permanent partial disability can be paid before you go back to work, while in Wisconsin, you can't get that lump sum until after you return to work. In Minnesota it eases your stay off the job and in Wisconsin it encourages your return to work. So we recommended that be changed.

Another example in Minnesota is the so-called "double retraining benefit". Because of a case law decision in the 60's we found people who took a retraining course in school were able to get double benefits. So they could get as much a 1-1/3 times as much as they were making when they were working, tax free. That obviously was a strong disincentive from returning to work and led to absurd situations where people turned down $20,000 jobs to stay in school.

All in all, the Study Commission recommended about seven adjust-

ments in the benefit structure designed to eliminate various disincentives for rapid return to work, but not to change the basic benefit structure. The net effect of those was a slight but significant decrease in the overall benefit level. So to balance that off and make sure that we weren't just proposing a raid on the benefit structure, we recommended raising the maximum weekly benefit to 200 percent of the average weekly wage. The net result of benefit cuts and benefit increases amounted to less than 1 percent of premium.

Well, just let me say that no one was amused. The employers were absolutely horrified at increasing the maximum benefit to 200 percent of the average weekly wage. I can't remember how many letters I received from employers who were sure we were recommending that an employee get 200 percent of his wage as a workers' compensation benefit.

Unions, on the other hand, were horrified at everything that they interpreted as a benefit cut. And the Legislature, which as you know, hates controversy, was horrified at all the benefit changes, both the increases and the cuts.

Now I must say I sort of expected that and it didn't bother me too much. A little churning leads to compromise in the Legislature. If people are afraid enough of something, they may be able to come to some sort of accommodation that protects everyone from what they most fear, but also accomplishes needed reform.

Well, unfortunately this time there was no such compromise forthcoming. I don't know whether it was the new make-up of

the House of Representatives or the threat of Governor's veto, but in any case, apparently both employer's groups and employee's groups thought that they would do better if they fought it out. The AFL-CIO wouldn't budge on benefit cuts and the employers' groups were absolutely adamant on the benefit increases.

But it's instructive I think to hear the arguments they used. When we told the employers that they should support the increased maximum basic benefit, in return for doing away with the little frills we thought were so terribly expensive, they said, "wait a minute. First, we have to see the effect of the reforms before we talk about improving benefits. We have had rate increases of several-fold over the last five years and we don't want any more benefit increases until some reform has been accomplished and has begun to work."

We told labor on the other hand that we had to eliminate some of these benefit goodies, because the premiums are too high, they pointed to the insurance companies saying "that is where the money is going. Until they can account for what is happening to the employers' premiums dollar, don't try to blame it on the benefits."

And that, I think, may be the most important political lesson we learned trying to reform the workers' compensation system in Minnesota. It was first articulated by the lobbyist for the Minnesota Association of Commerce and Industry, our leading employers' lobby group, when he said, "you know, you just can't build up political momentum for adjustment of benefits until

you have established that the economic delivery system is fair and efficient." In other words, you can't say we need to reduce payments to injured workers so we can save 1 or 2 percent of premiums until you have established to everyone's satisifaction that the 38 percent, 30 percent, or 25 percent or whatever it is that is going to the insurance companies for administrative overhead and profit is justified. Because that big chunk is a much fatter target than any benefit abuse, however generous, to an injured worker or his survivor. And I expect that is the question that is being asked in every state where workers' compensation reform is being discussed, not just in Minnesota. Is the delivery system fair and efficient, and is the rate justified? In Minnesota, it is private insurers, and the Minnesota Workers' Compensation Rating Bureau that are being asked to justify the rates being charged and the administrative overhead and profit being included in those rates. But in other states questions are being raised about the soundness of state funds as well.

Everywhere we turn there are signs of discontent with the current system, whatever it is. One of my goals in Minnesota, when we started to study the insurance system was to satisfy myself whether there are excessive profits to insurance companies in the workers' compensation system in Minnesota. I spent a lot of time on that question and I came to three conclusions:

First, the insurance companies sincerely believe they are losing money on workers' compensation insurance.

Second, there are others who just as sincerely believe that they are getting rich.

> Third, and maybe most important of all, the Minnesota Commissioner of Insurance, whose responsibility it is to regulate workers' compensation rates in Minnesota does not know. In fact, there is evidence presented to him that points clearly in both directions.

In Minnesota, at least, the regulation of workers' compensation rates is hopelessly inadequate and frankly it's the Legislature's fault.

First, we haven't given him the staff. Workers' compensation rate requests are analyzed by part-timers loaned from other departments, people with experience in other areas of insurance, people whose primary responsibilities are regulation for solvency, not regulation of rates.

But even if he had the staff, under the current system, at least in Minnesota, the Insurance Commissioner doesn't have enough information to be able to know whether he is promulgating a fair rate.

Let me try to explain what I mean. In workers' compensation, of course, there are three kinds of losses reported by insurance companies to the Commissioner of Insurance as data on which to base the new rates.

First, there are actual paid losses. Those are dollars that have actually been paid out to doctors, injured employees, rehabilitation counselors and everybody else.

Then there are what we call reported, but not paid losses.

Those are the case reserves, the money that is put away to pay future benefits to people who are hurt this year. Somebody who is permanently totally disabled, for example, is going to be drawing benefits for years and there has to be money set aside to pay those benefits.

The third kind of losses are what they call "incurred, but not reported" losses. Insurance companies have to put away some money to pay for claims that they haven't even found out about yet for accidents that happened this year but that may not be reported for years.

Now if you enforce tough rules about how to derive a rate from the losses reported without enforcing rules that establish how the losses are calculated in the first place, you are not really doing the whole job and that's what happens in Minnesota. There is no effective regulation of reserving practices. But there is another factor, too, that hasn't been considered in Minnesota in the past. That is that all these reserves, while they are sitting around waiting for the benefits to come due, are drawing interest. That investment income, at least in states where they have analyzed it, can run anywhere from 10 to 25 percent of the total annual premium volume.

Now that is a lot of money, in Minnesota somewhere between $30 and $75 million dollars. The reason I say somewhere is because the amount of that investment income is not available to the Commissioner of Insurance, and is not considered in the rate-making process. As a matter of fact, Dean C. Arthur Williams, a professor

at the University of Minnesota who specializes in workers' compensation insurance and who sat on our Study Commission, tells me that recently the Massachusetts Commissioner of Insurance promulgated a rate for auto insurance that assumed an underwriting loss. He is forcing automobile ainsurance companies in Massachusetts to lose money on underwriting because he thinks the income on investments on those automobile insurance reserves will more than make up for it.

Now I am not saying that just because we don't have this information from insurance companies in Minnesota that they are getting rich off workers' compensation insurance. As I say, I sincerely believe that they sincerely believe that, they are losing money. What I am saying though, is that as yet we have no way of knowing and before we can address the question of reform in the benefit structure politically, we have to be able to answer that question. In Minnesota we are trying to solve that problem in two ways.

First, we have taken major steps to improve the regulation of workers' compensation insurance in Minnesota. We have given the Commissioner of Insurance six new full-time staff, including a full-time actuary and two staff attorneys, several insurance analysts and a lot of money for computer time so that he can do his own independent analysis of the data as it comes from the Workers' Compensation Rating Bureau.

In addition, we have put in the law a whole list of kinds of data that he must request from the Rating Bureau and must take into consideration in his rate order. We have established an entirely

new mechanism for hearing, considering and approving rate increases that is patterned after the Public Service Commission approach to utility regulation . It includes a whole system of due process for employer's groups or anyone else who wants to challenge a rate increase request or appeal a rate increase order.

As those reforms begin to work we are confident that we will begin to be better able to understand the insurance system and decide whether it is operating as efficiently and fairly as employers and employees have a right to expect.

The second thing we have done is to try to provide more kinds of competition, in other words, to get the free market working to assure the lowest possible rates.

Now in all fairness to insurance companies, workers' compensation insurance is one of the few products where when you sell it you haven't any idea what it cost you. And you may not know what it cost you for years. Now insurance companies abhor that kind of risk and they should be expected to charge accordingly. So what we have tried to do in an attempt to encourage competition among private insurance companies in Minnesota is to establish a State Reinsurance Association, to provide mandatory reinsurance for claims over $300,000 to take the risk of the big catastrophy away from the private insurance companies and self-insuring employers.

We think that by protecting insurance companies from a big catastrophy on a given case, it makes it less risky for them to go out and vigorously compete for business. And that should help the small employer.

Big employers already enjoy that kind of competition. They are attractive customers, they pay big premiums and they have a low-cost alternative available to them, self insurance, so insurance companies compete vigorously for their business. Small employers don't have those advantages. They can approximate them, however, through group self-insurance, an idea we got from Florida which will become legal in Minnesota on the first of August of this year.

While we have not had group self-insurance in Minnesota in the past, we have had some experience with group purchased insurance. The most successful example is a forestry association in northern Minnesota. Some 200 of them banded together in a group for the purposes of buying insurance and were able to persuade a company to sell them insurance as if they were a big employer. That meant they got all the benefits of experience rating, retrospective rating, dividends and everything else. At the end of the first year they got a premium rebate of 48 percent of their original premium.

The other advantage of the state reinsurance fund is that the guaranteed availability of excess insurance makes it much easier for small employers to form that kind of self-insurance association.

Furthermore, the fact that employers of all sizes have alternatives available will provide a strong incentive to the insurance industry to provide competitively priced insurance plans if they want to keep that part of the market. I think they will.

As a matter of fact, I expect our reform of the insurance system to substantially ease the workers' compensation crisis in Minnesota, both by restoring confidence in the system through better information, and by giving every employer a chance to "make a deal" to save himself some money.

But even if we solve those problems, it is only the beginning of a solution to the workers' compensation dilemma.

Litigation is still rising, even in Wisconsin, not just in workers' compensation, but in product liability, medical malpractice, automobile insurance and elsewhere.

There is growing evidence that workers' compensation and other disability programs are being used to supplement pension income rather than just to replace wages lost.

Lump sum awards for permanent partial disability are increasingly under attack as approximating the old pain and suffering which we were supposed to have gotten away from when we moved to a "no fault" system.

There is increasing evidence that a greater burden for nonwork-related injuries is being assumed by the workers' compensation system because of the difficulty in distinguishing between work-related and nonwork-related conditions, particularly in the areas of cumulative trauma and occupational disease.

There are serious questions being raised about the effect of inflation on benefit levels and whose responsibilities it should be. Should the worker have his benefit eaten away by inflation; should the employer who employes him this year pay for 10 percent inflation for the next 20 years, or should the government?

But maybe even more important than those questions, are the political questions that need to be answered. Political roles are changing as a result of the workers' compensation crisis of the 70's.

Employers are finding they can no longer rely on their insurers to be their sole representatives on workers' compensation issues. Insurers interests are usually the same as employers interests, but not always. If they want to entirely protect their own interests, employers' groups must develop an independent capability for analyzing and acting on proposed workers' compensation law changes.

Insurers are finding that they can no longer be secure in the role of a pass-through mechanism. Unless they can react to proposed legislative benefit changes, both up and down, with accurate analysis and prediction of impact, they will not be living up to their responsibility either to their customers or to their stockholders.

Employee groups are finding they can no longer ignore the delivery system. High premiums create tremendous political pressure to

keep benefits down. If the delivery system charges unnecessarily high premiums, it is the injured employee who will suffer.

But most important of all, I think legislators are finding that they can no longer rely on special interest groups to advise them about workers' compensation law. We must develop our own capability to analyze and understand the potential impact of the changes we might want to make.

In closing let me say that maybe the most significant outcome of our experience in Minnesota may have been an amendment to the Workers' Compensation Bill in the House that was not part of the Study Commission Recommendations. That was to establish a new Study Commission with 2½ times the budget of the first Study Commission. It passed.

APPENDIX (3)

ALASKA WORKMAN'S COMPENSATION INSURANCE RATE HEARING

November 8, 1979

Anchorage, Alaska

KENNETH MOORE:

I am Kenneth Moore, Director of Insurance. I am the one who signed the order for this hearing and the invitation of you to be here. Conduct of...I will first introduce to left over here is John George, our Deputy Director, and will be here for the period of this presentation however long it may take. At this moment I am going to turn over the conduct of the meeting at this point to Don Koch, our systems analyst and who is charge of the Workman's Compensation within the division. Don Koch will handle the details from this point on on and he will accept the order, the first order that he will present at this time. Go ahead, Don.

KOCH:

Thank you, Director, and good morning ladies and gentlemen. Things are a little disoriented so, if you will bear with me a little bit. Chuck, would you hand me that list, please? Thank you, sir. As you know from the notice, we are all here to consider a filing that has been made by the National Council on Compensation Insurance on behalf of its member and subscriber insurers. The effect of which will be to change the rate level for worker's compensation insurance in this state. The overall impact is 1.8%. However, that is distributed quite differently when it comes to particular classes. Can I be heard back there? The best way to proceed is to start with the people that review these rate filings before they are submitted to the Division of Insurance and I think the best way to do that is to... I guess, Chuck, you are going to represent the C & R Committee.

SZOPA:

Right, Don.

KOCH:

I think we will let Mr. Szopa tell just what the role of the C & R Committee is in rate making for Workman's Compensation in the State and I think the thing will make sense then. So, Mr. Szopa, if you will take the stand and start your presentation.

SZOPA:

My name is Chuck Szopa. S-Z-O-P-A. My address is 6426 Chivigny Street in Anchorage. I am here to represent the Alaska Classification and Rate Committee. I work for Providence Washington Insurance located here in Anchorage. The Alaska C & R Committee, as it is called was brought into being shortly after the National Council was invited into this State by the Division of Insurance in 1976. The C & R Committee is composed of six companies at this point. Those individual companies are Providence Washington Insurance Company of Alaska, Alaska Pacific, Industrial Indemnity of Alaska, Fireman's Fund, Employer's of Wisconsin and Liberty Mutual. At the meeting this morning, three of the six companies are represented, as I indicated previously, I am representing Providence Washington. Olive Mott is the representative of Alaska Pacific and Tom O'Keefe is the representative of Industrial Idemnity. The primary purpose of the C & R Committee is to review any rate filings that may be promulgated by the National Council on Compensation Insurance. We also will review any classification changes that may become necessary as the different occupations in the State may change and we also review individual problems that may arise with an individual insured.

RATE PORTIONS OF HEARING DELETED

MOORE:

First gentleman listed here is Robert D. Mill.

ROBERT MILL:

My name is Robert Dwayne Mill. I am from Palmer, Alaska, Post Office Box 916 and I am one of the spokeman representing some 500 disabled Alaska victims of industrial accidents. These victims or injured workmen who are not receiving Workman's Compensation due to the fact that the insurance carriers have not been paying them. Even to the point of not paying after the Workman's Compensation Board renders a decision on these hearings and by law orders them to do that. I intend today to only bring the issue that one particular issue before this committee and certainly you, sir, Mr. Moore, Director of the Division of Insurance, and thank you for allowing me to sit here today. I will refer to just my particular case today because I would like to introduce this decision by the Workman's Compensation Board in regards to the statements I just made to you as an exhibit and you can follow this. I have it marked cut in red pencil. This is what has happened to me. It's my question at this time, Commissioner and members of the Committee, do you have the power or authority to regulate, to enforce and then most certainly investigate complaints like I'm submitting before you today. I am going to make this very short because I know there is a lot of other people here and if they have has to wait this whole morning like I have and some of them are injured, like myself, I don't want to take too much of the time so they can get their input into this also. Unfortunately, we couldn't all be here. Many of us from Fairbanks, Alaska injured workers, couldn't attend today... financial, physical and because so many of them have been drug out and when I say that, I am using the term..their cases, their hearings have been drug out to the point that where they have given up. I won't go into that but explain why we don't have more people here available here today. But rest assured what I said, we have some 500 names that have been turned over to our legislators as we appeal this thing on through and, of course, that is my full intent here today, sir, speaking on behalf of all of those people. I am appealing to you that if in fact these insurance carriers under Alaska Law Statutes are not upholding the law and fulfilling their end of the bargain and they have drawn it out so long for us. I am not committing a criminal act and I am sure that it will advance in many cases unless something is done into a most inhumane situation. Who do we appeal to and what do we do now?

MOORE:

You appear to be asking a question....I have no idea how the Workman's Compensation Board feels...

MILL:

Thank you. It took me....

MOORE:

...but if your questions are one, we are charged with very specific duties in regards to Workman's Comp and then there are others duties that are not Workman's Comp related, which have to do with conduct of companies and that where we are in that particular area

and I think you will have probably entered the right track when you entered voluminous opinions with your legislators, who set up the actual mechanisms for, to be operated on you.

MILL:

That's fine, sir, but our system is failing us. We are getting no response. We met with Commissioner Labor Orbeck requesting the Governor's presence. He was unable to attend. We requested that again, time and time again for him to meet with us...with authority to initiate some immediate relief for many of us. We are unable to accomplish thta. We are going to go back to the law statute. I don't think that at this time that a tape recording from this hearing presented to the Labor Board should be their extent, if in fact that's what this is going to be.

MOORE:

We will transcribe the tapes.

MILL:

Thank you. And I hope that it doesn't just sit there and only go past that point because it seems to me that this stage of the game for so many of us when we have the evidence and we are involved in this, we see these and as I might state, if this is not a criminal act to disobey a court order or the Workman's Compensation order and put us in the role of destitutes nobody to appeal to what in fact, on the sworn oath of office you have taken, sir, does that mean? Does that mean that you will regulate these companies to make sure that they abide by the law, who does that? Or do we have to appeal, and at this time, I would like this a formal statement. I would like...if you cannot and I hope that you can, cannot seek some immediate policing of this and a full investigation from your insurance division, then I would like to request at this time that if we have to go up the ladder, so to speak, a United States Grand Jury investigation into Alaska's insurance certainly to include our Labor and Workman's Compensation Division. And when I say this, I am talking about complete audits, the backlog of cases that are supposedly to have been settled in the form of renumeration, not kept in reserves and held there...not paid but that there had been fairly distributed under the statutes of the law to these people that have just and compensatable injuries and claims against these carriers. And beleive me, sir, and everybody that's here...not too many now, there is many of us that have the same situation and we have got to speak to somebody, sir. We are down...we are up to you. I think I would like to conclude this...

MOORE:

Don has a question.

MILL:

Thank you. I'm sorry.

KOCH:

I noticed on the last page of this document that there is an appeal procedure listed and the certification date of this or the admission date points out 27th of September of this year....

MILL:

That's correct.

KOCH:
So that the appeal would be final, excuse me, the order becomes final as of the 31st day after after everything is filed which would have been....

MILL:
That's correct.

KOCH:
....sometime in late October...

MILL:
That's correct.

KOCH:
...to your knowledge has the carrier filed the...filed for injunction...

MILL:
No, sir.

KOCH:
... an interlocutory injunction on that?

MILL:
No, sir, they have not filed an appeal. My attorney has checked that out just yesterday and, of couse, as you see by those dates, it's going into the second month. That was suppose to be effective and the monies which have been held back for over this past year and a half were suppose to be paid in 14 days in lieu of, if they did not, under that very document you will see that the carrier is to be penalized from the 14th day. That's from the 27th of September... 14 days failure to pay a penalty of 20%. This has been ignored. The 31 days that he has from the date that that order was sent down to appeal is expired. He has not appealed. It exercised that. Yet here we sit, sir. Myself, nothing and it has gone into the second month. Mind you now this has been in legal, and when I say, through the Workman's Comp, it has taken this long up til September to get a decision. The insurance company voluntarily took me off the temporary total disability, under the law covering this, they couldn't do that yet it was done way back then and all that information now be made available to you with the proper investigation into this. I only brought this most recent document to substantiate my reasons for being here today and speaking. This is just one example sir. We have a gentleman who will soon be up here, who has got case after case in his file. I am sure we can't review them all. But that is one. As you can see, and that to me is a flagrant disregard of our Alaska laws and statutes. If I did that or you, sir, I think we would have to go back the judge.

MOORE:
We will look into this.

MILL:
Thank you.

MOORE:
Mr Mill, thank you for coming down from Fairbanks, we appreciate it.

MILL:
And I would like to make a correction on that, please. Due to this delay, I no longer live in the Palmer area. I am living... A friend furnished a home to me in Delta, Alaska, so my address has changed...

KOCH:
Does that appear on the...

MILL:
I haven't put that on there but I am still using my mailing address in Palmer, which I have had for 13 years.
KOCH:
You can still receive mail at that location?
MILL:
Yes, sir, I can.
KOCH:
That's sufficient.
MILL:
And thank you. And thanks to the press and each and everyone of you.
KOCH:
I have next on the list, Mr. Chuck Inland? Is he here? Chuck Inland?
MILL:
He will be back shortly.
KOCH:
Okay. Gene Cecil.
MILL:
He, also.
KOCH:
He left. There the only ones I have on the witness list.
MIIL:
We have two more gentlemen here.
KOCH:
Okay, would one of you care to come forward and put your name on the list and then we would be happy to hear you on the tape recorder.
MOORE:
You can hear, I can't. I don't have any (undisc.)
MCGUFFIN:
My name is Don McGuffin, Box 1273, Wasilla, California...Alaska.
KOCH:
We have a gentlemen who is also going to testify, if you would, put your name on the witness list. Thank you.
MCGUFFIN:
Mr. Koch, I was hurt back in 1976, January. I had my first hearing on June 28, 1978, ich was appealed to the Superior Court and the Superior Court came in favor of me, overturned the board's decision and it went to Supreme Court, they appealed it. Excuse me. And after it went to the Supreme Court, the Supreme Court sent it back to the board for another hearing...to make another hearing out of it. So they come back and during a lunch hour break they had my hearing that I knew nothing about or anything like that. And now it is appealed back to Superior Court again. They re just giving my the runarround on this ever since, ever since accident happened. I was told several times that I was going to have a lot of problems with the insurance company. I said, no, I'm not because I am going to do just exactly what they want me to. I am going to be just as fair as I can, just do everything they say, do. I had to go to the Lower 48 to get so I could walk again becuase the nerves and my legs and everything had tied up in scar tissue where they operated on me. I couldn't reach up in the shelves or anything. And yet

they told me to go back to work. I said I can't even walk, how can I go back to work? So there isn't nothing else we can do for you. So as soon as I said I was going to the Lower 48 to a doctor, they shut me off just like that and that's the last I have heard of it or anything. I have got a wife and five kids. I have tried to do pretty by them and I have been pretty good. I have been a electrician. I have been an electronics technician. I have been a carpenter. And I have been the highest in the trades. All other union. I have always made good money all my life. Yet here is the insurance that is required by the state, yet when you have to use it, you have to go down and get a lawyer and fight like everything just to come to just a little bit of it. They told me I had to be retrained and I said fine, I will be trained. They sent me to counselling school to become a counsellor. I graduate this month. Now, they say you are not eligible for retraining because you were an electrician 10 years ago or 15 years ago, you can go back and do that. And that was back...Dr. Kent just stepped into a field like that even though he has been a doctor but there has been so many practices that advance in attendance...there is no way possible. My DVR counsellor tried several places to get me hired on the slope as an electronic technician, nobody would accept me because I have a back problem. I have heard electrician testify up here that they would like to have physical on people. How could...that would put it out right there, you know, if you are going to have a physical and you have got a back problem, you are not going to get a job no place and it has just been a runaround just backwards and forth, backwards and forth, you know. And I have got a family out there. I am trying to take care of them. I just bringing some grandsons into the world. My daughter is just having babies and this man right over here. I met him a year ago and he told me how to get on food stamps. I didn't even have food. I have been on food stamps for a year now. These people have nothing..don't want...we don't owe you nothing cuz you can go back to work an electronic technician.

KOCH:

What's the status of your appeal?

MCGUFFIN:

It is in the Superior Court now. In fact before Judge Singleton. I have an order here...the decision on the floor by Judge Singleton and he tells me just exactly what they should do. And I have got other cases to prove that they have done it.

KOCH:

Is Judge Singleton's order favorable to you?

MCGUFFIN:

Yes, it is.

KOCH:

When was ...Has that been filed on a (undisc.)

MCGUFFIN:

No, that's already come out. It went before the Superior, I mean the Supreme Court after that. The Supreme Court said well, Judge Singleton didn't make a final decision so just put it back for the board and let them have another hearing. I think the laws...the insurance laws of this state are terrific. They're good. I think were the whole problem lies is the fact that the insurance lawyer

is trying to do a good job for the insurance company, which you can expect but they are picking some of the people that are legitimately hurt. They are destroying homes, they are destroying families. I see a lot of Comp people... I have a lot of people referred to me as counsellors strictly from Comp that don't know which way to turn. So I know I am not the only one. If it was just me, I would say, well, I have got a problem, you know, I have got to straighten out. But it's not me, it's like you said 500-600 other people. On the average 800 people a year get hurt in this state. And this is a growing state. I mean, its got a long ways to go and there is a lot of construction going to go on. There is a lot of people going to be hurt again. If they have got this kind of a law to where the individual has to uphold the law but the insurance companies can dictate what they want to do and what they are going to do to a judge or anybody else, something is wrong. Don, I don't know what it is.

KOCH:

What we see is our role in this. You are talking to us, you must expect something of us.

MCGUFFIN:

We have went to everyplace we can. I have went through Legislature. I went to the Governor. I went to the Lt. Governor. Orbeck. Paul House. Everybody. And they can't do nothing. They say, oh, yes, we got a problem but there is nothing we can do about it. I don't know.

MOORE:

Don, where is your status now. Are...has the board held it second hearing?

MCGUFFIN:

The board held its second hearing but they held it at lunch. They took my lawyer to lunch while I was sitting there waiting for the board to come back. They said, oh, we made our decision while we was at lunch.

KOCH:

They did this in the presence of your lawyer?

MCGUFFIN:

Yes. They took my lawyer with them. And that was not...that's not the way a hearing should be held. First of all, the second hearing. I took all my witnesses down there, all the doctors and everything. I have got five doctors that I can get any kind of a job for where I don't have to bend, lift, stoop or twist. I don't know what it could be counselling is about the only thing I know of. And they go down there and they just ignore it completely. I don't know. I don't know which way to turn now. And I know I am not the only one. There is several right here in the valley...there are probably 25-30 right there in the Wasilla valley that is under the same way. And they cut your payments off....

KOCH:

Is the board's second decision favorable to or unfavorable?

MCGUFFIN:

It is the same decision that they made at the first hearing. They are not going to change it they said.

KOCH:
And this is on a demand from the court.
MCGUFFIN:
Yes.
KOCH:
You understand the role of the division in Workman's Comp?
MCGUFFIN:
Pardon me?
KOCH:
Do you understand the role of the Division of Insurance in Workman's Compensation?
MCGUFFIN:
No, I don't.
KOCH:
Workman's Compensation is an area of dual regulation. The benefits are adjudicated by the council. Some it something that's not in our jursdication.
MCGUFFIN:
Whose jursdiction is it within?
KOCH:
It is within the jursdiction of the Depatrment of Labor, Division of Workman's Comp and the Comp Board and the courts. Now, if indeed there is a practice that is developing, could be proved then, you know, how to go about that rather I won't get into a discussion of how to go about establishing the fact, but if practice is shown and it is an unfair practice, assuming in the insurance clauses as an unfair practice, there we have jursdiction to deal with the practice. But that's as to a practice that has happened or referred to the group rather than to an individual. We have...we don't have adjudicatory role in the benefits of Workman's Comp. If for instance, you had a carrier that was repeatedly doing an unfair practice and the proof is evident or proof is presentable, you know, and supported by, let's say, adjudication from the council, then you would have something that the Division of Workman's Compensation and the Division of Insurance would have an interest in by law. But aside from that, we have no adjudicatory role. It seems to me that you are in the proper place because the only people that have a role in what you are telling us is the Comp Board and the court. And it sounds like you have been up the ladder and back down a little.
MCGUFFIN:
Right.
KOCH:
But there is nothing...there is no way we can interpose ourselves into...
MCGUFFIN:
My trainer advised me that this could go on for a period of ten years.
KOCH:
It may, but if the courts are...in order for it to get to the Supreme Court, there has to have been a civil question of law or fact or what have you, that the court has decided they will address.

The court selects what they are going to address. Now the Supreme Courts selects what they are going to address based on the merits of the case so they have addressed it when they demand the thing back to the board with, presumably specific instructions as what they are to look at. If they have looked at that and they have made another decision and filed it then the only course to go from there is back up to the court again. And they will either support or not support what the Comp Board has indicated.

MCGUFFIN:

And do I just have to continue to just keep making this circle?

KOCH:

Well, see you are asking me something that you should ask your attorney because I just don't know. I don't know how long that cycle can go on. I think it depends on how long the courts remain in it. Apparently, there is something the board didn't do the first time. I haven't seen the Supreme Court decision that you are talking about but apparently they told the.....

MCGUFFIN:

Would you like to see it?

KOCH:

Not right now. But rather get into that. I have nothing to add to it anyway. The attorney might be able to give better advise. All I can tell you is that the division doesn't have a role by law. Meaning the situation that you have described to us. We are interested but... in much the same way as any system is concerned about hurts from another system. But there is little or nothing we can do by law about your situation unless it proved that there is a practice and the only way to prove the practice is if the company cuts you off and they cut everybody else off..bunch of people off... and all these people are reinstated, then we have a situation where there is a practice.

MCGUFFIN:

How many people do you have to have for that?

KOCH:

Well, we don't have a measure on that but, you know, if you can show indeed that if you have 500 cases and the vast majority of those are cases that should have paid, it is clear that should have paid right from the beginning and the courts have said so and the board has said so and then you present the practice that we can deal with.

MCGUFFIN:

And who do we have to see what the ... turn these names over to whatever we have to do?

KOCH:

Once you are able to establish a practice, then you come to us.

MOORE:

I would say...

KOCH:

The adjudicatory role is not ours because as a working of law, it belongs to the Comp board and to the courts but once you get into a practice and that practice is established, if it is an unfair practice as listed in Chapter, excuse me, Title 121, Chapter 36. It is an unfair practice as listed there, then you have something tangible that we can deal with.

MCGUFFIN:
All right.
KOCH:
...telling us...
MCGUFFIN:
I appreciate you listening to me.
MOORE:
Thanks for coming down.
MCGUFFIN:
You bet, Mr. Moore. I certainly appreciate it.
KOCH:
Let's see we have Mr. Hill?
NYLE HILL:
My name is Nyle Hill and I live at SR Box 2695, Wasilla, and I have got a few questions. Maybe I can answer a few of them that Don and Bob didn't bring up. I have advanced to the stage that they have gotten in trouble with these insurance carriers. Mainly, it is the same one all the time. I don't know whether I should divulge the name of this carrier but...the carrier is ALPAC Insurance, whatever the name of it is there...ALPAC is what we call it. But they have flagrantly from what we can see have been breaking the law. They are not doing what the state law says that they are suppose to be doing according to the book that the state has put out. They are not giving justifiable decisions. They are not giving justifiable compensations. They just flat ignore what the board says. They take too long..I..just had a hearing here a month and a half ago. They are not paying my doctor bills. They told me that...my lawyer told my that don't go along with chiropractic help. State law says that chiropractic doctors can operate and help people in this state. It says it in the book and I would like to know why that the insurance carriers can say that they just aren't going to pay these doctors. They don't go along with what their decisions are ...
KOCH:
You have had an appeal before the board?
HILL:
I just had a hearing on my doctor bills and my travel time..and according to the law....
KOCH:
Had the board's decision been handed down?
HILL:
No, I haven't heard nothing from them yet as of this date. And...I'm under the impression that they have got 20-30 days or whatever it is according to what the book states and they just keep dragging these things out and dragging them out and the last time I talked to my doctor, I don't know where he gets his information from but the impression I got from him that he has heard something and he felt and he told me to get rid of my lawyer because he felt that there had been a deal made between my lawyer and the insurance lawyer. Now, I can't prove this. The only thing I know is the statement has been made that they say they are not going to pay my doctors bills. I can't pay them and I'd like...there is a lot of answers or questions that just...

KOCH:

If statements have been made that they are not going to pay it, then you should confirm that statement with the board because they must issue an order saying that you were to paid or if not...

HILL:

Well, this is one of the reasons why I am here with the- these men because I don't want my case to [illegible] that theirs have. How can they [illegible] of the board? Why...a board [illegible] and the insurance carrier says well, [illegible] that decision.

Under law, as I understand it...

HILL:

What is the position of the board then?

KOCH:

I can't speak for the board because we're not...we're not members of that board and, you know, it is not within our department, but, once the board has issued its decision and you have the order for the decision, there is generally, under a due process system, a right to appeal on either side and they generally say what the extent of that is. In fact, in the exhibit we have here there is a stated period of time in which the carrier...in which the carrier has to petition its appeal since in that case the decision went against the carrier.

HILL:

Well, this drags out and drags out and drags out and it goes on year after year. Where does the person get any help?

KOCH:

I believe that is how the American judicatory system is, you know. They try to make it as far as they can but then there are some time frames in there and it can be drug out.

HILL:

I was listening to some of the comments on some of the contractors and the people that are in business that have to pay these exhorbant prices for this compensation and I listen to the reasons...I don't understand all their high financing is the reason why everything is going up in price but I would like to know why it is going up in price because what I have been seeing here and the people I have been talking to, there isn't no compensation being paid.

KOCH:

I can assure you that there is some compensation being paid. The dollars are there. We look at the finances of the insurers through our financial section and we look at the rate filings and you know, (undisc.) everything on its face but those dollars are being paid. We have had occasion to review claims files and have seen where the dollars are going out.

HILL:

Well, we would like to know...

KOCH:

This does occur but as far as what, you know, what you have described to me it sounds like you are part way through the adjudicatory system and what you are waiting for now is decision by the board.

HILL:
Yeh, I read in the paper here the other day some of the reasons why, you know,...Is there anything we can do, you know, as claimants.. people trying to get some help?

KOCH:
I think there probably is and ...

HILL:
Who do we go see? I mean, we are here now. We have been to our...

KOCH:
...you are not going to like the answer.

HILL:
Back to the same ones we have already been through.

KOCH:
...(undisc.) The Comp Board has told ... the Division of Workman's Compensation has told us that they are shorthanded. That they don't have the personnel to get the decisions out in a timely fashion required by statute and so it would appear that the only solution to that is for them to have some kind of additional help. Now, the only people that can give them additional help are your legislators. So the people to talk to is your legislators. Tell them that you are being delayed...that...Tell them the situation there... that's the ball park that you fall into in trying to keep up the system generally because if they are not issuing decisions within the statutory time period, then the only ones that can deal with that are the legislators because it becomes a budgetary issue.

HILL:
We have talked to our legislators and a problem....the main problem for us really is the fact that some of the other men, not so much me, I am just waiting...wondering why they haven't paid my doctor bills. My doctor's getting a little concerned and if I can't continue to see him, I am going to be in one heck of a fix. And if they refuse to pay my doctor bills, who is going to pay it because I can't.

KOCH:
I see what you mean.

HILL:
And if the burden becomes dumped back on me, there is no way and the way some of this system is set up...if you are injured, like Don's case. He was under litigation waiting for a decision one way or another. In the meantime, he is starving death. He is not getting no help no where. He can't get no welfare because of the judicial system. Your...it's pending. We can't help you.... Can't get food stamps some of the time and it is just such a runaround, it takes a long time to get any help whatsoever and from what I have seen in a lot cases, that you can't own anything. You are going to loose your home, you are going to loose everything you have got before you can even get any help from anybody. And that is not right. Why should a person have to go clear to the bottom of the barrel? I was really quite surprised that there was not more people here on the contracting unit of the scale complaining even a lot more because of the high rates that they have to pay. It's ridiculous for them. I haven't talked to that many people that have had any kind of a large settlement. I haven't talked to anybody to be down right honest with you. Everybody that I have even had any acquaintance with has gotten the shaft...purely got the shaft.

KOCH:
I can't respond to that because, you know, I don't know who you talked to and probably really wouldn't be relevant anyway.

HILL:
Well, what we would like to know is...

KOCH:
As far as beating the system goes the only advise I can see to give you, and I'm not super bright, but the only thing I can see is to talk to your legislator because from what you described to me your problem falls primarily in the area of the Workman's Comp Board's ability to get out their decision in a timely fashion.

HILL:
How do we get our legislators to...

KOCH:
I don't know and you are not sure just what kind of a decision they are going to give you...

HILL:
I've got a pretty good idea if it's the same pattern of what I have been seeing all along.

KOCH:
I can't speak to that but, you know, get the decision. That's been a problem. Now, they told me that they have had problems with delays. I've seen articles in the newspaper by a gentlemen here that speaks to the kind of delays that they experience....

HILL:
Well, if what we are seeing...

KOCH:
The only way to deal with that...that specific issue, to speed up that state of the system is to have enough people to meet and listen to those tapes and make the decisions and, you know, get the papers out.

HILL:
If what we are seeing...if what we are seeing is even halfway true of what is going on is this the committee that we bring the evidence... (END OF TAPE).

App. (4)
(Ch. 2.B.1)

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

FILED in the Trial Courts
State of Alaska, Fourth District

JUN 15 1979

WAYNE W. WOLFE, Clerk, Trial Courts
By _____ Deputy

MICHAEL BAKER, JR., INC., and ALASKA PACIFIC ASSURANCE its workmen's compensation carrier, Appellant, vs. PATRICK H. JACKSON and ALASKA WORKMEN'S COMPENSATION BOARD, Appellee.	No. 4FA-79-247

D E C I S I O N

This matter comes before the Court upon an appeal from a decision of the Workmen's Compensation Board awarding to the applicant temporary total disability as a result to an injury to his knee. The sole issue presented by this appeal is whether there is any substantial evidence to support the decision of the Board. This Court after considering the memoranda of the respective parties, the medical records and transcript of the proceedings before the Board is convinced that the decision of the Workmen's Compensation Board be affirmed.

Appellants in their brief indicate that there is a dearth of any evidence supporting work connected injury to Jackson's leg and stating that because of the evidence submitted by Dr. Joosse the employers failed to overcome the statutory presumption of work connectiveness. The Court agrees with appellants that the evidence submitted in the form of a letter by Dr. Joosse does overcome the statutory presumption in favor of the plaintiff, however, the Court also finds there is substantial testimony to support the fact that the claimant sustained the burden imposed upon him before the Board. Dr. Montano was very clear in his testimony (TR 15) that there were only four possible explanations for the symptoms suffered

by Mr. Jackson. He then went on to explain that of the four, three have to be completely discounted. The fair import of his testimony (TR 15, 16) is that the first three causes of Mr. Jackson's problems of being non-existent reasonable medical probability would point to the fourth cause that is trauma. He states very clearly on page 16 "that is the only implicating cause that seems to be present that you can attribute this to". The converse of that theorem of course is there are no other causes. On page 17 of the transcript he was asked the following question:

> "Q. Given the types of winter conditions in that area, doing that type of work, could it, within your medical expertise, bring on a problem like this?
> A. The only way I would be able to put it together would be since he had this episode where the knee became very swollen this later essentially changed to appear as a black eye does with a lot of black and blue and yellow and suggested that he had a large hematoma there which means that he had some kind of trauma in the area of the popliteal fossa. This suggests that somehow he contused this artery, and a contusion of an artery will cause a disruption of the intima. . . . If you disrupt this intima you can get an irregular blood flow over this area where the artery is injured, and irregularity to blood flow cause particles from the blood, essentially the blood platelets, to pick up on these, and over a period of time it can enlarge and eventually clot."

The appellant suggests that because the claimant could point to no specific blow or contusion to the knee, the injuries he subsequently suffered are impossible. Dr. Montano does not support such a supposition. On page 21 of the transcript Dr. Montano suggests the cause of the ultimate injury:

> "Q. Is it possible for him that day to have knocked his leg against something and then suffered this later on? Cramps?
>
> A. That would be possible.
>
> Q. Is that what you think happened?
>
> A. Well, I don't know of anything other than what he said he got out of the truck and he may have twisted his foot at that time and that may have been the only episode. That would have been enough [illegible] (emphasis added)

Dr. Montano went on to say:

> "Q. What I am really trying to establish is: That could not have been the result, in your opinion, of something that happened six months before or a year before or something like that?
>
> A. No, I don't think it would be that kind of a time frame. It would have to be something related closely to the time when he had the bleeding to his knee."

Again, on page 24 of the transcript, Dr. Montano indicated that it had to be a trauma (line 5). The fact that the trauma referred to by Dr. Montano must necessarily be a contusion or a blow to the knee is not borne out by the doctor's own testimony. Page 27 of the transcript, he refers to the specific trauma where:

> "A. Yes, he mentioned the episode where, you know, he was riding in a truck and got out and his knee hurt him, and following that he had the swollen knee and was treated by Dr. Kelly."

A reading of the entire transcript of the proceedings and the medical records convinced this Court that although there may have been conflicting evidence in the form of Dr. Joosse's letter concerning the cause of applicant's injuries, neither the Court nor the Board were required to disregard the testimony of Dr. Montano which is sufficient to support the burden of proof required by the applicant.

The findings and decision of the Alaska Workmen's Compensation Board be and the same hereby is AFFIRMED.

DATED at Fairbanks, Alaska, this 15 day of June, 1979.

Gerald J. Van Hoomissen
Superior Court Judge

ALASKA WORKMEN'S COMPENSATION BOARD

P. O. Box 1149 Juneau, Alaska 9981

PATRICK H. JACKSON

Applicant

vs.

MICHAEL BAKER, JR., INC.

Defendant

and

ALASKA PACIFIC ASSURANCE COMPANY

Carrier

DECISION AND ORDER

Case No. 77-03-0559

The claim of applicant for temporary total disability compensation and medical costs was heard in Fairbanks on December 5, 1978. The applicant was present and was represented by Attorney Richard D. Burke. The defendant and carrier were represented by Attorney Randall J. Weddle.

On March 23, 1977, while employed by the defendant, the applicant experienced cramping in his left leg upon taking a couple of steps after he had alighted from the defendant's vehicle. Before the cramping episode the applicant had been performing the duties of a surveyor for the defendant since the first week of March. His duties included strenuous activity bending, kneeling, climbing over objects in sub-zero weather and riding in a crowded vehicle along the pipeline. He could not recall a specific trauma to his leg, but upon going to the camp medic and being flown to Fairbanks to be seen by a doctor, he was found to have a tender, swollen left knee. The knee was aspirated, and his doctors suspected a medial meniscus tear.

Dr. William Montano, vascular and thoracic surgeon, testified that he believed the applicant had a contusion to his leg close to the time he had swelling, internal bleeding, pain in the knee and cramping of the left leg in March 1977. He said a contusion of the artery can cause irregular flow of blood and result in clotting.

Medical records show that applicant had twisted his left knee 14 years earlier. Treatment included the use of a cast for eight weeks, but the applicant claimed that he had no problems from that time until March 23, 1978.

The defendant accepted the incident as an injury arising out of and in the course of employment and paid temporary total disability compensation to the applicant for an eight week period ending May 25, 1977, at a weekly rate of $265.39.

We find that the applicant did experience injury arising out of and in the course of his employment for the defendant on or shortly before March 23, 1977.

We find that injury occurred during the period the applicant was performing active work of kneeling, crawling and getting in and out of vehicles in sub-zero weather for an approximate two week period prior to the onset of the swelling, cramping and pain experienced after alighting from the employer's vehicle on March 23, 1977. Testimony of Dr. Montano was that the applicant, shortly before or at the time, had experienced some kind of trauma that contused the artery in the knee which resulted in internal bleeding subjecting the applicant to pain, cramping, and swelling on March 23, 1977. We find no evidence that the twisting injury to his knee 14 years earlier substantially contributed to the March 1977 knee problems.

Following injury and disablement on March 23, 1977, the applicant was released and he returned to work in late May 1977. He continued to work until laid off June 21, 1977, due to the ending of the pipeline construction project. The applicant was then unemployed until July 11, 1978, when he was able to find work as a surveyor. The applicant testified that for a couple of weeks prior to his return to work in July 1978 he had been having slight cramps in his left leg and that the cramps had been gradually getting worse. He said he was able to work six days before the problems with his leg got so bad that he had to quit work and return to Fairbanks for medical care.

The applicant was seen on July 17, 1978, by James Eales, MYPA, and referred to James Lundquist, M.D. The applicant was diagnosed as having "left saphenous vein thrombophlebitis, acute. Myolgia involving the calf muscles of the left leg." Doctor's notes of July 25, 1978, stated applicant was 33 years old with a history of twisted leg knee 14 years ago that required a cast for 8 weeks but no problem until

March 23, 1977. On March 23 he developed spontaneous swelling of left thigh and calf and discoloration.

On July 26, 1978, a left popliteal artery embolectomy was performed. Notes of August 28, 1978, of Dr. Daniel Davis stated:

> Slowly progressive changes of peripheral vascular insufficiency rather than evidence of recanalization of the popliteal artery occlusion. Suspect that at the onset of this popliteal entrapment syndrome or cystic adventitial necrosis may have been precipitated by the patient's usual vigorous physical activity as a surveyor.

Testimony of Dr. Montano was that after the July 1978 removal of the clot, the applicant was soon complaining of return of symptoms and that further surgery was performed to remove the artery in which the clot had reformed. He said that when a clot reforms, it is then necessary to remove the damaged section, and this was done. He said the applicant was seen by him last month and had not been released for work. He said that the time between trauma in March 1977 and the formation of the clot in July 1978 was a little longer than usual, but the discoloration and swelling in the knee area at the time of the March 1977 onset of cramps and pain was indication the applicant had experienced a contusion of the artery at that time and was the only recent evidence of trauma and cause of the July and September 1978 clotting in the artery. Dr. Montano ruled out other possible causes for applicant's left leg problems which resulted in July 1978 Fogerty thrombectomy and September 1978 popliteal bypass surgery.

We find that the applicant was temporarily totally disabled from July 17, 1978, and that the disability and medical care received from the date was the result of injury on or shortly before March 23, 1977.

We find that the applicant is entitled to $5,383.62 for total disability compensation to be paid by the defendant for the 20 week, 2 day period July 17 through December 5, 1978, at the rate of $265.39 a week, with compensation continuing during the period that the applicant continues to be temporarily totally disabled from the March 23, 1977, injury.

In a letter dated August 24, 1978, the defendant advised the applicant that it would be resisting any payment of benefits for alleged injury on March 23, 1977.

DURING THIS PERIOD SURGERY TWICE WHILE ALLEGEDLY BROKE!

The applicant then retained Attorney Richard Burke to assist him in prosecution of his claim.

We determine that the defendant controverted payment of temporary total disability compensation awarded to the applicant, and that applicant's attorney provided valuable legal services in the prosecution of his claim. After considering the nature, length and complexity of the services performed and the benefits resulting to the applicant, we award fees to applicant's attorney in the amount of $938.36 to be paid by the defendant in addition to the compensation awarded to the applicant. Fees are calculated at 50 percent of the first $1,000 and 10 percent of remaining temporary total disability compensation awarded to the applicant.

ORDER

That the defendant shall pay $5,383.62 to the applicant for temporary total disability compensation for the period July 17 through December 5, 1978, with compensation to continue during the continuance of temporary total disability.

That the defendant shall pay to Attorney Richard Burke $938.36 for attorney fees.

Dated at Juneau, Alaska, this 13th day of January, 1979.

ALASKA WORKMEN'S COMPENSATION BOARD

s/ John Cook
John Cook, Chairman

s/ Catherine C. Ringstad
Catherine C. Ringstad, Member

s/ Jim Robison
Jim Robison, Member

Compensation payable under terms of this decision is due on the 14th day after the date of issue, and penalty of 20 percent will accrue if not paid within 14 days of the due date unless interlocutory injunction staying payment is obtained in Superior Court.

APPEAL PROCEDURES

A compensation order may be appealed through proceedings in the Superior Court brought by a party in interest against the Board and all other parties to the proceedings before the Board, as provided in the Rules of Appellate Procedure of the State of Alaska.

A compensation order becomes effective when filed in the office of the Board, and unless proceedings to appeal it are instituted, it becomes final on the 31st day after it is filed.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of Patrick H. Jackson, applicant; vs. Michael Baker, Jr., Inc., defendant; and Alaska Pacific Assurance Company, insurance carrier; Case No. 77-03-0559; dated and filed in the office of the Alaska Workmen's Compensation Board at Juneau, Alaska, this 24th day of January, 1979.

Elaine Berggren
Secretary

Edmund Orbeck, Commissioner
Department of Labor

November 20, 1979

Jacquelyn L. McClintock, Director
Workmen's Compensation Division
Department of Labor

Suggested response to inquiry of
Sentator Stevens Re: Patrick Jackson
vs. Michael Baker, Jr.

Honorable Ted Stevens
United States Senator
260 Russell Building
Washington, D.C. 20510

Dear Ted:

Re: Patrick H. Jackson vs. Michael Baker, Jr.
D/A 3-23-77 Case No. 77-03-0559

Thank you for your letter of November 8, 1979, regarding Mr. Patrick H. Jackson's claims for benefits from workmen's compensation.

On January 13, 1979, our Board by decision and order, unanimously awarded Mr. Jackson temporary total disability from July 17, 1978, through December 5, 1978, with compensation to continue "during the continuance of temporary total disability." (That type of disability compensation ends when injuries "stabilize", and the worker is either healed,and no longer disabled from work, or is rated as permanently disabled).

The employer and the insurance carrier appealed the Board's decision and order to Superior Court. On June 15, 1979, the court affirmed the Board's decision and order. We have no record of developments in the case after that date. A copy of a letter from Mr. Jackson's attorney to Mr. Jackson on July 5, 1979, quotes the insurance carrier's attorney as stating the carrier was going to appeal the Superior Court's order to the Alaska Supreme Court.

The matter, as far as the Board is concerned, is still in the court system. We have no record of court action involving issuing a judgement, execution order, or the like. The court did not remand the matter to the Board for enforcement, or for any other purpose.

Should the courts determine that compensation due was unpaid when due, a 20 percent penalty would be added to all such amounts and paid to Mr. Jackson. Whether before the Board or the court, Mr. Jackson's attorney's fees would be paid by the defendants should he ultimately prevail.

Very truly yours,

Edmund Orbeck, Commissioner
Department of Labor

P.O. Box 1149
Nome, Alaska 99802

3601 Blossom Lane
Redondo Bch, Calif.
90278

Ans. ④
(Ch. 2.8.2)

Rcvd 9/2/76

Dear Sirs:

I am writting in regards of workman's Compensation payments and Medical Treatment Reasonably necessary for recovery. Date of injury 2-10-75, Date of last compensation payment 4-3-75, Trial work period began 3-31-75, Trial work period ended 4-27-76. During my trial work period I was advised by the physician not to take the next step in treatment until it was absolutely necessary, because of the danger involved. Upon my Request for further treatment on 4-27-76, I was advised at Maynard McDougal Memorial Hospital to see a surgeon - because they were not equipped to give me any further treatment. I have been in contact with a back specialist here in Calif. His name is Dr. Vazquez - he took x-rays on 5-25-76. He said the sooner he could start treatment, the sooner my recovery. I wrote a letter 5-18-76 to the Alaska Workmans

Compensation Board and I have not yet recieved a reply from Alaska Gold Co. Any help or advice would be greatly appreciated.

Truly Yours,

Cary R. Oetberg

August 4, 1976

Mr. Robert A. Baldwin
Division Comptroller
UV Industries, Inc.
Box 640
Nome, AK 99762

Dear Mr. Baldwin:

Re: Cary B. Ortberg vs. UV Industries
D/A 2-10-75 Case No. 75-02-0265

Enclosed is a copy of a letter from Mr. Ortberg, as well as a copy of a May 28, 1976 letter addressed to Mr. Edgar T. Hunter, Manager, Alaska Gold Company. From Mr. Ortberg's letter it appears that he did not receive a reply to Mrs. Wilson's May 28 letter. We shall appreciate your responding directly to Mr. Ortberg with a copy to this office so that we may know what action is being taken.

Also with Mr. Ortberg's copy of this letter we are enclosing two medical report forms and requesting that he have Dr. Vazquez complete one and return it to this office with a copy to your office so that we may know what treatment is being rendered.

Very truly yours,

Earl J. Turner, Deputy Director
Workmen's Compensation Division

EJT/eb

Enclosures

cc: Cary B. Ortberg
2607 Blossom Lane
Redondo Beach, CA 90278

Dear Sir, 8-26-76

This letter is in regards to the difficulty I am suddenly having.

On August 15, 1975 I recieved a letter from Mr. John Cook, stateing that my compensation payments had stopped and that medical treatment necessary would continue to be paid. The compensation payments were stopped because I went back to work, at no time had there been a medical release or authorization of any kind. I seen the doctors in Nome, Alaska continuously from the date of injury, all medical bills & my back brace were paid up until the day that I left Nome, Alaska. As I indicated in

my letter of 7-24-76, I left Nome to see a surgeon as advised by Maynard McDougal Memorial Hospital on my demand to have my back fixed, regardless of the danger involved. I payed the expense to come to California, and now that I am here where they do have equipment to fix my back I cannot get anything done, by reasons known only by Alaska Gold Co.

I am unable to work, my family is on welfare, and I am very disturbed over this whole matter. I had difficulty with Alaska Gold Co. about April of 1975, in regards to a walk-out strike, the labor board had to contact Alaska Gold Co. 3 different times, in

about a 3 months period before I received payment for time off work, where as every other employee was paid promptly.

I can't help but to feel that I am being discriminated against. If there is any help or advice that you can give me to settle this matter as soon as possible, it will be greatly appreciated. We have our home in Nome, and we had plans to return to Nome as soon as my back injury was taken care of.

Very Truly Yours,

Gary R Ortberg

Gary Raymond Ortberg
2607 Blossom Lane
Redondo Bch, Calif. 90278

XXXXXXXXXXX
Pouch XA

CARY R. ORTBERG

Applicant

vs.

U. V. INDUSTRIES

Defendant

and

SELF-INSURED

DECISION AND ORDER

Case No. 75-02-0265

This matter was heard before the Alaska Workmen's Compensation Board in Fairbanks, Alaska, on December 8, 1976. The applicant was present but was not represented by counsel. The defendant was not present, but it was represented by Attorney Dennis E. Cook.

Applicant is seeking compensation for temporary total disability from April 27, 1976, until such time as he is able to return to work. At the time of this hearing he alleged he is disabled from working. He also is seeking reimbursement for medical costs incurred for treatment in California and payment of whatever costs are incurred for future treatment.

On or about November 11, 1974, while employed as a welder by B & R Tug and Barge in Nome, Alaska, applicant was walking out the door of the shop where he was working when he tripped or slipped on a fork extension and injured his back. He was seen by a Doctor Hobbs at the Maynard McDougall Memorial Hospital and was diagnosed as having a low back strain. He was off eight days, then returned to work and had no further problem with his back until about February 10, 1975, at which time he was working for Alaska Gold, which is a part of U. V. Industries. At that time he was off work for about seven weeks and was seen by Dr. Karen O'Neil and Dr. B. Gerard

at the Maynard McDougall Memorial Hospital. The employer, which is self-insured, paid compensation for six weeks plus six days for the period February 11, 1975, to March 30, 1975. Applicant returned to work on March 31, 1975.

When applicant injured his back the second time, he was moving some oxygen cylinders. He said they are heavy, and when he bent over to pick one up, he felt his back crack. Applicant said he continued working with intermittent visits to the doctors at Maynard McDougall Memorial Hospital until April 29, 1976, at which time he decided he should get his back "fixed." The doctors recommended he see an orthopedic specialist, so he went to California and contacted a Dr. Louis R. Vazquez, who said he would treat applicant if payment for the doctor's services was guaranteed. This the employer refused to do. In the interim applicant has been wearing a back brace which had been prescribed earlier. The California doctors are not sure whether his problem is a herniated disc or a pinched nerve.

Having heard the testimony and reviewed the evidence, we now make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Applicant sustained an injury to his back in November, 1974 while he was employed by B & R Tug & Barge. He was off for only eight days and was able to return to work.

2. On February 10, 1975, while employed by U. V. Industries, he sustained further injury to his back while lifting oxygen cylinders. He was unable to return to work until March 31, 1975, and U. V. Industries paid him compensation for this period.

3. Because there was some doubt in the minds of the Board members as to whether applicant's present problems were related to the November or the February incident, we obtained the records from the Maynard McDougall Memorial Hospital. They show applicant was first seen on November 13, 1974, because he hurt his back when he slipped and fell backwards. He was rechecked on November 18, 1974, for low back strain and bursitis of the right shoulder. A marginal note states "patient out collecting wood this a.m. doubt getting much rest." It appears to have been made because appli-

cant was working nights and whoever made the note felt applicant may not have been following the prescribed treatment of rest.

On November 13, 1974, applicant was not seen but requested a work excuse for three days because of a back problem.

On February 10, 1975, the notes show, "Back injury when lifting heavy oxygen tanks this a.m., felt snap in back and acute pain in low back. Less pain now. No radiation into legs. Had similar problem in Nov. '74, resolved c̄ (with) time."

February 12, 1975, phone call. In severe pain. No relief c̄ (with) Talwin or Codeine. Continued bed rest and heat was prescribed.

February 24, 1975, no new findings.

March 20, 1975, physical therapy. Williams flexion exercises were explained. This note appears: ". . . it is not certain that Mr. Ortberg will carry out the program. He stated he would rather do his own weight lifting program."

The next entry is dated July 24, 1975: "Recheck on back injury. Wife and patient concerned about "slipped disc" or whatever. h.o. (history of) back injury 11/74. dx (diagnosis) herniated L4-5 disc intermittent exacerbations, had severe pain 3 days ago, now slightly uncomfortable." There the notes indicate a possible history of drug abuse because they show "states only barbs (barbituates) help his pain."

July 25, 1975, "Fell - tripped over a pipe - Doesn't know what fell on." On this occasion applicant cut his right hand and the wound was sutured.

Nothing further appears until October 23, 1975, when applicant appeared and said he would like a low back brace. Applicant was not examined, but it appears that he was scheduled for an orthopedic clinic which was held on November 13, 1975. He was seen on that day by a Dr. Schriber who suspected a defect at S1 on the left. He prescribed a lumbosacral corset to wear when symptomatic. The doctor also noted that applicant "did a lot of weight lifting in the past and I suspect this may be germaine to his present problem too."

The date is illegible but in April the patient was in again still complaining of low back pain. The notes state, "Has had for 2 years and wants to talk about having something done about it." Also it is stated, "As he is going to California soon recommended he see orthopod there."

April 29, 1976, applicant was seen with low back pain. Dr. B. Gerard in a report on the medical form of the Board related applicant's problem as a "continuation of a problem from an injury of 2-10-75" and stated "This patient should be fully evaluated by an orthopedic specialist. He has been seen repeatedly here with no positive findings. I think the insurance carrier should choose the consultant and refer the patient."

4. Before the applicant left work to go to California he said he talked to his doctor, to his foreman and to a Mr. Hunter. According to him they all knew he was leaving to "get his back fixed," but when he reached California, the employer refused to pay further compensation or pay for medical treatment.

5. The facts indicate to us that applicant's present disability is related to his employment for U. V. Industries. It's true that he had sustained an earlier injury while employed by B & R Tug & Barge, but he was off work for only a short time in comparison to the time lost as a result of the February 10, 1975, incident. In any event, we believe it was the February 10, 1975, incident which caused him to leave work and seek medical help outside Alaska.

We believe he could have obtained adequate medical treatment in Alaska but went to California where he could be with relatives and expenses were expected to be less. Applicant said he still has his home in Nome and expects to return and resume working there if possible.

6. We don't know what specialty Dr. Vazquez may have. If he is an orthopedic physician and/or surgeon, we conclude he should examine applicant and report his findings to the Alaska Workmen's Compensation Board and to the employer's attorney. If he is not, we conclude applicant should be examined by an orthopedic chosen by the applicant and the employer. The cost is to be paid by the employer.

7. The employer shall also pay applicant temporary total disability for the period May 25, 1976, (the day applicant was first examined by Dr. Vazquez) until applicant is no longer disabled or has reached maximum improvement, whichever occurs first.

ORDER

It is so ordered.

Dated at Juneau, Alaska, this 4th day of April, 1977.

ALASKA WORKMEN'S COMPENSATION BOARD

s/ Earl J. Turner
Earl J. Turner, Chairman

s/ Charles Currington
Charles Currington, Member

s/ Wm. B. Woodland
William B. Woodland, Member

Compensation payments, if required to be paid in this decision, are payable within 14 days of its date unless a stay of payment is obtained from Superior Court.

APPEAL PROCEDURES

A compensation order may be appealed through proceedings in the Superior Court brought by a party in interest against the Board and all other parties to the proceedings before the Board, as provided in the Rules of Appellant Procedure of the State of Alaska.

A compensation order becomes effective when filed in the office of the Board, and unless proceedings to appeal it are instituted, it becomes final on the 31st day after it is filed.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of Cary R. Ortberg, applicant; vs. U. V. Industries, defendant; self-insured; Case No. 75-02-0265; dated and filed in the office of the Alaska Workmen's Compensation Board at Juneau, Alaska, this 4th day of April, 1977.

Secretary

September 28, 1977

Mr. Cary Raymond Ortberg
P. O. Box 368 R.C.W.
Chino, California 91710

Dear Mr. Ortberg:

Re: Cary Raymond Ortberg vs. UV Industries
D/A 2-10-75 Case No. 75-02-0265

Following receipt of your September 17, 1977, letter, I called Mr. Dennis E. Cook, the attorney who represented UV Industries, and explained to him that you said you have not received any payment since the employer sent the $4,925 on April 25, 1977.

He was under the impression that payment was being made regularly and was surprised that it was not. He will contact UV Industries and have it resume payment. It should bring the back payments up to date and continue making regular payment until you are no longer disabled. This was the Order of the Board.

Let us know if you do not hear from the employer by October 15, 1977.

Very truly yours,

Earl J. Turner, Deputy Director
Workmen's Compensation Division

EJT/eb

cc: Dennis E. Cook
Merdes, Schalble, Staley & DeLisio
P. O. Box 810
Fairbanks, AK 99707

Chairman, Earl J. Turner
Alaska Workmens compensation Board
Department of labor
P.O. Box 1149
Juneau, Alaska 99802

Cary Raymond Ortberg
B74922
P.O. Box 365
Chino, Calif. 91710

Sept. 17, 1977

Dear Sirs;

This letter is in Regard To Decision and Order CAS No# 75-02-0265.

I have Received compensation for May To Dec. 1976. but have not received as much as a letter in The past 9 months.

My family is in need, and it would be greatly appreciated if some Kind of regular income could be arrange.

Thank you for your Time and consideration.

Very Truly yours,
Cary Raymond Ortberg

STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY
RONALD REAGAN, Governor
DEPARTMENT OF CORRECTIONS
CALIFORNIA INSTITUTION FOR MEN
P. O. BOX 128, CHINO, CALIFORNIA 91710

May 10, 1978

RE: ORTBERG, Gary R.
B-79922

Mr. Dennis E. Cook
P. O. Box 810
Fairbanks, Alaska 99707

Dear Mr. Cook:

Copy of your letter of 5-2-78, to Dr. Dobson has just been received, but the letter to Dr. R. L. Voller of 3-10-78, has never been received.

Mr. Ortberg has refused x-rays requested by Dr. Dobson on three separate occasions. There is no physical therapist at the CIM Hospital. For this, transfer to the Therapy Department in Vacaville would be necessary. He should initiate such a request on his own since his non-compliance with CIM doctor's orders suggest that he would not be responsive to the idea of transfer. Williams' Flexion-Extension exercises were suggested by Dr. Black on 3-29-77, while he was at Soledad. His records fail to show compliance with these exercises.

Sincerely,

Richard L. Voller, M.D.
Chief Medical Officer

RLV:cmt

May 28, 1998

Dear Mrs. John Cook,

My wife has brought your letter to me today, it is my regret that this burden keeps falling back on my self. Dec. 8, 1976 I borrowed the money to fly to Fairbanks for the hearing, When I was asked what did I want, I stated I only wanted my back fixed and my family cared for until I was able to do so, The board said "it will be done". I didn't ask for any other reimbursement or compensation. I don't wish to burden you with all my personal problems, but I think there must be a need to point a few things out to you. I am in prison of my own judgment by getting involved in killing a cow to feed my family, If all had been right as agreed by U.S., I would have either been fixed or receiving compensation, as not to be faced with making a wrong discussion. I have spent many years of hard work, study and schooling to learn my trade, I am yet young with many working years ahead of me. Nov 18, 1977 one of my children, who's mother had died, was adopted because it was allege that I failed to provid support, and I haven't the money to take this though the courts. I still have three children to support and another on it way.

The taxes on my home in Nome, Alaska, has raisen from $166. to $500. F.H.A wants to for close. If I were able to return to my home, where could I possibly find a job in such a small town without any influence from U.V. Industries. Should all the money + work I put in my home, my freedom, the pain + discomfort of my body, my family, be at the cause and mercy of U.V. Industries?

As for the allegations by U.V.I., Dr Voller and Dr Dobson, I don't feel I would have to go into a bunch of constitutional safeguards for you surely know more about that than I. I didn't know that I was going to be in need to give evidence of following the Williams flexion exercises, but I have asked five of the 120 who live in the same dorm if they would give their signatures —

Ralph Edward Bishop # B-6558
Francisco Hernandez # B-71860
Robert Gower B-89787
Johnny Lord B-57676-A
Fredrich Gray B-65666

If more signatures are needed or certification, please let me know.

As not submitting to a full examination,

the order of the board was that I should be examined by an orthopidic chosen by the applicant and the employer. I have seen many doctors but it has been the non acceptance of the order by U.V.I, that I've had such difficulties, this non acceptance can be seen merely by the question mark on each compensation check, if they felt the deficency judgment not right, they have the attorneys & resources, where I have not.

I havn't refused an examination by any doctors, I was given a orthopidic examination by Dr. Black, and sign papers by Lacey, Shellooe & Meyenberg that these reports would be sent to Dr. Lieberman.

I was also given a examination by Dr. Dobson and I gave no refusal for him to do anything. I did sign a refusal for a prison inmate to perform X rays on me, and I would not sign a blank form without first putting down writting on it. My wife had also called Mr. Dennis Cook in regards to the some how change of Dr. Dobson in place of Dr. Lieberman, and explained what was happening, Mr. Dennis Cook stated him self that things didnt sound right. I have done some shamful things in my life time but none as disgraceful

as having to show to you my sorrowful heart and privations, pleask. forgive me. I am to be released July 4th, tell me Mr. Cook, what am I subpost to do?

Sincerely Yours,
Gary R. Ortberg

June 5, 1978

Mr. Cary R. Ortberg
B79922 4049
P. O. Box 600
Chino, CA 91710

Dear Mr. Ortberg:

Re: Cary Ortberg vs. UV Industries
D/A 3-10-75 Case No. 75-02-0265

A copy of your May 28, 1978, letter is being forwarded to Dennis Cook, the attorney representing the employer in your worker's compensation claim.

I have attached a copy of Dr. Dobson's May 11, 1978, letter to Attorney Cook which states, ". . . X-rays are necessary, in a proper orthopaedic evaluation of the type you are requesting."

The Alaska Workmen's Compensation Act at AS 23.30.095(e) authorizes the employer to have the employee examined and,

> ". . . If an employee refuses to submit himself to any examination provided for herein, his rights to compensation shall be suspended until the obstruction or refusal ceases. . . ."

Under the circumstances of your refusal to allow x-rays believed necessary to examination by Dr. Dobson, I believe, under the law, that the employer is justified in stopping compensation until you do submit to x-rays.

If you believe such a provision in the Alaska law violates your constitutional safeguards, you will need to first bring your claim before the Alaska Workmen's Compensation Board for hearing. If you disagree with the Board's order, then you could submit the matter for review in the courts.

Very truly yours,

John Cook, Director
Workmen's Compensation Division

JC/eb
Attachment
cc: Dennis Cook
Merdes, Schaible, Staley & DeLisio
P. O. Box 810
Fairbanks, AK 99707

June 12, 1978

Dear Mr Cook,

I have received your letter + the attached letter of Dr Dobson's. To begain with Dr Dobsons letter dis not state that I refused for him or any of his staff or for any one employed under his care and guidance to take x-rays of me. The little part that states: (and also when he was here in my office) neither says I refused x-rays by him or persons employed by him. I do intend to deal with Dr Dobsons and his ploy with words, in a law-suit along with the priron medical staffs, upond my release.

I do not believe Alaska workmens compensation act at AS 23.30.095(c) to violate my constitutional safeguards, nor do I believe it to have been written that I would have to submit myself to dangers/or circumstance of just any John Doe, but to a Medical Doctor.

I do believe the stopping of compensation with out first providing some kind of proceeding and repressentation, is in violation of my constitutional rights and in favoritism to the Employer.

I wish for this matter to be dealt with as fairly and as soon as possible.

Respectfuly Smitted,
Gary R. Ortberg

June 23, 1978

Mr. Cary R. Ortberg
B 799224049
P. O. Box 600
Chino, CA 91710

Dear Mr. Ortberg:

Re: Cary Ortberg vs. UV Industries
D/A 2-10-75 Case No. 75-02-0265

This will acknowledge receipt of your June 12, 1978, letter. Your worker's compensation claim will be scheduled for hearing before the Alaska Workmen's Compensation Board in early August, 1978.

If you will not be able to attend, you should arrange to have your testimony and that of your treating physician taken by deposition. You should also have legal assistance in preparation of your claim for hearing and, if arranged and paid for by your former employer, submit to an examination by its choice of physician.

Provided you are successful in the prosecution of your claim, the Board would direct UV Industries to pay costs and your attorney fees.

Very truly yours,

John Cook, Director
Workmen's Compensation Division

JC/eb

cc: Dennis E. Cook
Merdes, Schaible, Staley & DeLisio
P. O. Box 810
Fairbanks, AK 99707

WORKERS COMP

APP. ④

(C4.2.B.3.)

1820 Union Street
Apt. 145
San Francisco, Ca. 94123

May 25, 1979

Representative Brian Rogers
Pouch V
Juneau, Alaska 99811

Dear Representative Rogers:

I have received a copy of your letter to Diane Black regarding legal questions concerning the Alaska Workman's Compensation procedures weighted heavily toward accomodating only the insurance carrier, Alaska Pacific Assurance Company.

As one of the injured pipeline workers affected by this, I have retained excellent legal counsel here in the "lower 48", and it does appear at this writing that also certain doctors have a record of inaccurate diagnoses in cases concerning pipeline workers.

As Dianne will testify, at a meeting of people treated in Alaska, certain doctors repeatedly made rather serious diagnostic "errors".

In my case the doctors were:Perry Mead and Edwin Lindig of Fairbanks Clinic, and Declan Nolan and George Lyon of the Anchorage Fracture and Orthopedic Clinic, Anchorage, Alaska.

According,I filed a complaint in Federal Court, San Francisco for damages resulting from medical malpractice by the above doctors, and due to the facts that have materialized from the routine investigation done by my attorney's investigators, feel that you would benefit from including treating doctors in your investigation.

Since we will be serving these doctors shortly and will have a lenthy litigation, I am not at liberty to disclose information that I have at present regarding these doctors.

However, the Alaska Workman's Compensation Board knows, full well, and has documentation in the form of X-rays, bone scan and testimony, that I was treated and released by my Alaskan doctors for psychosomatic back problens and psychomatic malingering when, in fact my back was fractured and I had a ruptured disc in my neck. I now have advancing spinal arthritis, due to both the injury and the very lenghty delay in treatment. Most unfortunately this delay was caused by the interference of the Workaman's Compensation Board and Alaska Pacific refusing to pay treating doctors outside of Alaska and ignoring their diagnoses in favor of the doctors they "knew" in Alaska.

I will, of course by filing some things in the future to reverse the Workmans Compensation action in my case and will, if you like advise you the results of same, as well as the malpractice

litigation.

I have had some contact with the media here in California and there is at present, some interest in following my litigation by the Los Angeles Times, since they are so familiar with the Trans Alaska Pipeline politics in the past and are aware that Alaska will be good copy in the near future due to the "gas shortage" and subsequent Alaska/Canada gasline.

I do wish you and the others who may be involved in any investigation luck and you are free to review the file in my case if you feel it will help you. It's pretty cut and dried and well documented.

Sincerely,

Lois Salisbury

Lois Salisbury

Sent thank you 6/29

BR

ANCHORAGE FRACTURE AND ORTHOPEDIC CLINIC
A PROFESSIONAL CORPORATION
3546 LATOUCHE STREET
ANCHORAGE, ALASKA 99504

WILLIAM G. EDWARDS, M.D.
Orthopaedic Surgery and
Surgery of the Hand

THOMAS E. KIESTER, M.D.
Orthopaedic Surgery

GEORGE B. WICHMAN, M.D.
Orthopaedic Surgery

DECLAN R. NOLAN, M.D.
Orthopaedic Surgery

GEORGE A. LYON, M.D.
Neurological Surgery

TELEPHONE 279-9522

December 15, 1977

Rod Sisson, Esq.
ABBOTT, LYNCH, FARNEY, RODEY
8th Floor - Financial Plaza
601 W. Fifth Avenue
Anchorage, Alaska 99501

RE: SALISBURY, Lois
OUR FILE: 5-42972
YOUR FILE: 4115

Dear Mr. Sisson,

This is to acknowledge receipt of your letters of October 18th and November 17th. There is no medical problem in responding to your request for clarification of my office notes concerning your client, Lois Salisbury; your first request was frankly ignored because I felt that any response might conceivably be prejudicial to the interest of your client.

May I note that the first paragraph of my April 22nd 1977 office notes describe the patient's complaints and that the second paragraph describe a limited neurologic examination which was devoid of objective abnormality. The third paragraph describes x-ray findings in which there is objective abnormality compatible with, but not confirmatory of, her complaints. The fourth paragraph defined my opinion as to the presumed organic basis of her complaints.

On May 18th this patient was re-evaluated and her failure to pursue an outpatient physiotherapy program which an overwhelming majority of patients with cervical spine problems are able to carry out while working or traveling suggested that there might be some element of secondary gain, be it unconscious or conscious, in her ongoing disability. Inasmuch as my notes are office notes, I

frequently use the phrase "motivational factors" to alert myself or other physicians in this Clinic that should the patient again present for treatment, psychometrics might be appropriate in the early stage in any ongoing treatment. Malingering and a host of other problems including such simple things as failure to fit group norms in working situations is often important in the clinical management of patients, since shortening of disability is a goal in medical treatment.

Please let me know if I can give you any further information.

Very truly yours,

George A. Lyon, M.D.

GAL:bjm

Tel. 899-4671

Reg. No. _____

M. CLAY VAUGHAN, M.D.

Orthopaedic and Hand Surgery

THE WALTHAM MEDICAL OFFICE BUILDING
20 Hope Avenue – Suite 309
Waltham, Mass. 02154

CHARLES RIVER MEDICAL CENTER
25 Walnut Street
Wellesley Hills, Mass. 02181

January 27, 1978

Ms. Shirley Tulk
Claims Department/Boise Regional Office
Alaska Pacific Assurance Company
P. O. Box 5568
Boise, Idaho 83705

Re: Lois Salisbury
46 Gloucester Street
Boston, MA 02115

Dear Ms. Tulk:

Miss Lois Salisbury, was seen in the office on November 3, 1977 with a one year history of an injury to her low back, sacrum, and neck after slipping on the ice and falling down some stairs. She has undergone physical therapy and various medications but still complains of pain at the base of her spine while sitting, neck spasm, right scapula pain, and rare numbness in the right arm.

On physical examination, she had normal reflexes, motor power, and sensation. She had tenderness directly over the lower sacrum in the midline and some mild spasm over the right sacroiliac joint. She had tenderness over C5-7 in her neck, and compression on the skull produces pain in the mid cervical region. She also had pain on maximum rotation and forward flexion of the cervical spine which caused radiation into the right medial scapula region. X-rays showed some early arthritic changes between C5-6 and a question of resorption of bone over the body of the fourth sacral segment.

My impression is that Miss Salisbury sustained a ruptured disc between C5-6 in her cervical spine and also a fracture of the fourth sacral segment with persistent pain secondary to bone resorption and swelling.

I would recommend trying conservative measures including an inflatable donut while sitting and various anti-inflammatory agents as needed. She may require further cervical traction if arm symptoms increase or persist. I would expect permanent, but intermittent, disability from her cervical spine injury.

Very truly yours,

M. Clay Vaughan

M. Clay Vaughan, M.D.

MCV/smg

LAW OFFICES

Abbott, Lynch, Farney & Rodey

A PROFESSIONAL CORPORATION

8TH FLOOR

THE FINANCIAL PLAZA

601 WEST FIFTH AVENUE

ANCHORAGE, ALASKA 99501

TELEPHONE
907/276-3222

JOHN W. ABBOTT
TIMOTHY M. LYNCH
BRIAN J. FARNEY
PATRICK M. RODEY
PETER J. CROSBY
ROD SISSON
NOEL McMURTRAY
LEE DANFORTH
ERIC L. HANSON
DIANE F. VALLENTINE

April 7, 1978

Ms. Shirley Tulk
Claims Department/Boise Regional Office
Alaska Pacific Assurance Company
P. O. Box 5568
Boise, Idaho 83705

Re: Lois Salisbury
Our File No. 0305.4115 (Workmen's Compensation)

Dear Ms. Tulk:

I have just received a copy of Dr. Vaughn's medical report of January 27, 1978. It is quite obvious from this report that he has made objective findings concerning Ms. Salisbury's condition, to-wit: a ruptured disc, bone resorption, and early arthritic changes in the area of C5-6.

In view of this report, it would seem that an appropriate action at this time would be to reinstate Ms. Salisbury's workmen's compensation. Please advise of your response at your earliest convenience so that I can know whether to set this case on for the June round of hearings in Anchorage.

Very truly yours,

ABBOTT, LYNCH, FARNEY & RODEY

Rod Sisson

RS/ss
cc: Lois Salisbury

BEFORE THE ALASKA WORKMEN'S COMPENSATION BOARD

JUNEAU, ALASKA

EMPLOYER: Locher Cook Inlet, Box #60228, Fairbanks, Alaska 99706

EMPLOYEE: Lois J. Salisbury, 525 Amherst, Nashua, New Hampshire 03060

AGE: 27 OCCUPATION: Laborer

INSURER: Alaska Pacific Assurance Company, Box #5568, Boise, Idaho 83705

STIPULATION FOR COMPROMISE SETTLEMENT

It is hereby stipulated and agreed by and between the parties hereto:

1) that on or about September 3, 1976, the above named employee, while in the employment of the above named employer, sustained an accidental injury arising out of and in the course of her employment, and said accidental injury resulted in injury to the employee.

2) that both the employer and employee were operating under and subject to the provisions of the Alaska Workmen's Compensation Law.

3) that employer's liability was insured by Alaska Pacific Assurance Company.

4) Has employee returned to work? Yes_____ No__X__. If yes, when.

5) that temporary total compensation has been paid employee in the amount of $4,161.19 to cover 16 weeks _____ days.

6) that permanent partial/permanent total compensation has been paid employee in the amount of $ -0-.

7) that employer and insurer have paid medical expense in the amount of $1,990.31.

8) that there is a dispute between the employer and employee as to compensability of continuing medical treatment and period of disability as well as actual compensation rate.

a) position of employer and the medical or factual support of same: Medical release has been given by numerous physicians. Current medical reports indicate probable psychological problems unrelated to the industrial injury of 9/3/76. Wage data nor substantiation of 27 consecutive week employment have been submitted to allow proper computation of compensation rate.

b) position of employee: Believes continuing disability and medical treatment to be result of injury of 9/3/76.

9) that because of said dispute it is agree by said parties to enter into a compromise lump sum settlement under AS 23-30-005 et seq. as amended for

the payment of a lump sum of $4,000.00

which in addition to the amount heretofore paid of $4,161.19

would make a total payment of compensation of $8,161.19

This settlement is based upon an approximate disability of 0%. Full sum to be forwarded upon receipt of approval by Alaska Workmen's Compensation Board.

10) This settlement is not a waiver of any future medical expenses reasonably and necessarily incurred and related to and arising out of the accident and injury referred to herein.

Lois Salisbury

EMPLOYEE

EMPLOYEE

LOIS J. SALISBURY, the employee herein, appears in person and being duly sworn by the undersigned Board, states that she understands that by entering into this settlement she is forever closing out her claim under the Alaska Workmen's Compensation Law, that she understands that she will receive no further compensation by reason of this accident; that she understands that she has a right to a hearing of her claim and that as a result of such hearing she might receive more money or less money than is provided by settlement; that she is asking the members of the Board to approve this settlement. Employee further asks the Board to allow her attorney statutory fees as set forth under Sec. 23.30.145 regarding any amounts recovered by this settlement.

Lois Salisbury

EMPLOYEE

CLAIMANT'S ATTORNEY

As attorney for employee, I have fully advised my client of her rights under the Alaska Workmen's Compensation Law and recommend approval of this settlement. My fee in this matter is as set forth by Sec. 23.30.145, to be paid by Miss Salisbury, in the amount of $550.00.

ATTORNEY FOR EMPLOYEE

AUTHORIZED REPRESENTATIVE FOR EMPLOYER AND INSURER

On behalf of the employer and insurer, I recommend this settlement and ask the Workmen's Compensation Board to approve same.

RECEIVED
JUN - 9 1978
Alaska Workmen's
Compensation Board

REPRESENTATIVE FOR EMPLOYER AND INSURER

APPROVAL OF SETTLEMENT

Approved by the Alaska Workmen's Compensation Board this 2nd day of June, 1978 at Juneau, Alaska.

CHAIRMAN

MEMBER

MEMBER

CHARLES RIVER MEDICAL CENTER

JOHN C. ATHANS, M.D., F.A.C.S.
SURGERY

July 5, 1978

Atty. Rod Sisson
601 West 5th Avenue
Anchorage, Alaska 99301

Re: Lois Salisbury
46 Gloucester Street
Boston, Mass. 02115

Dear Mr. Sisson:

Date of injury: 9-3-76
Employer: Locher-Cook Inlet

This is a medical report on Ms. Salisbury, age 28, who stated that at 7AM on the date of injury she slipped on icy stairs at work and fell injuring her neck and back.

On examination she complained of pain at the base of her spine, upper and lower back, right scapula, and numbness in right arm.

Physical examination showed B.P. 130/100, T--99°, Wt. 109 1/2. Heart and lungs examination was normal. There was tenderness over the lower neck area, right scapula. Compression of the skull produces pain in the neck and down the right arm. The deep tendon reflexes were hyperactive on the right upper extremity. There was limitation of flexon and lateral bending to 20° in the lumbar area due to muscle spasm and tenderness. Limitation to 10° in flexion and extension in the neck with muscle spasm and tenderness limiting rotation.

X-Ray studies showed degenerative disc disease with osteoarthritis of the cervical spine. The right shoulder, dorsal and lumbosacral spine showed no fractures. The bone scan showed a possible lesion in the right scapula area.

Orthopedic consultation was made with Dr. Vaughan who felt that she had a ruptured disc between C-5-6 and a fracture of the fourth spinal segment.

Treatment included medication for control of pain, physical therapy, cervical traction which she should continue because of her permanent but intermittent disability from her cervical spine.

Sincerely yours,

John C. Athans, M.D.

JCA:hga
c.c. Lois Salisbury

25 WALNUT STREET, WELLESLEY HILLS, MASSACHUSETTS 02181 • (617) 235-8600

October 11, 1978
1820 Union Street
Ste. 145
San Francisco, Ca. 94123

Alaska Pacific Insurance Co.
Box 5568
Boise, Idaho 83705

Att: Ms. Shirley Tulk

Re: Lois Salisbury vs. Locher Cook Inlet
D/A 9-3-76 Case # 76-09-0922

Dear Ms. Tulk:

On June 21, 1978 I received notification that the compromise and release signed, had been approved by the Alaska Workman's Compensation Board. This included medical payment due, past, present and future pertaining to treatment related to my accident of 9/3/76..

To date you have paid only one non Alaskan doctor.

On June 25, I sent you a list of all monies owed. All doctors have sent you bills and reports.

Please advise me why payment has not been made directly to my doctors and why I have not been beimpursed my payments to same.

Thank you.

Lois Salisbury

Lois Salisbury

cc: Workman's Compensation Board
Dept. of Labor
P.O. Box 1149
Juneau, Ak. 99811
John P. Cook, Chairman

RECEIVED
DEC 5 19[illegible]

RECEIVED
OCT 23 1978
ALASKA PACIFIC
BOISE

78 NOV 7 A8:40
INDUSTRIAL COMMISSION
RECEIVED

Alaska Pacific Assurance Company

P.O. BOX 5568
BOISE, IDAHO 83705

November 1, 1978

Lois Salisbury
1820 Union St.
Suite 145
San Francisco, CA 94123

RE: Injury of 9/3/76

Dear Miss Salisbury:

May we take this opportunity to acknowledge your correspondence of October 11, 1978?

On July 19, 1978, our benefit check in the amount of $35.00 was forwarded to Dr. M. Clay Vaughan. Payment of $225.00 was forwarded to Dr. John C. Athans on September 14, 1978. As of this date, Dr. Alfred D. Weiss has failed to respond to our request for medical reports. Without these, our hands are tied as far as issuance of any benefit payment. We have written to Dr. Weiss on August 5 and October 6, 1977, and July 13, 1978. Numerous telephone contacts with his office have also been made for the express purpose of requesting the necessary medical data. If you are able to assist in supplying this necessary information to our office, proper consideration will be given the billing.

In reviewing the file, we find no indication of receipt of correspondence dated June 25, 1978. Should the above not provide a complete picture of the medical facilities with whom you have consulted, please do feel free to forward the names and address of those facilities to our office. We will then request the necessary reports and process the charges.

Sincerely,

ALASKA PACIFIC ASSURANCE COMPANY

Shirley Tulk
Claims Dept./Boise Reg. Ofc.

ST/bms

cc: Alaska Workmen's Compensation Board

STATE OF ALASKA

DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION DIVISION

JAY S. HAMMOND, GOVERNOR

650 W. INTERNATIONAL AIRPORT RD.
SUITE 100
ANCHORAGE, AK 99502

December 12, 1979

Mr. George L. Coon
SRC Box 8338
Palmer, Alaska 99645

Dear Mr. Coon:

Your recent letter to the State Director of Insurance in Juneau and a copy of their response to you on November 29, were received in Anchorage today, December 11.

We will not respond to the first two complaints as Donald P. Koch of the Division of Insurance has done so. In regards to your complaint wherein you have stated:

> "I have since learned Workmen's Compensation under-rated me on my disability checks and I am still waiting to go before the board."

I would appreciate it if you could be more specific about just exactly what you mean. Do you mean that your temporary total disability compensation checks that were paid to you from the date of the accident until you became stabilized were not in the correct amount or do you mean that your permanent partial disability for the loss of the leg was underpaid? If it is more convenient than writing, please call me in Anchorage at 276-3566, and I will do my best to resolve the problem.

Very truly yours,

Benny Joy

Benny Joy
Workmen's Compensation Board
WC Officer III
Anchorage

cc: Thomas F. Keever, Esq.
515 Seventh Avenue, Suite 340
Borealis Building
Fairbanks, AK 99701

Charles P. Flynn, Esq.
810 N Street
Anchorage, AK 99501

-G19LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF VETERANS' AFFAIRS

POUCH DA
JUNEAU, ALASKA 99811

November 29, 1979

Mr. George L. Coon
SRC Box 8338
Palmer, Alaska 99645

Dear Mr. Coon:

Re: Workmen's Compensation Insurance Complaint

Thank you for your letter received in this office on November 15, 1979.

We have reviewed the contents of your complaint and note that the Division of Insurance does not have jurisdiction in the issues you have described at this point in time.

The complaint that you have with your attorney is not one over which we have jurisdiction. Such complaints would have to be filed with the Alaska Bar Association in Anchorage. We would recommend that you consult an Anchorage directory for an address.

The complaint that you have concerning the union is one that we are at a loss as to provide direction. Short of suggesting that you contact an attorney for advice as where to turn, we are unaware of an agency that would deal with that type of complaint. It may be advisable for you to again contact the unions involved and request a copy of the benefits that would be provided.

Finally, the complaint that you have discussed concerning your workmen's compensation benefit is one which should be brought before the Alaska Workmen's Compensation Board if, indeed, there is a difficulty with the type and amount of coverage with which you have been provided. If you have any questions concerning that area you should contact Mr. Paul Troeh of the Alaska Division of Workmen's Compensation, Box 1149, Juneau, Alaska 99811. In the meantime, we will provide Mr. Troeh with a copy of your correspondence so that he may review the issues as you see them thus far. We thank you for bringing this complaint to our attention.

Very truly yours,

Donald P. Koch
Chief of Market Surveillance

DPK/slJ2

08-H4LH

3300 PROVIDENCE DRIVE
ANCHORAGE, ALASKA 99504

ardiology

Telephone
(907) 279-8577

mes A. Baldauf M.D.
eorge S. Rhyneer M.D.
co B. Bustad M.D.

Internal Medicine
Gilbert P. Blankinship M.D.

January 26, 1979

Elaine McNamee
Alaska Pacific Assurance Co.
4041 B. Street
Anchorage, Alaska 99503

RE: COON, George L.
DI: 6/9/76

Dear Miss McNamee:

This patient has undergone further cardiac testing including cardiac catheterization on 1/5/79 which does a great deal to clarify his chest pain and cardiac status. His ventricular pressures were normal as were his coronary arteries. He subsequently stopped all medications with marked improvement in all symptoms. He did have borderline left ventricular hypertrophy and minimal ventricular dyskinesis, but no other abnormality was noted.

With this information, I wish to revise my opinions previously stated in letters of May 9, 1978 and July 18, 1978 regarding the relationship of Mr. Coon's apparent heart disease as related to his injury. Without signs of failure currently and with normal coronary anatomy, it would seem the most likely explanation for his appearance of CHF and chest pain would be a reaction to the leg injury or treatment of same.

In summary, I now feel that his accident certainly aggravated his cardiac condition, and except for his borderline hypertension, was directly or indirectly responsible for the chest pain and failure noted.

If you have further questions or I can be of additional assistance, please contact me.

Sincerely,

Leo B. Bustad, M.D.

jl

cc: George L. Coon

Internal Medicine Associates

3500 LaTouche Street
Suite 310
Anchorage, Alaska 99504
Phone: (907) 274-5550

September 27,1978

Richard F. Buchanan, M.D.
Liver & Digestive Diseases

John F. Selden, M.D.
Nephrology

Paul L. Stear, M.D.
Internal Medicine & Infectious Diseases

George L. Stewart, M.D.
Pulmonary Diseases

James B. Watson, M.D.
Liver & Digestive Diseases

Thomas C. Wood, M.D.
Cardiovascular Diseases & Nephrology

Mr. Charlie Williamson
District Supervisor
Disability Determination Unit
338 Denali Street
830 MacKay Building
Anchorage,Alaska 99501

RE: George Coon
509-24-8653

Dear Mr. Williamson:

Mr. Coon underwent his disability evaluation September 6,1978. He had previously undergone a right below knee amputation following a crush injury of his right leg in 1976. Over approximately a sixteen month period he,in addition, had developed exertional chest pain which had not been differentiated between a cardiomyopathy or angina pectoris. He had medical documentation of associated congestive heart failure.

On medical evaluation he appeared as a straightforward individual who had tried to return to work,but had been unable to because of his impaired exercise tolerance and disability associated with his amputation. I have included a copy of the complete medical history and physical examination.

His chest x-ray,SMAC-24,CBC and urinalysis were normal. His resting electrocardiogram showed non-specific ST abnormality compatible with digitalis effect,however,exercise tolerance testing showed marked ischemic ST segment depression,T-wave inversion and was accompanied by exertional chest pain.

In my opinion, Mr. Coon is totally disabled because of his angina pectoris secondary to coronary artery disease. If he is found to have a surgically treatable lesion, he could be re-evaluated for disability following coronary artery surgery and expected amelioration of his angina pectoris. It is my opinion,however, that he will remain totally disabled unless surgical intervention is possible.

Please write if I may be of further assistance.

Sincerely yours,

Thomas C. Wood,M.D.

TCW/pw

Enclosures

PULMONARY DISEASES

BUFF B. BURTIS, M.D.
3730 RHONE CIRCLE
SUITE 102
ANCHORAGE, ALASKA 99504
(907) 276-7414

INTERNAL MEDICINE

July 27, 1979

Mr. George Coon
St. Rt. C Box 38
Palmer, Alaska 99645

Dear Mr. Coon:

You have asked for my opinion about the percentage of disability you have related to your injury and associated illnesses that you have experienced since 1976.

Because of the hypertension, side effects of medication you will experience while on hypertensive medication, the chronic chest pain which has persisted because of your abnormal gait, and because of the partial amputation of your right lower extremity, I feel that the level of your disability should be at least 50%.

A level of 50% implies that you are able to be gainfully employed to a degree. However, because of your handicaps I doubt that you will ever have the earning power that you enjoyed prior to your injury. Furthermore, in my opinion, you would not be seen as a good employment risk by any future employer. Therefore, your best chances of providing yourself and family with an income is to be self employed. This further limits your opportunities and under most circumstances will require a great deal more effort than would be otherwise required to earn a living.

I hope this information will be of some value.

Cordially,

Buff B. Burtis, M.D.

BBB/eif

ALASKA WORKMEN'S COMPENSATION BOARD

P. O. Box 1149

Juneau, Alaska
99801

GEORGE L. COON
Applicant

vs.

WEAVER BROTHERS, INC.
Defendant

and

ALASKA PACIFIC ASSURANCE COMPANY
Carrier

PRELIMINARY NOTICE OF
DECISION AND ORDER
Case No. 76-06-0325

TO: George L. Coon, SR C, Box 38, Palmer, AK. 99645
Thomas F. Keever, Esq., 515 7th Ave., Suite 340, Fairbanks, AK. 99701
Weaver Brothers, Inc. 1048 Whitney Road, Anchorage, AK. 99503
Alaska Pacific Assurance Company, 4041 B Street, Anchorage, AK. 99503
Charles P. Flynn, Esq., Burr, Pease & Kurtz, 810 N St., Anchorage, AK. 99501

Following the hearing of this matter before the Alaska Workmen's Compensation Board in Anchorage, Alaska on July 17, 1979, it is the decision of the Board that the claim of the applicant be adjudicated and resolved as follows:

The issue of permanent partial disability was withdrawn as an issue by the applicant's attorney leaving medical costs and a new evaluation as the remaining issues for the Board to decide on.

Charles P. Flynn, attorney for the defendant, agreed to pay the following medical bills at the time of hearing: (1) Dr. Buff B. Burtis $598.50, (2) Dr. Leo B. Bustad $1,179.00, (3) Prescriptions amount to $222.71.

The applicant's request that the carrier arrange for another evaluation is denied and dismissed.

ALASKA DEPARTMENT OF LABOR
WORKMEN'S COMPENSATION BOARD
P. O. BOX 1149, JUNEAU, ALASKA 99811

GEORGE L. COON
Employee

WEAVER BROTHERS
Employer

Alaska Pacific Assurance Co.
Insurance Carrier

STATEMENT OF READINESS TO PROCEED

Case No. _____

INSTRUCTIONS:

1. This statement must be completed and filed before any case will be set for hearing.
2. Applicant should plan to be present or represented by an attorney authorized to practice in the State of Alaska before requesting a hearing before the Board.
3. Continuances are not favored and none will be granted after the filing of this statement without a clear and timely showing of good cause.

THE (_X_ Employee) (___ Employer) (___ Insurance Carrier) (___ Physician)

requests that this case be set for hearing in

_X_ Anchorage ___ Sitka ___ Ketchikan ___ Fairbanks ___ Juneau

Complete only one of the following paragraphs indicating your desire for pre-hearing or regular hearing.

___ Pre-hearing is requested to frame issues, record stipulations, join necessary parties, (or) _____

_X_ Regular hearing is requested. The principal issues are:

___ Temporary total disability
___ Temporary partial disability
_X_ Permanent partial disability
___ Permanent total disability
___ Compensation rate
_X_ Medical costs
___ Other _____

Employee ___ is (or) _X_ is not presently receiving compensation payments.

I expect to present 4 witnesses, including 3 medical witnesses, and estimate the time required for the hearing will be 180 minutes. Names and addresses of witnesses are:

George Coon, SR C, Box 38, Palmer, Alaska 99645; J. Paul Dittrich, M.D. 3300 Providence Drive, No. 109, Anchorage, Alaska; Leo B. Bustad, M.D., 3300 Providence Drive, Anchorage, Alaska; Buff B. Burtis, M.D., 3730 Rhone Circle, Anchorage, Alaska.

All medical reports available have been obtained and filed with the Workmen's Compensation Board and opposing sides as required by Board Rules of Practice and Procedure. I believe that prior counsel for Mr. Coon submitted the medical records; if not, I have them and will submit upon notice. _X_ Yes ___ No

Name of individual submitting this form:
(Print or type) Thomas F. Keever

Signature Thomas F. Keever

Mailing address 515 7th Ave. Suite 340, Fairbanks, Alaska Zip Code 99701

Phone (907) 456-8556 Date 4/10/79

Attorney's name and address: Thomas F. Keever
515 7th Ave., Suite 340
Fairbanks, Alaska 99701

ADL 143

George Coon
SRC Box 8338
Palmer, Ak 99645

Mr. Richard Fineberg,

This letter is in regards to an Articule you wrote in Anchorage Daily News, about the problems, people are having dealing with Workman's Compensation Insurance.

Here is what I, myself have incountered with workmans Compensation Insurance after a job related accident, of June 9, 1976.

In this accident I received what was termed as a compound ~~fract~~ fractor of the right Tibula - lower section - below my knee - was crushed and held only by a piece of skin.

This lower section was reattached during surgey, but after two years of infection and numerouse set backs, my leg was amputed on March 3, 1978.

Here are afew of the run arounds I went through. First off workmans Compensation Insurance cut me off of disability payments shortly before my amputation. They were reissued after hassling with their Adjustor.

Due to the long duration of infection in my blood stream, I started having heart problems which were diagnosed as congestive heart failure.

Because of this diagnoseon of congestive heart failure, I went to Workman's Compensation Insurmce, asking them to pay for these now accumulated hospital and Dr. bills, since my leg was the cause of now heart problem.

They're Adjustor would not recognize the two being related and refused to pay the bills.

I then contacted an Attorney to have him get Workmans Compensation Insurance to pay for these bills, that I was having to pay, cause I knew my leg had caused this congestive heart failure.

At this time I had letters from three Drs, All which stated my infected leg was definitly the cause of my heart trouble.

One Dr. Dr Bustad, who worked for Workmans Compensation Insurance, examined me twice. The first time he stated there was no connection, but when I continued to have heart failures he re examined me, And wrote to me, also to the Adjustor, that he reversed his decision, that my leg was definitly the cause of my congestive heart failures.

All these letters and reports, I personally hand carried to the Attorney. After several months, and numerouse phone calls to his office, he turned my case over to another Attorney in his firm.

We had A few meetings in which I told him to put me before the board to get them to make Workmans Compensation Insurance to not only pick up the now highly Dr. & hospital bills, but I felt I was now Also intitled to A disability rating on my heart.

He stated, he would only be able to get them to pick up the bills.

I have since learned Workmans Comp. under rated me on my disability checks, And I am still waiting to go before the board.

I'd like to mention I also belong to not only Teamsters, but 302 as well. Whom neither dished out a dime on this accident.

It's ashamed that people have to lose not only their jobs, but nearly everything they've worked for and paid into these Unions to ~~serve~~ receive so little support when they are laid up.

I never received the benefit money from either Union, due to lose of limb, because the Dr's tried to save it, And I did not lose it at the time of the accident.

I've since received a letter from 302 stating I have lost all benefits because I have been unable to fill the required hours. Therefore I have lost all that I have paid into retirement.

This is just a start of the complaints I have and all of them can be backed up with proof.

I figured if you took the time to cover that article, then perhaps you're interested in what is really happening to disabled people. And the rip offs from Workmans Comp. Insurance.

If you have any questions or would be interested in more information, perhaps you'd like to contact me, for more.

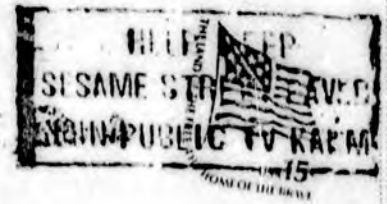
I live outside of Palmer, mile 76 Glenn Highway. My phone number is: 745-4520, or write to me at

George Coon
SRC Box 8338
Palmer, AK. 99645

Sincerely,
Geo. L. Coon

George L Coon.

Geo. Coon
SRC Box 8338
Palmer, Ak
99645



Attention: Anchorage Daily News
Richard Fineberg
Daily News Correspondent
Anch/Alaska

FORWARD TO:
BOX 81835
FAIRBANKS, AK
99708

Gov. Jay Hammond

RECEIVED
APR 2 1977
GOVERNOR'S OFFICE

Dear Sir.

I was injured in February of 1976 why working on the Trans Alaska Pipeline for Fluor Inc at Pump Station #10. I was employed as an Operating Engineer Apprentice.

In Febraary of 1977 Alaska Pacific Assurance Company, the Insurance Carrier for the State Workmans Compensation sent me to San Francisco to be examined by a doctor there that they were familiar with. In short, his findings have been interperted by the carrier in such a manner that all benefits have been suspended not only the weekly check for my survival but also

1

medical benefits. This interpertation is in direct conflict with those findings of Dr. George v. Wichman an Orthopedic Surgeon here in Anchorage who was recommended to me by the physician who initially examined me at the Providence Hospital Emergency Room. Since being hit by the 2½ ton truck while walking along the roadside at work Dr. Wichman has been treating me for my injury to my back and neck. Fortunately I have some savings to live on before being given an opportunity to appear before a board in June of this year, unfortunately. I do not have the money to continue medical treatments and buy medication. But, in my 15 years as a resident of this State I

Could not ever imagine a state agency being as disorganized as to allow this to happen to the residents it is intended to serve. I am informed this practice of sending persons to Doctors outside the state by the Insurance Company is a ploy to increase hardships caused by these injurys and help quicken settlements.

Sir, I have invested two years in training, examining and competing to enter into the Operating Engineer apprentia Program in Alaska and I am not interested in a quick settlement but in recovering from my injury, returning to work and becomming productive once again. I ask you how can this be accomplished

if I am denied the medical treatment by the Physicians who are trying with me to accomplish this.

I just pray that you were not aware of the workings of the system I seem to find myself under for- if you are I can only condem you as well as I hope I have condemned those peopk who have brought this grief upon me.

Sincerly

Kyle K. Hefner
6909 East 8th
Anchorage Alaska
99504
333-2738

From: Mary Jean | SUSPENSE DUE DATE 4/15/77

TO: John Cook, W.C.

SUBJ. OF CORR: Ltr from Lyle Hefner

ACTION REQUIRED:
Please draft a response for the Commissioner's signature. Thanks!

CC TO: Governor Hammond

ADDITIONAL REMARKS:

DATE OF THIS REQUEST & DELIVERY METHOD: 4/8/ FM NO:

ALASKA DEPARTMENT OF LABOR

INTER-OFFICE ROUTE SLIP

MAIL STATION NO.

1. John Cook, W.C.

2.

3.

- ☐ Action
- ☐ Information
- ☐ Circulate
- ☐ Signature
- ☐ Comment
- ☐ Contact Me
- ☐ Initial & Return
- ☐ For Your File

Remarks

Lyle Hefner
DA 2-1976

RECEIVED
APR 11 1977
Alaska Workmen's Compensation Board

FROM Mary Jean DATE 4/11

Form 4004 R 5/75

BRIAN ROGERS: 24 April 1977

I would like to thank you for the spark of hope you have given to many injured workers from the Trans-Alaska Apeline. I am one of the more fortunate Alaskans as the State has found my back injury severe enough to grant me Medical Assistance - Rent Assistance and Food Stamps to survive on while the final decision is made on my claim as I was injured in Feb 1976.

I am an Alaskan Resident of 16 years, a Viet-Nam Veteran and although this last month I landed a job as a clerk for the US Army it is quite a disappointment to discover that my career as an Operating Engineer is finished after completing Local 302 Apprenticeship School.

Mr. Finebergs article in the Advocate has had a sobering effect on many Alaskans and has to date only touched the tip of an iceberg but hopefully one concerned persons, ~~[illegible]~~, concern will topple that bergs and show the complete picture.

Diane Black has corresponded with me for the first time, although I became aware that others were in my situation prior to the article but in the South Central portion of the State the

organizational aspects of the injured [illegible] have not yet been conceived.

I personally have contacted RANDY Phillips, Sam Cotton, DON Young, Mike Gravel, TED Stevens, JAY Hammond without response, either positive or negative. The Comp Board found my claims as very nicely put disbelievable and in short they are without back up to support that claim; I am appealing to the court. The Vocational Rehabilitation office had me examined by a doctor and his findings were so conclusively severe that they said I was not rehabilitatle, and concure with those of an Orthopedic Surgeon, Internal Medicine Specialist, an MD who specializes in X-RAY, an Osteopath MD, an MD Actupunturist and a MD Psychiatrist and PHD Psychologist. All say the same thing, I am injured and it is permanent but that I have fantastic survival instincts and will not set personal limitations on myself, I hope that in the future this is true for me as well as for you.

Good day sir.

Lyle R. Hyfren

6909 E. 8TH
ANCHORAGE ALASKA
99504
HOME 333-2738/WORK 263-8294

P.S. The Doctor is SAN FRANCISCO that ALPAC sent me to in order to be evaluated said that there is nothing wrong with my back. Pretty consistant wouldn't you say.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

LYLE HEFNER,

Appellant,

vs.

ALASKA WORKMEN'S COMPENSATION BOARD, FLUOR ALASKA, INC., and ALASKA PACIFIC ASSURANCE COMPANY,

Appellees.

No. 3AN-79-1202

MEMORNADUM IN SUPPORT OF
MOTION PURSUANT TO A.S. 44.62.570(d) FOR DE NOVO HEARING
OR REMAND TO THE ALASKA WORKMEN'S COMPENSATION BOARD

I. Introduction

Appellant, Lyle Hefner, has moved pursuant to A.S. 44.62.520(d) for a de novo hearing permitting the introduction of psychiatric testimony regarding appellant, or alternatively, for a remand to the Alaska Workmen's Compensation Board (hereafter, Board) for the reception of further psychiatric evidence and a redetermination of appellant's petition for modification, filed in the administrative proceedings 31 August 1978. In reaching its Decision and Order of 22 January 1979, the Board failed to act upon appellant's motion for the appointment of a psychiatrist to examine the appellant, thus denying appellant and erroneously excluding crucial evidence necessary for a proper determination of the issues. Additionally, the Board erroneously sustained an objection to the testimony of Virginia Beirne, a witness for appellant, thereby erroneously excluding such evidence from consideration. The failure to appoint a psychiatrist to examine appellant deprived appellant of crucial evidence which he was otherwise not able to produce with reasonable diligence. Where evidence crucial to appellant has been erroneously excluded or was not otherwise available with reasonable diligence, the Court has discretion to either conduct a de novo hearing in whole or in part or to remand the proceedings to the Board for the

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receipt of such evidence and reconsideration. A.S. 44.62.570(d); Employers Commercial Union Insurance Group. v. Schoen, 519 P.2d 819, 825 (Alaska, 1974); Commercial Union Companies v. Smallwood, 550 P.2d 1261 (Alaska, 1976).

II. Facts

On 1 September 1977, in its first decision and order in this administrative proceeding, the Board denied appellant's claim for permanent partial disability compensation and temporary total disability compensation and dismissed the proceeding. (R. 71-76.) Although the Board found appellant suffered a work related injury, it determined in essence, that appellant was a malingerer faking all of his subjective complaints. Paragraphs four and six of the findings of fact and conclusions of law of the September 1979 decision set forth the Board's crucial determinations:

> 4. As revealed by the medical records, in over a year of comprehensive evaluations by doctors in various specialties no significant objective evidence of injury to applicant has ever been found by anyone. No doctor is able to explain a medical cause for applicant's extreme subjective complaints.
> . . .
>
> 6. Considering the evidence in its entirety, we are unable to find the applicant is disabled. Given the minor trauma involved and no objective medical findings, we do not, quite frankly, believe applicant. . . ..

Significantly, applicant's then counsel did not raise, nor did the Board address, the possible psychological etiology of the alleged disability.

New counsel filed a notice of appeal to the 1 September 1977 decision of the Board, concurrently moving to stay the appeal and to suspend the requirement for the filing of a cost bond on appeal. (R. 89, 90.) Appellant's memorandum in support of the motion to stay the appeal suggested that the Board failed to consider the possible psychological explanations for appellant's disability. Subsequently, in this first appeal of appellant's proceedings in opposition to a motion to dismiss, appellant submitted his affidavit of 2 March 1978 stating in part

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that documentation of his injury was hampered by the lack of any income. This appeal was later dismissed by the Court for lact of prosecution.

31 August 1978 the applicant applied for modofication of the 1 September 1977 decision. (R. 115.) Appellant's petition for modification argued that disability of psychological etiology was compensable and that the Board made a mistake in determination of fact. The petition noted the previous reliance of the Board upon the report of a psychologist, Dr. Ronald Ohlson, that, "this man's secret ambition in life is to retire comfortably, early." (R. 74.) The petition, however, also pointed out that no psychiatric examination of the appellant was presented to the Board although appellant, at the time compensation benefits were terminated by the insurance carrie had begun psychiatric evaluation by Dr. Wreggit. (R. 120, 121

The petition requested that the Board ord a complete psychiatric evaluation of the appellant. (R. 115.) In support of this request, an affidavit of counsel stated appellant was financially unable to obtain such an evaluation. (R. 109.) In support of his petition appellant filed the psychological report of a Minnesota Multiphasic Personality Inventory of appellant which suggested:

> . . . a disintegrating of his personality structure to a marked degree. The individual is strongly indicating psychotic symptoms. His defense structure appears to be unable to cope with the day to day realities of life. Anxiety and stress are a common companion of his present behavior. Stress appears to frequently produce passive-aggressive behavior toward himself and others.

(R. 346.) Appellant also submitted in support of his petition the report of Virginia Beirne. (R.) That report detailed the social history of appellant, his therapeutic counseloring to date, and concluded appellant's work related injury produced, "a frightened rage that was internalized to produce a depressed state." (R.)

When the Board failed to act upon appellant's request for a psychiatric examination, appellant, at the hearing upon

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the petition, again moved for a psychiatric examination. (T. 11 December 1978, p. 53.)

In support of his petition for modification appellant called Virginia Beirne to testify on his behalf. Ms. Beirne testified she was the Director of Cabin Fever Clinic, a psychiatric social worker with twenty-five to thirty years of counseling experience, and a graduate of the University of Pennsylvania School of Psychiatry, having professional affiliations with the National Association of Social Workers and the Academy of Certified Social Workers. (T. of 11 December 1978, pp. 7-8.) Upon attempting to elicit the opinion of Ms. Beirne concerning appellant's condition and its etiology, counsel for the defendant objected, and the Board subsequently sustained the objection to her testimony concerning the psychiatric causes of appellant's pain. (T. of 11 December 1979 at pp. 11-17); R. 156.) Defendant cross examined Ms. Beirne as to who was paying her bill; her answer was the state's medicaid program. (T. 11 December 1979, pp. 35, 36.)

On 22 January 1979 the Board denied appellant's petition for rehearing stating:

> "We have received no evidence which would now indicate that there is anything organically wrong with the applicant or that there is any other explanation than that given by Dr. Ronald W. Ohlson which was that, 'This man's secret ambition in life is to retire comfortably, early. . .. I get the impression that he would like very much for life to be one big pay day and vacation trip'."

Attached to this memorandum as Exhibit "A" is a report of a psychiatric evaluation of the appellant by Dr. William J. Rader, M.D. It is the opinion of Dr. Rader that the appellant has not been malingering, but suffers serious and substantial psychiatric difficulties which explain his diability. Exhibit "B", a further affidavit of appellant, states the reasons for appellant's financial inability to obtain such a psychiatric evaluation prior to the hearing before the Board on 11 December 1978 and his financial ability to do so subsequently to the 11 December 1978 hearing.

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III. LAW

A.S. 44.62.570(d), applicable to this appeal from an administrative proceeding pursuant to A.S. 44.62.330(a)(15), provides:

> The court may augment the agency record in whole or in part, or hold a hearing de novo. If the court finds that there is evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing, the court may (1) enter judgment as provided in (e) of this section and remand the case to be considered in light of that evidence, or (2) admit the evidence at the appellate hearing without remanding the case.

By this motion appellant seeks first to have this court remand this case to the Board for consideration in light of further psychiatric testimony; alternatively, the court should hold a de novo hearing permitting the litigation of the question whether the work related injury of appellant percipitated or caused psychiatric disfunctions which disabled appellant, entitling him to further benefits pursuant to the Alaska Workmen's Compensation Act.

In two instances the Board erroneously excluded vital evidence supporting the position of the appellant. First the Board, without explanation nor jusitification, failed to appoint a psychiatrist to evaluate the alleged psychiatric etiology of appellant's disability after an appropriate request to do so. A.S. 23.30.110(c) and (g) require and authorize the Board to investigate the claim and to require a physician examination of the injured employee. Having argument identifying the alleged psychiatric basis of the claim, some evidence supporting that claim, and knowledge that the appellant was financially unable to secure a psychiatric evaluation, the Board neglected its duty and committed error in failing to order a psychiatric examination and to state the reasons for the denial. Second, the Board erroneously sustained an objection to the testimony of Virginia Beirne concerning the psychiatric causes of appellant's disability.

Regulations adopted by the Board and governing the admission of evidence in claims proceedings required the Board

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to receive and to consider the testimony and report of Virginia Beirne concerning appellant's psychological disability. 8 ACC 45.120(c) provides in part:

> The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustom to rely in the conduct of serious affairs, regardless of the existence or statutory rule which might make improper the admission of such evidence over objection in civil actions. . . .

Testimony and evidence from Ms. Beirne concerning appellant's psychological disability, albeit she is not a psychiatrist or doctor, was relevant, and pursuant to 8 ACC 45.120(c), admissable. The careful and written evaluation, as supplemented by testimony, of a psychiatric social worker with 25 years of counseling experience who is a graduate of the University of Pennsylvania School of Psychiatry is that kind of evidence upon which responsible persons would rely. To exclude such evidence from consideration, as opposed to considering but attaching little effect as weight to such evidence, was error.

In two instances the Board erroneously excluded from consideration vital evidence supporting the position of the appellant. Upon the erroneous exclusion of vital evidence, A.S. 44.62.570(d) authorizes this Court to correct such error by remand or by conducting a de novo hearing. Alternatively, a psychiatric evaluation, such as that reflected in Exhibit "A", which could not have been produced by appellant in the exercise of reasonable diligence, warrants remand for reconsideration or a hearing de novo before this Court. As shown by the prior filings in these proceedings, the testimony received by the Board at the 11 December 1978 hearing and Exhibit "B", the indigency of appellant and his efforts to secure a psychiatric evaluation constitute reasonable diligence making the failure to previously produce the report of Dr. Rader justifiable. If the Board did not erroneously exclude from consideration relevant evidence, the Court, alternatively, should determine that the psychiatric evaluation of the appellant by Dr. Rader was not, in the exercise of reasonable diligence, available to appellant for production, thus again warranting either a remand for reconsideration or a

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hearing de novo.

IV. Conclusion

A.S. 44.62.570(d) authorizes the Court to remand a case to the Board for reconsidertion whenever the Board has erroneously excluded vital evidence or the evidence was not, in the exercise of reasonable diligence, available for production. The Board twice erroneously excluded relevant evidence vital to the position of the appellant. Alternatively, the psychiatric evaluation of the appellant was not, in the exercise of reasonable diligence, available for production to the Board. In either case this Court may remand the case to the Board for reconsideration in light of the erroneously excluded evidence or conduct a de novo hearing. Judicial and appellant economy support remand as opposed to a trial de novo. For the above reasons this Court should remand the case to the Board to conduct a further hearing or grant appellant's motion for a de novo hearing.

DATED this 10th day of August, 1979 at Anchorage, Alaska.

SMITH, TAYLOR & GRUENING
Attorneys for Appellant,
LYLE HEFNER

By: Charles G. Evans
Charles G. Evans

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PRACTICE OF PSYCHIATRY

PHONE 279-3822

WILLIAM J. RADER, M. D.

1709 BRAGAW, SUITE B

ANCHORAGE, ALASKA 99504

July 30, 1979

Charles G. Evans
605 W. Second Avenue
Anchorage, AK 99501

re: Psychiatric Evaluation: Lyle Heffner

Dear Mr. Evans:

I saw Mr. Lyle Heffner at your request for a psychiatric evaluation pertaining to the question of whether or not Mr. Heffner is malingering his disabilities from an industrial accident occurring early in 1976. Before seeing Mr. Heffner I received from your office and reviewed a compilation of medical, psychological, and legal documents pertaining to Mr. Heffner's case. I will not catalogue all of these reports but they are approximately two inches in thickness when all stacked together. From the material I was disposed to concur with the compensation board in their finding. After seeing Mr. Heffner for three and one-half hours (one hour on July 17 and two and one-half hours on July 19), I have come to the conclusion that Mr. Heffner has not been malingering and am prepared to support that opinion. I will not document all the data but will, as simply and succinctly as possible, document my understanding of his situation from the psychiatric standpoint.

Mr. Heffner's emotional problem had its beginnings between the ages of one and two at which time he had clinical tuberculosis. At that time the prescribed therapy was bed rest with medication. The rest was enforced and he spent a year in bed, part of the time being physically restrained, as reported to him by mother.

This happened to be a very critical time in his emotional development, a period which would be typically characterized by the job of learning locomotion, body and muscle skills, and a time of rapidly increasing activity primarily under the aegis of mother's protection and encouragement. The physical restraint prolonged the emotional passivity and helplessness of infancy. (Children at that age have strong need and yearnings for protection and security, an emotional and physical dependence upon mother.) Ordinarily the natural drive towards mastery of physical skills and the need for dependent and passive reassurances from mother are balanced and gradually shift in an untroubled way. In his case they were in direct conflict in a real, immediate, and ongoing way. I think this circumstance bound him in a more dependent relationship to his mother than would be typical. This was evidenced by his having a temporary school phobia when he first started to school. During his childhood and adolescence he was in fact accident prone. He reports this being true of his early childhood, was not so aware of its being the case during his adolescence. We have his clinical reports from the Army dispensary where he was treated first as a dependent and later as a soldier, which is a record from 1967 through 1970. To review this clinical record is important because it demonstrates the fact that he did have significant physical problems at that time.

In 1965 he had a fracture of the fourth metacarpal head which was declared healed in February of 1965. In April of 1967 he reported with an injury to his left elbow which was considered a superficial abrasion. In 1966 he reported on separate occasions with blood blister, a cold, bruised

EXHIBIT "A"

hand, and back pain. (The back pain was a result of falling while playing football. This was in the upper part of the back and shoulder and was diagnosed a trapezius strain.) Further, he reported once for family problems when he was having conflicts with his father. In 1967 he reported with a left knee injury which was described as an old injury. (About this he reports that he had a long gash over his knee when he was about in the fourth grade and this seemed to bother him off and on since that time.) Also in 1967 he reported with a head contusion and mild concussion as a result of a mugging while walking past Goose Lake. While he was in the service in 1968 he reported separately with knee difficulty; trouble breathing and coughing up blood (diagnosed as bronchitis); and several entries again with his knee. In 1969 there is an entry of complaint of knee pain, another recorded entry of abdominal pain (impression--possible ulcer; given symptomatic treatment). Another entry with stomach pain. Another entry that can't be read but stool samples were collected for parasites. An entry of trauma to his right fourth finger. Another entry of "slamming door on the hand," (x-ray okay). An entry of tonsilities with three return visits in one week plus an extra visit to the orthopedic clinic during that week for an injury to his hand with recurrent pain and swelling (no fracture). Another entry for pharyngitis and still another entry describing physical therapy for his hand. In 1970 he reported with separate instances of stomach pain (combid); another stomach trouble ; another time (his sister was exposed to hepatitis); another entry where he complained of not being able to eat the mess-hall food, sore throat and sinus congestion. Another entry of a swollen joint (it not being clear what this was). Entries on possible hepatitis. A separate entry on possible hepatitis and an entry on dysuria. Entries stop in September 1977 when he was discharged in the Army.

These entries are reviewed to support the conclusion that this man was indeed injury prone. He tended to have sequelae from injuries. It is not known exactly what his medical history was between 1970 and 1976 but no significant illnesses or injuries are reported by Mr. Heffner. The only problem he recalled was the fractured hand. It is significant in reviewing this man's history that his two parents had distinctly separate personalities, and which appears relevant to their divorce. His mother was described as "hard charger." She was aggressive, ambitious, and developed a working career of her own. His father on the other hand, was from a poverty background, saw himself as being deprived as a child, made a career of being an enlisted man in the service and was a "wheeler-dealer." His father tended to look for the easiest course of action in planning his own goals. Father's ambition for his son was to go to West Point. However, during adolescence Mr. Heffner had very little interest in school. He needed to be active physically and in fact was uncomfortable with passive kinds of activities, including studying. So it appears that he chose action over passivity. Passivity meant injury. Any dependency feelings were gratified as a result of injury. Unmet but denied dependency needs were partly met and legitimatized by injury.

To describe further in psychological terms, the early circumstances of his enforced passivity mobilized an active conflict of two psychological human drives, one being that toward independence, autonomy, aggression, the other one being the passive-

dependent helpless stance. He fortunately developed a stance vis-a-vis this conflict on the aggressive side, which itself became a long-term thread throughout his life and is still hoped for. (An example of a clinical clue to this lifelong stance is given in his response to an inquiry to his earliest memories, which was about his aggressive solution. This was that his grandfather and he while shopping saw a chain-driven tricycle. It was his grandfather's opinion that he was too small to operate this machine and made the bargain with him that if he could drive it home he could have it. He did so and got the tricycle.) So he has strong conscious wishes and intentions of being active and assertive as opposed to being passive. Till very recently, passivity, especially if enforced, produces acute anxiety if not relieved.

The picture gets a little more complicated by a second problem. Beginning in early childhood, probably about five or six, he began to have a repetitive dream of someone following him down an alley and chasing him as he tried to escape. This repetitive dream, which he has had continuously through his life, suggests psychologically a fear of retaliation or injury for his aggression. During his childhood then, his earlier problem and its solution to avoid passivity with action, had upon it superimposed a secondary concern, or conflict, over his aggressivity, which was fear of injury and retaliation. It was at this time he began to become accident prone which required his being taken care of and gratified his passive dependent longings. Injuries provided him with a solution to his continuing but repressed (driven underground) passive yearnings which were still unresolved from the earlier conflict. Injuries also were expressions of any guilt feelings about competing with his dad, his aggressive solution to the first problem, and angry feelings.

As he went through later childhood and adolescence he tended more and more to identify himself as an active sports person and more and more began to eschew and find uninteresting passive and intellectual pursuits. At the time of puberty and especially during adolescence, this trait tended to run counter to father's academic ambitions for him. It appears that he pretty much had this character trait developed after he was out of the service as evidenced by his having a successful working life. He developed safety consciousness to guard against injury. During those years he tended to see his goals only in terms of working seven days a week for twelve hours for a period of weeks and then after that weeks of vacation, travel, and engaging in sports. This in fact became his idea of the way he wanted to spend his working life. During this time he developed an intimate relationship with a woman but this fell apart after his injury and idleness. When he went to the hospital with his injury he reported he was able to stay there six days but was discharged at his pleading and against the doctor's best judgment because he could not adjust to the enforced passivity of being in traction. He clearly described a clinically acute anxiety reaction after about one continuous hour of enforced passivity in the traction apparatus. This was repeated many times. During his entire childhood and adult life, and still continuing, he was left with claustrophobia which takes the form of being anxious in a closed situation where he cannot get out. Whenever this occurs he tends to involuntarily cross his arms over his chest and seems unable to do otherwise during acute anxious situations. The mystery of this mannerism seemed to make more sense when he was told by his mother that he was restrained in bed by folding a sheet in a band and [illegible] around him and the mattress in an X configuration.

The back injury mobilized the archaic conflict that was not really solved during the previous years of his life, nor did he solve it during his convalescence. In fact he began to regress psychologically. He became more and more anxious and confused and had less and less ability to adjust to the situation. When he was informed that he was malingering he became very angry and this further reinforced the depressive-regressive stance. I would speculate that confusion was enhanced whenever the heretofore unconscious desire to be passively taken care of began to crop up consciously. These of course were understandably dealt with with denial and defensiveness about his situation.

To summarize, my reasons for not believing he is malingering are:

(1) He did not make an anxiety-free adjustment to his physical injury as most people do who are malingering. (Incidentally, I fail in my reading of the reports to see any vagueness about his complaints about his back. The vagueness tends to creep into clinical reports more from the doctors' opinions than the patient. Notwithstanding the vagueness, the doctors did begin to realize that there were psychological factors involved in his clinical picture but failed to decisively and comfortably refer him into any kind of helping situation at that time.)

(2) His being activity oriented, this created a problem of adjustment to the injury. As a matter of fact, it made his adjustment to it more ego-alien and unsatisfactory to him.

(3) We have a better explanation for his disability than the malingering theory--mainly that it was psychologically determined.

(4) His history in no way is inconsistent with the formulation. As a matter of fact, he reacted to the injury just as one expected he would.

(5) My reading of the psychological testing and the psychologist's report seems to be consistent with formulation given.

(6) He is not sophisticated enough to fabricate the clinical data which reveal the psychological proglem.

(7) Given the material it had, the board made a correct determination. It is not clear why the real story didn't come out. The reason may have been that Mr. Heffner was not psychologically minded enough to help much before his therapy experience and only with learning how to express himself did it become possible to get the story. Another is that he superficially presents himself with a macho - pseudomasculine smart-guy attitude which in this situation would make people suspicious.

Mr. Heffner's experience with group therapy seemed to have helped him in several ways. First he began to deal with the reality of his limitations. He began to try to live with his pain. And it provided him a catharsis for his anger with the insurance company. He also learned to do without medication and began to reckon with his having to live with his back limitations.

At the present time it appears that he is able to function at a desk job although after a couple of hours he reports becoming uncomfortable and has to move around. He feels that if he is able to tell when back muscles begin to tighten up and, if possible, can lie down for half an hour to an hour, a continuous spasmodic pain can be aborted. He also, because of enforced passivity, has begun to read and to take some enjoyment in this. He has also learned how to avoid physical actions which can trigger back spasm. However, he still wants to identify himself as a person who works vocationally with physical action and aspires hopefully to resume his vocation of heavy equipment operator.

In response to his question, he was informed that he had essentially accomplished what could be accomplished in a pain clinic; that is, to wean himself off medicine, face a future that requires adjustment to realities, and to learn how to live with chronic pain.

However, it was recommended to him that he should have two more years of therapy to both solidify those gains and particularly to adapt and find an acceptable and more passive life. It was also recommended to him that he terminate his fight with the insurance company as quickly as possible and to accept the outcome so that he can begin to get on with the business of re-ordering his own life. He was also cautioned about devoting his life to chasing after and undoing feelings of past injustices.

Mr. Heffner, as you alerted him, gave me a retainer fee of $200. As I told you and him, my fee is $70 an hour. I will be charging him only for the hours spent on the case. So far, I have logged two hours to review the records, three and one-half hours seeing him, one hour in studying my notes and dictating this report. There may also be more time spent if you need me to testify to or defend my findings.

Respectfully submitted,

William J. Rader, M.D.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

LYLE HEFNER, Appellant, vs. ALASKA WORKMEN'S COMPENSATION BOARD, FLUOR ALASKA, INC., and ALASKA PACIFIC ASSURANCE COMPANY, Appellees.	(EXHIBIT "B")

No. 3AN-79-1202

AFFIDAVIT OF LYLE HEFNER

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, LYLE HEFNER, being first duly sworn and deposed, do hereby freely and voluntarily state as follows:

1. I am the appellant in this case and the applicant before the Alaska Workmen's Compensation Board in Case No. 76-02-0411.

2. As of 15 February 1977 the insurance carrier terminated all compensation benefits including medical assistance in my case. Thereafter, until 6 February 1979, and because of the pain I experienced, I could hold no job producing any regular income. Prior to the second hearing of my case before the Board I was financially indigent and without resources necessary to obtain a psychiatric evaluation.

3. After the decision of the Board in January 1979, I was able to obtain regular employment in a clerical position in the civil service at the ~~Elmendorf Air Force Base~~ Fort Richardson. I subsequently engaged Dr. William Rader to prepare a psychiatric evaluation.

FURTHER AFFIANT SAYETH NAUGHT this 7th day of August, 1979 at Anchorage, Alaska.

LYLE HEFNER

SUBSCRIBED AND SWORN to before me this 7th day of August, 1979 at Anchorage, Alaska.

Notary Public in and for Alaska
My Commission Expires: 7/24/82

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APPENDIX (5)

To: Budget Review Committee

November 16, 1977

Fr: Edmund N. Orbeck
Commissioner
Department of Labor

Workmen's Compensation
Budget

The Department of Labor, in completing its FY 79 budget submittals, conscientiously and laboriously prepared each budget incorporating the basic philosophy of keeping costs at a minimum while continuing to effectively promote the welfare of Alaska workers, advance their opportunities for employment and ensure that working conditions are safe and that Alaska workers earn their fair share of work benefits. Budgets were submitted for 16 BRU's; of these, 14 budgets were prepared at a "bare bones" level for FY 79. For the past three years the department has been concerned with providing better service to the public while demands for service have steadily increased. Through reorganization, more effective utilization of staff and resources and the judicious expenditure of funds the department has been able to achieve these objectives.

Within the BRU for Workmen's Compensation the budget submittal was prepared above maintenance level requesting an increase in personal services. Current staff levels are not and will not be adequate to carry out the legislative intent of the Workmen's Compensation Program. Repeatedly requests for new positions have been denied. At this time, it is critical to provide this program with the necessary staffing; service to the public is continually eroding and cannot be considered "adequate" at this time.

The following is an historical review of the budget requests submitted over the years:

FY	Number of Time Loss Work Injuries Reported	Maintenance	Request for New Positions	Final Auth
1972	4,255	8	5	1 full-time
1973	5,077	8	2	0
1974	6,698	8	2	0
1975	7,766	8	6	2 full-time 2 half-time

1976	10,324	10 2 half-time	2 full-time 1 half-time	0
1977	9,780 (Estimate, final figures not available)	10 2 half-time	1	1
1978	N/A	11 2 half-time	1 (change half-time to full-time	1
1979 1980	N/A	~~12~~ (4)	1 4	1 2

The actual number of work injuries is expected to decline since the completion of the pipeline. This decline will be gradual and the number of accidents reported will never return to pre-pipeline levels. Although not as dramatically as evidenced by the pipeline influx, the growth in population and the number of workers in Alaska will continue to rise. However, this factor is certainly not the most significant one as far as the number of positions that is required. Further statistics show a drastic rise in the number of claims going to hearings:

	FY 75	FY 76	FY 77
Cases controverted	615	1,296	1,630
Cases set for hearing	504	426	743

We know from the history of other states* that if we had more Workmen's Compensation Officers able to devote more time at the onset of conflict a large percentage of the claims could be settled at the first level. This would reduce the anxiety of injured employees and reduce the financial strain that often occurs while the employee is disabled from work and waiting sometimes months for a hearing.

The National Commission on the State Workmen's Compensation Laws stated:

> It has become clear that Workmen's Compensation claims and statutes are, in practice, much more complicated than anticipated. Determination of compensability and the extent of disability are inherently controversial. Nevertheless, litigation might have been less frequent had State agencies provided enough positive assistance to workers who were unable by themselves to deal with the complexities of the law. For budgetary and other reasons, most states have not provided such aid.

* In 1976 - Montana had 168 claims go to hearing.
Nebraska had 350 claims go to hearing.

Additionally the costs of hearings is not cheap. Travel and compensation for members of the Workmen's Compensation Board are additional expenses included in the administrative costs of this program. The number of days scheduled for Board hearings has more than doubled over the past five years.

Recent legislation passed in 1977 (HCS CSSB 131) will further impact the number of controvertive cases. This legislation is difficult to administer equitably and requires extensive interpretation and adjustments on an individual basis.

The addition of just one Workmen's Compensation Officer located in the Anchorage area could have a tremendous impact on the overall management of the program. Pre-hearing conferences could be held with the claimant and insurance carrier and many cases settled without a full hearing.

The monies needed to fund this position are $34,000. In the overall state budget allocations, this is a very insignificant amount, however, a very important sum for Labor. As stated previously, no other additional funds other than maintenance costs were requested by the department other than this new position for Workmen's Compensation and the positions for Local Hire. While I am very much aware of the available anticipated revenues for FY 79 and the subsequent budget constraints, the budgetary approval for this position is the department's number one priority.

A review of our other Department of Labor budgets in the Administration of Justice category does not reveal any area where "trimming" could be sustained. In fact, the reverse is true. In order to enforce the legislative intent of Local Hire, additional funding is needed to adequately operate this program.

Filed in Willing
APPENDIX (6)

STATE OF ALASKA)
) SS.
FOURTH JUDICIAL DISTRICT)

AFFIDAVIT OF ROY L. KUHL

ROY L. KUHL, being first duly sworn, deposes and states:

1) I was injured in September, 1976, while working for Green Associates at Porspect Camp:

2) As a result of my injury I underwent back surgery at Virginia Mason Hospital in Seattle, Washington, on December 22, 1976;

3) When my condition after surgery stabilized I was rated by my doctor as 25-30% impared;

4) I have an 8th grade education and do not have a G.E.D.;

5) When I saw Mr. Jack Webb, representing ALPAC the workmen's compensation carrier, Mr. Webb held up a small white book and told me that "according to the book, $17,500.00 is all you are entitled to as compensation";

6) I did not feel that $17,500.00 was enough compensation for my injury, since I couldn't work at anything I knew how to do and I was 66 years old, but ALPAC had stopped paying me any money a couple of weeks previously, and I needed to settle my claim because I needed the money.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED at Fairbanks, Alaska, this 5th day of December, 1978.

Roy L. Kuhl

SUSCRIBED AND SWORN before me this 5th day of December, 1978.

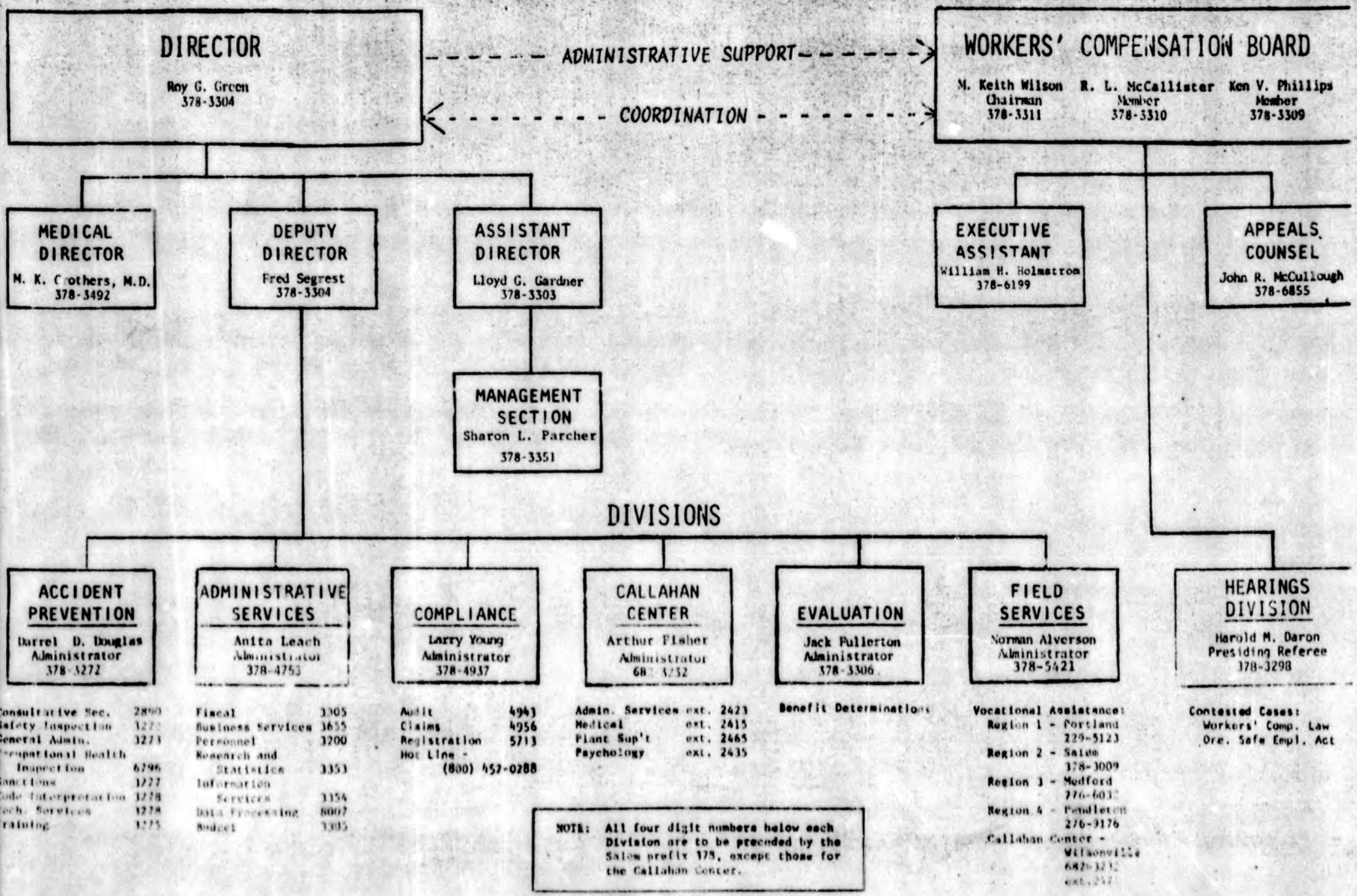
My commission expires: 8/25/82

Notary Public in and for Alaska

ROBERT L. CLIFFORD

App. 7

Workers' Compensation Department



(4-79)

the records available shall be borne by the rating organization. Accident experience records of carrier-insured employers shall also be available on the same terms to assist in making such rates.
[Formerly 656.426; 1973 c.794 §33a; 1975 c.556 §48]

656.704 Application of Administrative Procedures Act. Where ORS 656.001 to 656.794 does not provide a procedure for administrative or judicial review of actions and orders of the department or State Accident Insurance Fund, the provisions of ORS chapter 183 shall apply to the board review and judicial review of such actions and orders.
[1965 c.285 §54b; 1977 c.804 §23]

(Workers' Compensation Department)

656.708 Workers' Compensation Department; Evaluation Division; Hearings Division; director; appointment; authority. (1) There is created the Workers' Compensation Department. The department consists of the board, the director and all their assistants and employes.

(2) The Evaluation Division is created within the department. The division has the responsibility for initially evaluating claims for compensable injuries, determining the extent of disability resulting therefrom and prescribing the amount of benefits awarded therefor.

(3) The Hearings Division is continued within the board. The division has the responsibility for providing an impartial forum for deciding all cases, disputes and controversies arising under ORS 654.001 to 654.295 and 656.001 to 656.794, and for conducting such other hearings and proceedings as may be prescribed by law.

(4) The director shall be appointed by the Governor, from among persons recommended by the board, which appointment is subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570. The term of the director is four years. However, the director serves at the pleasure of the Governor. Except as otherwise provided by law, the director shall receive a salary fixed by the Governor. In addition to his salary, subject to any applicable law regulating travel and other expenses of state officers and employes, the director shall be reimbursed for actual and necessary travel and other expenses incurred by him in the performance of his official duties.

(5) The director shall have all the administrative, regulatory and rulemaking duties, functions and powers of the department except those specifically reserved to the board. The director shall provide such administrative fiscal and personnel services as are required by the board.
[1977 c.804 §25]

656.710 Field Services Division; functions. In addition to such other divisions as may be established within the department by law or administrative rule or order, the Field Services Division is established within the department. The division has the responsibility to contact promptly and to provide assistance to those injured workers referred to the division by insurers or other sources, to assist the workers to return to the work force as soon as their condition permits. The director, with the assistance of the division, has the responsibility for maintaining contact between the department and each worker who has incurred a serious disabling compensable injury from the time of injury until the worker returns to work or the worker's condition is determined to have resulted in permanent total disability.
[1977 c.699 §2]

656.712 Workers' Compensation Board; members; qualifications; confirmation; term; vacancies. (1) The Workers' Compensation Board, composed of three members appointed by the Governor, is created. Not more than two members shall belong to one political party and inasmuch as the duties to be performed by the members vitally concern the employers, the employes, as well as the whole people, of the state, persons shall be appointed as members who fairly represent the interests of all concerned.

(2) A member of the board shall be appointed for a term of four years on the first Monday in December of each year next preceding the expiration of the term of a member. Each member shall hold office until his successor is appointed and qualified.

(3) Any vacancy on the board shall be filled by appointment by the Governor.

(4) All appointments of members of the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570.
[Formerly 656.402; 1973 c.792 §28; 1977 c.109 §3; 1977 c.804 §26]

656.714 Removal of board member. (1) The Governor may at any time remove any member of the board appointed by him for

inefficiency, neglect of duty or malfeasance in office. Before such removal he shall give the member a copy of the charges against him and shall fix the time when he can be heard in his own defense, which shall not be less than 10 days thereafter. Such hearing shall be open to the public.

(2) If the member is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such member and his findings thereon, with a record of the proceedings.

(3) The power of removal is absolute and there is no right of review in any court whatsoever.

[Formerly 656.406]

656.716 Board members and director not to engage in political or business activity; oath and bond required. (1) No member of the board nor the director shall hold any other office or position of profit or pursue any other business or vocation or serve on or under any committee of any political party, but shall devote his entire time to the duties of his office.

(2) Before entering on the duties of his office, each member and the director shall take and subscribe to an oath or affirmation:

(a) That he will support the Constitutions of the United States and of this state and faithfully and honestly discharge the duties of his office.

(b) That he holds no other office or position of profit.

(c) That he pursues and will pursue while such member no other calling or vocation.

(d) That he holds and while such member will hold, no position under any political party.

(3) The oath or affirmation shall be filed in the office of the Secretary of State.

(4) Each of the members of the board and the director shall also, before entering upon the duties of his office, execute a bond payable to the State of Oregon, in the penal sum of $10,000, with sureties to be approved by the Governor, conditioned for the faithful discharge of the duties of his office. The bond, when so executed and approved, shall be filed in the office of the Secretary of State.

[Formerly 656.408; 1977 c.804 §27]

656.718 Meetings; chairman; quorum. (1) Biennially, the members of the board shall meet at the office of the board, which shall be maintained at the state capital, and shall elect a chairman, who shall serve for two years and until his successor is chosen.

(2) A majority of the members shall constitute a quorum to transact business. The act or decision of any two of the members shall be deemed the act or decision of the board. No vacancy shall impair the right of the remaining members to exercise all the powers of the board.

[Formerly 656.414; 1967 c.2 §4]

656.720 Prosecution and defense of actions by Attorney General and district attorneys. Upon request of the director the Attorney General or, under his direction, the district attorney of any county, shall institute or prosecute actions or proceedings for the enforcement of ORS 656.001 to 656.794, when such actions or proceedings are within the county in which such district attorney was elected, and shall defend in like manner all suits, actions and proceedings brought against the department or its employes in their official capacity.

[Formerly 656.586; 1971 c.418 §18; 1977 c.804 §28]

656.722 Department authority to employ subordinates. The board and the director may employ and terminate the employment of such assistants, experts, field personnel and clerks as may be required in the administration of ORS chapter 654, ORS 656.001 to 656.794 and other duties assigned to the board and the director by statute.

[Formerly 656.416; 1977 c.804 §29]

656.724 Referees; appointment; qualifications; term; removal procedure. (1) The board shall employ referees to hold hearings pursuant to ORS 656.001 to 656.990. A referee must be a member in good standing of the Oregon State Bar, or the bar of the highest court of record in any other state or currently admitted to practice before the federal courts in the District of Columbia. Referees shall qualify in the same manner as members of the board under subsection (2) of ORS 656.722. The board may appoint referees to serve for a probationary period of one year or less prior to regular employment.

(2) Referees are in the unclassified service under ORS chapter 240, and the board shall fix their salaries in accordance with ORS 240.245.

(3) (a) The employment of each referee shall be subject to formal review by the board every four years. Complaints and comments filed with the board regarding the official conduct, competence or fitness of a referee, as

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ALASKA ADVOCATE

Anchorage says good-bye to Mr. Whitekeys

Is this man crippled crazy, or a fraud?

The tortured tale of Workmen's Compensation in Alaska.

by Richard A. Fineberg

Workmen's comp under fire

Delay, frustration and charges of fraud plague the plan to benefit injured workers

by Richard A. Fineberg

Fairbanks

Diane Black, Cecil Kessick and Robert MacArmour have something in common: All three find themselves on the short end of a stick wielded by the workmen's compensation system they thought was supposed to assist them.

Marked differences in style and biography underscore their common complaint. Black, 35, a pipeline bullcook, is a wandering, mystical graduate of the youth movements of the '60's; MacArmour, 40, a compressor operator, is a fundamentalist Christian and family man; Kessick, 58, an insurance appraiser, is a husky, soft-spoken man whose avocation is trophy hunting.

Despite these outward differences, there are striking similarities in their cases and their conclusions. All three:

- suffered back injuries on the pipeline;
- claim they were unfairly denied disability payment and medical care by Alaska Pacific Assurance Co. (Alpac), the company that handled workmen's comp for Alyeska Pipeline Service Co.;
- say state officials who oversee the workmen's comp program have ignored their pleas;
- want to see the system reformed.

Alpac—the largest workmen's comp insuror (carrier) in the state—denies the charge that injured workers (claimants) are treated unfairly. "I personally would rather pay a claim that was doubtful...than to take the chance I had denied benefits to a man unjustly," Barbara Grissom, Alpac director of worker's compensation, told the *Advocate*.

From the records Alpac has presented, it appears that the insurance company believes Black, Kessick and MacArmour are exagerating their maladies—and that Black and MacArmour's complaints may be caused by pre-existing psychological problems.

If you're injured on the job, workmen's comp is supposed to cover lost income and medical expenses—even rehabilitation, should it be necessary. That's the law, and that's the way the system works—for many people. But there's another side to this coin: If you run afoul of the workmen's comp system, the torturous path to recovery can become a nightmare maze of cumbersome administrative procedures, arcane medical opinions and expensive, time-consuming legal actions.

Black, who has formed a group called Action for Victims of Industrial Accidents (AVIA) says she knows of about 50 workers who, like herself, feel they have received a raw deal from the workmen's comp system. According to Black, although she has about 20 signed statements from workers detailing their complaints, she has received little response and no action from public officials.

John Cook, director of the state Workmen's Compensation Division, acknowledges that his office is understaffed and overworked. "We're understaffed down here (in Juneau)...," he says, "because of the pipeline load."

The state agency, a part of the Department of Labor, provides administrative support for the three-person Workmen's Compensation Board. The Board hears and issues orders resolving problems that develop between injured workers (claimants) and the comp carrier.

The division does not review the Board's work, Cook said. A claimant who feels wronged by a Board decision may file a court case against the comp carrier and the Board.

Comp carriers in Alaska handle 15,000 to 20,000 cases per year, according to Cook. Most injured workers, division personnel maintain, get prompt and complete coverage. There are foul-ups, a state compensation officer told the **Advocate**, but most of the time the problem is simply a matter of paperwork that can be cleared up quickly by a phone call to the insurance carrier.

Although a relatively small percentage of comp claims go to the Board, the case files are voluminous, the procedures and precedents comlex. Consequently, the Board is swamped. In 1978 the board issued 394 written orders after hearings in Fairbanks, Anchorage, Juneau and Ketchikan. The Board also considered and approved more than 400 settlements of other disputed

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claims.

According to Cook, although the Board is required by statute to issue its findings within 20 days, the case backlog is so heavy that the average time between hearing and decision, when last calculated, was 96 days. (For a glimpse into the life of a claimant at loggerheads with the comp system, see accompanying story.)

Black, who walks with the aid of a cane and still requires treatment and painkillers for a back injury she says she suffered at a pipeline camp in 1976, said Alpac cut off workmen's comp payment and treatment in 1977 after a California specialist, Dr. Willard F. Pennell, M.D., examined her and advised Alpac:

"It seems apparent there is no need for further treatment of her back and under no circumstances should she be allowed to receive continuing medical care since she will simply utilize this to manipulate everyone with whom she has contact...Termination of her claim in some manner will most probably allow the current complaint to resolve."

Black has testimony from other medical experts contradicting Dr. Pennell. These reports indicate her 1976 pipeline injury has left her with a painfully disabling malady that requires continued treatment.

The Workmen's Comp Board, relying heavily on Dr. Pennell's judgement, has twice ruled against Black's petition that Alpac be required to resume benefit payments and medical care. She says she plans to take the case to court.

Although Dr. Pennell has impeccable professional medical credentials, two knowledgeable attorneys told the *Advocate* Dr. Pennell and his partner are well known for their penchant for siding with insurance companies. San Francisco attorney Marvin Lewis, author of a legal text, *The Psychic Injury*, and past president of the American Trial Lawyers' Association, said he has faced Dr. Pennell's partner in "seven or eight major cases." Commented Lewis:

"They always say my client is faking it; I always win."

Alpac comp director Grissom said Alpac has used Dr. Pennell in five or six Alaska cases she can think of. According to Grissom, Dr. Pennell is "a very competent man" who does not always render a finding that results in denial of benefits to the claimant.

Alpac vice president Gay Dwyre says Pennell is "an independent consultant." Under comp law, Dwyre points out, both the insurance carrier and the claimant have the right to call in one independent consultant.

Pennell's expert opinion plays an important part in the case of Robert MacArmour, who was thrown from a truck in a haul road wreck in May 1977. MacArmour says the back injury he suffered is so painful that he spends most of his time confined to his Fairbanks apartment.

As in Black's case, Dr. Pennell examined the Alpac-sponsored client for an afternoon, then prepared a report for Alpac. In this case the independent consultant said that in his expert opinion MacArmour was faking it and should be denied further benefits. Like Black, MacArmour has medical evaluations from other specialists challenging Dr. Pennell's conculsions. MacArmour's appeal to the Workmen's Comp Board was heard last October 2; he is still waiting for a verdict.

State Workmen's Compensation Director Cook sat on the Board during Black's hearing. On a subsequent trip to Fairbanks, he said, he was here picketing outside the state building.

However, Cook said, he had not been approached directly by AVIA, and he was not aware of the group's specific complaints. The state official said he was unaware of complaints about Dr. Pennell.

The Board's task—sorting our conflicting evidence and deciding who deserves comp benefits and who doesn't—is not an enviable one, Cook said. Frequently the Board is confronted with contradictory medical opinions. According to Cook, "That's one of the Board's problems—deciding which doctor they're going to believe."

Insurance industry sources say that just as some doctors are known for their tendency to side with the carrier, other doctors are known for their leniency to favor the patient by carrying him on workmen's comp for longer than may be necessary.

The problem is particularly accute in the case of soft-tissue injuries in which there is liable to be no clear-cut proof of injury, such as an x-ray showing a fracture. Many back injuries fall into this category.

To some workers facing unemployment, workmen's comp benefits (Alaska's are the highest in the nation) may be worth faking for.

For the comp carrier, as for other insurance policy writers, the problem of sorting out legitimate claims from frauds is a constant one.

One Alpac employee, who said the company tries to handle all cases fairly, said that during the pipeline years "we could always tell a lay-off coming because we'd get a bunch of back injury claims, all at once."

The claims would be filed by several employees of a contractor; a few days later, the contractor would complete an operation and lay off all its workers. This happened several times with several different contractors, she said.

What about the legitimate claimant who finds himself branded a fake? Faced with an overwhelming bureaucracy, complicated medical opinions and a cumbersome, baffling, 110-page, single-spaced booklet that tells him the law, the claimant may need an attorney.

But legal help may be hard to come by for many lawyers shun workmen's comp. "It's very unprofitable," one lawyer told the *Advocate*.

Another lawyer explained that workmen's comp was set up to provide automatic, speedy payment for on-the-job injuries, obviating the need the lawsuits. Nevertheless, workmen's comp has developed into a highly specialized legal field. Although the worker with a comp problem may need a lawyer for the complicated proceedings, the lawyer's fee—which will be set by the Board—is usually minimal.

There are about 75 attorneys in the Fairbanks phone book, but records of workmen's comp proceedings here indicate only a handful regularly represent injured workers before the Board.

(Alpac's Dwyre noted that workers who had comp grievances had access to attorneys through their unions; other sources said union legal staffs were swamped with diverse responsibilities and generally had little time for individual comp cases.

The claimant may have a hard time finding an attorney, but the insurance carrier on the other side seldom lacks for legal talent. One attorney who worked for a large law firm that defended insurance carriers in comp claims said he dealt with only paper, never people. "It's very dehumanizing...I never saw a human being," the attorney said.

The defendant attorney's task in this paper game is to save his client, the insurance

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carrier, money. That means the worker with a comp claim automatically becomes the adversary. "After a while," this attorney said, "you lose perspective; you figure everybody's a fraud."

Alpac writes more comp coverage than all other carriers combined, Alpac's Dwyre says. The company also writes more general liability, she said, than any other carrier in the state.

Unlike most of the insurance carriers in the state, Alpac has its roots in Alaska. The company began in 1967 insuring loggers in Southeast Alaska.

However, Alpac was purchased outright by the Philadelphia-based Insurance Company of North America (INA) in 1971 after the company bagged the contract for the trans-Alaska pipeline project.

According to Alpac's Dwyre, during pipeline construction Alyeska Pipeline Service Co. accounted for about 25 percent of Alpac's business. Additionally, Dwyre said, the pipeline boom greatly increased the business Alpac did with various other Alaska firms on Alpac's roster. (That list includes trucking companies, banks, the Fairbanks Medical Clinic and R&M Engineering, to name a few.)

To handle its pipeline business business Alpac opened offices in Valdez and Fairbanks. The company is also moving Outside.

Alpac offices have sprouted up in Boise and Coeur D'Alene, Ida., Portland, Ore., and Seattle, Wash. Additionally, the company recently moved into California. With the Pacific Coast covered, the Atlantic is next for Alpac: an office is planned for Atlanta, Ga.

In pain and poverty, she is unable to convince officials her plight is a direct result of a back injury... She talks of near suicidal depression.

(photo by Richard Finkelstein)

Diana Black

The fuel for Alpac's growth, most observers agree, was the contract with Alyeska. Like many aspects of the pipeline, Alyeska's insurance arrangements were a bit unusual.

Normally, a company purchases workmen's comp insurance for its employees by paying an insurance carrier a premium. In exchange for that premium, the carrier agrees to handle and pay all comp claims out of its own pocket.

That's not the way the Alpac-Alyeska contract worked. Instead, Alyeska paid its own claims, using Alpac to handle the paperwork and adjust the claims. This process, known as self-insurance, has become increasingly widespread in recent years.

It is widely believed Alpac adjusted the claims, took Alyeska's money and gave it to the claimand, then received 13 cents for every dollar paid out as a service charge. In fact, says Alpac controller Ben Roark, the contract was quite a bit more complicated.

According to Roark, the Alyeska-Alpac contract divided Alyeska's payment to Alpac into the following major components:

- premium (Alyeska-to-Alpac);
- losses incurred (Alyeska-to-Alpac-to claimant);
- "loss-conversion factor" or service charge (Alyeska-to-Alpac), based on a sliding scale that began at 13 cents per dollar and went down as payments increased;
- state tax (Alyeska-to-Alpac-to-state).

In other words, Alyeska paid Alpac an insurance premium. Then, the pipeline company turned around and paid off the claims, plus a service charge and incidential taxes.

This arrangement reportedly had other pluses for Alpac. For example, Alyeska is said to have deposited a large sum—one source said $500,000—with Alpac at the outset to guarantee there was money to pay comp claims. Alpac garnered the interest from that nest-egg.

In addition, when a worker filed a claim, Alyeska had to deposit the amount the adjustor (Alpac) thought the case might require. Alpac thus had another chunk of interest-bearing cash to add to its account.

It was a rather sizeable chunk: According to Roark, Alpac (Alyeska) paid more than 16,000 workmen's comp claims related to pipeline construction, ranging from incidental medical expenses in some cases to ongoing medical expenses plus thousands of dollars for permanent disabilities.

Considering that Alpac's pipeline money was garnered with no capital investment, no risk, some tax and all ex-

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Protest, challenge over comp

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penses paid, most sources agree that Alpac's contract was a fat one. Alpac's Roark said he did not like that description.

Asked to characterize the Alpac-Alyeska contract, Roark said, "It was a profitable... agreement to Alpac."

Just another bustling business caught up in the commotion of the pipeline, Alpac drew little attention. The company quietly adjusted claims, pushed papers, made payments and pocketed profits.

But Alpac was having growing pains. Office managers, adjustors and clerical staff came and went with the fast turnover rate that plagued most businesses caught in the currents of the pipeline. "Swamped" is the way Alpac's Dwyre described Alpac's problems with paperwork.

Duringthe height of the pipeline, one Alpac employee told the *Advocate*, "You could look for a (case) file in 16 places; by the time you got to the fourteenth it had been moved back to the third."

Superimposed on the chaotic tapestry of this booming little business were huge chunks of money floating among Alyeska, Alpac and the banks, eventually getting parcelled out in slivers to injured workers. Alpac's Dwyre confirmed reports that $1 million is a good ball-park estimate of the amount of money that went from Alyeska to Alpac during a typical month.

According to Roark, the monthly payments took a sudden jump near the end of 1977. "Yes, there was an increase in our losses after the pipeline was completed," the Alpac controller said.

Roark cited three factors for the jump: First, he said, "a lot of supposedly injured workers started developing back and neck problems" as workers faced the end of pipeline wages. Second, the state boosted Alaska's work comp payments. (According to a nationwide survey, Alaska's benefit ceiling is higher than that of any other state in the nation.)

Finally, a number of court cases went against Alyeska, resulting in large court awards.

Late in 1977, while Alpac was requiring more money per month from Alyeska than the company had needed during the peak of pipeline construction, Alyeska's owner companies were exhorting Alyeska to cut costs wherever possible.

The result of this situation, said one knowledgeable source, is that Alpac had to tighten down on comp claims. The seeds of the problem, the source added, were sown during Alpac's rapid growth while the pipeline was being built and came to fruition after the project was completed.

Knife-wielding is a tricky business, and it is easy to see how Alpac, under pressure to bring costs back down, may have cut some people with legitimate problems, as well as the grifters. In any event, many of the problems AVIA members experienced date from those last days of the pipeline.

During the reportedly tense trimming period, Alpac's cutting knife took an ironic twist and chopped off one member of Alyeska's own insurance staff. Cecil Kessick, a heavy equipment damage appraiser for Alyeska, hurt his back early in 1976 when he slipped on the ice boarding a helicopter after inspecting some trailers at Franklin Bluffs.

Alpac dumped Kessick off the workmen's comp roll in April 1977—three months before his doctor released him for light work. Under comp law, if you're injured on the job and cannot work, for two years after the accident you are entitled to wage conpensation. If there is permanent damage, the carrier must make a permanent settlement with the claimant.

Unlike the case of Black and MacArmour, in this case Alpac didn't even have its own physicians' report to counter Kessick's; the insurance company just decided Kessick had had enough compensation.

There are several complicating factors in Kessick's case. The comp record shows, for example, that in Kessick's case the Fairbanks Clinic apparently double-billed insurance carriers in some instances, and incorrectly over-billed Alpac in others. But that's not Kessick's fault. The salient fact is that Alpac dropped Kessick without any medical examination or direct testimony.

Stranger still, the Board upheld Alpac. Kessick has gone to court, suing Alpac and the Board.

As Kessick's lawyer argued before the Board: "A Claimant in Mr. Kessick's position is indeed put to difficult decisions. His treating physician tells him... he should not seek work. On the other hand, a claims adjuster for his workmen's compensation carrier tells him that he is able to work and terminates his compensation."

"If he follows his doctor's advice and continues to refrain from work for medical reasons, he suffers economic hardship. If he follows the claims adjuster's advice, he runs the risk of reinjuring himself."

Kessick has rented a small office in Fairbanks and he works part-time as an independent insurance adjustor. He said he still finds climbing difficult and he has to hire somebody to do much of his legwork.

Kessick declines to discuss his comp case and his court appeal of the Board's decision; he is still in the insurance business, he said, and he doesn't want to make waves, noting that the Board case and his appeal are matters of public record, his one comment is, "don't just read the Board's decision (branding him an exaggerator); look at the entire record."

Unlike Kessick, Diana Black will talk to anyone who will listen. In pain and in poverty, unable to convince officials that her plight is a direct result of the back injury she suffered on the pipeline, Black talks of near-suicidal depression. But she is quick to assert that her mental anguish is due to stress created by a system that seems to her cruelly indifferent at best, conspiratorial at worst.

San Francisco specialist Dr. Pennell and the Workmen's Compensation Board. Black insists medical reports identify her back problem as "myofascial syndrome," a malady that requires treatment, therapy and rehabilitation. Black holds that under workmen's comp laws she is entitled to coverage by Alpac.

How can Alpac and the Board deny the evidence and diagnoses of doctors familiar with her case and rely instead on the report of a specialist they had to go all the way to San Francisco to get? Black wants to know.

The reason Alpac went to San Francisco, Dwyre said, is that the insurance firm has difficulty finding independent consultants closer to home. Some physicians, fearing malpractice suits or conflicts with their colleagues, don't like to evaluate patients in controversial cases, the Alpac vice president said. For this reason, she explained, Alpac often has to send claimants to Soattle, Portland, San Francisco and Los Angeles for independent consultation.

A Fairbanks attorney who does some insurance work but avoids workmen's comp thinks there may be another answer to Black's question. When a party in an insurance case wants an expert witness, the lawyer told the *Advocate*, "obviously they're going to hire the doctor who gives them what they want."

In the jargon of the insurance world, another attorney familiar with Alpac's comp operations said, Dr. Pennell and his partner are known as "defendant doctors"—physicians who routinely see clients on behalf of an insurance carrier. According to lawyers familiar with insurance practices, some

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defendant doctors file reports with the carrier downgrading the client's complaints with astonishing consistency.

Alpac's Dwyre told the *Advocate*, "Diana was covered under workmen's comp for as long as...[Alpac felt necessary] to put her back to preinjury status.

"If we cannot put her back to preinjury status or if they end up with permanent impairment," the Alpac executive continued, "...then we have got to sit down and say we can really go no further. And that was the point we finally reached."

Although comp law says that if there is permanent damage the carrier must make a permanent settlement with the claimant, in this case Alpac never did so.

Alpac held that more than $15,000 in direct payments and $6,000 in medical expenses during the temporary disability period was sufficient compensation for Black's injury. The Workmen's Compensation Board agreed.

110 days later, still no answer

The workmen's comp waiting game...

Fairbanks

Blond, wiry, slightly balding at 39, Robert MacArmour limps over to his chair, eases himself down and removes the walking cane from his right wrist. He begins his story slowly, almost haltingly, as if he does not know how to describe for strangers the bleak, troubled world he entered unexpectedly in May, 1977 when the truck in which he was riding overturned on the North Slope haul road.

MacArmour, a compressor operator, was on his way down the pipeline to a new work site when the truck careened off a curve on the steep Atigun Pass south descent, plunged over an embankment and rolled. The pipeline worker was bounced around, thrown out of the cab and knocked unconscious.

Since that time MacArmour says he has had back problems, but he has received little solace from the workmen't compensation system, whose stated purpose is to cover lost income, medical expenses and rehabilitation for injured workers.

MacArmour was removed from the workmen's comp rolls by the insurance carrier, Alaska Pacific Assurance Co. (Alpac) during the summer of 1977 after three doctors cleared him to return to work.

MacArmour, who says he is in frequent pain and constant debt, appealed his case to the state-run Workmen's Compensation Board. His case was heard last Oct. 2.

State law required the three-person comp board to issue its findings within 20 days after a claimant's case is heard, but the board is swamped with a backlog of pipeline cases. As of this writing—nearly four months after the hearing—MacArmour is still waiting for his decision.

"They keep saying the decision is coming; is it coming by donkey?" Luz Arrango, MacArmour's girlfriend, asks from the kitchen of their sparse, low-income apartment. Luz is anxious to know for two reasons.

First, they both feel he needs an operation they cannot afford. "He's getting worse," she says.

Second, they are in a tough financial position. Luz works at a jewelry store to support herself, MacArmour and two young children. The bills—including over $4,000 in medical expenses Alpac won't pay—keep piling up.

The strain of waiting compounds the problems. Even if the decision is in MacArmour's favor, says Luz, "There's no way that's going to pay for what we've gone through."

MacArmour's mental health has been questioned by several physicians who have seen him. "I was neurotic at one point," he admits, "but my views have changed...I'm calmer now."

MacArmour says he wants "all the facts out in the open." To explain accurately how the case developed, he asks Luz to get "the box."

She disappears down the apartment hallway and returns a few minutes later, dragging a large cardboard box. The box is filled with records, loosely indexed in chronological order and interspersed with MacArmour's handwritten, narrative additions.

The records show that MacArmour spent eight days in the hospital after the accident and came out with tissue damage but no apparent fractures. He says he was worried about his back, but he wanted to go back to work as soon as he knew there was nothing wrong.

Doctors warned he might experience intermittent pain, but they cleared him to return to work.

"I've always shunned people who complain of back problems," he says. "I told the doctors I was always ready to take anything on...I was playing it tough."

(continued on page 7)

Robert MacArmour, who claims disabilities from an accident covered by Workmen's Compensation, is supported in his allegations by Luz Arrango, pictured here with children.

Waiting...

[continued from page 4]

Cleared by physicians to go back to work—he says at his own request and urgins—Alpac dropped MacArmour from the workmen's comp rolls during the summer of 1977. He did try to work in September, 1977—and quickly wound up back in the hospital.

Since that time, MacArmour has been enmeshed in a bureaucratic struggle to get his bills paid—and to get the medical attention he feels he needs to end his pain and get back on his feet.

MacArmour thinks he made things tougher for himself by trying to go back to work. An attorney familiar with workmen's comp procedures agrees.

Once doctors said MacArmour could go back to work, the lawyer says, it is understandable that a carrier would challenge all subsequent claims before paying them.

What is not so easy to understand is the time it has taken the board to consider the case and let MacArmour know what he can expect.

The case is complicated by conflicting medical testimony. Dr. Willard F. Pennell, M.D. (the same San Francisco specialist who advised Alpac to cut off Diana Black's workmen's comp—see accompanying story) examined MacArmour a year ago and felt MacArmour was faking his symptoms.

"The patient," Dr. Pennell advised Alpac, "overreacts to areas that are said to be painful and attempts to voluntarily inhibit muscle action but then goes through with it. He alleges bizarre sensory abnormalities which make no anatomical sense. I felt these were clearly conscious misrepresentations on his part.

Dr. Pennell concluded: "In my experience patients who perform in the manner that his man did during the neurological examination do so for purposes of litigation and it would not surprise me that such is the case with Mr. MacArthur (sic.) I do not believe that he is in need of any psychiatric treatment and I can find nothing to indicate that he is any way disabled from performing his pre-accident occupation if motivated to do so."

A prior and equally lengthy medical report from a Los Angeles specialist, Dr. Michael Roback, M.S., expresses a different opinion. According to Dr. Roback "The patient's condition with reference to the neck, low back and left arm are the result of a single accident suffered on 5/10/77...the patient has not received the full benefit of medical care and requires further evaluation and treatment."

After Dr. Pennell's report to Alpac, MacArmour—at his attorney's advice and, at his own expense—returned to Dr. Roback for another examination.

This time the Los Angeles orthopedic specialist was more emphatic: "Because of the injuries from the work accident," Dr. Roback wrote, "the patient is totally and permanently disabled for all employment and incapable of competing in the open labor market for employment."

Is MacArmour faking it? Luz does not think so. A Fairbanks psychiatrist, she recalls, once told her that MacArmour's problems were psychological.

Luz speaks simply and softly: "I said I believe Robert, because I've been close to him and I've seen his pain."

Epilogue:

I.

In an interview last week, before she left for a San Diego meeting with executives from other subsidiaries of Alpac's parent company, Insurance Company of North America, Alpac vice president Gay Dwyre described some of the problems faced by the injured family man:

"When a man...is severely injured...(sometimes) he becomes dependent upon the family for taking care of him when they never have before...it is one of the most terrible things that can happen to a human being...all of a sudden they are by themselves, not able to leave the house, and it does things...to their mind,-and to their family...It can destroy not only him, but the entire family."

Dwyre said she was speaking in general terms and was not familiar with MacArmour's case.

II.

Friday morning, 9 a.m. A solitary figure emerges in the gray Fairbanks dawn. He leans on a cane—not bent forward with age, for he is 39, but to one side. He walks with a stiff, short-stepped gait.

At a drop of three or four inches in the snowpacked walk, he pauses quickly in the cold to give full weight to the cane. Reaching his car, he eases himself in, starts it, then returns to the apartment, head down.

A short time later, a 4-year-old in a red snowsuit comes out, followed by a woman carrying a baby. The man with the cane comes last, his free hand holding the sundries bag for the babysitter and the woman's purse.

After Robert MacArmour drops Luz and the kids, he heads downtown to the adult education center, where he recently began taking a basic math class three mornings a week. The pain, he says, is a problem, but the class is something he has always wanted to do.

His math has always been poor, he says, and if he can improve enough he would like to study economics.

Shortly after noon, the man with the cane returns to the apartment. He checks the mailbox: No word from the Workmen's Compensation Board.

It is the 110th day since his hearing.

Changes coming for workmen's comp

No decision yet in the case of Robert MacArmour, the Fairbanks man who is waiting to hear whether the Workmen's Compensation Board will require his employer's workmen's comp carriers to pay medical expenses and benefits for back problems MacArmour claims stems from a wreck on the pipeline haul road in 1977.

The three-person, state-administered Workmen's Compensation Board, which oversees the privately funded and operated comp system, heard MacArmour's appeal last Oct. 2. Although state law requires the board to issue a decision in 20 days, the board is overloaded (*Advocate*, Jan. 25.)

While MacArmour's waiting period stretched toward four months, all three branches of state government were considering other aspects of the workmen's comp program. This action on diverse fronts underscored the complexity of the insurance program designed to guarantee injured workers prompt coverage for losses incurred due to on-the-job accidents and included the following:

- the State Supreme Court was deliberating arguments some observers believe could reduce greatly an injured worker's right to sue a negligent party;
- Sen. Bill Ray (D-Juneau) introduced a bill that would extend comp coverage to volunteer police officers;
- state administrators were prying money out of state-administered insurance industry account to cover payments for a program known as the Second Injury Fund.

The Supreme Court's problem, posed in three cases involving Alyeska Pipeline Service Co. and heard earlier this month, is to decide whether the fact that Alyeska paid workmen's comp for its contractors on the pipeline project entitles Alyeska to immunity against liability suits by workers injured on the project. Some observers say the high court's decision will have implications far beyond the pipeline.

Generally, if you're injured due to somebody elses negligence, you have the right to sue the negligent party. But if you're a worker injured on the job, you can't sue your fellow workers or your employer.

Instead, you get workmen's comp, which entitles you to salary compensation, medical expenses and rehabilitation (if you need it). If the system works properly, you are covered promptly--no legal hassles, no delays—by your employer's comp carrier.

In exchange for this guarantee, you give up the potentially lucrative payoff a suit for negligence might yield. A successful negligence suit can result in a cash judgement for pain and suffering; under workmen's comp there is no provision for pain and suffering.

What if you are employed by a subcontractor who is working in turn for another contractor? If you—the subcontractor's employee—are injured due to the negligence of the contractor, is workmen's comp your only remedy, or can you sue the contractor? Ths is the essence of the question the Court is considering.

Since pipeline workers' checks and supervision came from contractors—not from Alyeska directly—lawyers for several injured pipeline workers have argued that Alyeska, as the party that set up the job, should be liable for negligence. Alyeska counters that when the pipeline consortium picked up the tab for workmen's comp, Alyeska also picked up the employer's immunity to liability suits.

Alyeska also argues that the pipeline consortium did not have any responsibility for day-to-day safety and therefore should not be held negligent for pipeline accidents.

Legal logic and legal precedents exist to support the positions both Alyeska and the challenging workers have taken. Alaska's workmen's comp statute does not provide a clear answer, and different district court judges in the state have come up with different decisions.

One of the cases was brought by Kelly Everette, who lost a leg when a piece of pipe slid down a hill, crushing the pipeline worker between two sections of pipe. The other case was brought by Howard Vicini, who was injured when food on a freezer room shelf in a pipeline camp fell on him.

Both men have been covered by workmen's compensation obtained by Alyeska on behalf of its contractors but feel they are also entitled to sue Alyeska for negligent damages.

The Supreme Court's ruling—expected later this spring--will set a precedent for contractor liability in similar situations.

Sen. Ray's bill—introduced at the start of the legislative session—would entitle volunteer policemen on local police forces to workmen's comp benefits. At the present time volunteer firemen are covered by workmen's comp, but their police counterparts are not.

The Governor's staff is reviewing a request for a $275,000 supplemental appropriation for the Second Injury Fund, according to Paul House, who manages that fund for the state. The Second Injury Fund is funded by comp carriers to pay for rehabilitation, as well as long-term comp benefits for injuries caused by a prior disability.

House said that the supplement to last year's $722,000 Second Injury Fund appropriation will come from an account set up with the state but funded by the comp carriers. "The greater portion" of the supplement, he said, will go to Alaska Pacific Assurance Co. (Alpac.)

Alpac's portion of the supplement has already been paid to claimants, according to Alpac worker's compensation director Barbara Grissom.

Asked why Alpac has a large portion coming, House explained: One requirement for tapping the Second Injury Fund is a written record of the previous injury. Alpac insured the pipeline project, and Alyeska conducted pre-hire physical examinations. This practice, House said, gave Alyeska and Alpac a better written record of previous disabilities than many employers. Consequently, Alpac has a larger-than-average share of comp payments covered by the Second Injury Fund.

—Richard A. Fineberg

He waited 120 days to hear

Workmen's Comp says 'no' to Fbks. claimant

by Richard A. Fineberg

Fairbanks

The Alaska Workmen's Compensation Board has denied Robert MacArmour's appeal for workmen's compensation benefits.

MacArmour says he wants an operation to correct a painful back condition stemming from a wreck on the pipeline haul road in May 1977. While deep in debt for medical expenses incurred since the accident, MacArmour and his family waited 120 days for the overworked board's unfavorable decision (*Advocate*, Jan. 25, 1979).

The board ruling, issued Jan. 30, says MacArmour is a put-on and rejects his claim that pipeline insurance carrier Alaska Pacific Assurance Co. (Alpac) should cover his expenses. MacArmour, who says he's fighting mad, plans to appeal the decision to court.

The four-page decision by the board contains several apparent errors of fact and relies heavily on the medical opinion of a San Francisco specialist whose practices—along with those of his partner—have been questioned by other Alaska workers and attorneys in California.

Robert MacArmour

MacArmour is one of an unknown number of pipeline workers injured on the job who subsequently had problems with Alpac. A loosely organized group calling itself Action for Victims of Industrial Accidents (AVIA) claims 50 members, many of whom allege similar problems with Alpac, the insurance firm that bustled its way to the top of the Alaska insurance world during the oil pipeline boom.

MacArmour, who was thrown from a truck and knocked unconscious when the brakes failed on a steep grade, spent eight days in the hospital and received worker's compensation for two months, at which point physicians released him to return to work. He complained of back pains, but tried to work again that fall; medical records indicate he quickly landed back in a hospital bed.

Since then MacArmour has spent much of his time bouncing from doctor to doctor and fighting bureaucracies from his Fairbanks apartment. He appealed his case to the Workmen's Compensation Board, which heard the matter Oct. 2. Although state law requires the board to issue decisions within 20 days, it was 120 days before the board announced a verdict.

"The Board does not question...that the applicant was initially injured and that he had pain," says the board decision. "However, the pain he has today is not real, at least to the extent he testifies. The question essentially is whether the alleged pain is a psychological overlay caused by the accident or is a put-on in order to gain compensation."

Citing findings by San Francisco specialist Willard F. Pennell, M.D., the board concludes, "Any psychological overlay preexisted the May 10, 1977 incident. Applicant's complaints are based on a conscious attempt to get additional workmen's compensation benefits."

Pennell, a San Francisco neurologist and psychiatrist who examined MacArmour for Alpac during an afternoon last year, told Alpac MacArmour's behavior was bizarre and studded with "conscious misrepresentations."

"In my experience," the physician noted, "patients who perform in the manner that this man did during the neurological examination do so for purposes of litigation and it would not surprise me that such is the case with Mr. MacArthur (sic)."

In the final two pages of his evaluation, Pennell identifies MacArmour incorrectly and concludes, "Thank you for asking me to evaluate Mr. MacArthur for you." The doctor's 12-page, single-spaced letter to Alpac is dated Jan. 20, 1978—the same day he examined MacArmour.

In the board's view, Dr. Pennell found a "predisposed neurosis" and "conscious exaggeration of symptoms which seem to change constantly."

According to the board, "These developed such a pattern that each new doctor he saw was put to the test of trying to sort out an objective symptom to go along with subjective symptoms. Because of the short periods of treatment, no one doctor ever sorted it out until the pattern was explained by Dr. Pennell."

Reconstructing MacArmour's medical history to support its decision, however, the board overlooked or misstated several facts. Among them:

- MacArmour's attempt to return to work is described by the board as follows: "On September 8, 1977, applicant returned to work only to quit again after a few days." Pipeline medical records show MacArmour was sent back to Fairbanks by the medic at Five-Mile Camp on Sept. 19, 1977. Hospital and clinic records—as well as unpaid bills—show MacArmour was in the hospital for the next two weeks.
- "Dr. Lindig's report of March 17, 1978, released him for work and stated: 'Emotionally unstable for weeks.' " the board wrote. On the form cited, the physician did check a box releasing MacArmour for work, but the physician's handwritten interview note read, "Emotionally unsuitable for work"—not "emotionally unstable for weeks," as the board said in its decision.
- The decision also says, "Dr. Perry Mead on September 12, 1978 reported: 'I doubt that his injury caused his psychiatric disorder.' " In fact, the statement was made by Fairbanks psychiatrist Dr. Irving Rothrock—not Mead.
- "The reports of Dr. Pennell were compared to those of Dr. (Michael) Roback," the board said, noting that Dr. Pennell is a neurologist and psychiatrist while Dr. Roback is an orthopedic surgeon. The board does not indicate that Pennell saw MacArmour once, and the orthopedic surgeon saw him twice—before and after the Pennell interview. Neither of Roback's post-interview conclusions is mentioned by the board.

After their first appointment, Roback said, "The patient has not received the full benefit of medical care and requires further evaluation and treatment." After a second examination, Roback said, "The patient is totally and permanently disabled for all employment and in-

[continued on next page]

Workman

[continued from preceding page] capable of competing in the open labor market for employment."

To pick and choose among conflicting medical opinions is a part of the task of the Workmen's Compensation Board. In view of Pennell's reported penchant for siding with insurance carriers against claimants, MacArmour and other claimants find it surprising that the board—supposedly the claimant's friend—relies so heavily on Pennell.

Diane Black of Fairbanks, one of the founders of AVIA, says she was shipped off to Pennell, similarly branded an exaggerator with pre-existing psychological disorders, and cut off from worker compensation by Alpac and the board. An Anchorage claimant not connected with AVIA wrote the *Advocate* to relate a similar experience with Pennell and Alpac. (The claimant asked not to be identified.)

In an interview with the *Advocate*, San Francisco attorney Marvin E. Lewis, past president of the American Trial Lawyers' Association and author of a legal text on courtroom medicine, said he has faced Pennell's partner in "seven or eight major cases...They always say my client is faking it; I always win."

But attorneys like Lewis are hard to come by. At this point MacArmour's legal case looks like a long shot at best. One Fairbanks lawyer said the case probably will have to go to the Supreme Court, and that takes a lot of money.

Money is something of which MacArmour has little. His girl friend, Luz Arrango, currently supports him and two children. They worry that the family does not have enough money to make it through the month.

Their car is about to be repossessed; there are several thousand dollars in back medical bills hanging over their heads, they say.

Luz Arrango's dark eyes flash as she contemplates the bleak future, and the fact that the board, relying on the questioned expertise of a specialist hired by the insurance industry, kept them waiting four months before proclaiming that MacArmour is a put-on who is not entitled to the help that could put him back on his feet.

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Workmen's comp: high cost of pain

By R.A. FINEBERG
(First of a series)

When you think of insurance, you probably think of the skyrocketing cost of automobile coverage, or that life insurance policy with its provisions you and the insurance agent barely understand. But Alaskans pay more workmen's compensation than any other kind of insurance.

Alaska's compensation program, in fact, pays the highest benefits in the nation to injured workers. But the program is troubled. The ailments afflicting the comp system are many:

• High comp premiums which Alaska employers are required by law to pay may be forcing some businessmen to close their shops because they are eating up profits.

• The state bureaucracy designed to deal with comp problems is virtually paralyzed by its workload. While law requires the Workmen's Compensation Board to settle disputes between an injured worker and the insurance company within 20 days, the decision of a typical case now takes more than three months.

• Many injured workers claim they have been unable to get fair compensation for their injuries, or a fair hearing from the overloaded bureaucracy.

• Other workers reportedly fake injuries to collect lucrative benefits they don't deserve. By doing so, they bilk the insurance company and drive skyrocketing comp premiums still higher.

• Arcane rate-setting procedures and cumbersome bookkeeping practices make it difficult to determine what kind of profits insurance companies reap from workmen's comp. In this clouded situation, many industry observers assert comp is very unprofitable, but the insurance company that handles more compensation insurance in Alaska than all other companies combined appears to be prospering from its rapidly growing business.

The focal point of these diverse problems is a system that was established in the early 20th Century to provide workers injured on the job with insurance to provide income during recovery pay for medical expenses and rehabilitation. Employers are required by law to purchase workmens' comp insurance for all employees' the worker in turn gives up his right to sue an employer or fellow employee for negligence.

In 1968 compensation premiums in Alaska totaled about $8.5 million, about 11 percent of all insurance premiums written in the state. By 1977, the bill for workmen's compensation had jumped to more than $107 million, nearly 24 percent of the state's total insurance premium.

Before comp rates began rising, workers' comp premiums typically cost an employer about 40 cents per $100 of payroll. With increasing benefits and medical costs, today the same employer may be paying $5 to $10 in comp for every $100 of payroll.

Benefit boosts mandated by the state legislature in 1975 were a major source of the jump in comp costs. The legislative action, reflecting the findings of a nationwide presidential study on workers' comp, coincided with the pipeline

See Back Page, COMPENSATION

Comp

Continued

boom's increase in the average Alaska wage on which those benefits are calculated. This combination of factors sent comp benefits skyward, and premium increases followed.

The compensation system was designed to work promptly, with a minimum of red tape. For many claimants, that's the way it works. For those who get cross-wise with the system, however, it can become a nightmare of bureaucracy, delays and hassles whose only remedy is costly and time-consuming legal action.

A claimant who has a dispute with his insuror may take his grievance to the state Dept. of Labor's Workmen's Compensation Division. A state-run, three-person board rules on cases in which claimant and carrier cannot agree.

The board's task is an unenviable one. Insurance companies and claimants both go doctor shopping and come to the hearing with the most persuasive experts money can buy. To make its decision, the board must cut its way through legal flak, medical jargon and mountains of paperwork.

The board also is swamped with a backlog of cases stemming from the trans-Alaska pipeline boom. Although the Board is required by statute to issue a decision within 20 days, claimants typically wait three to four months for the overworked board to hand down its decision.

Numbers tell the story of the board's overload. Six hundred and fifteen comp cases were contested in 1975; three years later the number had risen to 1630 — an increase of 265 percent.

Formal decisions issued by the board after hearings increased from 176 in fiscal 1975 to 430 in fiscal 1978. During the same period, the number of compromise settlements (agreed to by claimant and carrier and approved by the board) rose from 150 to 584.

Workmen's Compensation Division director John Cook acknowledges that his agency is swamped. A proposal to add personnel to the comp board to handle the increased work load has been bandied about in Juneau with no legislative action to date.

Alaska benefits — presently at a maximum of $654.30 per week, the level set by the legislature — are higher than any other state in the nation. One federal program, the Federal Employees Compensation Act, sets a higher level ($678.25), according to a trade publication, "Analysis of Workmen's Compensation laws."

Last year, when Alaska paid $607 per week, Iowa was paying injured workers a maximum salary substitute of $247.48 to rank second. Only a few other states paid over $200.

Industry sources frequently comment that Alaska's high comp benefits may be worth faking injuries for — at least until the next pipeline comes along. The extent of the fraud in the state has not been ascertained.

"There is no doubt whatsoever that a huge change in costs — both insurance and average weekly payments — has been noticed," says Richard Jones of Sohio Petroleum Company's employee relations. And, Jones says, "we've noticed that the percentage of applicants having their claims accepted has gone up. I can't even remember when one was declined."

Ron Krueger, personnel officer for the Alaska Railroad, cites similar discontent with the federal law, estimating that compensation costs have tripled since 1974. The railroad now pays about $1 million in doctor bills and compensation, he says.

"I'm sure that the accident rate has not tripled," he says. "Costs are rising out of proportion to injuries."

[illegible] worker unjustly denied benefits. Former state insurance chief Richard Block says he finds it difficult to believe a system that is paying claimants $70 million a year in benefits is treating many workers unfairly.

Not so, says Diane Black of Fairbanks. Injured on a pipeline job in 1976 (she was a cook at Toolik Camp and hurt her back while moving furniture), Black says she and other workers who feel they have been unfairly treated have formed an organization — Action for Victims of Industrials Accidents (AVIA) — to reform the comp system. To date, however, their organization has failed to convince either the government or the insurance industry that there is a widespread or serious problem.

Claimants who are denied benefits often find themselves in pain and in poverty, says AVIA organizer Black. "We have a hard time making ends meet, let alone launching a protest," she states.

Black says she has 15 signed statements and knows of at least 30 more injured workers who feel they got short shrift from the comp system. Many of the cases involve one carrier, Alaska Pacific Assurance Co. (Alpac).

Possibly, Black says, that's because Alpac is the largest comp carrier in the state. Sparked by a contract with Alyeska Pipeline Service Co. that comprised 44 percent of Alpac's business in 1976, according to data on file with the Division of Insurance, Alpac's growth has outpaced all other carriers in the state.

In 1977 Alpac wrote $60,675,000 worth of comp premiums — six times more than any other carrier operating in Alaska and 56 percent of the state total. By comparison, in 1975 Alpac's $17.4 million was nearly three times that of its main competitor and 40 percent of the state's total.

In contrast to AVIA's gloomy view of Alpac, a Division of Insurance examiner who audited Alpac's [illegible] and January 1978 reported that he "got the general impression that the treatment of...claimants...was exemplary." The examiner also characterized the company's rehabilitation program as "excellent." A market conduct exam, which would have directed more attention to the manner in which Alpac handles individual claims, was scheduled by the division but was never conducted.

The Division of Insurance has a consumer complaint section to handle problems individuals encounter with insurance companies. But his agency usually sends comp claimant problems to the overloaded Workmen's Compensation Division in the Labor Department. According to Insurance Division investigator Bob Blakeney of Anchorage, his office refers about three calls a week to the Workmens' Compensation Division.

If it is difficult to get a handle on claimant problems, it is even harder to get a clear picture of the economics of comp insurance. "Very unprofitable," says an industry source, pulling out a recent compilation in an insurance news letter. The unaudited, nationwide data indicates the comp premium-to-payout ratio is one of the worst in the industry and just about at the break-even point.

The purported unprofitability of comp doesn't seem to bother Alpac. Largely on the strength of its Alaska comp writings, this insurance company has grown from five employees in 1968 to 296 today. In recent years the company has opened offices in Fairbanks and Valdez, built a handsome new headquarters in Anchorage and branched out to Montana, Idaho, Washington, Oregon and California.

Records filed in Juneau with that Division do not provide a clear answer to the question, is comp a lemon or a money-maker for insurance companies? Part of the problem is that the state's leading carriers — Alpac, Industrial Indemnity and Providence of Wash- [illegible] Alaska together with their filings from other states, making it all but impossible to develop a true picture of the profitability of writing comp insurance in Alaska.

Division of Insurance personnel who readily admit they would like to have more information about the way Alaska's comp carriers figure their rates out and are trying to get that information.

Financial studies are being conducted, and the division has scheduled a public hearing in Anchorage May 15 to discuss workers' comp rate-making issues.

Next: who pays the bill for workmen's comp?(The Fund for Investigative Journalism provided some of the funding for the research for this series).

Anchorage Daily News
April 29, 1979
(cont.)

Former Insurance Division director stumps for study of workers' comp

By R.A. FINEBERG
Daily News correspondent

Since stepping down as director of the state's Insurance Division last December, Richard L. Block has been dividing his time between revamping the Alyeska Pipeline Service Co.'s insurance department and drumming up support from businessmen for a thorough investigation of the worker's compensation system.

Noting that the Director of Insurance is the public's protector and advocate on insurance matters, some observers question the porpriety of the worker's comp reform campaign Block proposed shortly after leaving public office.

The question the critics ask: If reforms in the cumbersome workers' comp system are needed (few deny this proposition) could Block have done more about this problem while he was the state's top insurance official?

Block maintains his present consultant activities are "not a conflict at all" with his past duties. "The work I'm doing as a risk management consultant," he says, "is advising buyers of insurance on how to more effectively utilize the insurance mechanism." Essentially, he continues, that is "the same thing I did as Director."

Although the state's conflict of interest statute seeks "to discourage public officials from acting upon a private business interest in the performance of a public duty," the statute applies only to conduct while in office. No law prohibits a public official from going through the so-called "revolving door" between public and private office.

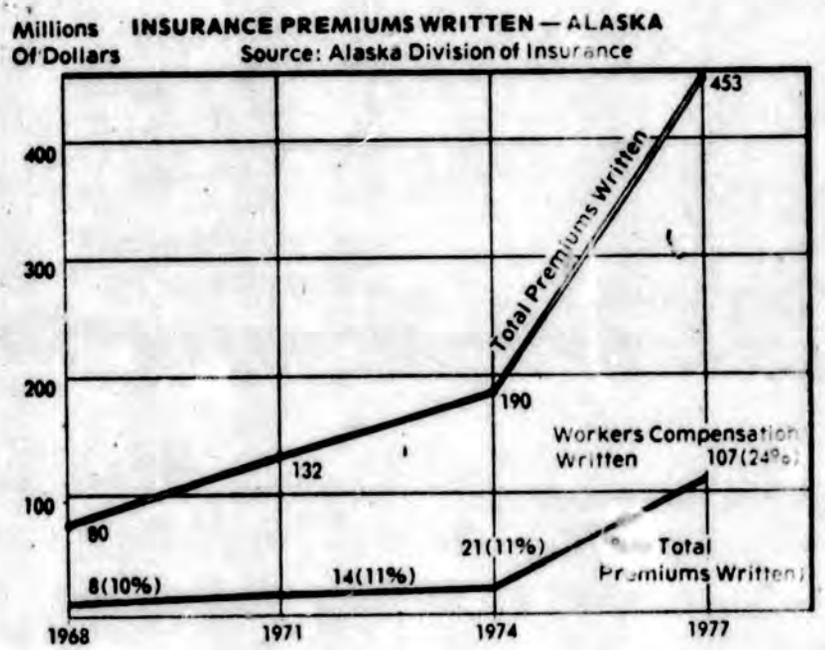
Block's abrupt transition from public servant to would-be business advocate is no more precipitous than his entry into public service. When Block became the state's Director of Insurance Oct. 1, 1975, he resigned from the Board of Directors of Alaska Pacific Assurance Co. (Alpac), the company that dominates the workers' comp field in Alaska.

Generally regarded as one of the most knowledgeable persons about insurance in the state. Block wins high marks from his former subordinates at the Division of Insurance — and from many others — for fairness and intelligence.

But some critics say Block reflected the insurance industry position — rather than the consumer's — on many matters. "I don't necessarily fault that the guy that runs it (the Insurance Division) is out of the industry — he has to have some knowledge, says AFL-CIO spokesman Dwayne Carlson in Juneau. "But it just never turns out right...I don't know of any time an industry request has been rejected," Carlson says.

Deputy director John George, who served under Block, thinks the criticism is unfounded. Anybody who serves as long as Block did in a controversial position, George maintains, is bound to draw somebody's criticism from time to time.

Asked to evaluate his tour as Director of Insurance, Block replies, "We had to make some tough decisions...buy they were decisions that were long overdue...What I really did was motivate people there to understand what a regulatory agency was supposed to do and show them how to do it. Now they're out there doing it."



Graph traces the growth of the Alaska insurance business since 1968 (top line) and the growth of worker's comp costs. In 1968, worker's comp premiums made up approximately 10 per cent of the total insurance market in Alaska; by 1977 comp premiums accounted for 24 percent of all insurance premiums written and weighed in as the largest insurance line in the state by dollar value.

Block's successor at the Division of Insurance, Kenneth Moore, says he found a "clean desk" when he took over Feb. 26. The former director, Moore says, left no specific recommendations no lists of immediate or potential problem areas.

Before Moore arrived from New Mexico to start his new job, however, Block had circulated a proposal to Alaska businessmen calling for a thorough review of workers' compensation. The study Block is proposing points toward major legislative reform, as well as changes for both the state Labor Department's Division of Workmens' Compensation and the Commerce Department agency Block headed for over three years.

(continued)

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(April 29, 1979 — sidebar)

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(sidebar)

CONT.

Richard Block

Kenneth Moore

Block's "Proposal to the Alaska Coalition of Employers for the Identification and elimination of the causes of High Cost of Workmens' Compensation Insurance to Alaskan Employers" is dated Jan. 18, 1979; his last day as Director of Insurance was Dec. 22, 1978.

Even before the proposal was circulated, Alyeska Pipeline Service Co. had hired Block on a consulting basis to manage temporarily and overhaul the pipeline company's insurance program.

Two oil companies owing a major share of the Alyeska pipeline, Exxon and Sohio, are among the companies sponsoring Block's research proposal, which describes the following probably goals:

- "A legislative package whichmust be carried to Juneau and advocated;"
- "Change in administrative procedures at the Division of Workmens' Compensations;"
- Change of direction by thecourts;
- "Change in the (workers' comp premium) rating structure whichmust be developed and implemented through the Division of Insurance;"
- "Changes in the health care delivery system."

Block's seven-page research proposal traces the recent history of workers' compensation in Alaska, pointing out that the state legislature boosted comp benefits in 1975 to reflect the high wages of the pipeline boom. (This action was taken five months before Block left private industry to become Director of Insurance in October, 1975.)

Increased premiums necessary to pay for the benefit hike resulted in criticism from employers, who must pay for worker's comp insurance fo their employees. In public office Block sought to cut back benefit increases, thereby reducing premium rates.

Before coming to Alaska, Block served as general counsel for Pacific Employers Insurance Co. Like Alpac, Pacific Employers is a wholly-owned subsidiary of the nationwide conglomerate Insurance Co. of North America (INA).

When INA purchased Alpac in 1971, Block helped the parent company with legal technicalities. Block later served a brief stint as Alpac's assistant secretary and spent three years on the Alpac Board of Directors, a position he resigned to become Alaska's Director of Insurance in 1975.

Although he maintains there is no conflict between his present consulting activities and his recently-held public position, Block does agree that he is "more valuable to the people I'm working for...I certainly know a lot more for having worked in the division."

A bill proposed by the state ombudsman last year would prohibit former public officials from being paid to represent any person or business on matters the former official handled in public office for 12 months after leaving office. The bill has yet to receive legislative committee action, however, and the revolving door through which Block entered and left public office is entirely legal.

Anchorage Daily News
April 30, 1979
(Page 1)

Some doctors rough on comp claims

By R.A. FINEBERG

(Second of a series)

When Robert MacArmour, a Fairbanks pipeline worker injured in a truck accident in the Brooks Range in May 1977, pressed his claim for workers' compensation benefits, Alaska Pacific Assurance Co. (Alpac) sent him to a San Francisco specialist for examination.

The physician, Dr. Willard F. Pennell, spent three hours with MacArmour, then wrote a 12-page, single-spaced report to Alpac.

The neurologist-psychiatrist told the insurance company, MacArmour most likely was faking his back problems.

Alpac denied MacArmour further benefits. Citing Dr. Pennell's opinion, the state Workmen's Compensation Board upheld the insurance company, concluding MacArmour's complaints were "based on a conscious attempt to get additional workmen's compensation benefits."

Today MacArmour is still seeking medical treatment while he looks for a lawyer to help him tackle Alpac and the compensation board.

MacArmour says he knew early in his interview with Dr. Pennell that the physician was going to side with the insurance company.

Diane Black, another Fairbanks worker who says she too has a back problem, tells an almost identical story about Dr. Pennell and Alpac.

An Anchorage woman, who asked that her name be withheld, claims Alpac sent her to Dr. Pennell and that the San Francisco specialist stripped her of "almost everything but my driver's license."

None of the three Alaska worker's comp claimants knew each other when Alpac sent them to San Francisco. Until recently they had never heard of a lawyer named Marvin E. Lewis.

Lewis says he could have warned them about Dr. Pennell. A San Francisco attorney and past president of the American Trial Lawyers Association, Lewis has been in court with Dr. Pennell and his partner, Dr. Knox Finley, for more than two decades.

"They always say my client is faking it; I always win," the lawyer snaps, noting that he has won at least half a dozen major injury suits for clients against whom Dr. Finley has testified.

Lewis is the author of a legal text, "The Psychic Injury." In that volume he describes in detail several of the cases in which he has faced Dr. Pennell's partner. Those comments, he says, are equally applicable to the work of Dr. Pennell.

In one case quoted in the textbook, Lewis pointed out that Dr. Finley had appeared in nearly 100 cases in San Francisco as an expert witness, then asked the doctor to name a single case in which the physician had testified that there is a link between the accident in question and the psychological damage for which the plaintiff seeks damages.

The physician was unable to name a case in which he sided with the plaintiff.

Lewis concluded one successful prosecution with this statement to the jury:

"Dr. Knox Finely comes from a defense mill. That's what his office is...nearly a hundred times he has testified on the stand like this in...injury cases and always for the City and always for...insurance companies...Then his two partners were doing the same thing. Then they were not only having these cases, but there were other plaintiffs who were injured that never got to Court...they were doing all this...as a business, a business of testifying for insurance companies..."

Dr. Pennell declines to discuss lawyer Lewis' criticisms of himself and his partners. What about the complaints of MacArmour, Black and other Alaskans? Professional ethics, Dr. Pennell replies, prohibit him from discussing individual cases.

See Back Page, WORKMEN'S

Continued

Why does Alpac use Dr. Pennell? According to Alpac comp director Barbara Grissom, Dr. Pennell is one of the few West Coast physicians licensed in both psychiatry and neurology. Grissom describes Dr. Pennell as "a very competent man" who does not always render a finding that results in denial of benefits to the claimant.

Under comp law, Alpac vice president Gay Dwyre points out, both the insurance carrier and the claimant have the right to call in one independent consultant.

Grissom says Alpac has used Dr. Pennell in five or six cases she can think of. Other Alaska comp carriers have also used Dr. Pennell on occasion.

How many Alaska comp claimants have been sent to Dr. Pennell? How often has the Workmens' Compensation Board decided controversial cases on the basis of this physician's testimony?

Director of Workmens' Compensation John Cook says he cannot answer the question. To gather this kind of data would require going through mountains of paperwork associated with thousands of comp cases on file in Juneau.

Cook says his staff is already overworked and he cannot assign anybody to this task. Despite the fact that Dr. Pennell's opinion was cited at length as the basis for the board's rejection of both Black and MacArmour's appeals for continued compensation, Cook denies that the board is unduly influenced by any one physician in a given case.

Dwayne Carlson, AFL-CIO lobbyist in Juneau, says he has been proposing that the workers' comp and other State Labor Department files should be computerized so that safety and medical trends can be pinpointed and dealt with promptly. Carlson recalls he had to gather statistics manually to present testimony for workers' comp hearings in 1975. He would have to do the same today, he adds.

Injured Fairbanks workers who have banded together to call attention to their problems want the same information. The group, Action For Victims of Industrial Accidents (AVIA), has gathered names of several dozen allegedly injured workers who claim the comp system has failed them. However, AVIA lacks comprehensive statistics that might underpin the complaints.

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Anchorage Daily News
April 30, 1979
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Workmen's comp doctors criticized

AVIA's prime mover is Diane Black, 34, who injured her back working at a pipeline camp in 1976. She walks with the aid of a cane and requires pills and treatments for pain she says resulted from the accident, which occured when she was moving furniture at Toslik camp.

After paying $24,000 in compensation and $6,000 in medical expenses, Alpac cut Black off in 1977. The Workmens' Compensation Board twice upheld the insurance company. Said the board: "We believe, as stated in Dr. Pennell's report, that it is probable that some secondary gain or need for attention is motivating her to perpetuate her symptoms and that she will continue to seek treatment and take medication as long as it is provided."

The board quoted Dr. Pennell, who advised the insurance company that "Mrs. Black may have sustained a mild low back sprain at the time she lifted the bed at work (in 1976) but certainly that injury could not have produced symptoms of any great duration, and I firmly believe that she recovered from those symptoms."

Black, who is writing her own court brief challenging Alpac and the state board, contends Dr. Pennell and the board ignored and misstated key facts about her case. She feels she needs back surgery to correct the problem stemming from her injury.

Insurance industry sources say back injuries are among the most difficult for physicians — and the workmen's compensation board — to evaluate.

A back injury is also at issue in the case of pipeline compressor operator MacArmour. He was thrown from the passenger seat of a truck when it careened out of control and plunged off a steep bank at the Atigun Pass haul road crossing. The truck rolled several times. MacArmour was accompanying the "pigs" that were used to clean the inside of the pipeline to the next job site on May 9, 1977.

The accident knocked him senseless, injuring his back. He was airlifted to Fairbanks for medical treatment.

According to the medical records, MacArmour was released from the Fairbanks hospital after eight days, then spent several months going from doctor to doctor. In September of 1977, he tried to go back to work as a compressor operator, but quickly landed back in the hospital, complaining of intense back pain.

Cut off from compensation benefits in July, 1977, MacArmour brought his case to the Workmen's Compensation Board for a hearing on Oct. 2, 1978.

In its Jan. 30, 1979 decision, the board sided with Alpac and Dr. Pennell. In doing so, the board rejected the finding of California orthopedist Michael Roback, who examined MacArmour twice and concluded MacArmour had not received "the full benefit of medical care" and was "totally and permanently disable" as a result of the haul road accident.

Although the law requires the board to issue an opinion in 20 days, MacArmour had to wait four months for a decision. The delay in MacArmour's case was typical.

The question the board pondered for four months was whether MacArmour's alleged back pain was caused by a genuine physical problem, by a psychological problem, or whether the symptoms were faked. The board, quoting at length from Dr. Pennell's critical evaluation, dismissed MacArmour's case with the judgment: "Applicant's complaints are based on a conscious attempt to get additional workmen's compensation benefits."

MacArmour says he plans to appeal the board's decision in court, but first he has to find a lawyer to take the case. Several lawyers said they are reluctant to take MacArmour's case because it promises to be time-consuming and expensive to research and prosecute.

While MacArmour casts about for an attorney, he must also decide what to do about resolving his pain — and several thousand dollars in medical bills that have accumulated since the 1977 accident.

Although Black, MacArmour and other comp claimants with alleged grievances have demonstrated in front of the state building in Fairbanks, besieged the Ombudsman and the Governor's office with complaints and contacted the Workmen's Compensation Division's Fairbanks representative on numerous occasions, they have received a less than heartwarming response from state officials.

Workmens' Comp Director Cook says he hasn't investigated the group's complaints because they haven't addressed specific inquiries to him. Disputed cases requiring the board's attention have jumped from 615 in fiscal 1975 to 1630 in two years later, and Cook acknowledges that the division is hard pressed to handle all the paperwork.

The State Commerce Department's Division of Insurance has a consumer complaint section, but that agency has been of little use to comp claimants like MacArmour. Bob Blakeney, complaint investigator, says his office usually forwards comp claimants to the Workmen's Compensation Board because that institution is set up to deal with claimant-carrier problems.

How do the comp claimants fare with the board? "We don't know," Blakeney replies. His agency and the Workmen's Compensation Board are within different departments, and bureaucrats are normally reluctant to step on toes by crossing departmental lines.

Asked how many comp complaints his office directs to the Workmen's Compensation Division, Blakeney checks with two staff members and comes back with an answer: about three a week. He seems somewhat surprised. "I think three a week is a lot of calls," Blakeney says, "and if we had three a week on a standard line (of insurance) we would really feel like we had a tremendous problem."

Former Director of Insurance Richard L. Block, who is serving as a consultant to private business and who plans to conduct a research program aimed at lowering workers' comp rates, says he finds it difficult to believe that a system that is shelling out $70 million a year in comp benefits is treating many workers unfairly.

"Even assuming the company wanted to put the squeeze on workers," Block says, "you've got the Board watching out." The insurance carrier is penalized if it is wrong in denying benefits, Block adds, and the carrier also has to pay the claimant's attorney fees.

Block's view is very much at odds with the impressions of seven comp claimants who met one evening last month at an Anchorage restaurant to discuss their comp problems. Truck drivers, ironworkers and laborers, they all told similar stories. None were associated with the Fairbanks-based AVIA.

Some were cut off without notice; others had to fight for months to win benefits the comp system purports to deliver promptly to injured workers.

One claimant, who felt he had received a raw deal from doctors and insurance companies alike, commented, "I had a brother who was a surgeon and I believe in doctors, but when you find people

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(continued)

like this you can't trust, it turns you around."

The workers compared problems, exchanged bits of information and leafed through the 110-page reprint of the law governing worker's comp, searching for passages that pertained to their individual cases. "The insurance company never informed me at all that there was a book," one said.

Most agreed a concise and clearly written guide to key portions of the comp law would be a great help to the injured worker, who sometimes knows little about the intricacies of law. Although one of the duties of the Director of Insurance is to "inform the public of matters concerning the...coverage, benefits and rights of insurance," former Insurance Director Block thinks that that if such a booklet were necessary, the Division of Workmen's Compensation ought to put it out.

Hovering over claimants at odds with the system is a stigma: they are regarded by many as fakers or malingerers. Nobody knows just how many comp frauds there are, but the problem is a serious one.

Several claims adjustors recall that during the heyday of pipeline construction they could tell when a contractor was about to finish a portion of work and lay people off; a few days before the job finished, a rash of workers employed by that contractor would show up at the worker's comp office with alleged back injuries. The situation today, most observers agree, is even worse.

The fact that some workers find Alaska's lucrative comp benefits worth faking for (the comp system payed $70 million in benefits to Alaska claimants in 1977) is of little comfort to Luz Arrango. The Fairbanks woman, who lives with Robert MacArmour, has been supporting *herself*, MacArmour and two children since MacArmour was injured in 1977.

Luz does not believe the doctors who have labeled MacArmour a fake. "I have seen his pain," she says.

There have been nights, she recalls, when MacArmour has moaned in anguish in his sleep, twisting and grimacing in obvious pain. Yet she would ask the next morning how he fared during the night, and he'd reply, "not badly."

"Why should Robert and the children pay for other people's frauds?" Luz wants to know.

When Alpac sent MacArmour to Dr. Pennell, the company issued a plane ticket and $60 in expense money. MacArmour received the Alpac check and ticket less than 48 hours before he was scheduled to depart. The expense money was inadequate. He spent part of the day before he left trying to secure enough money to cover taxis to and from the San Francisco airport, a hotel room, meals and miscellaneous expenses. By calling the Workmens' Compensation Division and Alpac he finally got an additional $40.

His expense records show he needed it all.

(Tomorrow: The high cost of workers' compensation — how the rates are set and reviewed. The Fund for Investigative Journalism provided some of the funding for the research for this series).

Anchorage Daily News
May 2, 1979
(Page 1; part 3 of series)

Compensation rates may artificially boost costs

By R. A. FINEBERG
Daily News correspondent

(Last of a series)

Variations in the way Alaska insurance companies report data to the national workmens' compensation rate-making organization may be artificially boosting the price Alaska employers pay for workers' comp insurance, The Daily News has learned.

This possibility has led the state Division of Insurance to hire accounting specialists to examine the complicated comp rate-setting procedure. The report, by the California-based firm of Milliman and Robertson, is due by June 30, according to state insurance director Kenneth Moore.

Informed sources say the investigation was triggered when the Division of Insurance learned Alaska Pacific Assurance Co. (Alpac), the state's largest workers' comp insurance carrier, may not list its reserves — the amount the company sets aside for anticipated payments — in the same way other major carriers operating in Alaska list theirs.

But an Alpac official said Monday the company does not list its reserves in a different manner.

Don Koch, the state's insurance market surveillance chief, said one area of confusion is the manner in which Alpac reports annuity payments to the National Council on Compensation Insurance, the industry's rate-setting organization.

Alpac buys annuities (simply guarantees to make regular payments) to cover long-term payments to disabled comp claimants or to survivors of persons killed in job-related accidents.

Alpac, or any other insurance company, may — for example — buy an annuity that pays $1.5 million over a 30-year period for less than $500,000.

Insurance division officials are concerned that a company may record the money set aside for anticipated pay-outs — the $1.5 million figure — with the National Council for rate-making purposes even though the company later pays the lower figure.

And it may be that the lower

See Back Page, RATES

Rates Continued

May 2, 1979
(part 3; continued)

figure is the appropriate one to use in calculating the costs that go into the rates a carrier charges for workmens' compensation, Koch said. If some carriers report the $1.5 million pay-out price rather than the $500,000 purchase price, the practice would tend to raise comp rates, Koch said.

But Alpac says the purchase price is what it reports to the National Council.

"What we paid for the annuity is what we report," Alpac vice president Gay Dwyre said Monday.

Koch said, "We're under the impression it's the other way around. However, we have not confirmed that as yet...it is one of the things Milliman and Robertson will look at."

At this time, Koch said, other major carriers are advising the National Council of the actual amount they pay for long-term securities, while Alpac appears to be listing the amount the security, once purchased, ultimately pays out.

Koch emphasized that the division is not prepared at this time to fault any carrier. There is legitimate confusion, he said, about which figure to use.

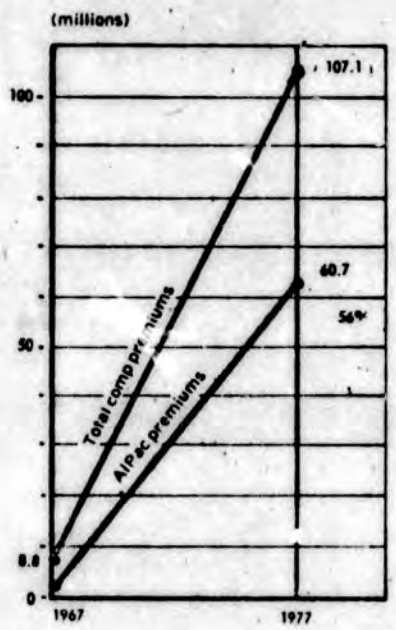
Whether the higher figure or the lower one is used, he said, all companies should use the same system.

"Somebody is not doing it the way it should be done," he said. "We're going to...get it fixed."

The extent to which different reporting methods may inflate Alaska comp rates cannot be determined from records filed with the Division of Insurance in Juneau.

That is one of the reasons the Division of Insurance hired Milliman and Robertson to examine the data submitted to the National Council. The data submitted to the National Council by carriers, Koch said, is generally accepted by the Council without auditing.

Workers' comp premiums written in Alaska



Only a small percentage of comp cases require large, long-term payments according to Richard L. Block, former state Director of Insurance now in charge of Alyeska Pipeline Service Co.'s risk management program. The pipeline carrier had "15,000 to 20,000" comp cases during construction of which less than 800 are still open. But those 800 cases Block says, "represent more in dollars than all we've ever paid out."

Koch said the Milliman and Robertson exam is looking at a wide range of rate-setting practices. However, he said, it was the Division's concern that some of Alpac's figures "may not reflect actual experience" that prompted the study.

The possible discrepancy in reporting methods was uncovered in 1977 when the Divison of Insurance met with Alpac employees to lay the groundwork for a routine financial examination of Alpac. That audit of Alpac, completed in January 1978, criticized the company for sloppy record-keeping and questioned the firm's reserving practices.

Alpac did not contest the audit.

Among the 1978 state audit's findings:

• The accounting firm of Peat, Marwick, Mitchell & Co., which conducted part of the examination for the state, found several weaknesses in Alpac's system of internal accounting. "Because of the overall importance of data processing to the company's system of internal control," the auditing firm advised the state, "we recommend that continued improvements...be given high priority." Alpac instituted the changes recommended.

• The audit revealed a backlog of approximately $619,000 in rejected claimchecks — checks branch offices requested for claimants that were cancelled by Alpac's central office for various reasons. Some, several months old, had yet to be returned to the originating office.

• Alpac's year-end report for 1976 showed an overall reserve deficiency of $2,095,419. However, a study of closed claims made by the state auditors showed that for the next nine months Alpac had a surplus on closed claims of $1,468,-922. State financial examiner Don DeMuth finds the contrast in these figures "hard to believe."

Ordinarily, DeMuth said, he would expect a correlation between the two studies. In this case, however, one set of figures appeared to indicate significant under-reserving, while the other set indicated over-reserving.

Nothing that may be a legitimate and logical explanation for this contrast, DeMuth said he would like to know more about Alpac's reserve reporting techniques.

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← Noting that there may be a le
(correction appeared 5/3/79)

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May 2, 1979
(Part 3; continued)

"Normally an insurance regulatory body would not be concerned if a company was over-reserved," the 1978 audit stated, "...but since Alaska Pacific Assurance Co. writes approximately one-half the workmens' compensation business in the state, the Division of Insurance...is concerned with the potential effect that conservative loss reserving has on rate-making statistics. The division expects to make a market conduct examination of Alaska Pacific Assurance Co. in the near future which will include a review of the rate-making process and rate-making data base."

The market conduct study was never made market surveillance chief Koch said, because there were too many other projects that required the division's attention. Consequently, Koch advised then-director Richard L. Block, Koch would not be able to conduct the market study. Block, Koch recalls, was not happy about it.

Questions raised in the process of laying the ground work for the routine Alpac audit, however, tipped the state examiners to the possibility that discrepancies existed between the company's actual losses and the losses reported to the National Council. It was that information, division personnel said, that prompted the present study by Milliman and Robertson.

While questioning Alpac's paperwork procedures, the 1978 state audit praised the company's handling of claimants. "While the financial examiner did not make a specific review...(of claim settlement practices)," the report said, inspection of claim files for reserves gave "the general impression that treatment of...claimants was exemplary." Alpac's rehabilitation program was characterized as "excellent."

Alpac's claim handling has been criticized by some claimants who feel the company has unjustly denied them injury benefits. In Fairbanks a disgruntled group of injured workers has formed a group known as Action for Victims of Industrial Accidents. Group spokesman Diane Black has signed statements from at least 15 workers in the Fairbanks area, many of whom felt they got a raw deal from Alpac.

Industry-wide figures show that workers' comp carriers pay about as much for losses and expenses as they collect in premiums, leaving little apparent margin for profit. But these figures do not take into account the income the insurance company generates by investing large sums of money that will not have to be paid out in losses until a future date.

That an insurance company can make money while writing policies at an apparent loss is shown by figures on file with the Division of Insurance for Alpac. From 1973 thru 1976 Alpac recorded an underwriting loss of nearly one million dollars. During the same period, however, the company showed an after-tax profit of $2,328,120.

According to state figures in 1977 Alpac, a wholly-owned subsidiary of the national giant Insurance Co. of North America, wrote $80,675,000 of workers' comp premiums in Alaska. That's more than all other comp carriers in the state combined.

Alpac is headquartered in Anchorage with about 120 employees here. In Fairbanks, Juneau and Ketchikan offices, the company has another 22 employees, and about another 100 employees in five other western states.

Workers' comp benefits have been a subject of controversy in Alaska since 1975, when the legislature, in keeping with the findings of a Presidential commission, increased the benefit payments for on-the-job injuries. As benefits were increased to reflect pipeline wages, insurance carriers increased premiums to offset benefit payouts.

Criticism from businessmen, who must purchase the mandatory insurance from private carriers, resulted in a slight reduction in benefits — and premiums — in subsequent years, but Alaska's benefits are still the highest in the nation.

During the past decade the state has witnessed a dramatic jump in total comp premium payments, from approximately $8 million in 1968 to $107 million in 1977. During the same period Alpac's has emerged as the dominant comp carrier and the largest insurance company in the state.

The Division of Insurance has not yet completed its annual report for 1978, but informed sources told The Daily News they expect the total pay-out in comp premiums to drop slightly, while Alpac will retain its dominant position, recording more comp premiums than all other carriers in the state combined.

(The Fund for Investigative Journalism helped pay for some of the research for this series.)

Anchorage Daily News

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Changes needed for workers' comp

A wide-ranging examination of Workmen's Compensation in Alaska carried in The Daily News this week suggests a number of subjects that need close attention to ensure that the program really benefits those it is designed to help. The list of unanswered questions raised about the system demands a careful study be initiated to determine the facts and figures upon which policy makers may judge the program.

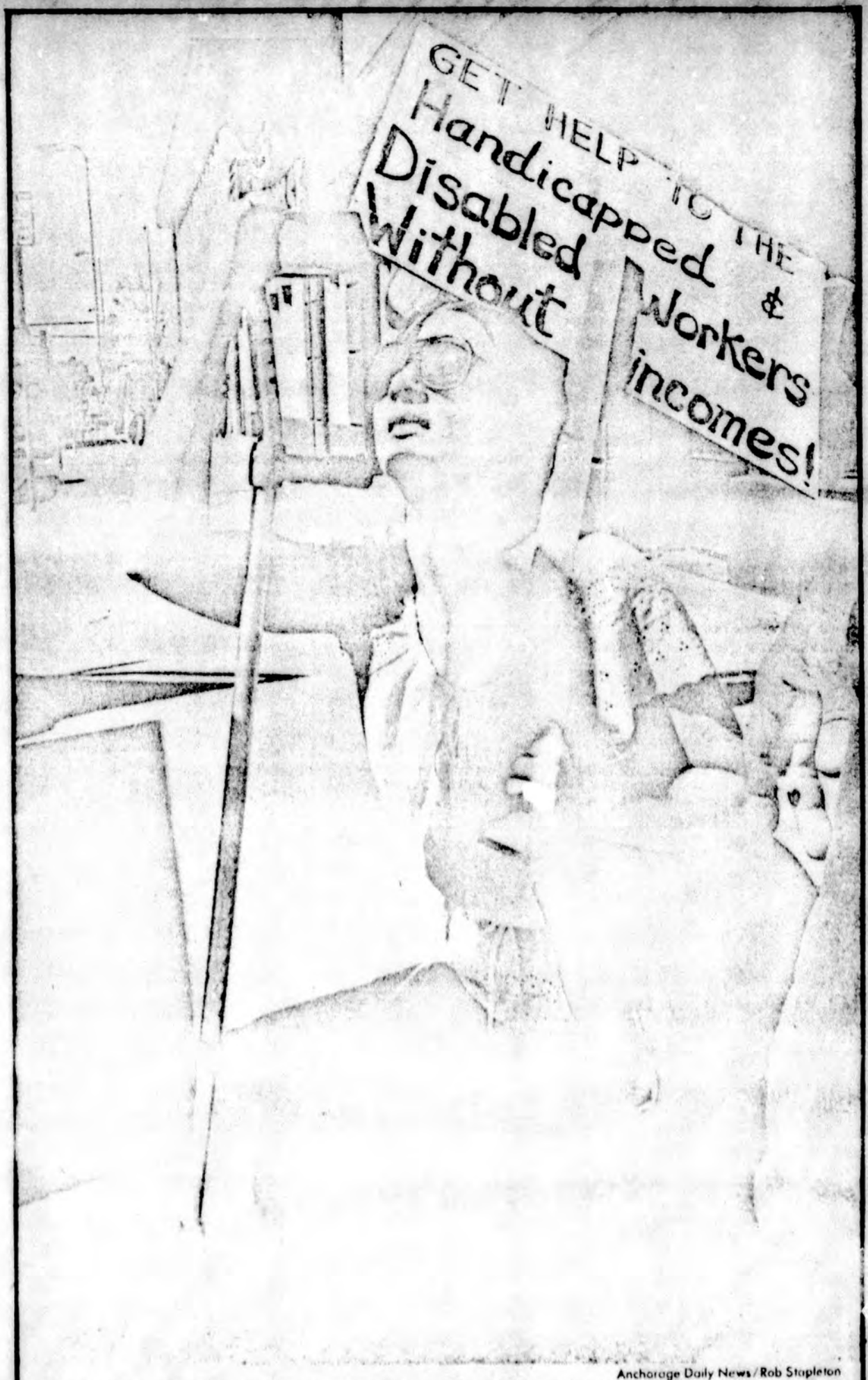
Without question, claimants have sometimes been caught in a classic bureaucratic squeeze; overlapping and sometimes conflicting jurisdictions of the Department of Labor's Workmen's Compensation Division and the Insurance Division in the Department of Revenue serve to undermine the comprehensive handling these important claims should receive. Upon checking, an official in the Revenue division office acknowledged a sizeable number of complaints involving workers' comp, but also told us the complaint office hadn't identified the subject as an area needing attention.

It is also troubling to note that a number of claimants — nobody knows just how many — have apparently been denied claims on the strength of medical testimony from a California physician well known for his consistent findings in favor of insurance companies. In cases examined in our reports, those claimants couldn't convince any applicable state agency to investigate the circumstances.

Have legitimate claimants been denied help from the system designed to aid them? The state has a responsibility to find out, and, if the answer is yes, changes ought to be made now.

The Division of Insurance also ought to examine the method by which rates are established for workers compensation policies. Those rates are now filed by the Northwestern Compensation Rating Bureau, an affiliate of the National Council on Compensation Insurance — an insurance industry organization. Those rates, fixed on the basis of unaudited data, have tremendous impact on Alaska employers who foot the bill, and the state should have greater certainty about their validity.

It is certain that a number of Alaska wokers believe they have been wronged by the current system. It is not enough to answer, as did former Insurance Director Richard Block, that since lots of claims have been paid the system must be working.



Anchorage Daily News/Rob Stapleton

Diane Black, injured in 1976 while working on the trans-Alaska pipeline, took part in a protest Tuesday at the MacKay Building in Anchorage.

Anchorage Daily News
July 4, 1979
(Page C-1)

Injured workers protest workmen's comp policies

By BRIAN A. HUNTLEY
Daily News reporter

A group of injured workers picketed the MacKay building in Anchorage Tuesday, protesting what they called unfair treatment by state workmen's compensation officials.

The protest led to an afternoon meeting with Lt. Gov. Terry Miller. Miller said the talks with the protesters "were productive" and pledged to inform Gov. Hammond of the group's grievances and schedule a meeting with Labor Commissioner Ed Orbeck.

But not all the picketers were satisfied with the afternoon session.

Diane Black, injured in 1976 while working on the oil pipeline, said "We have heard the promises before, and I guess we'll have to wait and see what happens. But if we don't get action, we will continue the (picket) lines and hunger strikes."

Black said many injured workers were afraid to come forward to protest poor treatment by the Workmen's Compensation Board and insurance companies.

"I guess when we get desperate enough, we have to come forward — we can't get help from Social Security, welfare, or the state vocational rehab (rehabilitation) — it's just a disgrace."

She added workers often cannot afford to fight long legal battles with insurance companies, and after financially draining litigation, the injured worker may be forced to accept a small settlement.

"If you're destitute, you just can't fight any more — you just desperately take whatever you can get, but it may not be fair," Black said.

Robert D. Mill, a Palmer resident injured while working on the pipeline, said he objected to the state's reliance on testimony by insurance company doctors. "Some of the doctors just haven't accurately reviewed our cases. We may have been treated by our own doctors for months, but the insurance doctor may only look at us for 15 minutes — and that will determine our payments for the rest of our lives," Mill added.

Complaints, case backlogs surround workmen's comp rate hearing

By RICHARD A. FINEBERG
Daily News correspondent

Rates which employers must pay to insure workers against on-the-job injuries will be the primary focus of a hearing Thursday in Anchorage, but other aspects of the workmen's compensation program may be considered, according to Kenneth Moore, director of the state's Division of Insurance, who will chair the session.

An issue that could come up at Thursday's hearing is the way the insurance industry and state authorities handle workmen's comp cases. Some workers seeking benefits say they have been disabled by on-the-job accidents but have been denied benefits by insurance companies who run the complicated workmen's comp program under supervision by two state agencies and a review board.

One of the agencies is Moore's Division of Insurance, a branch of the Department of Commerce and Economic Development that licenses and insures all insurance companies operating in Alaska. The other is the Department of Labor's Workmen's Compensation Division, which provides staff and administrative support for the Workmen's Compensation Board, a three-person panel that handles disputes between injured workers and insurance carriers.

The proposed comp rate change on the docket Thursday would result in a relatively small increase in overall comp rates — perhaps one or two percent, according to sources familiar with the filing by the insurance industry's National Council on Compensation Insurance (NCCI). While premium rates for some categories of workers, such as contract construction employees, would jump considerably under the NCCI proposal, other categories would drop.

The NCCI first submitted proposed changes in the comp premium structure earlier this year, but the Division of Insurance sent the proposal back to the NCCI for more supporting information, according to Division of Insurance sources. Comp rates reflect accident and benefit payment data submitted to the NCII by carriers operating in Alaska without audit.

Last spring, concern about the NCCI's unaudited rate-setting procedures prompted the Division of Insurance to commission a special review of the NCCI data by a California specialist. The division has received that report, but the contents will not be made public until the industry has had a chance to review the findings, according to a Division of Insurance source.

The source described the findings as "very, very favorable to the companies ... it found substantially less (problems) than we thought it was going to find." The report will not be part of Thursday's hearing, the source said, but the study might be released later in the month if the companies do not challenge the findings.

While Moore takes testimony in Anchorage on comp rates — and other issues, as time permits — a new director of the Labor Department's Workmen's Compensation Division moves to Juneau. Jacquelyn McClintock, former comp hearing officer in Fairbanks, steps into the director's slot that Labor Commissioner Ed Orbeck says gave retiring director John Cook ulcers. After 16 years with the state Cook left the job last month for medical reasons, according to Orbeck.

Orbeck and McClintock faced a court challenge Oct. 5 in Fairbanks from seven comp claimants who sued the state after waiting several months for decisions on their cases by the overworked Workmen's Compensation Board. The state officials also met with a second group of disgruntled comp claimants.

Under state law, the board is supposed to rule on comp disputes within 20 days after a hearing, but the average case takes 96 days, according to Labor Department statistics.

"There is no way we can comply with the law as it is written," Orbeck said after the court session. There are just too many disputed cases and too few board members and staff aides to handle the increase in disputes between claimants and carriers in the wake of the pipeline boom, the commissioner said.

The Workmen's Compensation Board consists of three persons, two community members appointed by the governor and one representative of the Commissioner of Labor. In the past, Workmen's Compensation Division hearing officers based in Fairbanks and Anchorage have worked with one governor-appointed panel, holding hearings in both cities. A second Workmen's Compensation Board, working with another hearing officer, handled the Southeast Alaska panhandle.

This spring, in response to the growing backlog of comp cases, the legislature added a new board for Fairbanks and Anchorage and created positions for a new hearing officer for each city. The beefed-up Anchorage board is hearing more cases and producing faster decisions, according to Chancy Croft, an Anchorage attorney and former legislator who frequently handles comp cases.

The Fairbanks slot has yet to be filled. New director McClintock, who inherited a backlog of cases when she became a hearing officer in Fairbanks last November, says she frequently worked nights and week-ends but still faced a stack of long-delayed decisions when Orbeck promoted her last month.

Two former pipeline workers who claim they represent hundreds of others who have been short-changed by the cumbersome comp system met with McClintock and Orbeck in Fairbanks last month to discuss reform of the program. The workers, Robert Mill and Robert MacArmour, were not parties to the court challenge, but both said their personal lives had been disrupted by long delays in the board hearing process.

MacArmour said that for a broke and injured worker whose carrier denies him benefits, the months of waiting for a decision from the state can be "devastating." MacArmour asked Orbeck to

(continued)

promise to try to secure additional funds to speed the decision process. Orbeck did not make any promises, but he did say he wanted to help comp claimants get quicker decisions.

Mill asked Orbeck to set up a special committee to review the work of the Workmen's Compensation Board on long-term, disabling injuries. Orbeck said he could not interfere with the board's operation.

MacArmour also asked the state to put out a manual that would help the injured worker understand the complicated state law that governs workmen's comp. Orbeck said a complete rewrite of the law was needed.

Orbeck seemed surprised when Mill said he felt insurance carriers were abusing the law and that the state was not responding to the problem. Several times during the meeting Orbeck told the angry protesters that prior to this meeting they had never requested a meeting with the commissioner.

"I carried a banner," MacArmour responded, referring to 1978 and 1979 demonstrations at state offices in Anchorage and Fairbanks.

Mill said he picketed, too. Mill also travelled to Juneau to discuss his problems with the Workmen's Compensation Division staff.

Both MacArmour and Mill were injured in truck accidents during pipeline construction. They both receive treatment from an Anchorage chiropractor.

It is not known whether critics of the comp system such as Mill and MacArmour will bring their grievances to the Division of Insurance Thursday, but Moore has left the door open. Although the hearing is about the rate change, the advance notice says, "as time permits, the Division will also hear testimony concerning other workmen's compensation insurance issues."

In the past the Division of Insurance has confined its interest in workmen's comp to rate-setting matters, leaving the problem of delivery of services to its sister agency in the Labor Department.

Thursday's hearing will be held from 9 a.m. to 4:30 p.m. at the Municipal Assembly Room, 3500 E. Tudor Road. In addition, Moore and other staff members will host an informal meeting Wednesday night to talk with the public about any insurance-related problems. That meeting will be held at 7 p.m. Wednesday at the Pioneer School, at Third Avenue and Eagle Street.

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(continued)

Hurt workers hit delays

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orage Daily News

ANCHORAGE, ALASKA, FRIDAY, NOVEMBER 9, 1979

Anchorage Daily News/Marc Olson

Nyle Hill, who says his insurance company won't pay his doctor bills, despite an order by the Workmen's Compensation Board, listens to testimony by another angry claimant during hearings Thursday.

Anchorage Daily News/Marc Olson

Robert D. Mill, a former truck driver, told state Insurance Division officials who held hearings on workmen's compensation that insurance carriers stall payments on permanent disabling injuries.

Hurt workers hit compensation delays

Hurt workers hit compensation delays

By RICHARD FINEBERG
Daily News correspondent

Henrietta Nugen left Thursday's workmen's compensation rate hearing smiling. Everybody else who came to learn about the intricate and mysterious process by which the insurance industry sets the rates which employers must pay for their comp premiums left looking unhappy, and a small group of people who claim the comp system gives them a run-around looked like they had just left a wake.

Nugen, who works for the Studio Club rehabilitation center, said she did not want to see higher workmen's comp premium rates. State Division of Insurance Market Surveillance Chief Don Koch thumbed through his new listing of comp rates and told her that institutions such as the rehabilitation center can expect a 19 percent decrease if the division approves the new rates, which are expected to go into effect Jan. 1.

The total comp bill Alaska employers shell out — $102 million last year — will increase by 1.8 percent under the new rates, according to Hank Edmiston, Denver-based vice president of the National Council on Compensation Insurance (NCCI).

Although the overall increase is slight, some comp rates will go up considerably and others, like Studio Club's, will go down. Across the board, contractor will see a 10.7 percent increase, manufacturing will go up 0.6 percent and all other categories will average a 4.2 percent drop, according to the filing proposed by the Alaska Classification and Rate Committee, an insurance company group that retains the NCCI.

About 20 people — employers concerned about their comp rates and individuals concerned about whether that insurance covers them when they are hurt on the job — attended the hearing at the Anchorage Assembly building.

The industry group also presented testimony on a proposed change in rates for small policies. Under this proposal, the current $15 charge for handling small comp policies will go to $35 in 1980 and $60 in 1981. Edmiston said the increase in premiums for the small policy holder would be offset by across-the-board decrease in comp rates, leaving the industry with no additional revenues.

"It's just a redistribution of the total comp bill," one insurance industry official explained.

An audit of the information submitted by Alaska comp carriers to the NCCI by a California specialist "gives us some confidence (in the NCCI)...that we didn't have a year ago," according to state Market Surveillance Chief Koch. However, the report, which the Insurance Division received Oct. 1, will not be released until Dec. 4, Koch said.

The Alaska business people with gripes included veterinarians, who say they have shelled out $182,000 in comp premiums over the past five years to insure employees who have run up a total of less than $4,000 in comp claims. The problem, Koch said, is that the vets are lumped in with animal control personnel, who deal with stray and wild animals and have a higher accident rate.

"It took us five years to find that out, and we didn't get much help from your division or our insurance agents," commented veterinarian Pam Tuomi.

Bill Martin, controller with Sourdough Express in Fairbanks, said he was disappointed copies of the bulky and complicated rate filing were not available in advance, or at the hearing, so that people could comment intelligently.

A different kind of comp problem was described by Robert Mill, Don McGuffin and Nile Hill, workers who claim they were injured on the job and unjustly denied benefits by the comp system. "It's just been a run-around, backwards and forward," said McGuffin, whose comp case has been bouncing between the state Workmen's Compensation Board and the courts for two years.

"If in fact the insurance carriers under Alaska statutes are not upholding their end of the bargain," Mill asked, "who do we appeal to?" Last month Mill and other comp claimants went to Fairbanks to meet with Labor Commissioner Ed Orbeck.

State Director of Insurance Kenneth Moore, who presided over the hearing and an informal meeting at Pioneer School Wednesday night, said his office would look into the specific problems created by comp claimants at both meetings. Additionally, he said, his division will make a transcript to the Labor Department, which administers the day-to-day operation of the Workmen's Compensation Board.

Anchorage Daily News

Friday, November 9, 1979 C-1

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CONFERENCE OF INSURANCE LEGISLATORS

Proceedings of the Twelfth Annual Meeting

As a legislator interested in W/C I recommend pages 157 on - you may want to join this group.

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CONFERENCE OF INSURANCE LEGISLATORS

PROCEEDINGS

OF THE

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Preface

The Conference of Insurance Legislators was formed in 1969 by a group of legislators from across the nation. Each member of COIL has the responsibility of originating and promoting legislation regulating the insurance industry in his or her state.

COIL holds meetings and seminars several times each year. National Insurance Law Service, publishers of Insurance Codes, Regulations, and Related Laws to the Insurance Codes for each state, intends to publish the proceedings of major public meetings and seminars of the Conference of Insurance Legislators. We anticipate that this new series of publications will be a useful and informative service for the insurance industry.

Editorial Staff
NATIONAL INSURANCE LAW SERVICE

February 1981

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PROCEEDINGS

(Thursday, November 20, 1960
Morning Session)

COIL President J. R. Murphy: Ladies and gentlemen, I would like to officially open this Twelfth Annual Meeting of the Conference of Insurance Legislators.

The invocation this morning will be delivered by The Reverend Bernard Popp, who is rector and pastor of San Fernando Cathedral in San Antonio. Please stand and after the invocation please remain standing for the Pledge of Allegiance.

Reverend Monsignor Bernard F. Popp: Heavenly Father, we place ourselves in Your Presence at this moment here in San Antonio, a special place in Your great world. We, the members of this Conference of Insurance Legislators, are aware of Your Presence and hence we ask You to bless us. We have as our objective the good of our fellow man, his security, his surety, and his safety.

We are tools in Your hands, the Provident God who is security itself and surety itself and safety itself. May we share in Your Presence. May we reflect Your patience, and may we be worthy of Your patronage.

Bless this assembly so that our reflections may be wholesome, our decisions truthful, and our resolutions honest. May we experience Your joy and happiness in our hearts as we find meaning in these days of sharing ourselves with each other and may that meaning be reflected in our concern for one another.

May your stay in San Antonio be delightful. May your visit be enjoyable, and may these impressions be with you always, we ask this in God's Name. Amen.

(Here followed the Pledge of Allegiance, led by COIL first vice president, Senator Thomas M. Crowley.)

President Murphy: Father, thank you very much for the invocation. I felt in it a little challenge, and that is good, and I hope we respond to it.

It is quite appropriate to have Representative Robert Davis deliver our welcome. In presenting him, I would like

tional disease claims. This would apparently be accomplished by way of federal standards, which would abolish existing safeguards of state laws, would extend the statute of limitations to accommodate latent diseases, and would require the acceptance by the states of disability and causal relation standards established at the federal level. The second alternative, which is the one I think you will see activated this year, suggests that the federal government enact categorical programs, similar to the black lung program, to accommodate specific diseases such as asbestosis. The cost of these programs would be levied directly on the affected industries. The third alternative recommended an increase in, or extra benefits extended through the Social Security system.

I would point out that if the allegations contained in the Department of Labor report are anywhere near correct as to the size of the working population affected by occupational disease, the cost of bringing those cases into the compensation system would be astronomical.

The National Council of Compensation Insurance has made some analyses and projects an eightfold increase in total workers' compensation costs, based upon these allegations. What is particularly troublesome is that changes in state laws to accommodate these claims would have both prospective and retroactive implications. In other words, it is conceivable that a large body of retired individuals will suddenly be eligible for extensive workers' compensation benefits. The application of federal standards to implement the first option would not be gradual.

There has been some industry support, and that is I think the only way any sort of categorical or any other kind of program will pass the Congress, in the area of the second option of instituting categorical programs. The asbestos manufacturers, for example, are supporting legislation establishing a federal asbestos program to be financed by asbestos manufacturers — as well as the tobacco industry, since smoking is said to precipitate asbestos in asbestos-exposed employees. In fact, I read that the chance of an asbestos worker who also smokes getting lung cancer increases ninety-five times over that of an individual who works with asbestos and doesn't smoke.

In the area of occupational disease, I feel it is going to be necessary for the insurance industry to rebuff these federal allegations. The statistical rationale used by the Department of Labor is weak and it bases its allegations on studies and surveys that are admittedly flawed. But the allegation that 100 or 200,000 people die each year as a result of occupational disease exposure is beginning to acquire a life of its own. The industry will need to come up with better reasoning than it has been able to so far to convince legislators and others that there is no serious occupational disease problem related to the workers' compensation system. To that end the Alliance of American Insurers and the AIA are now in the process of conducting a resolved occupational disease claims survey. The survey is being conducted in Texas, New Jersey, Michigan, Pennsylvania, Kentucky, Colorado, and Oregon. We hope it will provide the data to better respond to the Department of Labor's and other studies alleging substantial shortcomings with the state system of handling occupational disease claims.

I would also say in closing that if you create a system, as has been done to deal with black lung, that allows a recovery without medical evidence that the disease actually existed or was caused by employment, no workers' compensation system or government, short of one with its own printing presses, can support it. If you don't require medical evidence of disease or proof that it necessarily arose out of the work environment, you no longer have a workers' compensation program, you have a welfare program.

With that, I would say that I believe that state initiatives are necessary in the area. If a program fails in one state it is not as catastrophic as a program mandated in all fifty states that fails.

Thank you very much.

(Applause)

President Murphy: Ladies and gentlemen, it is a pleasure to present to you Mr. John H. Lewis. His entire practice is limited to the area of workers' compensation. He has worked in Florida with the legislature and with the governor quite closely in the development of legislation regarding workers' compensation. Mr. Lewis is chairman of the Workers' Com-

pensation Council and is a native of Coconut Grove, Florida. Mr. Lewis.

(Applause)

Mr. John H. Lewis: I am supposed to talk about the history of workers' compensation "reform," and I use the term advisedly. Most of the action on the state level came about, beginning in the mid-70s, reportedly as a result of the report of the National Commission on State Workers' Compensation Laws, which for better or for worse did set some objectives for states to try to meet within the workers' compensation program. Unfortunately, most efforts at state reform were limited to increasing benefits. That was the main thrust of virtually every effort on the state level for several years.

The states learned, to their regret, that the report they were following in many instances didn't stipulate merely to increase benefits. In fact, that report warned in some sections that were not well read that if in fact you do not do things with other aspects of your law with respect to the distribution of the permanent disability benefit and the administration of the law, increasing benefits could have a horrendous impact on the compensation program. As the benefit levels increased and as rates doubled and tripled and quadrupled, a realization came about that that was in effect what had happened.

What is going on now is somewhat different. I come from Florida, where we have worked quite extensively with our reform effort over a period of two years. And while most of you have heard about Florida in terms of wage loss as the big answer to everybody's problems, that is not really the Florida experience that you ought to be paying attention to. Although I heartily endorse wage loss and feel that it is the answer to many problems within the system, the Florida experience goes far beyond that aspect of workers' compensation. Florida took the time, which virtually no state had taken until then, to look at its workers' compensation program and analyze where the benefit dollars were going, determine how the administration of the program was impacting on the system, and review litigation and attorney involvement in the system. And it took the time to sit back and make some decisions as to how it wanted the system to operate.

Once those decisions were made by the legislature, it was easy to evaluate how the system was actually operating and see that it was not doing what we expected.

The next step, although politically not terribly simple, was structurally simple. We put together a program to do what Florida wanted to do. The state wanted to spend its money on people who had real economic loss. It wanted to accomplish this in an administrative fashion as best as possible, and it wanted to minimize litigation and in turn minimize the role of attorneys in the operation of the system. A program was put together that way, it was enacted into law, it is in effect right now, and it is doing so far exactly what the state, through its elected officials, wanted.

There are many reform efforts now going on in the various states. Unfortunately some of those efforts still retain the old characteristics state legislation. They put together a lot of people who have an interest in not changing the system, let them tell the legislature there is nothing that can be done or tell them that existing programs are working fine, to leave everything as it is or perhaps enact just a piece of legislative patchwork here or there. Thus, you have instant legislative workers' compensation reform.

The Delaware experience is interesting. Delaware is going in the direction that Florida went and it is going in the same manner. The initial attempt made in the last legislative session was viewed by some as abortive but, no, it wasn't, it was part of the process. The bill did not pass the first time around, but it most likely, it is hoped, will next year, the first time around being the educational process.

If any legislature wishes to impact on workers' compensation, if it feels workers' compensation is not doing what it is supposed to or is doing it too expensively or in an inappropriate manner, you can't just walk in and take a meat axe to the system. Nobody knows enough about how the system is operating in each state to make the determinations necessary to "reform" the system. Any legislature that wants to talk about serious change in workers' compensation has to be willing to devote at least a year's worth of effort to looking at the system, determining what it is presently doing, making some philosophical decisions as to what it ought to do, getting public support through an education process, and fighting

back some of the interest groups — and perhaps we are all involved in various interest groups here that would in some respect oppose changes in workers' compensation. But those are the things that have to be accomplished if workers' compensation is going to be changed in any manner other than the haphazard manner that brought about the problems we have now.

Two people sitting here right now, Fred Martin and Senator Anderson from Florida, took part in that process. They can tell you, I think without a doubt, that education — education of the legislature and education of the general public — is essential to any workers' compensation reform effort.

As I said, we have problems in making those changes because too many of us have vested interests in the system. It is tough as an attorney making several hundred thousand dollars a year from workers' compensation to say the system ought to be changed. It is tough as a carrier that may be totally free of administrative regulation, that holds onto money for six months when it should have been paid out, to say we ought to change the system and have the money get to the claimant a lot quicker.

There are many vested interests but in fact there are only two that ought to be initially concerned, the employer and the employee. Those are the two that really have the most concern about workers' compensation. There are not too many employer and employee representatives here today but we have to give them the lead in making some of the decisions. The rest of us are sort of peripheral, some more peripheral than others, but our interests ought not to control the system and its structure and its development. We have to set aside some of our baser considerations, primarily the immediate dollar, and work with the legislature, providing information, providing education, and providing assistance. Without that process we will be back year after year after year, trying to cure the problems of last year's set of amendments.

There is not much else I can say because the details are not necessary and obviously the time is short, but if I can leave one message with you, it is this, that workers' compensation change, workers' compensation improvement from anybody's standpoint, requires a dedicated effort, a dedicated learning process and a dedicated public relations process. If people don't understand what the system is about, if they don't understand what it is capable of doing, you will never get the kind of support that you need legislatively to accomplish the necessary changes.

Thank you.

(Applause)

President Murphy: Thank you very much, Mr. Lewis.

Our final speaker on the subject has been on our executive board for a number of years. He serves presently in the Delaware legislature and he is chairman of the banking and insurance committee of that state. He has been in the Senate since 1973. He resides in Dover and his particular interests have been medical malpractice and workers' compensation. He will introduce to you some of his ideas and will be accompanied by his staff member, William Campbell.

(Applause)

Senator William M. Murphy, Jr.: Thank you, Senator.

I am going to start out by just making a few comments to my fellow legislators as to some of the problems that you will run into when you finally get around to making an effort on revising your workers' compensation laws. First, I want to caution you that one of the first things you must do is find out exactly where you stand, whether you have a problem with your workers' compensation, which you probably do, and get all the information that is necessary, as John Lewis suggested before.

We did a two-year study involving two different citizens committees. The first was a rather large committee, consisting of twenty-two people — that is large for Delaware — that was not funded and was not staffed. All that came out of it were some legislative recommendations from one of the subcommittees. The subsequent year we created another committee that was both funded and staffed and we got all the information that was possible within a period of about six to eight months. We did not get all we needed because we could not get certain information from the various rating bureaus,

and couldn't even get information from our own industrial accident board. This is part of the process you must go through prior to any type of introduction or any educational process.

I would like to caution you that there are going to be a number of groups that are going to oppose everything you try, all the way from the plaintiff attorneys to the doctors that are working in the system. You must educate the press and cooperate with them 100 percent, otherwise you will be criticized for trying to make such a tremendous change in the law. One of the techniques going to be used against you and against the argument of changing the current system is the "big lie" — you are trying to take away benefits from the injured worker, you are going to be coddling the seriously injured worker who probably could go back to work but will claim that he or she cannot. The trial lawyers are going to fight you because they will claim you are going to change their pay system.

Most of these things that I have said here have been said previously, and from here I am going to turn it over to Bill Campbell, our staff member and one of the people who helped draft the legislation.

Mr. William G. Campbell: My function here is to try to briefly outline the major ingredients in a reform effort. I couldn't agree with and emphasize more the points that have been made by John and the Senator, and that is that you have got to diagnose your own state system carefully, and you have got to collect and collate the data that is available before you try any reform effort. If there is any message coming through from the reform efforts around the country, it is that. The needs are different in every state, you have got to know what is there.

One of the major areas, just briefly, that you have got to cover in any reform effort is your delivery system. Are you going to have a one-way system, straight monopolistic state fund, a two-way system, or three-way system, i.e., with self-insurance, with carriers, and with group self-insurance? You have got to look at those items. There are still a half dozen or so states with monopolistic state funds. The rest have mixtures of those systems. There are efforts going in a couple of

those monopolistic state funds now to allow competition, and that seems to be a possible trend.

Exclusive remedy is a very important area you are going to have to address in any reform. There have been cases coming down in California, Massachusetts, and Louisiana, all very recently, all seriously questioning the previous dogma that your exclusive remedy was compensation, and now we are finding that wives and children, are able to sue where the worker can't. We are finding that co-workers can be sued and indirectly sue the employer, and that is something you are going to have to address.

The administration in the system is a key element you also have to look at, again on your local basis. Consider your payment system. Do you go to a direct payment system, which a large majority of the states have now, that requires your carrier or self-insurer or whatever to pay within X days or deny within a slightly longer period, usually fourteen to twenty-one days, or do you go with an agreement system, which was the old system and which a number of states still have. There, everything has to go before the board, the obvious backup in the agreement system; you can see where the problems are in that.

Think about the mechanics of the administration. You have to look very hard at whether you add in something like the deputy commissioner-coordinator type of position, which they did in Florida and which we picked up in the Delaware bill. A representative, almost an ombudsman, the way we picked it up, for the worker, trying to get the worker represented and get him through the system quickly before there are any problems and before there is a need for litigation to get into the system.

You have got to look at whether you stay with a board or not. Historically we have had industrial accident boards in most of the states. Many states are moving toward arbitrators, hearing officers, and maybe an appeal level.

What is the hearing structure? Do you allow for emergency hearings? Do you allow rights for immediate payment on an emergency hearing while a case is being appealed? Again, if you are going to try to make your system efficient, you have to look at all those things.

Do you mandate reviews after six months, nine months, twelve months, a process where you must have a review of all permanent totals, all people not back to work, all people not back on the same job, et cetera, as is being suggested in some of the reforms?

A major area you also have to look at, which pervades all this, is litigation reduction. That has been alluded to various times in our discussions here and earlier. You have to look at the return to the non-adversary system, which is more and more prevalent. Dr. Larson stresses it very hard in his comments as do most of the commentators on compensation. The idea is that this was a no-fault system and we are trying to get back to a no-fault system. If you are going to do that, you have to look at what you are going to do. Are you going to make claims only fileable when they are mature, i.e., when you have been denied a benefit? Are you going to eliminate the shotgun claims used in most states now, where the day that somebody gets hurt, you file for every right you have in the book? What are you going to do with attorneys' fees? Are you going to put limitations on them? Who is going to pay them? Is the employer going to pay them or is the employee going to pay them out of his share? Are you going to pay only on the difference between the last offer and the award that is made? There are a number of different elements there that have to be looked at.

Are you going to use coordinators or somebody to try to represent the worker and get them through the system without getting litigation in it?

Look closely at occupational disease. If there is anything the federal end will really be looking hard at, it is occupational disease. If you don't get your act together and pass appropriate legislation in the states, we have to all assume that the federal government will come in and there will be some type of federal occupational disease relief. That is a complex issue. What can you do in the states? You can look at special requirements, special incidences before you can accept occupational disease as a solid claim. There are eight or ten different word combinations the states have come up with to qualify occupational disease, and there are new ones being tried, but that is something you are going to have to address in the bill.

Then, there is coordination of benefits. This is a new title for an old concept. You have got a lot of benefits out there. If the idea, the intent of the workers' compensation law is to get the person paid approximately what they were netting before the injury, which is supposedly the concept of it, then you have got to look at what happens when you allow them to get unemployment compensation, automobile no-fault wage loss replacement, or employer salary continuation plans. If the man is making two or three times what he was before, you have to wonder if that isn't a disincentive.

The tough part of coordination of benefits, however, is your Social Security offset. A number of states have passed reverse Social Security offsets, whereby if you do it correctly the federal government, through the Social Security disability payment on permanent disabilities, will pay a significant chunk of the dollars that are otherwise due from the state. It sounds wonderful. However, I caution you to look very hard at it. If everybody starts relying on a federal Social Security system that is not perhaps bankrupt but awful close, when you start putting in the billions of dollars that would be going out in permanent disabilities for some of the big states that are not doing it yet — it is mostly the smaller ones, as far as dollars go — you have got to wonder what effect that is going to have in the offset.

In Delaware, we reached the classic compromise. We did not go with the reverse offset but we did provide an escalation, which is one of the other areas you have to cover. In the inflationary times we are in, it is awful tough not to permit an escalation for a worker who is injured at thirty years old, and knowing that he or she may have forty or fifty years to go, and it is a real problem. On the other side of the coin, escalation is devastating, as some of you have found out. The cost on it just gets astronomical. As a compromise, we are escalating those payments that do not qualify for the federal Social Security disability payments on the permanent totals. That is a significant chunk but it is only 7 to 10 percent, somewhere around there, instead of the whole group. They are still getting escalation, escalation with a cap, but it is still escalation, and it is a partial compromise and a small step forward in that difficult area.

As to medical, you have got a million things to look at there. It is an important cost area. You have free choice

versus employer selection. The majority of the states have an employer selection where the employer selects the doctor. It doesn't sound important, but it can be awfully important. Free choice is the minority view, but if you have free choice it is hard to take away; but it is a factor in getting the employee back to work. A panel system is the other option there, plus one that we called in the Delaware bill an impartial medical opinion. You stay with a free choice system but you allow some independent doctor selected through an employee-employer negotiation system to make a binding arbitrator-type opinion.

That same type of approach can be used for some of your other problems such as unnecessary treatment, which is becoming a serious problem in terms of its cost factors. You need some kind of system to be cranked in there. It can be peer review, it can be fee schedules and all that enters into the cost, or it can be something like the impartial medical opinion, but you have got to face all those areas in medical.

Rehabilitation and reemployment is another consideration that has worked into the law. You will find general consensus until you get down to the details. Everybody says rehabilitation is wonderful and it should be done immediately. I think everybody agrees on that but once you get into details it is awful tough, but somehow you have got to find a way. There are a number of options out there to mandate rehabilitation early in the game, at least as soon as the employee is not going to be able to go back to the same job or the same employer with the same job. Other ways to trigger rehabilitation involve taking into account the number of days in hospital or the number of days off the job. You can pick a number of options but you want to trigger rehabilitation as soon as possible. And you don't want the bureaucratic monster that has been created in some places where they have gone with this overkill rehabilitation system.

Reemployment is a new consideration. They provide for it in Florida. It is being looked at in other areas. It is an extremely difficult concept but it is a very important one because reemployment is really what the issue is all about, what rehabilitation is about as well, and it is one you have got to address.

Other factors to consider include group self-insurance. About twenty states now allow group self-insurance specifically. A number of others allow it because there is nothing in the books on it. It is a way small employers can get together. It has a lot of pros and cons but it is something you have got to look at.

Uninsured employer funds is an issue that is just sort of picking up. Over a dozen states have it one way or another now and a number of them do it through their second injury funds. You need somehow to look at those people out there who are not covered, not just because they are excluded as farm workers or domestics or one of the nineteen essential recommendations, but the ones who would be covered but their employer isn't. One way to do this is through the uninsured employer fund. It is a cost factor, though.

You have got to look at the nineteen essentials, as mentioned, and see whether you want them, but don't take them as dogma. You have got to look at funding also. A very important aspect is that you have to get adequate dollars to your industrial accident board. Our board, when we started two years ago, didn't even have a calculator in the place, and they were computing these things. I mean it is just unbelievable some of the things you will find.

You have got to get computerization in there. You have got to get modern management techniques, and that is a large part of the problem. It isn't as easy as it sounds. We were able in about four months to get a total computer program put in, which I think surprised everybody, but we did it by bringing in a consultant who is an expert on it, knew what he was doing, and we had tremendous support through Senator Murphy and others to get the money in that year's budget and get it moving. That is an area you have got to look at very hard, revolving funds with the administrative assessments that are already being put in so much of the country anyway, being put in there to fund it. It is something you can't ignore.

We are going to try to put a more detailed version of this together which we will get the staff to get to you, to give you

some detail on these points, but at least those are the major points that we discovered.

Thank you.

(Applause)

President Murphy: I do want to thank you gentlemen.

(Whereupon the third general session of the conference was adjourned.)

Kathryn G. Chamberlin,
Reporter.