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RECOMMENDATIONS FROM COMMISSION MEMBERS

MINUTES OF AUGUST 1, 1980 MEETING

ROGERS

- 1) The Second Injury Fund is in difficulty. I expect that, that will be one of the areas we may want to look into during the work study commission.
- 2) There are four things we need to develop prior to the next meeting:
 - a) We should compile a list of recommendations you people feel ought to be considered by this commission over the course of the quarter. There have been a number of recommendations by the National Commission on Worker's Compensation Laws and recommendations by the Fineberg Report, the Block Report. We want to basically list or group those recommendations, list them out and then decide which ones are worth time and sub-committee time. All reports will be coordinated into one set of recommendations.
 - b) The second major thing would be in terms of what statistical information we think we need to ask the Chairman, the people we can get for free to develop the data and the people we need to hire to develop the rest. We should make the request of the Insurance Carriers, that they provide us with any data they have which answers any of the questions and also of the Division of Insurance, depending on which one would be the one likely to have the information. If we get entirely different answers from asking the same questions from three, there's probably something wrong but I think by doing the random sample and asking both to answer the question, we'll probably get a pretty good handle on it. Statistically, we can then look and find the corrections.

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Rogers cont'd.

What I would request is that by next Friday, a committee member define areas on which he feels data should be developed, prior to the next meeting. Have the members send a letter to the committee staff letting us know. From that, we'll ask the staff and the House Research Division to develop much of that data, if they can.

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

- c) Third, would be the bibliography of research material. All information should be read by all committee members prior to the next meeting. One is the 1971 National Committee Report. Second, is the Interagency Task Force Report. The third is the four studies of Florida, Minnesota, Oregon and California. Everyone has the Fineberg and Block reports. These should be made available to everyone.
- d) The fourth theory would be to try to get from each member of the committee a list of four people who might be available for developing information for the committee on any issues that might come up in the future. My suggestion would be that we spend at least an hour going over, firstly, what statistical information the members of the commission think is most important to develop and if anyone knows where that information is readily available we'll send for that. That secondly, we go over the bibliography and it's potential development.

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Rogers cont'd.

- 3) Members of the commission can send their many additional recommendations requesting for data or suggestions for developing the bibliography and try to, basically, build our information base between now and the next meeting.
- 4) One suggestion for the attorney is to note how many cases there appears to be on Worker's Compensation.

Croft

- 1) I would say there are five concerns in my mind that we need to address:
 - a) The board violates the Alaska Statutes
 - ➔ b) Rehab/re-employment (not amount but rehab)
 - c) P.P.D. \$60,000, no relation to statute or anything else
 - d) Serious physical injury not addressed
 - e) The premium cost re-evaluation of cost, technical amount, long overlap for the cost of Worker's Compensation in Alaska

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

- 2) I would like, for maybe the year '79, be able to get statistics from the Worker's Compensation Board as to the total number of cases they handle, the number of cases that were solely medical benefits, the length of time, the average payment of compensation, the number of cases that were permanent disability, the average amount of compensation payments. Maybe, something that would indicate the extremes, as well. The number of times

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that minimum benefits were payable at \$65.00 a week.
I do think we need alot of information in that regard.

- 3) I would suggest that you try something like this. Have someone, with legislative research, go through the 200 random cases, all with the '78 number on them; so that, we'll know they were filed a couple of years ago. They could go through and just at random, pull out the final report from the carrier end and then have a check list. The person would collect the following information:
- a) How many cases was the only issue payment of medical benefits?
 - b) How many cases only involved temporary total disability?
 - c) How many cases involved permanent partial disability?
 - d) How many cases involved, of this permanent total, are dead?
 - e) How many cases are still open?
 - f) How many cases have been closed?
 - g) Get the date of the increase and the date of the first payment: also, the date of the last payment.
 - h) Was hearing requested?
 - i) Was there actually a hearing in the case?

I think that if we had compensation statistics like that, we would then have some idea of what we're talking about. If we find that only five percent say of the cases ever go to a hearing and 95% of the cases were involved in a hearing, we would have a pretty good system. If most of the cases are medical expenses, and we find that, that is what we consider additional portions, maybe the problem is medical. I'd be curious to find out how quickly compensation is paid. I would like to see, out of the 200 cases, the total amount of expenditures. If there is a problem with making sure it it was a random statistical

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sampling, I would take the number of cases which involve compensation. We could count those. Take '78 or whatever the last number is, then, you'll know the number of medical payments, make a portion of the medical only, the total number of cases.

Swalling

- 1) The Worker's Compensation Act has got some severe deficiencies in it. It has been amended over a period of time in a piece meal fashion and it has never been really studied thoroughly and objectively. The problem with slow payments are cumbersome. Administrative procedures relating to Worker's Compensation are administrative in nature and high premium costs are of course something else. Benefits to injured workers, cost to employers ultimately are passed on to the consumer, all of those problems have to be addressed.

Maloney

- 1) I have some additional concerns in the area of what can be drafted in the legislative fashion relating to the apparent mininterpretation of the law what has been made by our coharts.
- 2) Opening and extending benefits to workers.
- 3) We also should look at the area of rehabilitation. In particular, we should take a look at the interest of the party to actually be rehabilitated prior to an award being granted. It appears to me that the individual does not want to seek rehabilitation prior to award.
- 4) There is also a problem with the amount of and method of

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studying reserves that I have had some concern with. The method used to set reserves is unrealistic in today's world rather than having a total expected payment over a long period of time, I would think that looking at a person's value approach to the amount that may be due is more realistic.

- 5) We also have some concern with minimizing the milllingering and volume of cases. The report that was issued last year in the case indicates that there's really been little study of that. I think all of us have had occassion to look at cases where there has been milllingering and where there is definitely fraud. I'd like the commission to, at least, take a look at some method to help us in tht area.
- 6) We should list all of the various recommendations (50 to 100) that have been made in the past, addressing the specific area that we should be interested in. They should be broken down by those areas that affect the benefits, titlements, administration and rehabilitation. We should then have additional suggested recommendations, which would come either from the public or from this group. Add those then, methodically, go through all of them; so that, we, in fact, made a comprehensive study rather than something which doesn't address all of the problems.
- 7) Let's get the problems from the Board members laid out for the morning of the next meeting.
- 8) Maybe someone could go to Juneau, take a look at the information, see what they have, take a look at what's

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developed in the cases prior to getting back together again, add something that one or two of us requested. I would also urge that the raw data be brought back to the committee.

- 9) Get information on the profitabilities. Find out what the problems are. Find out what the reserves are and how long this is held. If you can't find out what the profit is, find out what the reserves are and how long it's held. I think that the Investment Income question might be an area in which to start developing data.
- 10) The committee should try to find out what data is available on profitabilities and then by our next meeting, where we know we don't have the expertise or any data, at that point, we'll be contracting out to develop the data. After the next meeting, we should decide how far we want to go into the profitability question, to what extent we want resources. In that regard, it may be helpful to talk to the other states and their commissions to see if they looked at that. In my opinion, probably it will be very difficult to figure out the profitability figures because, the insurance companies help write the tax laws. Most of us have looked at the profit, whether the reserve is current and productive. It's very difficult to accurately figure out what the profit is.

Carlson

- 1) One of the problems has been almost a total lack of statistical data. When the legislators have had to make

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decisions based on information given at a time and given good faith, unfortunately, that data hasn't proven to be factual. More information will be available once we get computerized.

- 2) We need to find where the accidents happen, where there's a particular carpenter trade, construction industry or mechanics causing some of the problems in the air industry, so we can probably set up training programs to stop industrial accidents.
- 3) I think that all of the employers and all of us are concerned about the high cost. The retention reserves is a legitimate complaint from employers.
- 4) Also, we'll want to discuss negotiated agreements as opposed to benefits due under the law in exchange for not having the tort action.
- 5) The other area of concern which was brought up; where the worker ends up with more take home pay while he is on temporary disability and that area is definitely an area to look at.
- 6) I would like to hear from the board themselves, the members from the board as to the problems they foresee before we go too far into developing any resource data.
- 7) I think it is time we take a harder look at the State Fund.
- 8) I think there are some things, I hope, we can take a

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look at, that need to be addressed this session. The Second Injury Fund, in particular. Part of the problem is a lack of expertise by legislators and others in Worker's Compensation. I think the fund is in serious jeopardy and I think it affects the injured worker in getting back to work and it's going to have an impact on the future rates of the employers. I think that needs to be one of the first things we address.

- 9) The other is a controverted plan. The number of controverted claims in the State is out of proportion and I think we need to take a look to see why this has happened. I hope that we hear from attorneys from both sides, both claimants and the insurance industry and why they feel the large number of claims are controverted.
- 11) I'd like to see some data submitted regarding the joint trust.
- 11) I think we have to be very careful at this meeting. While there are those of us who represent organized labor, there is a great segment of the population that is not represented. I think that any legislator should try with all his might to protect the unorganized as well. So, I think, that any laws that are made on Worker's Compensation, we're talking about compensation for a worker that's been injured on the job, should include all.
- 12) I think the Board should have trained hearing officers. I hate to see the claim labeled before we make any decisions. I think that recommendations should be submitted to the board for their approval or disapproval or adding to it. I think the initiative must come from

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the Department and the board. Should set up the adoption of regulations and procedures. I think it needs to be changed from a board being called to a department that is working with the board. I think also that you are going to have the Department of Law cross involved because, the Department of Labor thinks that we don't have any lawyers to help claimants with court proceedings. Probably, you will have to include both.

O'Keefe

- 1) I hope to be able to be a coordinator between the National Council which does some of the statistical data gathering for Alaska. The Worker's Compensation Classification Rating Committee along with the wealth of information which should be available for this study from the insurers in this state, so that people making decisions here today and the legislature in the future will know how, from a claims standpoint the mechanisms succeeded and failed. I think that being the insurer, this committee can see to what problems we face in implementing the laws that's now instructed in Alaska.
- 2) I think it's important to point out that in this state there has been two reports, one of them is the Fineberg report. There is another. Mr. Block has a report pointing out some concerns as well. There's nationwide, all fifty states commending many reports that are brought up concerning Worker's Compensation. Perhaps as many as 200 recommendations. These can all be boiled down.

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O'Keefe cont'd.

- 3) Information in its aggregate is available through the National Council of Worker's Compensation in the rate making formula in terms of allocations and expenses. Statistically, they can determine how much of this would be, how much loss is attributable to medical, temporary disability, permanent, etc. The formula does calculate this. So, that this information should be available.
- 4) I have a few copies of the Reinstatement of Worker's Compensation Expense Program. Again, this would address the issue of rate make-up and the expense stand point. We will endeavour to get additional copies, so everybody can read this.
- 5) I would like to make sure that the Division of Worker's Compensation and the Division of Insurance give as much lead time and cooperate as much as possible. Particularly, with the National Council and with the Alaska Insurers to make sure that the compatibility that you have available is utilized, that you are not asking requests that would require complete system changes in these parts. They are not accomplished in a short bit of time.
- 6) We, as individual insurance companies, speaking only for ourselves, are concerned about the issue of on-time payments, in particular, first-time payments. The law, in terms of the State of Alaska, is quite similar to some other states regarding the timeliness of the first payment for the injured party and regarding termination of payment and the notification justifiably given to the claimant. However, like any other law that is presented, it does have its difficulty.

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O'Keefe cont'd.

We are obviously concerned about on-time payments. We do some record keeping in this area but admittedly, it is not what this committee is looking for. We know that any delay that we make on a first-time payment, any annoyance we cause through a claimant, only hurts us because they have no recourse but getting an attorney and this can be more expensive. It is to our best interest to pay on time. This is difficult because of the inability of the company to get the employer's report from a far off location. If an insurance company can match up the doctor's first report of injury and the employer's report in such a fashion that we can meet the 10 day notice, the issue of notice to the employer, notice to the insurance company and how does the insurance company find out from the employer in a location, Alaska, which perhaps doesn't have a ratio. This can be difficult.

- 7) I think it's much more. It's a much easier task for this committee to address the issue of stopping payments arbitrarily. This is an issue where, in all due conscience with any insurance company, we should look at that. But before we chastise the industry on statistical basis, let's take into consideration that the insurance company has no vested interest in alienating claimants.

Rasley

- 1) I'm concerned with the cost of a good program through the employer. I think my first intent for being on this committee is that I hope that the intent of this study group will help the legitimately injured worker on a timely basis, at a reasonable cost to the employer.
- 2) I think that the system itself certainly needs overhauling. It might be beneficial to us to try to get

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Rasley cont'd.

some of the data collected by these other states. If that is possible, to see where they went with their system and what kind of results they have had with their programs they've instituted.

- 3) One of the problems is with claims. Many times its cases that I have talked to our members about, they go into the hearing or either the attorney from one side or the other has filed a statement of readiness; then, they get to the hearing they are not ready. This wastes everybody's time. It runs up the attorneys fees. I believe on both sides and these are all calculated into the costs of the insurance through the carrier or through the employer. I think that's an area that needs looking at.
- 4) I think another area that needs to be looked into is possibly an independent state investigative unit. I think that's an excellent idea. It would be an unbiased type of organization that would give a much better idea of what legitimate claimants are.
- 5) One other comment concerning a specific area that I think needs work and probably one of the more important ones is the disagreement of the interpretation of the word "Compensation" and what it means. In the Act itself, ten different people can read the Act and get ten different interpretations of what "Compensation" means. If it means medical compensation or disability compensation, we need to show exactly what we mean by "Compensation" throughout the Act. This particular area needs to be defined, so that they have a clearer understanding when a case appears before them. I think this is an area that really needs to be look at at and it would help clear up any disputes in the Act itself.

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- 6) Defining Compensation. It would definitely cover a controverted medical claim to where the attorney would be paid according to the statute; so that, I think, is one of the problems now. In some cases, the carriers and the employers are arguing if that is not covered by the statute. That's one of the problems. It needs to be covered and my point was, broadening the scope of compensation; so that, it does cover the areas of these things to where it would not be open to controversy.
- 7) I would like to know the percentage of cases that come from uninsured employers. I think that, that particular area is an area where it's difficult for the claimant to collect any compensation. I don't mean the self-insured. I mean the guy that is violating the law and doesn't have any compensation coverage at all.
- 8) I would like to know how many of those cases used Sec. 125 of the Act, Sec. C had to do with Rule 45. I would like to know how many of those cases, Rule 45 was involved with, in relation to how many go before the board (Rule 45 states: "If not in accordance with the law, a compensation order maybe suspended or set aside in full or in part through injunction being in the Superior Court brought by a party and interest insubordinate in all other parties as seen before the board").
- 9) In reference to Worker's Compensation premiums, that's really one of the only places I've ever seen that the contractor really doesn't know where his money is going. Usually, your contractor knows where every penny is going, what he's spending it for and why he's spending it but in Worker's Compensation, it doesn't seem like he knows that. He has to pay. He goes ahead and pays it but

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Rasley cont'd.

he doesn't really know what he's buying. This was in reference to Dick Fineberg's report (page 53 or 54). We might look into this.

- 10) One of the things that I see that seems to be a problem, is rehabilitation. If an individual goes for rehabilitation training, my understanding, at the present time, is that his benefits are cut just about in half. It would seem to me that, that would certainly take away the incentive for the individual to get training. The amount of his benefits should be continued until such time he can go into some useful employment.
- 11) There are a great many people out there whom we, of this study commission, are representing and we're not just representing union members. I hope that I'm here to represent all the people of Alaska, all the working people of Alaska, not just my union members because this is something that effects every working person in this state.

Chapados

- 1) I am also concerned about costs. I think there has to be some position that we can all arrive at to provide a good program for the Alaska workers, as well as to keep in mind the cost of the program. I think the studies that have been introduced, the Fineberg Report and Dick Block's Report really have established something from which we can work. I think prior to the creation of these studies, we have a situation where many people were not able to refer to any statements of information that would generally be acceptable. I think we can go from there, using these studies to proceed with, perhaps, making alot better

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evaluation than we would otherwise.

- 2) I agree with Dwayne and Dave on the matter of timing and the time we are going to be able to spend with Worker's Compensation.
- 3) I'd like to see the Block Report made available to the committee members. It was a good report, probably a few of our view-points differ but you can balance them one against the other.
- 4) Our group of employers in the transportation industry, for the most part, are in the regulated industry. For that reason, we are more concerned about the cost than the average employer, because we cannot pass on our additional costs with justification and considerable amount of effort, clearer presentation to the AGC, the RACC and the other agencies that regulate our rates. Usually, when our cost becomes effective, it takes about six months before we can get a change in our rates and it's very difficult to get this sort of change or get it amended right at the same time the rates are increased. This is an area that perhaps, we could give some thought to.
- 5) We should look into an employer being required to take an injured employee back. I can see where it would be certainly a desirable thing to do but I know that if an employer is concerned about an aggravated injury, it would then make his situation even more infallible, as far as cost. The employer is concerned about an far as cost. The employer is concerned about this. He has a lot of concern about the kind of liability he must protect himself with.
- 6) I think we certainly should consider engaging some firm

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or individual who is qualified to take a look at the statistics that are available now and based on such information that we follow up and have questions on. I think that if we leave it up to the governmental agencies, they have a lot of other things to do and I think we should get someone who really knows what they are doing to dig into this area. I would suggest that we consider this as one of the steps we take during the study.

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