

HB

352

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3542

November 9, 1987

## M E M O R A N D U M

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair  
House Labor and Commerce Committee

Re: Workers' Compensation Hearing

The House Labor and Commerce Committee will host a public hearing on Workers' Compensation on Thursday, November 12 from 1:30 to 5:00 p.m. in the ground floor conference room at the Anchorage LIO, 3111 C Street.

Your committee file contains copies of a House research report on workers' compensation attorney fee provisions, correspondence about workers' compensation issues, a House Labor and Commerce Committee report on legislative recommendations of the ad hoc Labor/Management workers compensation working group, and copies of testimony by Don Koch, Division of Insurance, regarding the recent rate increase for workers' compensation premiums approved by the Division.

Thursday's hearing will not be a teleconference although there will be a listen-only hookup with the Fairbanks LIO. On Friday, November 13, from 1:30 to 4:30, we will be taking testimony via teleconference on insurance and civil justice reform issues, including testimony on workers' compensation. Communities linked to the teleconference include: Anchorage, Fairbanks, Juneau, Soldotna, Wrangell, and Ketchikan.

Please call me or Ginger Baim at 561-7629 if you have any questions or need additional information.

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3842

November 6, 1987

House Labor and Commerce Committee Report  
Informal Workshop on Workers' Compensation  
Friday, October 30, 1987  
Anchorage, Alaska

On Friday, October 30, the House Labor and Commerce Committee met in an informal workshop with the ad hoc Labor/Management Workers' Compensation Committee to receive their initial recommendations for legislation to address the soaring costs of the workers' compensation system.

House Labor and Commerce Committee members present were Representative Dave Donley, Chair, and Representatives Ellis and Furnace.

The ad hoc committee

consists of five representatives from management/employers and five from labor organizations. Members are:

## LABOR

- Bob Anders - Operating Engineers, member of the Workers' Compensation Board
- Ken Weist - Business Agent/Roofers
- Ralph Mingo - Teamsters/Local 959
- Kevin Dougherty - AFLCIO
- Joe Thomas - Business Agent/Laborers Union

## MANAGEMENT

- Dick Cattnach - Associated General Contractors
- Mary Pierce - Executive Director of MICA and member of Workers' Compensation Board
- David Gottstein - Carr/Gottstein Inc.
- Steve Rehnberg - Tanagusuk Corporation
- Ralph Lewis - Ketchikan Pulp & Paper

The Labor/Management working group gave a brief history of the efforts by WCCA and others to address workers' compensation issues. Mr. Cattnach said that the management arm of WCCA had gotten legislation adopted in 1982 that primarily made changes in the way benefits were calculated. He said the legislation was biased toward management/employer interests.

WCCA was relatively quiet until last October when the Division of Insurance approved a request for a sixteen percent increase in workers' compensation premiums. As a result, the Labor/Management Committee was formed to make recommendations for legislation that fairly weighed the interests of both employees and employers.

The ad hoc committee has been meeting regularly in the last year. At this time, they have reached a tentative agreement on several issues aimed at reducing the cost of the system. The committee is currently drafting legislation and both the Senate and House Labor and Commerce Committees have expressed willingness to introduce the legislation next session as a committee bill.

The recommendations of the committee fall into three categories. They are:

#### REHABILITATIVE SERVICES

The ad hoc committee recommends that an initial interview with an injured worker be conducted by a rehabilitative service specialist taken from a rotating roster that is not determined by either the employee or the insurance carrier.

Testimony indicated that there are about twenty qualified CIRS (Certified Insurance Rehabilitative Specialists) in Alaska and that they are in agreement with the committee's recommendation.

Under the committee's recommendation, an employee may choose to use the initial interviewer as their rehabilitative service provider if they choose. Otherwise they may choose from the next provider on the roster.

#### MEDICAL COSTS

Testimony indicated that thirty eight percent of the dollars in the workers' compensation system go to medical costs. The committee felt that changes to reduce costs in this area would have a significant impact on cutting overall costs of the system.

The committee recommends that legislation be adopted to require physicians and other primary health care providers to charge "usual, customary, and reasonable rates", as they are required to do under statutes governing other medical insurance programs such as medicare.

The committee also recommended that an IME (Independent Medical Exam) be conducted after every fifteen visits to the primary physician in order to cut down on what could be unnecessary visits. If the IME determines that the client has reached medical stability, and the personal physician

disagrees, the client will be referred to a third IME. The Board will make their determination in each case after weighing the opinions of the three medical providers.

Throughout this discussion, the committee members expressed concern that medical treatment not be impaired by any attempts to reduce costs and that injured employees are not coerced into accepting medical providers they do not want.

Committee members testified that medical costs tripled in the last three-year period even though the number of workers in the labor force decreased. Therefore the costs are distributed among fewer workers.

Discussion followed about whether the third IME physician should be exempt from malpractice claims in order to assure an unbiased opinion. The third IME will not be a treating physician, their purpose is to judge whether the patient is medical stable (i.e. whether further treatment will improve the workers condition).

The committee said that no consensus had been reached among their members on the malpractice exemption provision. Representative Donley suggested that they consider setting a very high legal standard as opposed to absolute immunity from liability.

The committee recommended that back and neck injuries be scheduled in the same way other injury/disabilities are.

The committee recommended that Temporary Disability (TD) payments be limited to two years.

#### DETERMINING BENEFITS/AVERAGE WEEKLY WAGE

The committee recommended that when an injured worker has moved out of Alaska, their monthly workers' compensation payments be adjusted by the cost of living index of the area they reside in.

The committee agreed that vested rights to pension and other benefit packages be included for determining a workers' wage rate, in keeping with the Supreme Court decision in Ragland v. M-K Inc.. The trade-off was that workers' compensation benefits will be offset by retirement benefits.

The committee discussed the current method for determining the average weekly wage for the purpose of establishing benefit levels. They made the following recommendations:

- Establish a new method for determining exceptions (when the average weekly wage cannot be fairly determined under the "regular" system) because twenty-five percent of the

litigation results from disputes over determining an accurate and fair average weekly wage.

- Adjust the minimum/maximum average weekly wage to increase the minimum and decrease the maximum. The committee felt that the current system rewards lesser injuries while limiting rewards for more severe injuries. Since the greatest percentage of cases are in the lower spectrum, the committee felt this change would help workers by more fairly distributing benefits, encourage business, and help reduce overall costs.

The committee recommended that a "payment under reservation of rights" method be used in "last injurious exposure" cases whereby the last employer provides benefits while claims are being controverted and the employer who is ultimately determined to be liable is responsible for reimbursement.

#### OTHER ISSUES AND RECOMMENDATIONS

The committee discussed several issues that they were not able to reach a consensus on except to agree that the issues should be addressed.

The committee discussed the question of whether independent contractors who are sole proprietorships and not obligated to carry workers' compensation coverage on themselves, are eligible for workers' compensation benefits under a prime contractors policy.

There is considerable confusion over the definition used to determine whether a person is an independent contractor or an employee. Several local business have been billed retroactively for coverage on workers they hired as independent contractors because their carrier argued that these workers would have been found to be employees if they had been injured and went to court.

Testimony indicated that, as a result, contractors want proof that sub or specialty contractors carry workers' compensation insurance before they will enter into a contractual arrangement with them. The cost for a sole proprietorship to purchase workers' compensation coverage is a minimum of \$1,000 and could be as much as \$6,000, depending on the trade and type of work.

The committee felt the definition for determining whether a person was an employee or contractor should be adjusted but did not feel they would be able to reach a consensus on how to go about it.

The committee discussed problems with the current system of assigned risk pools (with surcharges up to 33 percent) saying

that small employers don't benefit from this system and that it can have a tendency to encourage a callous attitude toward safety.

The committee felt that questions about occupational illnesses such as heart attacks and stress related injuries should be addressed in a manner that is fair to both employees and employers.

The committee felt that the administration of claims in dispute took far too long and that the length of time greatly increased costs and that definite timelines should be set to expedite the claims settlement process.

\* \* \* \* \*

The House Labor and Commerce Committee will host a public hearing on workers' compensation issues on Thursday, November 12, from 1:30 to 5:00 p.m. in the Anchorage Legislative Information ground floor conference room at 3111 C Street.

The ad hoc Labor/Management committee recommendations will be discussed along with public comment on a whole range of issues affecting the Alaska Workers' Compensation system.

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX 11, JUNEAU 99811

October 30, 1987

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair  
House Labor and Commerce Committee

Re: Notes for Friday's Workers' Compensation workshop

On Friday, October 30, 1987, the House Labor and Commerce Committee will host an informal workshop on workers' compensation issues at the Anchorage LIO building, 3111 C street, ground floor conference room at 1:30 p.m.

The purpose of the workshop is two fold:

1. To discuss the workers' compensation system in Alaska and to bring committee members up to speed on current issues and terminology.
2. To receive a preliminary report from the ad hoc Labor/Management Workers' Compensation committee about the issues they have been working on and about any proposed legislation.

This is an informal worksession and members of the ad hoc committee have been specifically invited. They are: Bob Anders, Ralph Mingo, Kevin Dougherty and Ken Weist on the Labor side of the team, and Mary Pierce, Dick Gattanach, Steve Rehnberg, and David Gottstein, on the management side. Senator Tim Kelly, Chairman of the Senate Labor and Commerce Committee will also attend.

Members of the public or any other interested party are welcome to attend although we would like to keep the group down to a manageable size in order to have a productive discussion. The House Labor and Commerce Committee will host a formal public hearing on workers' compensation issues on Thursday, November 12, again at the Anchorage LIO conference room.

Your Committee file includes news articles about workers' compensation, a statement from Don Koke from the Division of Insurance about the recent rise in premium rates, and a copy of a law article by Chancy Croft on rehabilitative services.

STATE OF ALASKA  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
DIVISION OF INSURANCE  
P. O. BOX D  
JUNEAU, ALASKA 99811

Opening Comments for Public Meeting Concerning Revised  
Workers' Compensation Insurance Rates to be Effective  
January 1, 1988.

Good afternoon. My name is Don Koch. I am a special Deputy for the Alaska Division of Insurance. This is not a hearing in the usual sense. This is a public informational meeting or forum designed to give you an opportunity to hear how the worker's compensation rate filing effective on January 1, 1988 was constructed. Hopefully an insight and understanding as to how that process developed.

With me today are two representatives of the National Council on Compensation Insurance, Mr. Stan Sparks and Mr. Mark Mulvanney.

My opening remarks borrow freely from an Order I wrote last December concerning a rate filing that was under consideration at that time. Much is unchanged from that time to this.

The the National Council on Compensation Insurance is a national rating organization licensed by the State of Alaska. The members and subscribers of the the National Council on Compensation Insurance are insurance companies writing worker's compensation insurance in the various states. The the National Council on Compensation Insurance does statistical compilation of data, including premium, payroll, loss and expense data, on behalf of its member and subscriber insurance companies. It makes rate and policy form filings with the State of Alaska on behalf of its member and subscriber insurers.

On October 16, 1987, the the National Council on Compensation Insurance filed a rate change for worker's compensation insurance on behalf of its member and subscriber companies to be effective January 1, 1988 on new and renewal policies. The overall statewide premium level increase resulting from implementation of that filing is 25.1%. The components of the increase are:

<input type="checkbox"/>	increase due to experience.....	+22.1%
<input type="checkbox"/>	increase due to change in trending .....	+01.3%
<input type="checkbox"/>	reduction to reflect anticipated decrease in the state average weekly wage.....	-00.01%
<input type="checkbox"/>	increase for tax to reflect Guaranty Fund Assessments..	-01.1%

The overall average of 25.1% is further broken down into four (4) major industry groupings, each with a different impact from the filing reflecting that groups' contribution to the loss level. The industry groups are manufacturing, contracting, oil & gas, and all other. Within the groups, individual classifications can move an additional  $\pm 25\%$  from the group overall indication, further reflecting the particular experience of the individual classification. The four groups, the indicated rate change by group, and the range of rate movement for classifications in each group are:

<u>GROUP</u>	<u>IMPACT</u>	<u>RANGE of IMPACT</u>
Manufacturing	+10.5%	-14.0% to +36.0%
Contracting	+29.0%	+4.0% to +54.0%
Oil & Gas	+43.0%	+18.0% to +68.0%
All Other	+17.6%	-7.0% to +43.0%

These impacts are distributed to individual classifications. There are a total of 546 classifications used in the the National Council on Compensation Insurance classification manual. Of the 546 classifications, 434 classifications had some payroll for the period used to determine classification relativity in Alaska. Of that 434 classifications, about 116 classifications had more than \$10 million of payroll over a three year period in Alaska. The total numbers of classifications in the manual by industry group are:

<u>GROUP</u>	<u>TOTAL NCCI CLASSES</u>	<u>SOME ALASKA PAYROLL</u>	<u>+10 MILLION ALASKA PAYROLL</u>
Manufacturing	294.	102.	7
Contracting	67.	63.	27
Oil & Gas	11.	11.	7
All Other	174.	158.	75

The current filing is not unusual in terms of the review process that led to its filing with the Division of Insurance. Much of the methodology utilized tracks with filing methods that have been used in the past in this state and found to be acceptable in past reviews. It is, in a sense, routine, though its impact is not.

Since 1974, Market Surveillance Section of the Division of Insurance, has closely monitored workers' compensation insurance experience of insurers writing that line of insurance in Alaska. The purpose was to measure competition and to develop an independent base with which to gauge the proposals of the National Council on Compensation Insurance. By applying Division of Insurance devised formulas and tests to this base information, which is limited in its sophistication, the Division of Insurance has generally been able to predict rate changes within two or five percent of the actual proposal and to do so about six months before a filing is proposed. In other words, it gets us in the ball park concerning what to expect. Since this approach does lack sophistication and is not accurate to the degree desirable for ratemaking purposes, the results of these tests have not been widely publicized. One concern is that the tests done by the Division of Insurance should not be available for potential use by insurers as part of the support for rate change proposals.

Utilizing this process, I noted in June 1986 that there was a likelihood of a significant filing to be effective on January 1, 1987. At that time the Market Surveillance Section concluded that a 21.5% overall premium level increase would be needed and that due to data anomalies the true need was probably closer to 30%. The data anomalies referred to, are the impacts of reserve strengthening attributable to prior years.

Using a similar process this year, I concluded that a filing in the range of 33% would be needed for 1988. I also noted that certain tests applied by insurance commissioners across the country suggested that the majority of insurance companies writing worker's compensation insurance have substantial reserve deficiencies based on the latest filings of annual reports. This, if anything tends to suggest that the need is even greater than our tests indicate that it is. Again there are data anomalies that, given an adequate data base and sufficient sophistication, are subject to fine tuning and development of a believable rate indication, albeit unpopular.

Typically, the Division of Insurance looks at losses in relation to the premium accompanying the losses. Recently, I had occasion to look at losses isolated from the premium and I had a bit of a shock. In 1983 worker's compensation losses were \$70,678,000; in 1984, they were \$89,789,000; in 1985 they were \$124,447,000; and in 1986 they were \$150,294,000. That is more than doubled in a four year period and with a decreasing payroll base to boot.

When the Division of Insurance receives an insurance rate filing from an insurance company or a rating organization such as the National Council on Compensation Insurance, it does so under standards found in AS 21.39.030 which provide that the rates shall not be excessive, shall not be inadequate, and shall not be unfairly discriminatory.

The documentation provided with the filing supports the contention that the current rate structure is inadequate. Independent data developed by the Division of Insurance suggests that the proposed level requested does meet the statutory tests.

The standards set forth in the rate law (AS 21.39) do not provide, nor should it provide, for the application of political or economic considerations when reviewing a rate filing. The law was specifically designed to avoid just that occurrence. Viewing it from these considerations, this filing could not have come at a worse time. The economy has been devastated by factors with which you are all familiar. These place pressures on such a filing which while recognized, can not be considered under the law.

The Division of Insurance does not influence the benefits available under the Alaska Workers' Compensation Act. Those are established by the legislature and administered by the Alaska Workers' Compensation Board. The Alaska Worker's Compensation Board generally becomes involved only with the specific request of the claimant, but the Division of Insurance can not. There is one additional party regularly appearing on the scene, again via the claimant, and that is the court system.

The Division of Insurance does not deal with individual consumer complaints involving workers' compensation insurance. These are the jurisdiction of the Alaska Worker's Compensation Board.

When the Legislature addresses an issue relating to workers' compensation insurance, the role of the Division of Insurance is to attempt, through the National Council on Compensation Insurance, to determine the price impact of the proposed legislation. The Division of Insurance does not and should not take an advocacy posture as respects changes to the benefit structure in the Alaska Workers' Compensation Act.

The Division of Insurance does have a strong role in the efficiency of operation of the rating systems utilized by insurers writing workers' compensation insurance. It has a strong interest in factors that affect the data base from which rates are derived. It is concerned with issues that can influence the accuracy of the data base underlying the rate structure. Because of these interests and concerns, the Division of Insurance wants to:

- assure the proper reporting and gathering of payroll data;
- assure the proper and equitable application of the filed classification system; and,
- assure the proper conduct of persons writing coverage for an employers workers' compensation liability.

During the public hearing held last year, witnesses testified to some of the frustrations experienced. In many cases, the Division of Insurance does not have jurisdiction to address the kinds of problem described. Numerous issues were discussed in the hearing and more in correspondence and in telephonic communications. Many times, the extent of recognition of these

problems is the stereotypical comment, "it's not my job." While to a great extent that may be true of the issues witnesses have brought to us in the hearing last year, we did commit to at least describe the issues for the benefit of those who may be in a position to address them or to dismiss them. This was done via the Order issued last December. The issues brought to our attention include:

- questions of jurisdiction;
- trying to determine whether an individual is an independent contractor or will be held to be an employee;
- trying to have something done about a claimant who is known to the employer to be malingering or abusing the system;
- dramatic change in cost with short notice;
- dealing with fraud;
- rate disparity between Alaska and other jurisdictions;
- subsidy within classifications;
- overpopulation of the assigned risk plan;
- the perception that board or court decisions are too liberal;
- the increasing cost of medical;
- the growth of the legal expenses in the system;
- the problems with the rehabilitation portion of the act;
- perception that the act is not enforced; and
- more.

When a rate increase such as this goes into effect, it applies to new and renewal business as has already been noted. This fact itself offers both pain for some and relief for others depending on when the particular employers' policy expires and whether the change is an increase or a decrease. It impacts the cost effectiveness of an employer depending at what point he is bidding a job and whether his workers' compensation insurance costs for the period bid are known when bidding. With that in mind, this proceeding today is the most notice that has ever been seen for a January 1 rate filing. In the future, this procedure will be used for experience based filings. You will have 60 days advance notice that a change is eminent. That is not a lot, but it is a significant advance over past practice.

# Reform Alaska's workers' compensation system

By STEVE HAAG

Alaskan jobs and businesses will be threatened more than ever this winter by skyrocketing costs for workers' compensation insurance, and that's a very real threat to every employer and employee in this state.

The workers' compensation system began in the United States in the early 1900s. It was based on a belief that an employee should be entitled to wage compensation and hospital-medical cost coverage for injuries that occurred on the job.

Workers' compensation insurance coverage is now mandatory for every employer in the United States. Alaska has one of the most generous benefit and compensation packages in the country.

In 1987, Alaskan workers' compensation rates increased an average of 14.3 percent with some industries shouldering increases as high as 40 percent. That increase added \$20 million to the \$155 million statewide that employers were paying annually for coverage. It's expected that a 25 percent average increase will take effect in 1988.

The potential results are obvious. Businesses already hard hit by a faltering economy will be dealt a death blow by higher premiums. Jobs will be lost by the hundreds.

The problem is not that the system is being abused in large part, but rather that the system has gone far beyond what it was ever intended to accomplish. The goal of workers' compensation should be to help an injured worker

recover and to return to gainful employment. During the time of disability, the worker should be fairly compensated at a level comparable to the income that would be generated if the worker was on the job at which the injury occurred.

However, the basic premise of workers' compensation has been altered in Alaska. Under our system there is little or no incentive to return to work.

Why is Alaska's system so expensive? There are numerous reasons. Alaska is one of only two states which provide that benefits paid to an injured worker will be based on 200 percent of the statewide average weekly wage. This can result in a weekly compensation wage of more than \$1,000, tax free, while the salary an employee may have been earning while on the job was significantly less.

To make matters worse, a worker injured in Alaska may choose to move to another state with a substantially lower cost of living, yet be compensated at the rate determined in Alaska.

Compensation is based on a worker's income for the past two years. Under Alaska law a person can work on the North Slope earning \$40,000, then switch to a job paying half that, become injured on the new job and be compensated at a rate based almost totally on the prior job. As a result, that person would earn more from workers' compensation than from working.

Unlike many states, Alaska has no provision for per-

odic reviews of standards for treatment of injured workers by medical or rehabilitation providers, nor any guidelines for fees.

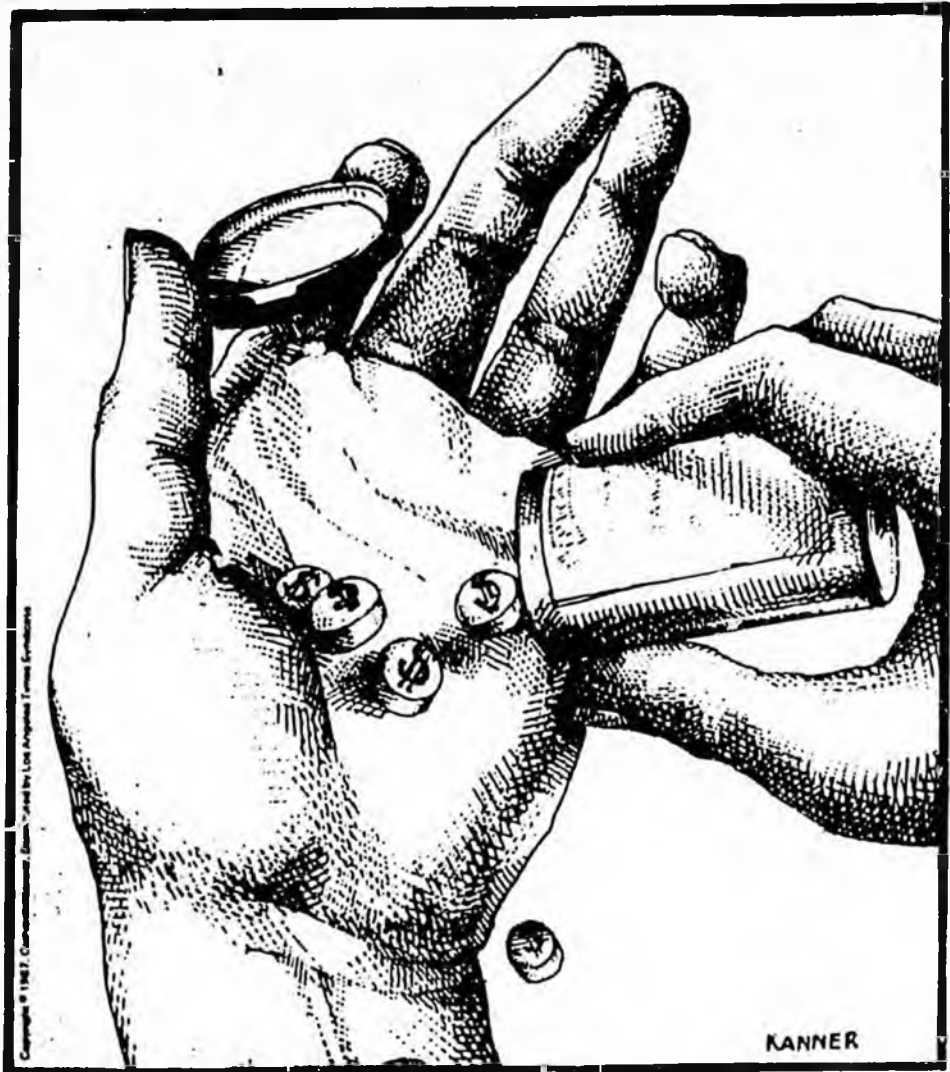
Many other factors have driven up the cost of coverage including runaway medical costs, the failure of occupational rehabilitation legislation passed in 1982, a lack of limits on benefits and a lack of fraud investigation.

Alaskan employees are being excluded from Alaskan jobs because Outside companies can bid on those jobs using an all-states endorsement, which allows payment of workers' compensation based on the home-state rate, even though the job is in Alaska. As a result, Alaska companies paying premiums based on Alaskan experience cannot compete for those jobs.

To remedy these and dozens of other faults with the system, the Workers' Compensation Committee of Alaska, a statewide organization, is reviewing every aspect of the law. WCCA hopes to present a legislative package negotiated by labor and management to the legislature in 1988.

While employers are the only group that pays premiums, this is both a management and labor issue. As premiums rise, businesses will fold, taking needed jobs with them. It is in everyone's interest to make the system work as it was originally intended.

□ Steve Haag is president of Workers' Compensation Committee of Alaska.



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Robert B. Atwood  
President and Publisher

Elaine Atwood  
Assistant Publisher

William J. Tobin  
Vice-President, Editor-in-Chief

## Relief for businesses

THERE IS hope on the horizon on the workmen's compensation front, we are pleased to report.

This past Monday, in comments in these columns, we took alarmed note of the fact that workmen's comp insurance rates assessed against employers in Alaska are scheduled to skyrocket an average of 25 percent the first of January.

And nothing, we said, was being done about it — and the certain prospect that such an increase would drive any number of businesses into bankruptcy and throw more Alaskans out of work.

But that's not the case, says Senate President Jan Faiks.

Thank heavens.

IN AN address Tuesday before the Anchorage Rotary Club, the Republican Senate leader disclosed that behind-the-scenes work indeed has been going on and that she felt confident one of the early acts of the 1988 legislative session would be to address the workmen's comp problem.

In this case, addressing the issue means, she said, rolling back the enormous rate increases in order to save jobs and save businesses.

What changes will be

made — or proposed, at least — in the workmen's compensation program were not detailed.

But Sen. Faiks said both management and labor were working in tandem to deal with the frightening prospect of financial ruin that potentially could put thousands of Alaskans out of work.

MEANWHILE, in the private sector, a number of major Alaska employers have joined together to form the Workers' Compensation Committee of Alaska, Inc., an organization campaigning for a reduction in the soaring insurance rates. We trust this group is working with legislators to achieve a reasonable solution to the problem.

The proposed increases, resulting from the state's extremely liberal rules and regulations under workmen's comp, are simply outrageous.

A commitment by the members of both the House and the Senate to take corrective action early in January is essential to stemming an even further precipitous plunge in Alaska's economic recession.

Sen. Faiks' comments this week were encouraging for all concerned.

RECEIVED  
OCT 23 1987

sent from  
Pat Sullivan  
Wash. County District

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AN ACT  
Relating to workers' compensation.

\* Section 1. AS 23.30.230 is repealed and reenacted to read:  
Sec. 23.30.230. PERSONS NOT COVERED. (a) The following persons  
are not covered by this chapter:

- (1) part-time baby-sitters;
  - (2) cleaning persons;
  - (3) harvest help and similar part-time or transient help;
- and
- (4) persons employed as entertainers on a contractual basis.

(b) The exclusion of certain persons under (a) of this section, may not be construed to require inclusion of other persons as employees for purposes of compensation under this chapter.

\* Sec. 2. AS 23.30 is amended by adding a new section to read:  
Sec. 23.30.239. SOLE PROPRIETORS AND PARTNERS AS EMPLOYEES. (a)

A person who is a sole proprietor, or a member of a partnership, may elect coverage as an employee under this chapter by making written application to an insurer. The insurer may accept the application and fix an assumed monthly wage at which the person shall be carried on the payroll for purposes of this chapter.

(b) When the application is accepted, the person is subject to the provisions and entitled to the benefits of this chapter. The person shall promptly notify the insurer whenever there is a change in

May 11, 1987

Tim Lamb  
Bangs & Lamb, Inc.  
2825 Rose St., Suite 202  
Anchorage, Alaska 99508

RECEIVED MAY 13 1987

RE: Pac West Laminate  
TY 881-7513

Dear Tim:

The Alaska Supreme Court has established six criteria to use in determining whether a worker is an employee or an independent contractor. I will outline these six factors and describe how Pac West's installers fit into the picture.

1. The degree of skill involved in the claimant's work. There are some skills required to install the cabinets, flooring and countertops which the insured sells. This tends to support the independent contractor status.
2. The degree to which the work is a separate calling or business. I was unable to locate any of the insured's installers in the yellow pages so they do not advertise their services, which indicates an employee status. However, since most are insured (general liability only), this would support the independent contractor status.
3. The extent to which the claimant can be expected to carry his own accident burden. I would expect that installers could be expected to carry their own Workers Compensation insurance coverage, however, the cost may prevent them from doing so. This would be difficult to call but I would say that this indicates employee status.
4. The extent to which the claimant's work is a regular part of the employer's work. This test supports the employee status since Pac West is in the business of selling (installed) furnishings. The insured sells the complete package. If the installation were inadequate, the customer would go to Pac West not the installer.
5. Whether the claimant's work is continuous or intermittent. Several of the installers worked throughout the policy period, one had annual earnings from Pac West of \$40,000, supporting the employee status.

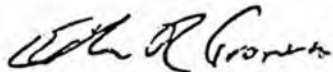
Tim Lamb  
May 11, 1987  
Page 2

6. Whether the duration of the work is sufficient to amount to the hiring of continuous services as opposed to contracting for the completion of a particular job. Installation is an ongoing part of the insured's operations, with many of the installers being paid regularly for their services. Again, the employee status is apparent.

Overall, the installers meet the test of being employees. We would end up with claims on the installers and, therefore, we bill premiums to cover that exposure. I disagree with the contention that insuring these exposures (without the benefit of any premium) is considered "a cost of doing business".

I hope this explains the factors involved in the employee vs. independent contractor issue. If you have further questions, please call or stop by the office and we can discuss this further.

Sincerely,



Edwin R. Grove, III  
Premium Audit Manager

ERG:njm

cc: Don Koch

JOHN C. PHARR  
COUNSELLOR AT LAW  
3900 ARCTIC BLVD.  
SUITE 202 A  
ANCHORAGE, ALASKA 99503

19071 502-1995

May 21, 1987

*Paula*  
Bill and Peggy Westhusing  
8240 Hartzell Road, #2  
Anchorage, AK 99507

Dear Bill and *Paula* Peggy:

I looked up the list of factors in independent contractor versus employee and found that there are actually 10. They are as follows:

(1) A servant [employee] is a person employed to perform services in the affairs of another and who with respect to the physical conduct in the performance of the services is subject to the other's control or right to control.

(2) In determining whether one acting for another is a servant or an independent contractor, the following matters of fact, among others, are considered:

(a) the extent of control which, by the agreement, the master may exercise over the details of the work;

(b) whether or not the one employed is engaged in a distinct occupational business;

(c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;

(d) the skill required in the particular occupation;

7) 349-1681  
Arztzell Rd. # 2  
Alaska 99507

Mr. & Mrs. Westhusing  
May 21, 1987  
Page Two

(e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;

(f) the length of time for which the person is employed;

(g) the method of payment, whether by the time or by the job;

(h) whether or not the work is a part of the regular business of the employer;

(i) whether or not the parties believe they are creating the relation of master and servant; and

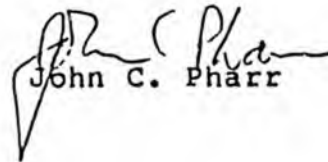
(j) whether the principal is or is not in business.

As I mentioned, I would also look at the policy itself to see how it defines "employee."

If you want to draft a letter, I will be happy to review it.

Very truly yours,

LAW OFFICES OF  
JOHN C. PHARR

  
John C. Pharr

JCP/js



# Pac West, Inc.

---

Industrial Indemnity  
4341 B St.  
Anchorage, AK 99503

May 31, 1987

Re: Pac-West Workmen's Comp  
TTY 881-7513

Attn: Edwin R. Grove

Dear Mr. Grove:

In referencing your letter to Tim Lamb dated May 11, 1987, we would like to take the opportunity to contest and evaluate each of the criteria outlined in establishing status as an independent contractor.

Enclosed is a copy of a letter from our attorney who outlined ten criteria established by the Alaska Supreme Court. We will be addressing these ten issues in our evaluation.

First of all, the subcontractors in question are listed on pages 6 and 7 on your workmen's compensation audit under "Casual Labor". In actuality, only \$1,042.00 of the \$85,330.00 total is casual labor. The remainder of the so-called "casual labor" are bonafide independent subcontractors, whose services are contracted for cabinet and floorcovering installations.

The following nine contractors are acting as independent contractors and workmen's compensation coverage was inappropriately charged:

1. Lee Weise, Jr. dba Interior Woodworks
2. F. Michael Singer dba Wooden Joint Mfg
3. Walter Liedke dba Anchorage Joinery
4. Jon Mousel dba Falcon Cabinetry
5. Gary Fidino dba GF Builders
6. Frank Stevens dba Stevens Custom Floors
7. Bernie Ruzicka dba Debco Trim
8. Paul Smith dba None Finer Flooring
9. Scott McPherson dba McPherson Floors

- a. The extent of control which, by the agreement, the master may exercise over the details of work:

Pac-West does not supervise on site any work performed by the second tier subcontractors. They are solely responsible for the quality and standards expected of any legitimate installer or manufacturer.

At job completion, Bill does a walk-through and notes any flaws in workmanship that he feels may be picked up by the architect and "punch-listed". At that time, we make the second tier sub aware of the potential problem and he would make the effort to correct his shortcomings if he wished to continue contracting from Pac-West.

We always expect premium quality workmanship from our subs as the general expects from us. Sub-standard work is not accepted by anyone in the trade.

- b. Whether or not the one employed is engaged in a distinct occupational business:

Pac-West, Inc. is an architectural supply. Our primary function is to buy and sell products, such as Monitor casework, floorcovering, ceramic tile and accoustical ceilings. As a service, we include in our bids the installation of these products.

For these installations, we hired the subcontractors in question who specialize in these fields.

- c. The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision:

As noted in "a", no representative of Pac-West is on site or supervising and instructing second tier subs.

- d. The skills required in the particular occupation:

All skills of each subcontractor are specialized and most require at least a five-year apprenticeship. In addition, we rely on the expertise of the subcontractors in the installation of products of which we are not capable of performing. Our primary function is to coordinate the project and see that there is an acceptable finished product.

- e. Whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work:

The majority of all work performed by the nine subcontractors was done in the field, where they would supply all tools necessary to complete the installation.

f. The length of time for which the person is employed:

All independent contractors worked under written contract. Each contract had a definite start-up date and approximate completion date.

g. The method of payment, whether by the time or by the job:

All payment is by the job.

h. Whether or not the work is a part of the regular business of the employer:

As noted in "b", we are an architectural supply and manufacture custom mill work to complete our architectural package. Installation of these products is standard in conventional contract bidding.

i. Whether or not the parties believe they are creating the relation of master and servant:

We, at no time, expect any subcontractor to drop their current contracts with any other shops to start up one of our projects. All work and contracts are pre-scheduled and based on the finish schedules provided by the general contractors.

We do expect the subs to act responsibly in completing their contract as the general contractor requires the same of all subs.

j. Whether the principal is or is not in business:

All of the subcontractors in question are sole proprietors and principal owners of the businesses. They have no workmen's comp policies in force because they have no employees and perform all work themselves.

349-1681  
Tzell Rd. #2  
Alaska 99507

1071 349-1681  
 Hartzell Rd. #2  
 Alaska 99507

In summarizing these ten issues there is no question in establishing the status of the nine subcontractors in question as independent contractors. We feel very strongly that your company has made a gross error in classifying them as casual labor.

If you are basing that classification solely on the fact that there were no workmen's comp policies in force, you are blindly overlooking the strong points which prove them to be independent contractors.

None of the contractors in question have workmen's comp policies because they have no employees. As I understand workmen's compensation was just recently made available to sole proprietors as an option, the middle of last year. Why then if they did not optionally elect to cover themselves with workmen's comp, are we being charged when we have not optionally agreed to it.

In checking with the other four insurance companies in the pool, INA, Providence-Washington, Alaska National, and Employees of Wausau, all of them stated down the line, that subcontractors with current certificates of insurance but no workmen's comp coverage, would not be charged for workmen's comp coverage.

On the quarterly payroll reports, only names of employees were ever listed. We never expected Industrial Indemnity to cover private subcontractors with workmen's compensation.

Following is an adjustment to our final audit as we most firmly see it.

CLASS	DESCRIPTION OF WORK DONE	TOTAL EARNINGS	RATE	PREMIUM
2812	Cabinet Works-Power	21,535.00	8.04	1,731.00
9521	House Furnish-Inst.	* 14,401.00	5.64	812.00
	Sub-total			2,543.00
	Increased Limits .0100			25.00
	Expense Constant			85.00
	Standard Premium			2,653.00
	Plus Assigned Risk Surcharge .10			265.00
	Total Premium			2,918.00
	Less Previously Invoiced Including Deposit			<3,334.00
	Less Premium Discount .031			<228.00
	Credit Due			644.00
				=====

\*Adjustment to this figure. Your audit stated total for this category \$98,689.00. Total amount paid to subcontractors was \$84,288.00 leaving balance at \$14,401.00

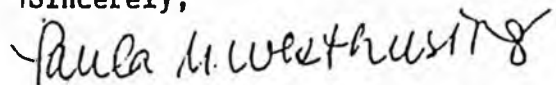
(907) 349-1687  
O Hartzell Rd. #2  
Age, Alaska 99507

This is only an evaluation of our policy from 11/26/85 thru 11/26/86 and does not include our pre-paid estimate for workmen's comp coverage for payroll in 1987.

If you cancel our policy 6-7-87, we will at that time total our payroll to date and compare it with our annual estimate. We will take legal action to recoup our estimate credit and also our credit due from our '86 audit as we feel most adamantly that we have been wrongfully and unfairly charged.

Please review this letter. We await your response as we wish to clear up this matter.

Sincerely,



Paula M. Westhusing  
Vice-President

cc: John Pharr  
Tim Lamb

Enclosure

June 25, 1987

Paula M. Westhusing  
Pac West Laminate Design  
8240 Hartzell Road, Suite 2  
Anchorage, Alaska 99507

RE: Workers Compensation Policy Number TY 881-7513

Dear Mrs. Westhusing:

I have further researched the subcontractors which we included in our audit of January 14, 1987. I found that we carried the workers compensation coverage on two of the subcontractors, Gary Fidino and Frank Stevens. Your final billing invoice will be amended to delete the premium charges for those individuals.

As far as the other contractors are concerned, we require that they provide you with certificates of insurance showing proof of workers compensation coverage. These certificates are required since they and their employees would be considered employees in the event of injury.

I would be happy to meet with you to discuss this further if you wish.

Sincerely,



Edwin R. Grove, III  
Premium Audit Manager

ERG:dms

cc: Tim Lamb, Bangs & Lamb

**Industrial Indemnity**  
a Crum and Forster organization

Anchorage Division  
4341 B Street  
Anchorage, Alaska 99503  
Mailing address P.O. Box 307  
Anchorage, Alaska 99510  
(907) 561-6000

October 6, 1987



Helen Workman  
ACCI  
620 S.W. 5th Ave., Suite 1110  
Portland, Oregon 99204-1496

RE: Pac West Laminate Design or Pac West, Inc.  
TY 881-7513 11-26-85 to 11-26-86  
TY 882-7780 11-26-86 to 6-7-87

Dear Helen:

Industrial Indemnity Co. of Alaska is now petitioning the Alaska Assigned Risk Insurance Pool to cancel or suspend the current workers compensation coverage of Pac West, Inc. due to uncollectable monies owed to Industrial Indemnity as follows:

1.	TY 881-7513	11-26-85 to 11-26-86	Amount Due	\$3,720
2.	TY 882-7780	11-26-86 to 6-7-87	Amount Due	<u>1,860</u>
		Total Due as of 10-2-87 is		\$5,580

Industrial Indemnity has attempted to resolve these overdue balances through negotiation, without success. We, therefore, have no choice but to ask that Pac West's current coverage be cancelled until all prior policies are paid in full. In the meantime, we have referred this matter to our collection department.

Please call if there are any questions or if you need additional information.

Best regards,

 Jay Hite  
Workers Compensation Underwriter

JH:njm

cc: Pac West, Inc.  
Bangs & Lamb, Inc.

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3502

PRESS RELEASE

NOVEMBER 3, 1987

TO: Mary Pat Murphy  
The Anchorage Times

FOR IMMEDIATE RELEASE

ANCHORAGE, AK--A hearing on Workers' Compensation will be held by the House Labor and Commerce Committee on Thursday, November 12, 1987. Meeting time is 1:30 p. m. until 5:00 p.m. in the Anchorage Legislative Information Office, ground floor conference room at 3111 C Street.

The hearing is being hosted by Representative Dave Donley and Senator Tim Kelly, chairmen of the House and Senate Labor and Commerce Committees.

Senator Kelly and Representative Donley have joined in a bipartisan effort to address the current problem of soaring workers' compensation insurance premiums. Workers' Compensation has recently received attention because of the dramatic increase in rates. Public testimony will be taken on this issue, as well as on; workers' compensation complaints, employee problems, the insurance industry's perspective and employers problems. Other issues to discuss include; workers' compensation liability and who is covered, alternatives to workers' compensation and cost saving proposals. A presentation of legislative suggestions will be made by the ad hoc labor-management committee on workers' compensation.

For further information contact Ginger Baim at 561-7629, or Ruth Packard at 561-7612.

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For more information call Ginger Baim 561-7629.

B6

# PACIFIC

## CONSTRUCTION SYSTEMS

RECEIVED  
NOV 4 1987

October 29, 1987

Representative Dave Doneley  
Chairman of House Labor and  
Commerce Committee  
3111 "C" Street  
Anchorage, AK 99503

Attn: Ginger

Re: Workmen's Compensation  
Insurance Rates

Dear Ginger:

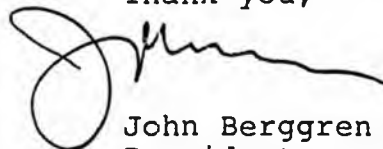
Pacific Construction Systems of Alaska, Inc. strongly supports placing the revisions of the state Workmen's Compensation Laws before the 1988 legislative session. This is very important to us as a small business in Alaska. We have suffered over a 42% increase in 1987 and are looking at an additional 25% increase in 1988. We must roll back these enormous rate increases in order to save jobs and businesses. These increases appear to be a result of entirely too liberal action by the Workmen's Compensation Review Board. The current laws encourage the use of Workmen's Compensation versus other avenues available in many cases. This is all at the expense of work force and ultimately all of us. Corrective action must be taken to stem an even further precipitous plunge in Alaska's economy.

Pacific Construction Systems has bid jobs well in advance of these rate increases, with no way to know what would be charged. The result now is that any hope of a "bottom line" is a risk (if not an overall loss, and to date there appears to be nothing we can do about it. We need your help!

Please roll back rates and tighten up on benefits!

If you have any questions regarding this matter, please feel free to contact me at (907) 563-4188.

Thank you,



John Berggren  
President

JB/ab

Pacific Construction Systems • Post Office Box 4-1268 • Anchorage, Alaska 99509 • (907) 563-4188



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

P.O. Box Y, State Capitol  
Juneau, Alaska 99811-3100  
Mail Stop 3100  
(907) 465-3991

September 2, 1987

MEMORANDUM

TO: Representative Dave Donley

FROM: Karen Oakley *ko*  
Legislative Analyst

RE: Workers' Compensation: Attorney Fees Provisions and Time Taken to  
Settle Controverted Claims  
Research Request 88.022

You raised several questions concerning workers' compensation programs in Alaska and other states, specifically:

- What limits do Alaska and other states place on the amount that can be paid to attorneys that represent injured workers?
- Why are no limits placed on the amount that insurance companies pay attorneys in defending themselves, and does this lack of limits give the insurer an advantage over the injured worker in the adjudication process? and,
- How long does it take, on average, to settle controverted claims?

Background

Workers' compensation is a mandatory program that requires employers to pay medical costs and part of lost wages to employees who are injured or become ill because of work conditions. Workers' compensation also pays benefits to the dependents of workers that are killed on the job. In turn, the law relieves employers of liability from common law suits involving negligence.

Prior to the advent of workers' compensation, disputes over workplace injuries were settled through tort adjudication--an often lengthy process that could result in extremely large settlements or no settlement at all. Workers' compensation laws were enacted to take the concept of fault out of on-the-job injury claims and thereby meet the following objectives:

- 1) provide sure, prompt and reasonable income and medical benefits;
- 2) reduce personal injury litigation;
- 3) relieve public and private charities of pressure to serve uncompensated claims;
- 4) maximize employer interest in safety and rehabilitation;
- 5) promote the frank study of causes of accidents; and,
- 6) eliminate attorney and witness payments.<sup>1</sup>

### Attorney Fees Provisions

When workplace injuries were treated as torts and settled through the courts, attorney fees could take a large portion of any settlement. Thus, the workers' compensation process was created and structured to avoid the need for attorneys; in its most idealized form, compensation administration would provide automatic relief to the injured worker. However, the modern actuality is that most claimants employ an attorney.

Because the system was designed to avoid the need for attorneys, there is a lack of agreement over the role that attorneys should play in compensation administration. Opponents of attorney involvement argue that claimants can do just as well without an attorney and that having an attorney just reduces the net award. Attorneys argue that compensation practice is rife with complex issues of evidence and proof and that claimants will receive higher awards and have greater success if they hire an attorney. The limits placed on attorney fees in workers' compensation cases reflect an attempt to ensure that injured workers retain the bulk of their awards. Ideally, the limits are set high enough to attract competent counsel to the field but low enough to forestall frivolous cases.

All states have provisions for subjecting the claimant's attorney fees to the supervision of the commission or court handling compensation administration. In 21 states, the maximum amount that a claimant attorney can receive is specified in statute (see Attachment A). Generally, the maximum amount is expressed as a percentage of the amount awarded--the range is 10 to 25 percent. Often, the percentage will vary depending upon the amount awarded; for example, the attorney may receive 25 percent of the the first \$1,000 and 10 percent of any additional amount awarded. In several states,

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<sup>1</sup>United States Chamber of Commerce, Analysis of Workers' Compensation Laws: 1987, p. vii.

the maximum fee is a specified dollar amount. Four states, including Alaska, allow "reasonable fees."

An important feature of the attorney fees provisions is whether the fees are paid by the employer in addition to the compensation awarded or are paid by the insurer from the compensation. In 35 states and in the District of Columbia, claimant attorney fees are added on to the award and paid by the employer if the claimant prevails.

No state supervises or sets limits on the amount that the employer or its insurance company can spend on attorneys, presumably because the marketplace will act to keep the fees down. Larson, in his workers' compensation treatise, states:

"The fees of the employer's or insurer's counsel, since they have no immediate impact on net benefits, are not ordinarily supervised or limited. The only limitation--which is more effective than many people realize--is the insurance attorney's ever-present concern that, if his charges get out of line, his big insurance client will take away his business altogether, which in some cases would be disastrous to a law office."<sup>2</sup>

#### Attorney Fees in Alaska

**Statutory Provisions.** Alaska Statute 23.30.145 specifies how claimant attorney fees are to be handled (Attachment B). This statute contains the following key provisions:

- All fees must be approved by the Workers' Compensation Board;
- The fees may not be less than 25 percent of the first \$1,000 of compensation and 10 percent of all sums in excess of \$1,000 of compensation; and
- If the insurer controverts the claim, the board may direct that the insurer pay the attorney fees of the claimant in addition to any compensation awarded.

In specifying a minimum amount for claimant attorney fees, Alaska is unique; most states specify a maximum. This section of the statute

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<sup>2</sup>Larson, Arthur, "The Law of Workmen's Compensation," Matthew Bender, Volume 3, pp. 15 - 684, 1983.

reflects the intent that attorneys in compensation proceedings be reasonably compensated for their services and thereby ensures that claimants can find counsel to argue their claims.

**Judicial Interpretations.** In several cases before the Alaska Supreme Court, insurer's counsel have argued that the minimum fees provided for in the AS 23.30.145 are much too high; the court has ruled that the minimum fees have been set by the legislature, and it is up to the legislature to change them if they are too high. In one case, the court noted that:

" . . . It is debatable whether a percentage attorney fee of essentially 10 percent is generally too high. Our Civil Rule 82 grants virtually the same fee to the successful litigant in a contested court case. The 10 percent fee in workers' compensation cases is contingent. The most common contingent fee in court actions is 33 1/3 percent. . ."<sup>3</sup>

However, in a later case, the court noted that the legislature might wish to examine whether the minimum fee resulted in excessive fees:

"Alaska Statute 23.30.145 seeks to insure that attorney's fee awards in compensation cases are sufficient to compensate counsel for work performed. Otherwise, workers will have difficulty finding counsel willing to argue their claims. Also, high awards for successful claims may be necessary for an adequate overall rate of compensation, when counsel's work on unsuccessful claims is considered. Taking into account these factors, however, we are still concerned that, in some cases, application of AS 23.30.145(a) results in a fee award that is "out of all proportion to the services performed." Haile v. Pan American World Airways, Inc., 505 P. 2d 838, 840 (Alaska 1973). The remedy for this is statutory change by the legislature, not "interpretation by the courts." The legislature may wish to examine whether the formula in AS 23.30.145(a) sometimes results in excessive fee awards, awards higher than are necessary to attract counsel into the compensation area."<sup>4</sup>

In Whaley v. Alaska Workers' Compensation Board, the Alaska Supreme Court ruled on a workers' compensation case in which the lower court had granted attorneys' fees to the insurer under Appellate Rule 508(e).<sup>5</sup> This rule

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<sup>3</sup>Alaska Interstate v. Houston, 586 P. 2d 618 (1978).

<sup>4</sup>Wein Air Alaska v. Arant, 592 P. 2d 353 (Alaska 1979).

<sup>5</sup>648 P. 2d 955 (Alaska 1982).

grants a reviewing court the discretion to award attorneys' fees to a successful party, and it applies to appeals to the Superior Court by administrative agencies such as the Workers' Compensation Board. However, the court ruled that to allow an appellate court to routinely grant attorneys' fees to the prevailing employer would undermine the purposes of the workers' compensation act. They noted that:

"The statute is designed to provide the most efficient, dignified and certain means of determining benefits for workers sustaining work-connected injuries, and is to be liberally construed in favor of the employee. In particular, AS 23.30.145 is unique in its generosity to claimants and their counsel. . . A routine grant of attorneys' fees to employer-defendants would undermine the purposes of the statute and severely limit a claimant's ability to seek appellate relief."

Thus, the court concluded that to grant attorneys' fees to an employer-defendant under Rule 508(e), a finding that the claimant's appeal was frivolous, unreasonable, or brought in bad faith must be made. The Pennsylvania Supreme Court ruled similarly in a similar case.<sup>6</sup>

**Actual Fees Paid.** Alaska Statute 23.30.155(m) requires insurers to report to the board several kinds of benefits paid, including fees paid to claimant attorneys and to their own attorneys. Jan Hansen, Chief of Adjudications for the Workers' Compensation Board, analyzed reports of attorneys fees made by insurer for injuries that occurred on or after January 1, 1982 through October 10, 1985. She found 118 cases during this period where the insurers reported the fees they paid to both the insurer and claimant attorneys. On average, the claimant's attorneys were paid \$4,549 per case, and the insurer's attorneys were paid \$5,162 per case. Ms. Hansen indicated that these data must be viewed with some skepticism, however, because of under-reporting, particularly of fees paid to employer/insurer attorneys. She notes that insurers must pay and report payment of claimant attorney fees soon after the case is settled, but that fees paid to their own attorneys may be paid much later. Thus, it is likely that the actual fees paid to employers attorneys are somewhat higher than the data for the 1982 - 1985 period show.

**Discussion.** Relative to other states, Alaska statutes are generous to attorneys representing claimants in workers' compensation cases. Attorneys for successful claimants are assured of receiving reasonable compensation for their work. Except in rare cases, the general rule that the losing

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<sup>6</sup>United States Steel v. Workmen's Compensation Appeal Board, 457 A. 2d (PA Commonwealth, 1983).

Representative Donley  
September 2, 1987  
Page 6

side pays the attorney fees of the winner does not apply to claimants. Thus, insurers must pay their own attorneys, win or lose, and they must pay the attorney fees of successful claimants. These conditions should force insurers to be prudent in deciding whether to controvert a claim and should act to balance the strength of parties in the adjudication process. While it appears that insurers pay more to attorneys than claimants do, the disparity is slight, suggesting that claimants are being adequately represented.

#### Time Required to Settle Controverted Claims

Within 21 days of learning of an injury, the employer/insurer in Alaska must begin compensation payments or deny the claim by filing a notice of controversion. If a claim is controverted, the case will be scheduled for a hearing before the workers' compensation board. In Alaska, the average time between the filing of a notice of controversion and settlement of the case by the board has typically been 60 to 70 days.<sup>7</sup> In comparison to other jurisdictions, Alaska is one of the speediest: The average amount of time taken to adjudicate controverted cases (n=40,244 cases) in 15 western states and provinces, including Alaska, in 1984 was 330 days.<sup>8</sup> Thus, controverted cases in Alaska are currently handled much faster than elsewhere.

Although controverted cases are handled promptly in Alaska, the workers' compensation board has noted an increase in the number of appealed cases within the last year, and the docket has become increasingly crowded. Cases controverted now (in September) could not be scheduled for a hearing before the board until December or January, thus, the average time to settle cases will likely increase.

I hope this information is useful. If you need any additional information, please let me know.

Attachments

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<sup>7</sup>Jan Hansen, Chief of Adjudications, Alaska Workers' Compensation Board, Personal communication.

<sup>8</sup>Ibid.

ATTACHMENT A  
Attorney Fees in Workers' Compensation

Table 18B

ATTORNEY FEES IN WORKERS' COMPENSATION<sup>1</sup>

State	Attorney fees established by statute, rule, operating policy or on individual case basis	Determined by	Statutory provision whereby attorney fees are added to award in certain cases	Statutory provision making unlawful acceptance of unapproved fees	Laypersons permitted to represent claimants	Attorney fees, upon approval, become liens against awards
Alaska	25% minimum on first \$1,000; 10% on balance, statute	Agency	Yes	Yes	Yes	No
Alabama	15%, statute	Court	None	None	No	No
Arizona	25%, statute	Agency	None	None	No	No
Arkansas	30% first \$1,000; 20% next \$2,000; 10% on balance, statute	Agency	Yes	None	Yes	No
California	13% rule	Agency	Yes	None	Yes	Yes
Colorado	Individual case basis	Agency	None	None	No	Yes
Connecticut	Individual case basis	Agency	Yes	None	Yes	No
Delaware	30% or \$2,250, whichever is smaller, statute	Agency	Yes	None	No	No
District of Columbia	Individual case basis	Agency	Yes	Yes	Yes	Yes
Florida	25% first \$5,000; 20% second \$5,000; 15% on balance, statute	Agency	Yes	Yes	No	Yes
Georgia	25% to 33 1/3%, rule	Agency	Yes	Yes	No	No
Hawaii	Individual case basis	Agency	Yes	Yes	Yes	Yes
Idaho	Individual case basis	Agency	Yes	None	Yes	No
Illinois	20%, statute	Agency	Yes	None	No	No
Indiana	20% first \$5,000; 15% next \$5,000; 10% balance, rule	Agency	Yes	None	No	No
Iowa	Individual case basis	Agency	None	None	No	Yes
Kansas	25%, statute	Agency	None	None	No	Yes
Kentucky	20% first \$25,000; 15% next \$10,000; 5% balance, \$6,500 maximum, statute	Agency	Yes	No	No	No
Louisiana	20% first \$10,000; 10% on balance, statute	Court	Yes	Yes	No	Yes
Maine	Individual case basis	Agency	Yes	Yes	No	No
Maryland	20% first \$7,000; 15% next \$18,000; 10% balance, policy	Agency	Yes	None	No	Yes
Massachusetts	20% on lump sum settlement, individual case basis, statute	Agency	Yes	None	No	Yes
Michigan	30%, rule; up to time of trial; plus 15% on redemption settlements	Agency	None	None	No	No
Minnesota	15% first \$4,000; 10% next \$27,500, statute	Agency	Yes	Yes	No	Yes

<sup>1</sup> This table refers only to attorney fees for claimants. Attorney fees of employers and insurance carriers are not regulated by State statutes or regulations.

Table 18B—Continued

State	Attorney fees established by statute, rule, operating policy or on individual case basis	Determined by	Statutory provision whereby attorney fees are added to award in certain cases	Statutory provision making unlawful acceptance of unapproved fees	Laypersons permitted to represent claimants	Attorney fees, upon approval, become liens against awards
Mississippi	252 before Commission; 33 1/32 in Court, statute	Agency	None	Yes	No	Yes
Missouri	252, policy	Agency	None	None	No	Yes
Montana	252 - 402, policy	Agency	None	None	Yes	Yes
Nebraska	202 - 252, policy	Court	Yes	None	No	Yes
Nevada	No provision		Yes		Yes	
New Hampshire	202 - 252, policy	Agency	Yes	None	No	No
New Jersey	202, statute	Agency	Yes	Yes	No	Yes
New Mexico	102, if no proceedings are filed invoking the jurisdiction of the Court, statute; individual case basis if Court's jurisdiction is invoked	Court	Yes	Yes	No	No
New York	Individual case basis	Agency	None	Yes	Yes	Yes
North Carolina	Individual case basis	Agency	Yes	Yes	No	No
North Dakota	\$50 per hour, maximum, rule	Agency	Yes	None	No	No
Ohio	Individual case basis	Agency	None	None	No	No
Oklahoma	102 TTD; 202 other types, statute	Court	None	None	No	Yes
Oregon	252 not to exceed \$3,000, rule	Agency	Yes	None	Yes	Yes
Pennsylvania	202, statute	Agency	Yes	None	No	Yes
Puerto Rico	Individual case basis	Agency	Yes	None	Yes	No
Rhode Island	Individual case basis	Agency	Yes	None	No	No
South Carolina	Individual case basis	Agency	Yes	Yes	No	No
South Dakota	Individual case basis	Agency	Yes	None	Yes	No
Tennessee	202, statute	Court	None	Yes	No	Yes
Texas	252, statute	Agency	Yes	None	Yes	Yes
Utah	202 first \$15,000; 152 next \$15,000; 102 balance, maximum \$9,051, rule	Agency	None	None	Yes	No
Vermont	202 maximum \$3,000, policy	Agency	Yes	None	No	Yes
Virginia	Individual case basis	Agency	Yes	None	No	No
Washington	301, statute	Agency	Yes	Yes	Yes	No
West Virginia	202, 208 week limit, statute	Agency	None	Yes	No	No
Wisconsin	202 in dispute cases, statute	Agency	None	Yes	Yes	No
Wyoming	Individual case basis	Court	Yes	Yes	Yes	No

Source: Larsen, Arthur, "The Law of Workers' Compensation," Matthew Bender, 1983.

SECTIONAL ANALYSIS OF WORKERS' COMPENSATION  
TASK FORCE SB 322 AND HB 352

Section 1. Parts A and B:

This intent language is meant to give a clear message to the courts that they are not to construe workers' compensation laws in favor of any party but to be fair and to decide cases upon their merit and always within the confines of the written statute. It is also intended that the Board possess the weight of fact-finding authority and that its decision, if supported by evidence, is conclusive.

Part C:

Further, it is the legislature's intent to address the Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264 (Alaska 1984), decision and constitutionality of the cost of living between claimants receiving benefits in Alaska and living elsewhere in the United States.

Section 2. This section gives the Department the authority to establish and maintain a roster of rehabilitation specialists or physicians that are needed for dispute resolutions under two other sections: AS 23.30.041 (vocational rehabilitation) and AS 23.30.095 (medical benefits).

Section 3. This section mandates the department to adopt new regulations if one is declared invalid by the supreme court.

It is our intention to insure that any new regulations adopted under this section have retroactive as well as prospective application, so that everyone is treated equally. We question whether the legislative drafter's language fulfills this intent, and request that a definitive answer be obtained.

Section 4. This section provides the employer with protection against an employee who falsely represents his/her physical condition, and the employer relies upon knowledge of his/her physical condition for job placement, and the employee is then injured. The intent of this section is to uphold the Board's decision in Robinett v. Enserch Alaska Construction, AWCB No. 870210 (September 4, 1987), and is a contract of hire issue.

## Sectional Analysis of SB 322 and HB 352

Section 5. This section is a minor change made by the administration to provide more timely payments to the Second Injury Fund.

Section 6. In this section we have completely revised the vocational rehabilitation statute.

### Parts A and B:

This subsection defines a reemployment services administrator and his duties. This reemployment services administrator is selected by the Board and serves to perform several functions, some of which include enforcing regulations, recommending regulations, establishing performance and reporting criteria to be adopted by the Board, enforcing the reemployment benefits provided under AS 23.30.041, and reviewing on an annual basis the performance of the rehabilitation specialists. The reemployment services administrator is also charged with submitting to the Department a variety of reports relating to vocational rehabilitation statistics.

### Part C:

This is a guide to the employee's opportunity to enter into a voluntary rehabilitation program. This sets forward an eligibility evaluation to establish the employee's eligibility for future vocational rehabilitation services. It is important to note here that either an employee or an employer may request the eligibility evaluation. The rehabilitation specialist that is chosen to do the eligibility evaluation comes from a roster maintained by the reemployment services administrator. This system should provide for a fair evaluation to each employee without any bias toward a specific rehabilitation specialist. Unfortunately the dispute resolution process for eligibility disputes was omitted during the drafting of the bill.

### Part D:

If found eligible for rehabilitation benefits the employee is responsible to request in writing his/her desire to enter into a vocational rehabilitation program. Part D also sets out the criteria under which an employee will be found eligible for such a program.

Part E:

This section specifically speaks to an employee's ineligibility for reemployment benefits. If the employer offers employment that is within the employee's physical capacities at a wage equivalent to 60% of the worker's gross hourly wages at the time of the injury and that new employment allows the employee to be employable in other jobs that exist in the labor market, then the employee is not eligible for reemployment benefits. If the employee has been previously rehabilitated in a former workers' compensation claim and then proceeded to return to work in the same or similar occupation, the new employer is not responsible for further rehabilitation. This criteria should be an incentive for employers to return to work an injured employee, if possible.

Part F:

This part outlines the choice of reemployment specialist and the employee's and employer's involvement in that choice. It also outlines the goals of the reemployment plan and the criteria that must be met.

Part G:

This part lists the various outcomes of a reemployment program. These must be achieved in the shortest possible time and insure remunerative employability but not remunerative employment. This is meant to discourage elaborate rehabilitation plans and encourage an injured worker to return to the work force.

Part H:

This discusses who are parties to this contract.

Part I:

This part addresses non-cooperation by the injured worker. Not included here, although it should be, is the resolution process we propose in a situation where there is non-cooperation.

Part J.

This part outlines time limits in the reemployment benefits process. Time limits are: (1) benefits may

not extend past two years from the date of plan acceptance at the discretion of the employer; (2) the employee, if electing reemployment benefits, must do so within 60 days of the employers notice of injury. (If the employee is in fact unable to make this selection because of an unusual physical injury perhaps in a coma or in the hospital with severe injuries, then there is an exception to this 60-day limitation); (3) the chosen rehabilitation specialist has 30 days to determine the employee's eligibility for reemployment benefits (if there are unusual or extenuating circumstances the reemployment services administrator may grant additional time); (4) the employee and employer have 10 days to select a rehabilitation specialist; (5) the plan must be developed and submitted within 90 days of the determination of eligibility; (6) is to caution against employees that would not be physically able to engage in the plan and allow them to do so upon their physician's approval. All of these time lines are intended to assist the employee in a speedy rehabilitation plan and not to prolong an employee's entrance back into the work force. This section also sets forth various disputes and resolution processes with final decision-making power by the Board.

Part K:

This discusses costs of the plan and compensation to the employee while in the plan. The total cost of the plan shall not exceed \$10,000.00. In order to encourage the employee to complete the plan, the employee's temporary total disability benefits cease after he/she reaches medical stability. But if these benefits cease before the plan is complete, we have established a mechanism whereby the permanent impairment benefits will then be paid at the temporary total disability rate. In order to further protect the employee if the permanent impairment benefits are exhausted, the employee will continue to be paid at a rate of wages equal to 60% of the employee's spendable weekly wages not exceeding \$525.00. Any remaining permanent impairment benefits after the employee has completed the plan will be paid in a single lump sum. The purpose of this section is to provide the employee with the necessary money to enable for self-support during the rehabilitation program.

Part L:

In this part of the vocational rehabilitation statute we are trying to establish some professional standards regarding who is allowed to complete eligibility evaluations.

Part M:

In this part we have included several definitions specific to vocational rehabilitation.

(1) Employability is defined to mean an employee has the ability to engage in employment but he/she hasn't necessarily achieved employment. (2) Labor markets have been expanded to include geographical areas outside of the State or in a different part of the State. (3) Further, there are definitions of physical capacity and physical demands. (4) A rehabilitation specialist is defined as a Certified Insurance Rehabilitation Specialist. (5) Remunerative employability is defined in this section also.

Note on Section 6:

As part of the legislative process we moved quickly from a work draft to a bill. There are certain sections of the vocational rehabilitation statute, AS 23.30.041, that are erroneous, and items not included in the bill. It is our intent to request the opportunity to look at this section and recommend some changes consistent with our intent. This is applicable only to AS 23.30.041.

Section 7. This section was amended to add the additional protection for an employer whose employee's claim is barred under AS 23.30.020(b) (false representation as to physical condition) from being sued in a court action. (See Section 4.)

Sections 8, 9, 10, 11, 12, and 13 all speak to medical benefits as provided under the Workers' Compensation Act. Our intent was first to try and curb abuses that have occurred under this system and the cost of those abuses. Currently Alaska, with medical costs at 38%, has the highest medical costs of any state in the nation (percentage of total costs of workers' compensation).

Section 8. The employee in this section still has the opportunity to choose a physician but is limited to a single change of a treating physician. An additional change can be made only with written consent of the employer. We are not intending to hamper an employee's attending physician from referring that employee to a specialist when necessary.

Sectional Analysis of SB 322 and HB 352

- Section 9. This section clarifies that, at reasonable times throughout disability, the employee must submit to an examination by a physician or surgeon of the employer's choice and establishes a presumption of reasonableness.
- Section 10. This section allows the employer to check on the reasonableness of treatment without discontinuing the employee's medical treatment by controversion. This section also sets forth a process of dispute resolution by providing the employer with the right to a separate evaluation.
- Section 11. This section adds language establishing a medical fee standard as usual, customary, and reasonable. The intent was for fees to be paid using HIAA (Health Insurance Association of America) as a standard for what is usual, customary and reasonable. We allow the Board to determine what is used as the standard because in subsequent years HIAA may not be considered to be the best choice of a standard. (HIAA is a national service which provides medical fees by zip code). Physicians are familiar with this standard as it is normal for usual, customary, and reasonable fees to be paid in non-occupational benefits. Also, our intent is that in no case would an employee be charged for any medical services. The physician will be paid at 100% of the HIAA's usual, customary and reasonable fee.
- Section 12. This section is repealed and reenacted authorizing the board to appoint or contract with a medical services review committee to assist and advise on the appropriateness, necessity and cost of medical and related services.
- Section 13. This new subsection gives the Board the opportunity to select a physician to resolve a medical dispute from a list established and maintained by the Board. It is presumed that greater weight be given to the opinion of that independent medical examiner, and he will be presumed to be correct unless there is absolutely clear and convincing objective evidence to the contrary. Also, this section provides some protection to the selected physician in the rendering of his opinion. We felt it was very important to provide a dispute resolution process in the new statute to resolve medical issues by medical experts.
- Section 14. This section codifies the board's interpretation of the meaning of compensation for statute of limita-

tion purposes under AS 23.30.105. It also complies with the Supreme Court's directive 14 years ago in Williams v. Safeway Stores, 525 P.2d 1087, 1089 n.6 (Alaska 1974), that the legislature clarify when compensation includes medical and other benefits and when it means time loss benefits only. For the purposes of filing a claim for additional disability compensation, the board has consistently concluded that when compensation payments have been made without an award, the claim must be filed within two years after the last payment of disability or death benefits and cannot be extended by the payment of medical benefits only.

- Section 15. This section shifts the burden of proof to the employee for establishing a compensable claim for mental injury resulting from work-related stress, consistent with the amendment to AS 23.30.165(17) found in section 32.
- Section 16. This new subsection enforces findings by the Board to be conclusive if supported by any evidence. This is a message to the higher courts.
- Section 17. This section codifies the board's interpretation of the meaning of compensation for statute of limitations purposes under AS 23.30.130, which provides that a request for modification of a compensation award must be made within one year after the last payment of disability or death benefits. This is consistent with the amendment to AS 23.30.105 found in section 14.
- Section 18. This section reflects changes consistent with the repeal and reenactment of AS 23.30.155(m) found in section 20, concerning the reduction of reporting penalties.
- Section 19. This section was amended to assure that an employee continues to receive benefits if his/her claim is controverted solely on the grounds that one or more employer is liable. We were concerned about cases where an employee had a legitimate claim but was not receiving benefits because two insurers were fighting over who should pay. We have added a penalty in the form of attorney's fees and costs and interest as a further disincentive.
- Section 20. This section repeals and reenacts employer/insurer reporting provisions requiring that an annual, instead of an anniversary, report be filed with the board by March 1 of each year showing the total

amount of all compensation by type, medical and related benefits, vocational rehabilitation expenses, legal fees, and penalties paid on all claims during the preceding calendar year. Currently, data is collected on a per claim basis through interim and claim anniversary reports. However, there is no data collected showing what employers/insurers have paid for claims on an annual basis, making it impossible to meaningfully analyze insurance rates or to make effective changes in the workers' compensation system.

Also, it is the purpose of this section to encourage compliance with the reporting system by assessing full penalties against employers/insurers who repeatedly fail to comply with reporting requirements, but forgiving the occasional reporting oversight for insurers showing substantial compliance.

Because of the insurers' past reporting record, we will also be recommending changes that will include a penalty provision for failure to file an annual report.

Section 21. The intent here is to limit the weekly compensation rate for recipients residing inside or outside the state to a maximum of \$700. The bill unfortunately doesn't address the maximum "outside the state" and needs to be corrected. It also allows for an employee who can document wages to receive a minimum of the lesser of his spendable weekly wage or \$154 per week. An employee who does not document his wages will receive no less than \$110 per week.

In Part B of Section 21 the weekly rate of compensation is adjusted based upon the cost of living of the locality in which the recipient resides compared to the cost of living of the State of Alaska. This section addresses the constitutionality under Alaska Pacific Assurance Co. v. Brown, 687 P.2d 107 (Alaska 1984). It allows the Board the opportunity to pick what shall be used as the standard for cost of living indexes.

Four corrections that need to be made in this section are deletion of the statement "for a recipient residing in the state" at line 29, and insert "average" before cost of living in lines 20 and 21 on page 19, and line 5 on page 20. Substitute the term "gross" for average and "earnings" for wage in line 25 and "are" for is in line 26.

Sectional Analysis of SB 322 and HB 352

- Section 22. This section was amended to conform AS 23.30.041's definition of a labor market and to broaden the market for the employee's service in determining permanent total disability.
- Section 23. This is a new section that further clarifies that a failure to satisfy the remunerative employability definition as a wage goal as defined in AS 23.30.041 does not mean that an employee is automatically permanently totally disabled.
- Section 24. This section defines when permanent impairment benefits begin. In no case will temporary total disability benefits be paid beyond the date of medical stability, and temporary total disability benefits may not be paid for more than two years regardless of the continuance of the disability. Our intent here was to disallow the continuance of temporary total disability benefits as it is under the current system and also to conform with the limitation as provided in AS 23.30.041 where a reemployment plan may not exceed two years.
- Section 25. This section was repealed and reenacted. In this section permanent partial impairment payments are based upon the "whole man" concept as set out in the American Medical Association's Guides to the Evaluation of Permanent Impairment. Compensation paid to claimants under this section is based upon total disability of \$240,000 multiplied by the claimant's percentage of net permanent impairment. Impairment levels below 30% are further adjusted by a factor less than one, but in no case is the impairment compensation less than \$250. The intent of this section was to redistribute benefits so that those employees who have a greater percentage of injury receive awards commensurate with their injuries whereas those with minor injuries receive a proportionately less amount of compensation.
- Section 26. This section provides for payment of temporary partial disability benefits only up to the time of medical stability, consistent with the amendment to AS 23.30.185 found in section 14. It also reduces the maximum period for paying temporary partial disability benefits from five to two years.

In the last sentence of this section the statement "unless otherwise provided under AS 23.30.041" should be deleted.

Sectional Analysis of SB 322 and HB 352

- Section 27. This is a new subsection intended to further define what the wage-earning capacity of an injured employee is. It also allows the Board to fix the wage-earning capacity based upon reasonable regard for the nature of the injury, degree of physical impairment, usual employment, and other factors and circumstances.
- Section 23. This section was amended to define what will be used to compute the spendable weekly wage of an employee. Specifically, we were addressing several Supreme Court decisions which fixed spendable weekly wage on future earnings. These cases, such as Johnson v. RCA-OMS, 681 P.2d 905 (Alaska 1984), and its progeny, have made the determination of spendable weekly wage impossible because it is based on the predictability of what someone might be making at some future point in time. We intend to clearly base the determination of spendable weekly wage on the employees' past earnings history except under some very specific cases listed in AS 23.30.220(a)(2) and (3). We believe this change will markedly decrease the amount of litigation over determination of spendable weekly wage.
- Section 29. This section is an offset for a future section, section #31, which defines what gross earnings are. This section allows the employer to offset those contributions made to a qualified pension or profit sharing plan that have in fact been paid or are payable to an injured worker under the plan for any week or weeks during which compensation benefits are also available.
- Section 30. This section addresses and prohibits discrimination by an employer in hiring, promoting, or firing an employee just because they have filed a workers' compensation claim. This does not prevent an employer from basing his hiring, firing, or promotion practices or policies on the consideration of safety and safe practices. It also allows the employer to require a prospective employee to fill out a pre-employment questionnaire and to use that questionnaire as documentation for the Second Injury Fund or to determine if the employee has the physical or medical capacity to meet the documented physical or medical demands of a particular job.
- Section 31. This section amends the definition of employee gross earnings to include total contributions by an employer to a qualified pension or profit sharing plan for the two prior years multiplied by the

Sectional Analysis of SB 322 and HB 352

percentage of vested interest at the time of injury. This change is consistent with the board's interpretation of the Supreme Court's ruling in Bagland v. Morrison-Knudsen Co., Inc., 71 P.2d 377 (Alaska 1986).

- Section 32. This section amends the definition of injury by providing specific language concerning mental injury caused by mental stress. This section is meant to address the ever increasing possibility of stress-related workers' compensation claims. Such a claim is Wade v. Anchorage School District, 741 P.2d 334 (Alaska 1987). In the Wade case the employee perceived that work stress caused him to have a mental injury and therefore he was injured. Under this amendment work stress does not cause a mental injury unless the work stress was extraordinary and unusual in the profession and a predominant cause. The burden, unlike other injuries, is placed on the employee to prove the mental injury is work connected.
- Section 33. This section adds a new paragraph to define what is meant by medical stability. This is consistent with changes made in Sections 3, 24, and 26. This is in direct opposition to current legislation where temporary disability benefits are paid until employment or release for employment regardless of medical stability.
- Section 34. This section repeals provisions that are unnecessary or inconsistent with the repeal and reenactment of AS 23.30.200(b) found in section 17.
- Section 35. This section is an administrative section amended to require employers to file a annual rather than an anniversary report. The purpose of this section was to allow us to have future opportunity to have correct and complete reporting information which we have not had in the past.
- Section 36. This section specifically mandates that only future injuries sustained after July 1, 1988 will come under the jurisdiction of this proposed legislation. This legislation will not be considered retrospective in any way except for the changes in reporting requirements. (See Sections 3, 11, 16 and 35).
- Section 37. This section provides that the Act takes effect July 1, 1986.

It may be necessary to change the effective date for some section of this bill.

January 14, 1988

Senator Tim Kelly, Chairman  
Senate Labor and Commerce Committee  
Representative Dave Donley, Chairman  
House Labor and Commerce Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Senator Kelly, Representative Donley and members of your committees:

As Co-chairmen of the Management/Labor ad hoc committee we are pleased to present our proposal for changes to the current workers' compensation act. Our proposals represent the culmination of more than a years effort by hundreds of professionals from many different walks of life. It is not intended to be a final solution to the high cost of workers' compensation in Alaska, but represents instead our most recent step in our ongoing effort to improve the benefit levels for injured workers while at the same time reducing the cost that must be borne by Alaskan employers.

#### BACKGROUND

##### PRE AD HOC COMMITTEE

In 1968, the Alaska weekly maximum workers' compensation benefit was \$113. By 1974, the maximum weekly compensation rate rose to \$175. During this period of time, Congress established the National Commission of State Worker's Compensation Laws to "undertake a comprehensive study and evaluation of State workmen's compensation laws, in order to determine if such laws provide an adequate, prompt and equitable system of compensation."

In a pro-labor atmosphere and in reaction to some of the National Commission's findings, the Alaska legislature in 1975 amended the Alaska Workers' Compensation Act (Act) by providing a gradual phase-in of the 200% of state average weekly wage maximum, doubling the scheduled permanent partial disability maximum in the Act, and eliminating the \$50,000 limit on unscheduled permanent partial disability.

Management bitterly contested the 1975 labor-sponsored amendments. As a result, little thought was given by labor management or the legislature to workers' compensation as an effective delivery system. Only a portion of the 1972 Commission's recommendations were enacted, but due to the changes that were adopted, workers' compensation insurance premiums increased 35.2% in 1975, 13.0% in 1975, and 5% in 1977.

In 1977, management successfully sponsored legislation reimposing a limit on "unscheduled" permanent partial disability -- this time at \$60,000. Other meaningful changes were impossible to achieve and in 1979, a pro-management group, the Alaska Conference of Employers (ACE), was established to study the problems and recommend legislative changes necessary to reduce the high cost of workers' compensation in Alaska. The employers also created another group, the Workers' Compensation Committee of Alaska (WCCA) and charged that group with the task of placing the recommendations of the ACE study into legislation. The pressure of these two management groups led to the creation of the 1980 Legislative task force to study the Alaska workers' compensation system and recommend changes. The committee, co-chaired by Senator Terry Stimson and Representative Brian Rogers, included representatives from labor, management, and the insurance industry. Ultimately the joint effort failed at the close of the 1981 legislative session and no corrective legislation was recommended.

At that time, WCCA commissioned a study by Daryl Cody and Associates on the problems with workers' compensation in Alaska and their recommendations for changes. This study was presented to Representative Terry Martin in January, 1980 with the recommendation that the suggested changes be incorporated into legislation.

With the Cody study, the opportunity for the classic management vs labor confrontation on workers' compensation presented itself. This time however, logic prevailed. Labor, represented by the AFL-CIO, and management, represented by WCCA, called for a joint public meeting for the purpose of selecting representatives to sit on an "ad hoc committee" to recommend changes to the Alaska workers' compensation statutes.

#### THE LABOR/MANAGEMENT AD HOC COMMITTEE

The first order of business for the new ad hoc committee was to formulate the objectives of the group. The following were adopted at the first meeting:

1. Provide an effective system for the delivery of benefits and services.
2. Discourage fraudulent claims and fraudulent statements to obtain or deny workers' compensation benefits.

3. Provide an effective deterrent for those employers failing to provide required workers' compensation insurance;
4. Increase incentives and decrease disincentives for returning to work after an injury;
5. Encourage safety;
6. Provide for effective rehabilitation of an injured worker;
7. Redistribute dollars from those workers not severely injured to those seriously injured workers who have lost the ability to be gainfully employed as a result of their injury;
8. Reduce or minimize the impact of workers' compensation premiums on the employer;
9. Continue to study the Alaska workers' compensation system to identify problems and recommend solutions, and,
10. Stabilize the atmosphere for discussing proposed changes to the Alaska Workers' Compensation Act.

Due to time problems, the Ad Hoc committee agreed to limit its initial efforts to:

1. Providing for the early identification of injured workers who potentially need rehabilitation;
2. Providing for the early return to direct employment;
3. Providing incentives to return to work and reduce disincentives to return to work;
4. Providing for appropriate criminal penalties for willful misrepresentation of facts for the purpose of obtaining or denying benefits; and,
5. Providing a mechanism for cease and desist orders to be issued against uninsured employers.

The Ad Hoc committee was successful in having its legislation agenda passed in 1982 and 1983.

Since 1983, the Ad Hoc committee has continued to meet to work on problems that became apparent or problems that were created by the court system in their interpretation of the statute. For

the most part, however, the committee dealt primarily on relatively minor problems and had not undertaken an in-depth review of the system and its evolution since the legislation passed in 1982 and 1983.

#### CURRENT EFFORTS OF THE AD HOC COMMITTEE

The cost increase for workers compensation announced in November of 1986 caused the ad hoc committee to reexamine the problems with the system and the need for changes. It was apparent that the system had deteriorated significantly since the last major modifications in 1983. The quality of service to the injured worker had decreased and the cost to the employer had increased. In fact, from 1983 to 1986, the incurred cost of workers' compensation increased from \$70.2 million to \$150.1 million while employment in the state decreased. Since the incidence rate of injuries remained relatively constant during this period, it was apparent that the cost per claim had more than doubled.

In this setting, the ad hoc committee decided that the best approach was a complete examination of the current statute. In order to establish priorities, both management and labor met with their respective constituents and developed a list of issues that needed attention. These lists were then compared, merged and a plan of action developed. Since the problems were complex, it was decided to concentrate on the issues of vocational rehabilitation, medical services, compensation and benefits in 1987 and defer other items until 1988.

The current members of the ad hoc committee are:

Robert Anders - Co-chair and labor member of the Workers' Compensation Board; business agent - Operating Engineers

Mary Pierce - Co-chair and management member of the Workers' Compensation Board; Executive Director, Medical Indemnity Corporation of Alaska

Richard Cattanach - Vice President, Finance, Unit Company

Kevin Dougherty - AFL-CIO

David Gottstein - Director of Distribution, Carr Gottstein, Inc.

Ralph Lewis - Vice President - Ketchikan Pulp and Paper

Ralph Mingo - Safety Engineer, Teamsters Local 99

Stephen Rennberg, MA - Vice President, Finance, Tanadgusik Corporation

Joseph Thomas - Business Agent, Laborers Union

Kenneth Weist - Business Agent, Roofers

During the past year, the ad hoc committee met weekly in an attempt to define the various problems and explore potential solutions. The advice and suggestions of hundreds of professionals were sought. Medical doctors, chiropractors, vocational rehabilitation providers, lawyers, and others knowledgeable in workers' compensation were consulted and provided input to either the ad hoc committee or a WCCA study committee. During the entire process, the committee sought the advice and counsel of the Division of Workers' Compensation and at least one member of the division was in attendance at all the committee meetings.

Briefly, the proposed legislative changes for 1988 can be outlined as follows:

#### Vocational Rehabilitation

1. Change the current system from being mandatory to voluntary;
2. Limit the program to those injured workers prevented from performing the duties of their profession;
3. Limit rehabilitation programs to two years;
4. Limit rehabilitation plan costs to \$10,000;
5. Pay a permanent partial disability or a total permanent disability at the total temporary disability rate until plan completion or termination. The remainder, if any, is to be paid in a lump sum;
6. Establish employability, not employment, as the goal of rehabilitation;

#### Medical

1. Subject medical payments to the usual, customary and reasonable fees charged in an area;
2. Allow the injured worker to make one change in treating physician before seeking the consent of the employer;
3. Limit treatment plans to no more than 90 visits within 90 days;
4. In the case of a dispute, allow the board to appoint an independent medical examiner whose opinion shall, in the absence of clear and convincing objective evidence to the contrary, be presumed to be correct;

## Compensation

1. Change the maximum weekly benefit from \$1100 to \$1700 and increase the minimum from \$110 to \$150.
2. Allow an employee's vested pension contributions to be considered in determining the weekly rate.
3. Limit the controversy in the determination of weekly earnings by clarifying the process for such determinations.
4. Adjust the weekly compensation benefits for differences in the cost of living for claimants residing outside Alaska.

## Benefits

1. Schedule all injuries and base disability payments on the "whole man" concept.
2. Increase the permanent partial disability benefit for the more severely injured worker.
3. Limit temporary total disability payments to two years.

## Other

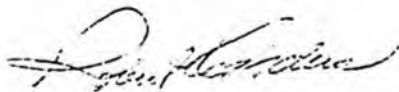
1. Provide legislative intent language for the courts and future legislatures.
2. Bar workers' compensation claims if the employee falsified his application and the falsification contributed to a subsequent injury.
3. Establish criteria for stress claims.
4. Prohibit discrimination of an employee who files a workers' compensation claim.
5. Assure the maintenance of workers' compensation payments to employees when questions arise as to the ultimate responsibility for liability.

It is the belief of the ad hoc committee that the changes recommended should lead to an improved delivery system for workers' compensation at a lower cost to Alaskan employers. We believe that the savings will come primarily from a reduction in the amount of litigation, a reduction in the number of injured workers entering vocational rehabilitation programs, and a reduction in expenditures for medical services. These reductions

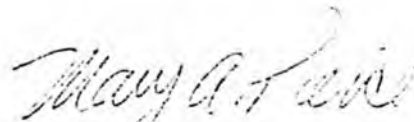
should not however negatively impact the quality or quantity of services available to an injured worker. Rather, it is our belief that the injured worker will be able to avail themselves of better services in a more timely manner.

Determining the cost impact of the proposed changes will be difficult and will require a certain amount of faith. An evaluation of the cost savings due to a reduction in litigation, the impact of a voluntary vocational rehabilitation system, the acceptance of a usual, customary, and reasonable limit on medical expenses, the limitation on medical utilization, scheduling base injuries that are currently unscheduled, and other stated items will be difficult if not impossible. Quantification and estimation necessary for a precise actuarial determination of the impact of these recommendations is not possible and accordingly will require assumptions as to what "might be". The net result will only be as good as the assumptions that were used to determine what "might be". It may be necessary for the legislature to accept, as management and labor has, that the changes should logically lead to lower costs in the system with no adverse impact on the injured worker. If the legislature can make this commitment of faith, we would like to see them join us as we measure the actual results of our changes and work with us to continue to make modification when and where warranted.

Sincerely,



Robert Anders



Mary Pierce

# WCCA

Worker's Compensation Committee of Alaska, Inc., 11401 Olive, Anchorage, AK 99515

Rep. Dave Donley and Sen. Tim Kelly  
House and Senate Labor and Commerce Committee Chairs  
Juneau, Ak.

Gentlemen:

I want to take this opportunity to thank you both for the tremendous support you two have shown in the recent months and reiterate our support for the task force. I have been asked many times whether the WCCA would have a separate agenda for the session. The answer is emphatically, no.

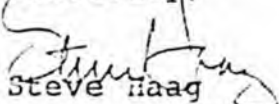
The efforts of the very best people we could find in Alaska from the ranks of management and organized labor have contributed to our effort. The WCCA believes that effort has produced an impressively thorough, first look at the major cost components of the Alaska worker's compensation system.

In our legislation you will find answers to the problems of soaring unregulated medical costs, unrealistic Alaska benefits and the failure of private vocational rehabilitation. It attempts to look at the history and the future of worker's compensation in Alaska in addressing the intent of the law and the new frontier of claims -- stress. Underlying all of the features of this bill is the effort to reduce the needless dispute and litigation that seems to haunt the system. But perhaps its most redeeming quality is that it represents the thoughts, hard work and aspirations of the two most important parties in the system: those who pay and those who benefit.

We were warned we should not leave the bill at the doorstep of State agencies. We took that message to heart and produced a piece of legislation without a single fiscal note attached that will significantly reduce the cost of worker's compensation insurance for all Alaska employers.

My constituency anxiously awaits the outcome of your efforts in Juneau and trusts you will help us honor the agreement between labor and management that produced this extraordinary document.

Sincerely,

  
Steve Haag



SKILL  
RESPONSIBILITY  
INTEGRITY

THE ALASKA CHAPTER  
**ASSOCIATED GENERAL CONTRACTORS  
OF AMERICA, INC.**

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3201 SPENARD ROAD  
ANCHORAGE  
WILLIAM E. SCHNEIDER  
EXECUTIVE DIRECTOR

January 15, 1988

Representative Dave Donley  
Chairman, House Labor & Commerce Committee  
Alaska State Legislature  
P.O. Box V (M.S. 3100)  
Juneau, AK 99811

Dear Representative Donley:

On behalf of the membership of the Associated General Contractors of Alaska, we strongly support the recommendations of the Management/Labor ADHOC Committee For Workers' Compensation Reform.

Your efforts in this critical area are appreciated by all of those individuals who make their living in the construction industry.

We encourage you and your fellow representatives to expeditiously pass this legislation.

Sincerely,

ASSOCIATED GENERAL  
CONTRACTORS OF ALASKA

William E. Schneider  
Executive Director



SKILL  
RESPONSIBILITY  
INTEGRITY

THE ALASKA CHAPTER  
**ASSOCIATED GENERAL CONTRACTORS  
OF AMERICA, INC.**

BOX 92500 • ANCHORAGE, ALASKA 99509  
TELEPHONE (907) 561-5354



1201 SPENARD ROAD  
ANCHORAGE  
WILLIAM E. SCHNEIDER  
EXECUTIVE DIRECTOR

January 15, 1988

Senator Tim Kelly  
Chairman, Senate Labor & Commerce Committee  
Alaska State Legislature  
P.O. Box V (M.S. 3100)  
Juneau, AK 99811

Dear Senator Kelly:

On behalf of the membership of the Associated General Contractors of Alaska, we strongly support the recommendations of the Management/Labor ADHOC Committee For Workers' Compensation Reform.

Your efforts in this critical area are appreciated by all of those individuals who make their living in the construction industry.

We encourage you and your fellow senators to expeditiously pass this legislation.

Sincerely,

ASSOCIATED GENERAL  
CONTRACTORS OF ALASKA

William E. Schneider  
Executive Director

# ALASKA STATE AFL-CIO

2501 Commercial Dr.  
Anchorage, Alaska 99501  
(907) 258-6284



801 1st Ave.  
Fairbanks, Alaska 99701  
(907) 458-2030

MANO FREY  
Executive President

TO: ALL HOUSE AND SENATE MEMBERS  
FROM: MANO FREY, EXECUTIVE PRESIDENT  
RE: WORKER'S COMPENSATION

The Joint Labor-Management Task Force has worked for more than a year negotiating changes to the current Worker's Compensation Law that would result in premium reductions to the employer; and, at the same time, maintain fairness in compensating the injured worker.

The legislation now being considered is a result of the task forces' efforts. It certainly does not attempt to address every complaint or concern regarding the current worker's compensation statute, but it does accomplish the stated goal of providing some necessary relief to the employer while providing benefit safeguards for the employee. In addition, reforms are included to several areas of the law that caused abuse and hardship to the employees in the past.

I strongly urge your support for this bill.



**JIM CARROLL**  
President

**FAIRBANKS BUILDING  
& CONSTRUCTION TRADES COUNCIL  
AFL-CIO**

North of the 63rd Parallel  
315 5th Avenue  
Fairbanks, Alaska 99701-4688  
(907) 466-4248  
(907) 458-1208



**JOHN GIUCHICI**  
Secretary/Treasurer

January 14, 1988

Bob Anders  
Labor and Management Ad Hoc Committee

Dear Bob,

The Fairbanks Building and Construction Trades Council voted to endorse your workers compensation bill. We have some concerns about some areas of the bill but, feel in the long run it will be beneficial to lowering the high insurance rates.

Fraternally Yours

J.N. Carroll  
President

# WESTERN ALASKA BUILDING and CONSTRUCTION TRADES COUNCIL

AFFILIATED WITH

A.F.L. - C.I.O.

BUILDING AND CONSTRUCTION TRADES DEPARTMENT

Phillip A. Thingstad

PRESIDENT

407 Denali Street

ADDRESS

ANCHORAGE, ALASKA 99501

January 14, 1988

SECRETARY

407 Denali Street

ADDRESS

ANCHORAGE, ALASKA 99501

Alaska State Legislators

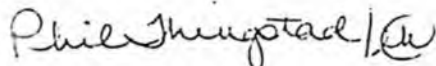
Dear Ladies and Gentlemen.

This letter accompanies a proposed piece of legislation, one in which a lot of time and effort was put into by both Labor and Management in an attempt to help close the loopholes and solve many of the problems of the Workers Compensation Law.

The Bi-partisan work put into this proposal was extensive and a very good product was the result, one in which all appear to be happy with as it will help the workers as well as the employers. The only people who oppose such legislation are the "Out of State" insurance companies and the lawyers, both of whom make a great deal of money off the current ambiguous law.

The Western Alaska Building and Construction Trades supports, with great enthusiasm, this possible revamping of the Workers Compensation Law.

Sincerely,



Phil Thingstad  
President  
Western Alaska Building  
and Construction Trades

PT/ik  
Attachment

**GUIDE TO  
INSURANCE REHABILITATION SPECIALISTS  
CERTIFICATION**

**CERTIFICATION OF INSURANCE REHABILITATION SPECIALISTS COMMISSION**

**A DIVISION OF**

**BOARD FOR REHABILITATION CERTIFICATION**

**1156 SHURE DRIVE, SUITE 350  
ARLINGTON HEIGHTS, ILLINOIS 60004**

### SECTION 3. CRITERIA FOR ELIGIBILITY:

To be eligible to sit for the CIRS examination, an applicant must meet ALL requirements in ONE of the categories listed below. Education and employment experience requirements must have been fully satisfied by the application deadline date (JANUARY 1, OR JULY 1). Applications not meeting the eligibility criteria of one of the following categories at the application deadline date will be referred to the Credentials Committee for review to determine eligibility. Please be reminded, the application processing fee is non-refundable. Read categories carefully. CIRSC will charge a \$20.00 handling fee for any check returned for non-sufficient funds.

#### CATEGORY ONE

Degree or Certification or License:

Current Registered Nurse (RN)  
Valid Certified Rehabilitation Counselor (CRC)

or

Master's degree or Doctorate degree in:

Rehabilitation Counseling, Rehabilitation Administration, Work Adjustment, Vocational Rehabilitation, Job Placement, or Psychology.

Acceptable Employment Experience Required:  
(See definition Section 4)

A minimum of two years full-time (or the equivalent) employment providing direct or indirect rehabilitation services to a disabled population receiving benefits from a disability compensation system.

#### CATEGORY TWO

Degree Required:

Bachelor's, Master's, or Doctorate in any other discipline.

Acceptable Employment Experience Required:  
(See definition Section 4)

A minimum of four years of full-time (or the equivalent) employment providing direct or indirect services to a disabled population receiving benefits from a disability compensation system.

JOHN H. LEWIS  
Post Office Box 33055C  
Coconut Grove, Florida 33233  
(305) 443-8111

Education: B.S.B.A., University of Florida, 1963  
J.D., Duke University School of Law, 1967

Experience: Assistant to Dr. Arthur Larson  
Larson's The Law of Workmen's Compensation  
1965-1974

Instructor In Law  
University of Miami School of Law  
1973

Chief Counsel and Associate Executive  
Director, National Commission on State Workmen's  
Compensation Laws, 1971-1972

Florida Governor's Task Force on Workmen's  
Compensation, Vice-Chairman, 1972-1973

Florida Workmen's Compensation Advisory  
Council, Chairman, 1974-1977, Vice-Chairman,  
1977-1980

Legal Advisor, Florida Self-Insurance Rules  
Advisory Committee, 1976-1977

Research Analyst, Interdepartmental Workers'  
Compensation Task Force, 1975-1976

Consultant: U.S. Senate, U.S. Department of  
Labor, Alaska State Legislature,  
Pennsylvania State Legislature, Alaska  
Workers' Compensation Board, Rhode Island  
Department of Business Regulation, Delaware  
State Chamber of Commerce, Louisiana  
Association of Business and Industry, Alaska  
State A.F.L.-C.I.O, California Workers'  
Compensation Institute, Office of the

Governor-State of Rhode Island,  
Massachusetts House of Representatives,  
Kentucky Legislative Research Commission,  
Maryland State Chamber of Commerce, California  
State Senate, National Conference of State  
Legislatures, The Government of the Territory  
of American Samoa, Oregon Workers' Compensation  
Department, Michigan Department of Labor-  
Department of Commerce, Office of Inspector  
General-U.S. Department of Labor, Minnesota  
Department of Labor and Industry, Maine Bureau  
of Insurance, United States General Accounting  
Office, Office of the Governor-State of  
Illinois.

Practice of law, 1967-80, with emphasis on civil  
litigation and workers compensation matters.

Reports and Articles:

A Workmen's Restoration System, Supplemental  
Studies for the National Commission on State  
Workmen's Compensation Laws, 1972.

An Analysis of State Workers' Compensation  
Agency Activities, Report for the  
Interdepartmental Workers' Compensation Task  
Force, 1977.

An Analysis of the Alaska Workers' Compensation  
System, Report for the Alaska State Legislature,  
1982.

Cost Implications of the Hawaii Workers'  
Compensation System: An Analysis of Cases, Costs  
and Law, 1984.

The Alaska Workers' Compensation Law:  
Fact-Finding, Appellate Review, and the  
Presumption of Compensability, Alaska Law  
Review, Volume 2, June 1985, Number 1 (With  
Arthur Larson).

Permanent Partial Disability Benefit Recipients  
In The Kentucky Workers' Compensation System,  
Report for the Kentucky Legislative Research  
Commission, 1985.

Major Issues In The Oregon Workers' Compensation  
System, Report for the Oregon Workers'  
Compensation Department, 1987.

## WCCA CONTRIBUTORS

A & B Tool  
Acme Fence  
Alaska Airlines  
Alaska Business Insurance  
Alaska Cleaners  
Alaska National Insurance  
Alaska Oil Marketers Association  
Alaska Pulp  
Alaska Sales and Service  
Alaska State Medical Association  
Alaska Timber Insurance Exchange  
Alyeska Air Service  
Anchorage Refuse  
Anglo Alaska Petroleum  
ARCO  
Arctic Foundations  
Arctic Slope Region, Inc.  
ARECA Insurance Management  
Associated General Contractors - Alaska Chapter  
Bailey's Rent All  
Carr Gottstein  
Collins & Associates  
Central Plumbing and Heating  
Cimarron Holdings  
Comprehensive Rehabilitation Services  
D.J.'S Alaska Rentals  
Doyon Drilling  
Enserch  
Estar  
CCI  
Hickel Investment  
Holland America  
K & L Distributors

Kenai Penninsula Borough  
Klukwan  
Lynden  
Marathon Oil  
Mark Air  
Mechanical Contractors of Fairbanks  
Midas Muffler  
Municipality of Anchorage  
National Bank of Alaska  
Newberry Alaska  
Northern Adjustors  
Northern Air Cargo  
Pacific Movers  
Professional Trust Administrators  
R G & B Contractors  
Rain Proof Roofing  
Reeve Aleutian  
Rental Association of Alaska  
Saupe Enterprises  
Smyth Moving  
Spenard Building Supply  
Standard Alaska Production  
Steel Fabricators  
TOTE  
Udelhoven  
Universal Motors, Inc.  
UNCCAL  
Usibelli Coal  
VECO

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

*Joint House & Senate  
Labor and Commerce Committee*

*Jan. 19, 1988*

*Jan. 21, 1988*

*Jan. 29, 1988*

# WCCA

## TESTIFYING BEFORE COMMITTEE

State your name and company name.

Plan to keep your comments to 5 minutes.

If you have written testimony, provide copies for legislators if possible. 12 copies.

Topics to cover in testimony:

The type of business your in.

How workers' comp rates affect your company.

How much do you pay

How do the 1998 rates increase your costs.

How do the rates effect your business...is the cost passed on to the customer, have you laid off employees, will rates cause you to possibly shutdown.

Urge the committee to pass the LABOR/MANAGEMENT TASK FORCE BILL with few amendments. You might note that passage of the bill would be one of the best things the Legislature could do for business.

If you are not intimately familiar with the bill simply state that you support the legislation based on the fact it has been agreed to by both employers and employee groups.

You may be asked some questions which would relate to your business. Most likely the committee will not ask questions. In general you need to convey that this legislation is important to your business and that it should pass quickly. You could also mention that you support the general concept of workers' comp but that the current system in Alaska is not beneficial to either the injured worker or the employer.



**Risk and  
Insurance  
Management  
Society, Inc.**

**Alaska Chapter**

President January 26, 1988

HOWARD P. CUTTER  
1835 South Bragaw, MS 512  
Anchorage, Alaska 99512  
(907) 265-3172

Vice President  
MIKE KLAWITTER  
Risk Manager  
North Slope Borough  
P.O. Box 69  
Barrow, Alaska 99723  
(907) 852-2611

Secretary  
GAIL J. JONES  
Sr. Insurance Specialist  
Alyeska Pipeline Service Co.  
1835 South Bragaw, MS 512  
Anchorage, Alaska 99512  
(907) 265-8798

Treasurer  
IKE CHARLTON  
Risk Manager  
University of Alaska  
Bunnell Building  
Fairbanks, Alaska 99775-5580  
(907) 474-7428

Society Director  
VICTORIA RATCHYE  
Risk Manager  
Star Natural Gas Co.  
P.O. Box 190288  
Anchorage, Alaska 99519-0288  
(907) 264-3753

TO: Senator Tim Kelly  
SUBJECT: Comments on Workers' Compensation

Dear Sir:

Thank you for giving me a few minutes of your time. My name is Howard Cutter and I am President of the Alaska Chapter of Risk and Insurance Management Society. Our organization represents about twenty of the largest employers in the State of Alaska, such as State of Alaska, Municipality of Anchorage, Alascom, Enstar, North Slope Borough, Sealaska, and Alyeska Pipeline Service Company. Employers who are members of RIMS employ more than 32,000 people in the state.

Workers' compensation rate increases during the past three years have significantly impacted the cost of doing business in the state, whether it be private or public entity. A couple of examples are that oil and gas pipeline operations have jumped from \$3.09 to \$10.83 in 1988, or 251%. Drilling operations have gone from \$11.93 to \$30.26, or 153%. I will not dwell on this as you are well aware of the insurance costs.

I co-chaired the Rehabilitation Subcommittee for the W.C.C.A. during the past year. Therefore, I would like to address that subject.

1. Due to the lack of regulations for the past five years, everyone seems to have their own idea on what Section 041 really means and how it should be functioning.
2. Vocational rehabilitation has become an "add on benefit" that duplicates the purposes of permanent disability payments.
3. Delays in referral of the injured employee to rehabilitation makes the benefit less immediate.
4. Increased involvement of attorneys have introduced an adversary aspect into what is -- or should be -- an agreed, cooperative process.
5. The delivery of the vocational rehabilitation benefit is too often dominated by paper and not services.

January 26, 1988  
Page Two

6. Last, but not least, the cost/benefit ratio is almost nil. On the attached sheet I have listed ten claims from various members with the costs and end result. You will observe the results have been anything but satisfactory. I will not take your time to review each one but submit them for your review.

In summary, the Board of Directors of the Alaska Chapter of RIMS highly endorses the work of the W.C.C.A. and the Labor/Management ADHOC Committee. We recommend passages of SB-322 and HB352 without major changes.

Thank you for your time.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Howard Cutter", with a long horizontal line extending to the right.

H. P. Cutter, President  
Alaska Chapter of RIMS

<u>Case No.</u>	<u>Rehab Costs</u>	<u>Results</u>
1.	\$ 6,264	Employee refused further rehab and retired.
2.	23,586	Employee returned to work for a short period, then decided to stay home.
3.	21,180	Employee refused job that she was trained for and went to work with her family.
4.	15,680	Employee refused further rehab as "a waste of time and money."
5.	4,860	Employee returned to previous job.
6.	9,060	Changed vocational plans and now going to college.
7.	19,643	Changed goals in rehab -- accepted C&R settlement.
8.	15,233	Retrained as para legal, didn't like work; is now on T.T.D.
9.	33,207	Trained as PBX installer, no work available, settled C&R.
10.	<u>8,849</u>	Employee settled C&R.
Total	\$157,540	Results: Nil

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3892



HB 352/SB 322 - Relating to Workers' Compensation

## WHAT'S IN IT FOR WORKERS?

### THE BIG THREE:

1. Significant raise in payments for permanent, partial disability with a system that assures substantial payments to workers with the most serious injuries.
2. Raise in weekly benefits for workers at the bottom end of the scale and lowering the maximum benefit. This statute change will raise benefits for the majority of injured workers since less than five percent are near the maximum benefit level.
3. Requires that pension and benefits be included in calculating a workers average weekly wage for the purposes of determining workers' compensation benefit levels (this is in response to the Hagland case).

### AND A FEW MORE

4. Assures that an injured worker will immediately receive benefits when there is argument about which carrier is obligated to pay. Currently an injured worker may go months with no benefits because of a technical squabble among carriers.
5. Prohibits discrimination against a workers who has filed a workers' compensation claim.
6. Makes rehabilitation services voluntary instead of mandatory so that workers aren't forced to participate in a program they don't want and probably can't benefit from as a condition of receiving benefits.

Prepared by Representative Dave Donley, Chair  
House Labor and Commerce Committee  
January 20, 1988

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

Chairman - Representative Dave Donley

(907) 465-3892



March 7, 1988

## M E M O R A N D U M:

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair  
House Labor and Commerce Committee

Re: Proposed CS for CS SB 322 (L&C) - Workers'  
Compensation Legislation

In response to testimony offered during the numerous public hearings we have hosted on workers' compensation legislation and on the basis of the work of the House Labor and Commerce subcommittee on HB 352/SB322, I've asked legal services to prepare a proposed committee substitute for your consideration with the following changes from the version of the measure that passed the Senate:

1. Include a mandated rate decrease for workers' compensation premiums of no less than 10%, effective July 1, 1988 through January 1, 1990. (Attachment #1)
2. Add intent language under Section 1 recognizing that prevention of on-the-job injuries is a primary goal of the Legislature and that the workers' compensation should include incentives for improving workplace safety.

Add a new Section mandating that insurers shall offer a rebate of not less than 5% of the annual premium costs to any employer that had no safety violations during the year covered by the premium.

3. Amend penalties under AS 23.30.075 (b) to require a mandatory fine of \$10,000 for failure to carry workers' compensation insurance, in addition to any other fines, penalties or liabilities authorized under law.
4. Amend language governing the contents of the annual report to the Division of Workers' Compensation by insurers to include the number of claims filed and the percent of claims controverted during the year for which the annual report was submitted.

Include language to require the Board (in addition to assessing any penalties under AS 23.30.155 (f), to notify the Division of Insurance when they determine that a carrier's controversions are excessive, frivolous, or designed to unfairly deny employees benefits that are due them. Upon receipt of a notice from the Board, the Division of Insurance will initiate an investigation of the carrier for violation of the unfair claims settlement act.

5. Amend (AS 23.30.180) to delete (3) and (4) so that in determining PTD, the labor market is defined as within a workers area of residence or last area of employment.
6. Amend language governing the contents of the annual report to break out the costs of legal fees to reflect the fees paid to both the plaintiff and defense attorney, including all other costs associated with litigation.
7. Amend Section 9 (AS 23.30.040(c) to read: "The employee shall request an eligibility evaluation within 90 days after the employee gives the employer notice of injury unless the administrator determines the employee has unusual and extenuating physical limitations, including when an employee suffered an injury in which the employee does not know or could not have reasonably known that they would be unable to return to their previous occupation as a result of their injury that prevent the employee from making a timely request."
8. Amend Section 11 (AS 23.30.095(a) to provide that an employers choice of physician for an IME is limited to no more than one change in choice, as is an employees right of choice under the proposed legislation.
9. Amend Section 32 (AS 23.30.220(a) (2) to delete the word "voluntary" and to change the 18 months standard on page 26, line 12 to 12 months.
10. Amend Section 41 (effective date) so that this act applies to any "stress" injury that occurred on or after the date of adoption of this bill by the Legislature.
11. Include language requiring that an IME must be in the same speciality as the treating physician unless the Board unanimously agrees, on a case by case basis, to authorize an IME by a physician who is not within the same speciality of the employees physician.
12. Amend Section 21 (AS 23.30.155(c) (page 19, line 3) to provide that penalties assessed under this subsection shall be increased by (20) 30 percent.
13. Include new language amending AS 23.30.155 (f) (governing penalties for unfair denial of claims) to increase penalties from 20 percent, under current law, to 25 percent.
14. Amend Section 29 (AS 23.30.190(b) to change "may" to "shall" on page 24, line 27.
15. Include a new section requiring that benefits paid to recipients residing in Alaska be paid by checks drawn on Alaska banks or other method of payment that is accepted as immediately redeemable by a bank in this state.

16. Amend AS 23.30.041(k) (Page 9, line 14) to read: (k) "Benefits related to the reemployment plan may not extend past two years from date of plan approval (ACCEPTANCE), at which time the benefits.....".
17. Amend Section 13 (AS 23.30.095(e) to reinstate the deleted language and to add new language so that it reads: "AUTHORIZED TO PRACTICE MEDICINE UNDER THE LAWS OF THE jurisdiction in which the physician resides (STATE IN WHICH THE EMPLOYEE MAY BE FOUND)".

In addition to the changes in the proposed CS listed above, following are proposed amendments that the Committee may wish to consider for inclusion in the final committee substitute.

1. Include a new section to allow the time period for determining the base period for unemployment compensation to begin after temporary benefits under workers' compensation have ceased if the worker is (1) eligible for unemployment compensation by having paid into the system while they were employed and (2) are "ready, willing, and able" to work but have not been able to find a job. (See attachment #2 - copy of Washington State law).

The Department of Labor has been asked to determine whether this addition will require a fiscal note for SB 322 that may result in a further referral to the House Finance Committee.

2. Add a new section to repeal and reenact AS 23.30.110(C) so that it reads as per attachment #3. The proposed language is in response to public testimony that there has been a significant increase in the amount of time between filing a case and obtaining a formal hearing before the Board. The Division response is that the time lag is caused by attorney requests for a continuance after a case has been scheduled and comes before the Board. The result is that the hearing time is wasted because another case cannot be scheduled on such short notice. The attorney response to the Divisions' response is that they have to request a hearing when they receive a case even if they aren't ready to proceed to hearing because it takes so long to get a hearing scheduled. The Divisions response to the attorney response is that it wouldn't take so long to get a hearing scheduled if they didn't have so many continuances.!

The proposed language in attachment #3 addresses this problem in a way that will not unfairly impact the employer or employee and will help the Board to manage their hearing schedule in a more responsive and efficient manner.

#7

A M E N D M E N T

Offered in the HOUSE

By Donley

TO: HB 352

Page 27, after line 3:

Insert a new bill section to read:

"\* Sec. 36. Notwithstanding AS 21.39.030, an insurer providing workers' compensation insurance in the state shall provide at least a 10 percent reduction in the premium rate charged within the state for workers' compensation insurance, for the period beginning July 1, 1988, and ending January 1, 1990."

Renumber remaining bill sections accordingly.

Page 27, line 4:

Delete "This Act applies only"

Insert "Sections 1 - 35 of this Act apply"

for any payment) on account of death, provided the individual in its employ

(1) has not the option to receive instead of provisions for such death benefits, any part of such payment, or, if such death benefit is insured, any part of the premium (or contributions to premiums) paid by his employing unit; and

(2) has not the right under the provisions of the plan or system or policy of insurance providing for such death benefits to assign such benefits or to receive a cash consideration in lieu of such benefits, either upon his withdrawal from the plan or system providing for such benefits or upon termination of such plan or system or policy of insurance or of his services with such employing unit. [1951 c 265 § 5; 1949 c 214 § 6; 1945 c 35 § 35; Rem. Supp. 1949 § 9998-173. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

**Severability**—1951 c 265: See note following RCW 50.98.070.

**50.04.350 Wages, remuneration**—Excepted payments. The term "wages" shall not include the payment by an employing unit (without deduction from the remuneration of the individual in its employ) of the tax imposed upon an individual in employment under section 1400 of the federal internal revenue code, as amended, or any amount paid to a person in the military service for any pay period during which he performs no service for the employer: *Provided, however,* That prior to January 1, 1952, the term "wages" shall not include dismissal payments which an employing unit is not legally required to make. [1951 c 265 § 2; 1945 c 35 § 36; Rem. Supp. 1945 § 9998-174. Prior: 1943 c 127 § 13; 1941 c 253 § 14.]

**Severability**—1951 c 265: See note following RCW 50.98.070.

**50.04.355 Wages, remuneration**—Average annual wage—Average weekly wage—Average annual wage for contributions purposes. On or before the fifteenth day of June of each year an "average annual wage", an "average weekly wage", and an "average annual wage for contributions purposes" shall be computed from information for the preceding calendar year including corrections thereof reported within three months after the close of that year by all employers as defined in RCW 50.04.080. The "average annual wage" is the quotient derived by dividing total remuneration reported by all employers by the average number of workers reported for all months and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. The "average annual wage" thus obtained shall be divided by fifty-two and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar to determine the "average weekly wage". The "average annual wage" for contribution purposes is the quotient derived by dividing total remuneration reported by all employers subject to contributions by the average number of workers reported for all months by these same employers and if the result is not a multiple of one dollar, rounding the result to the next lower multiple of one dollar. [1977 ex.s. c 33 § 2;

1975 1st ex.s. c 228 § 1; 1973 6.]

**Effective dates**—Construction—following RCW 50.04.030.

**Effective date**—1975 1st ex.s. c amendatory act are necessary for the public peace, health, and safety, the and its existing public institutions. Sunday following signature by the g 19.]

**Effective date**—1973 c 75: See note following RCW 50.04.030.

**Effective date**—1970 ex.s. c 2: See note following RCW 50.04.020.

**50.04.360 Week.** "Week" means any period of seven consecutive calendar days ending at midnight as the commissioner may by regulation prescribe. [1945 c 35 § 37; Rem. Supp. 1945 § 9998-175. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 214 § 16; 1937 c 162 § 19.]

## Chapter 50.06

### TEMPORARY TOTAL DISABILITY

Sections	Purpose.
50.06.010	Allowable beneficiaries.
50.06.020	Application for initial determination of disability— Special base year—Special individual benefit year.
50.06.040	Laws and regulations governing amounts payable and right to benefits.
50.06.050	Use of wages and time worked for prior claims— Effect.
50.06.900	Chapter prospective.
50.06.910	Partial invalidity of chapter.

**50.06.010 Purpose.** This chapter is enacted for the purpose of providing the protection of the unemployment compensation system to workers who have suffered a temporary total disability compensable under industrial insurance and is a recognition by this legislature of the economic hardship confronting those workers who have not been promptly reemployed after a prolonged period of temporary total disability. [1975 1st ex.s. c 228 § 7.]

**Effective date**—1975 1st ex.s. c 228: See note following RCW 50.04.355.

**50.06.020 Allowable beneficiaries.** Only individuals who have suffered a temporary total disability and have received compensation under the industrial insurance laws of this state, any other state or the United States for a period of not less than thirteen consecutive calendar weeks by reason of such temporary total disability shall be allowed the benefits of this chapter. [1975 1st ex.s. c 228 § 8.]

**Effective date**—1975 1st ex.s. c 228: See note following RCW 50.04.355.

**50.06.030 Application for initial determination of disability—Special base year—Special individual benefit year.** An application for initial determination made pursuant to this chapter, to be considered timely, must be filed in writing with the employment security department within twenty-six weeks following the week

in which the period of temporary total disability commenced. Notice from the department of labor and industries shall satisfy this requirement. The records of the agency supervising the award of compensation shall be conclusive evidence of the fact of temporary disability and the beginning date of such disability. The employment security department shall process and issue an initial determination of entitlement or nonentitlement as the case may be.

For the purpose of this chapter, a special base year is established for an individual consisting of the first four of the last five completed calendar quarters immediately prior to the first day of the calendar week in which the individual's temporary total disability commenced, and a special individual benefit year is established consisting of the entire period of disability and a fifty-two consecutive week period commencing with the first day of the calendar week immediately following the week or part thereof with respect to which the individual received his final temporary total disability compensation under the applicable industrial insurance laws except that no special benefit year shall have a duration in excess of three hundred twelve calendar weeks: *Provided however*, That such special benefit year will not be established unless the criteria contained in RCW 50.04.030 *has been met, attached* except that an individual meeting the disability and filing requirements of this chapter and who has an unexpired benefit year established which would overlap the special benefit year provided by this chapter, notwithstanding the provisions in RCW 50.04.030 relating to the establishment of a subsequent benefit year and RCW 50.40.010 relating to waiver of rights, may elect to establish a special benefit year under this chapter: *Provided further*, that the unexpired benefit year shall be terminated with the beginning of the special benefit year if the individual elects to establish such special benefit year. [1975 1st ex.s. c 228 § 9.]

*Effective date*—1975 1st ex.s. c 228: See note following RCW 50.04.355.

**50.06.040 Laws and regulations governing amounts payable and right to benefits.** The individual's weekly benefit amount and maximum amount payable during the special benefit year shall be governed by the provision contained in RCW 50.20.120. The individual's basic and continuing right to benefits shall be governed by the general laws and regulations relating to the payment of unemployment compensation benefits to the extent that they are not in conflict with the provisions of this chapter. [1975 1st ex.s. c 228 § 10.]

*Effective date*—1975 1st ex.s. c 228: See note following RCW 50.04.355.

**50.06.050 Use of wages and time worked for prior claims—Effect.** The fact that wages, hours or weeks worked during the special base year may have been used in the computation of a prior valid claim for unemployment compensation shall not affect a claim for benefits made pursuant to the provisions of this chapter; however, wages, hours and weeks worked used in computing entitlement on a claim filed pursuant to this chapter shall not be available or used for establishing entitlement

[1975 1st ex.s. c 228 § 11.]

*Effective date*—1975 1st ex.s. c 228: See note following RCW 50.04.355.

**50.06.900 Chapter prospective.** This chapter shall be available only to individuals who suffer a temporary total disability, compensable by an industrial insurance program, after the effective date of this chapter. [1975 1st ex.s. c 228 § 12.]

*Effective date*—1975 1st ex.s. c 228: See note following RCW 50.04.355.

**50.06.910 Partial invalidity of chapter.** Should any part of this chapter be declared unconstitutional by the final decision of any court or declared out of conformity by the United States secretary of labor, the commissioner shall immediately discontinue the payment of benefits based on this chapter, declare it inoperative and report that fact to the governor and the legislature. [1975 1st ex.s. c 228 § 13.]

*Effective date*—1975 1st ex.s. c 228: See note following RCW 50.04.355.

## Chapter 50.08

### ESTABLISHMENT OF DEPARTMENT

#### Sections

50.08.010 Employment security department established.  
50.08.020 Divisions established.

*Displaced homemaker act, departmental participation: RCW 28B.04.080.*

**50.08.010 Employment security department established.** There is established the employment security department for the state, to be administered by a commissioner. The commissioner shall be appointed by the governor with the consent of the senate, and shall hold office at the pleasure of, and receive such compensation for his services as may be fixed by, the governor. [1953 ex.s. c 8 § 3; 1947 c 215 § 8; 1945 c 35 § 38; Rem. Supp. 1947 § 9998-176. Prior: 1939 c 19 § 1; 1937 c 162 § 12.]

**50.08.020 Divisions established.** There are hereby established in the employment security department two coordinate divisions to be known as the unemployment compensation division, and the Washington state employment service division, each of which shall be administered by a full time salaried supervisor who shall be an assistant to the commissioner and shall be appointed by him. Each division shall be responsible to the commissioner for the dispatch of its distinctive functions. Each division shall be a separate administrative unit with respect to personnel, budget, and duties, except insofar as the commissioner may find that such separation is impracticable.

It is hereby further provided that the governor in his discretion may delegate any or all of the organization, administration and functions of the said Washington state employment service division to any federal agency.

50.04.310	Unemployed individual.
50.04.320	Wages, remuneration.
50.04.323	Wages, remuneration—Government or private retirement pension plan payments—Effect upon eligibility—Reduction in benefits—Exceptions.
50.04.330	Wages, remuneration—Retirement and disability payments excepted.
50.04.340	Wages, remuneration—Death benefits excepted.
50.04.350	Wages, remuneration—Excepted payments.
50.04.355	Wages, remuneration—Average annual wage—Average weekly wage—Average annual wage for contributions purposes.
50.04.360	Week.

\*Application for initial determination\* defined: RCW 50.20.140.

\*Claim for benefits\* defined: RCW 50.20.140.

\*Claim for waiting period\* defined: RCW 50.20.140.

**50.04.020 Base year.** "Base year" with respect to each individual, shall mean the first four of the last five completed calendar quarters immediately preceding the first day of the individual's benefit year. [1970 ex.s. c 2 § 1; 1945 c 35 § 3; Rem. Supp. 1945 § 9998-142. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

**Effective date.**—1970 ex.s. c 2: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 5, 1970: *Provided*, That sections 3 and 8 of this 1970 amendatory act shall not take effect until January 1, 1971." [1970 1st ex.s. c 2 § 25.] This act is codified in RCW 50.04.020, 50.04.030, 50.04.320, 50.20.010, 50.20.120, 50.04.355, 50.20.150, 50.24.010, 50.29.010 through 50.29.080 and 50.29.140, 50.04.323, 50.20.030, 50.20.050, 50.20.060 and 50.20.127; sections 3 and 8 are codified in RCW 50.04.320 and 50.24.010.

**50.04.030 Benefit year.** "Benefit year" with respect to each individual, means the fifty-two consecutive week period beginning with the first day of the calendar week in which the individual files an application for an initial determination and thereafter the fifty-two consecutive week period beginning with the first day of the calendar week in which the individual next files an application for an initial determination after the expiration of the individual's last preceding benefit year: *Provided, however*, That the foregoing limitation shall not be deemed to preclude the establishment of a new benefit year under the laws of another state pursuant to any agreement providing for the interstate combining of employment and wages and the interstate payment of benefits nor shall this limitation be deemed to preclude the commissioner from backdating an initial application at the request of the claimant either for the convenience of the department of employment security or for any other reason deemed by the commissioner to be good cause.

An individual's benefit year shall be extended to be fifty-three weeks when at the expiration of fifty-two weeks the establishment of a new benefit year would result in the use of a quarter of wages in the new base year that had been included in the individual's prior base year.

No benefit year will be established unless it is determined that the individual earned wages in "employment" in not less than six hundred eighty hours of the individual's base year: *Provided, however*, That a benefit

year shall be established unless the individual earned wages in "employment" during the last two quarters of the new base year of not less than six times the weekly benefit amount computed for the individual's new benefit year.

If the wages of an individual are not based upon a fixed duration of time or if the individual's wages are paid at irregular intervals or in such manner as not to extend regularly over the period of employment, the wages for any week shall be determined in such manner as the commissioner may by regulation prescribe. Such regulation shall, so far as possible, secure results reasonably similar to those which would prevail if the individual were paid his or her wages at regular intervals. [1977 ex.s. c 33 § 1; 1973 c 73 § 1; 1970 ex.s. c 2 § 1; 1949 c 214 § 1; 1945 c 35 § 4; Rem. Supp. 1949 § 9998-143. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

**Effective dates.**—Construction.—1977 ex.s. c 33: "The provisions of this 1977 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect ninety days after adjournment sine die of the 1977 Extraordinary Session (forty-fifth legislature) of the Washington State Legislature. *Provided*, That the first paragraph of section 1 of this 1977 amendatory act shall take effect immediately and the remaining portion of section 1 of this 1977 amendatory act and all of section 2 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after October 1, 1978; section 7 of this 1977 amendatory act shall take effect commencing with benefit years beginning on and after July 3, 1977." [1977 ex.s. c 33 § 11.]

**Reviser's note:** The various sections of this 1977 amendatory act [1977 ex.s. c 33] referred to in the above section are codified as follows: Section 1 as RCW 50.04.030, section 2 as RCW 50.04.355, section 3 as RCW 50.12.070; section 4 as RCW 50.20.050; section 5 as RCW 50.20.060; section 6 as RCW 50.20.100; section 7 as RCW 50.20.120; section 8 as RCW 50.20.095.

**Effective dates.**—1973 c 73: "Sections 7, 8, 10, 11, and 12 of this 1973 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. Sections 1, 2, 3, 4, 5, 6, and 9 of this 1973 amendatory act shall take effect on July 1, 1973." [1973 c 73 § 13.]

**Reviser's note:** The effective date of sections 7, 8, 10, 11, and 12 was March 8, 1973. The effective date of sections 1, 2, 3, 4, 6 and 9 was July 1, 1973. Section 5 referred to above was vetoed.

**Effective date.**—1970 ex.s. c 2: See note following RCW 50.04.020.

**50.04.040 Benefits.** "Benefits" means the compensation payable to an individual, as provided in this title, with respect to his unemployment. [1945 c 35 § 5; Rem. Supp. 1945 § 9998-144. Prior: 1943 c 127 § 13; 1941 c 253 § 14; 1939 c 219 § 19; 1937 c 162 § 19.]

**50.04.050 Calendar quarter.** "Calendar quarter" means the period of three consecutive calendar months ending on March 31st, June 30th, September 30th, or December 31st. [1945 c 35 § 6; Rem. Supp. 1945 § 9998-145. Prior: 1943 c 127 § 13; 1939 c 214 § 19; 1937 c 162 § 19.]

**50.04.060 Commissioner.** "Commissioner" means the administrative head of the state employment security department referred to in this title. [1947 c 215 § 1; 1945 c 35 § 7; Rem. Supp. 1947 § 9998-146. Prior:

#3

AS 23.30.110(c) is repealed and reenacted to read:

— (c) Before a hearing is scheduled, the party seeking a hearing shall file a request for a hearing together with an affidavit stating that the party has completed all necessary discovery, has obtained all evidence it needs for the hearing, and will not seek a continuance or request the hearing record remain open at the conclusion of the hearing. Within 10 days the opposing party must notify the board if it is not ready for a hearing. If the opposing party notifies the board that it is not ready for hearing, the board or a board designee will conduct a pre-hearing conference within 30 days, and determine the hearing date. If no opposition is filed, a hearing will be scheduled no later than 60 days after the receipt of the request and affidavit. The parties shall be given at least 10 days' notice of the hearing, either personally or by certified mail. Once a hearing has been scheduled, no continuances will be permitted. The board shall close the hearing record at the end of the hearing; any evidence or arguments filed after the conclusion of the hearing will be excluded from the record. The only exception will be in case of surprise as determined by the board. The board may then extend the time to file additional evidence or argument. The parties cannot stipulate to leave the hearing record open. The parties may not stipulate to change the date, cancel, postpone, or continue the hearing, except for cases of illness of a party or its representative or because of a conflict with a matter scheduled by a state or federal court. If the parties reach a settlement agreement less than 14 days before the hearing, the parties shall appear at the time of the scheduled hearing to state the terms of the settlement agreement. Within 30 days after the hearing record closes, the board shall file its decision. If the employer controverts a claim on a board prescribed controversion notice and the employee does not request a hearing within two years following the filing of the controversion notice, the claim is denied.

DRAFT LETTER OF INTENT FOR  
HCS CS SB 322 (L&C) - WORKERS' COMPENSATION LEGISLATION

(EXISTING LETTER OF INTENT ADOPTED BY THE SENATE)  
LETTER OF INTENT FOR CS SB 322 (L&C)

With an actuarial analysis concluding that this bill will provide a two percent savings in hard costs and an unquantifiable amount of soft dollar savings, it is the intent of the Alaska State Senate that, upon passage of this bill, the Division of Insurance request new rate filing reflecting a decution in workers' compensation premiums.

PROPOSED LETTER OF INTENT FOR HCS CS SB 322 (L&C)

The legislature recognizes that the increasing costs of workers' compensation insurance is creating a great hardship on Alaska's workers, our employers, and the insurance carriers that serve our businesses.

It is the intent of the Legislature in adopting this legislation to enable a more efficient, fair, and cost effective delivery of services under Alaska's workers compensation system. To accomplish this, SB 322 demands significant concessions from employees and employers. It is the intent of the legislature in adopting this measure that each party to the workers' compensation system in Alaska, including workers, employers, and workers' compensation insurance carriers, initiate actions necessary to reduce the number of work related injuries, to assure prompt and fair compensation to injured workers, and to create incentives for prompt and fair settlement of disputes regarding workers' compensation claims.

With an acturarial analysis that concludes that this legislaton will provide at least a two percent savings in hard costs and with public testimony before this body that the measure will bring about significant soft dollar savings, it is the intent of the legislature that, upon passage of this bill, the Division of Insurance request a new rate filing reflecting a reduction from current rates in workers' compensation premiums of no less than 10 percent as of July 1, 1988 and that this rate be maintained through January 1, 1990.

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 12, 1988

SUBJECT: Workers' Compensation - SB 322

TO: Senator Tim Kelly  
Chairman  
Senate Labor and Commerce Committee

FROM: Michael F. Ford *M.F.*  
Legislative Counsel

The following is a sectional analysis of the above referenced bill:

Section 1 - Establishes the legislative intent of the bill.

Section 2 - Creates additional departmental authority regarding rehabilitation specialists and physicians who are involved in rehabilitation.

Section 3 - Requires the department to adopt new regulations if an existing regulation is held invalid by the state supreme court.

Section 4 - Precludes certain employees who knowingly make a false statement on an employment application from receiving compensation benefits.

Section 5 - Alters the time for an employer to make required contributions to the second injury fund.

Section 6 - Establishes the responsibility and authority of the department regarding rehabilitation of injured workers. Establishes specific eligibility criteria requirements for rehabilitation plans, specifies reemployment benefits, and duties of the employee while receiving reemployment benefits. Provides time limits for reemployment plans, limits the cost to the employer of the plan, and provides that only a rehabilitation specialist may perform certain casework. Also includes a definitions subsection.

Section 7 - Establishes that the liability of the employer is limited to workers compensation even if the employee is barred from receiving compensation because the employee knowingly made a false employment application.

Section 8 - Limits the employee's designation of a physician to the state where the employee resides. Provides the employee may make only one change of physician without consent of the employer and requires notice of the change.

Section 9 - Establishes that a written plan is required for continuing medical treatment. Specifies the contents of the treatment plan and requires certain documentation.

Section 10 - Provides that the employee shall submit to examination by a physician chosen by the employer, and establishes a presumption of reasonableness for certain examinations.

Section 11 - Establishes a fee standard for medical treatment.

Section 12 - Authorizes the board to appoint a medical services review committee to assist the board in issues regarding the cost of medical services.

Section 13 - Establishes procedures in the event of conflicting medical opinions. Provides for independent medical examination and creates a presumption that this opinion is correct.

Section 14 - Specifies that a claim may be filed within two years of the last payment of certain benefits.

Section 15 - Provides that the presumption of compensability does not apply to a mental injury resulting from work related stress.

Section 16 - Establishes that a finding of fact made by the board in a compensation order and supported by any evidence, is conclusive if the employer and employee have also met their proof requirements.

Section 17 - Specifies that the board may review a compensation case brought within one year after the last payment of certain benefits.

Section 18 - Provides that certain employer penalties may be reduced as provided under AS 23.30.155(m).

Section 19 - Requires the most recent employer to make temporary disability payment when there is a dispute as to which employer is responsible for compensation.

Section 20 - Requires the employer to submit a report regarding total compensation paid and provides for a reduction in certain late report penalties.

Section 21 - Establishes the weekly rate of compensation for disability or death for in-state and out-of-state recipients. Requires the board to establish regulations for determining living costs.

Section 22 - Establishes a market for an employee's services in determining permanent total disability.

Section 23 - Provides that failure to achieve remunerative employment as defined in AS 23.30.041(m)(7) does not by itself constitute permanent total disability.

Section 24 - Establishes limits on payment of temporary total disability.

Section 25 - Provides compensation for permanent partial impairment and establishes guidelines for determining the existence and degree of impairment.

Section 26 - Limits payment of temporary partial disability compensation to two years or the date of medical stability, except as provided in AS 23.30.041.

Section 27 - Provides for determination of an employee's wage earning capacity, for purposes of temporary partial disability compensation.

Section 28 - Provides for calculation of an employee's spendable weekly wage. Limits the compensation due an employee who had no earnings during the two calendar years preceding injury, or was voluntarily absent for 18 months or more of the previous two years.

Section 29 - Establishes a reduction in weekly compensation benefits when an employer makes a contribution to a pension or profit sharing plan of the employee.

Senator Tim Kelly  
Page 4  
January 12, 1988

Section 30 - Prohibits discrimination against an employee who files a good faith claim for compensation benefits.

Section 31 - Redefines "gross earnings" to include certain pension and profit sharing contributions.

Section 32 - Redefines "injury" to exclude certain mental injuries.

Section 33 - Definition of medical stability.

Section 34 - Repeals existing wage earning determination for partial disability compensation.

Section 35 - Transitional provision for contributions to the second injury fund.

Section 36 - Applicability section.

Section 37 - Effective date.

MFF:bb  
WKB1/041

# STATE OF ALASKA

## DEPARTMENT OF LABOR

### DIVISION OF WORKERS' COMPENSATION

STEVE COWPER, GOVERNOR

Ginger  
FPI

1111 WEST 8TH, RM 305

BOX 1149

JUNEAU, ALASKA 99802-0700

PHONE: (907) 465-2790

May 21, 1987

Chancy Croft, Attorney  
613 Cushman Street, Suite 210  
Fairbanks, AK 99701

Dear Chancy:

Re: Board Regulations

This is in response to your April 7 letter in which you object to the Board's "new" regulation dealing with evidence procedures, specifically 8 AAC 45.-120(f)-(m).

Please forgive me for responding so late, but prior to doing so I wanted to refresh my memory on the history of the changes the Board made to this particular section. It was rather a shock to see the latest regulations referred to as "new" since they had been on the drawing board since early 1985.

As you will recall, the Board completely rewrote its regulations in 1983, the first rewrite since 1959. This particular section was substantially changed to deal with Smallwood objections. I note from our records that you gave public testimony on the 1983 regulations in February 1982, and although I do not have a transcript from those proceedings, I am aware that you and Randall Weddle had discussed a possible revision to remedy the problem you both had with §.120. I don't believe we received any proposals for revision from either of you on that particular section; however, I am sure you will remember that §.120 was one of the most controversial subjects discussed at the Fall 1983 public meeting we held to explain the Board's new regulations at the Anchorage Laborer's Hall. The main complaint at that time with the Notice of Intent language, similar to the objections you are currently raising, was that the regulation was too technical and that it created an unfair burden on the unrepresented claimant.

The most recent change to §.120 was adopted, therefore, in response to what the Board felt were well-founded complaints, mostly from attorneys, to the regulatory language you now want to resurrect. The Board's whole purpose in the last revision was to 1) simplify procedures for unrepresented claimants since they would not have to prepare Notices of Intent required by the 1983 regulations, 2) reduce paperwork by eliminating duplicate filing and serving of papers, and 3) put the burden on excluding evidence on the party who wants to keep it out, rather than putting the burden on the party who wants to get

evidence into the record. As an administrative system, it has our intent to make things as simple as possible, despite the obstacles in Smallwood.

Obviously, it is your position and that of Randy Weddle's that we missed the mark. Even though we have only, so far, received complaints from you and Randy, the Board is certainly supportive of any revision that would discourage delays, sabotage, and unnecessary costs in the adjudicatory process. I do take exception to your statement that there was considerable concern and surprise when the new regulations came out, and particularly your statement that many of you did not feel the new regulations would work at that time. My records show that you, along with all attorneys in the workers' compensation system, were notified by the Board of the regulation hearings and, as required, proper notice was posted in the newspapers. Hearings on the regulations were held on July 29, 1985 in Fairbanks - no one appeared; on July 30, 1985 in Anchorage - one insurance adjuster testified and three adjusters observed; and on July 31, 1985 in Juneau - no one appeared. We timely received one letter of regulation comment, and a letter from Randy Weddle which was received after the comment deadline. If you and others had concerns with the proposed regulations, why wasn't written or oral testimony presented for the Board's consideration? That is supposedly the whole purpose behind the regulatory process.

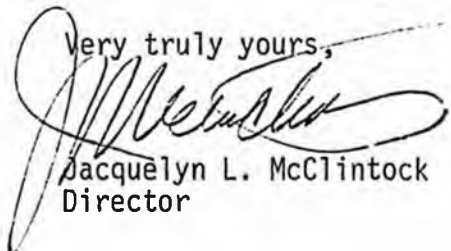
Based on the problems you and Randy state are arising with this regulation, it appears that the new system may very well be in need of further revision. However, considering the fact that the old system raised much more adverse comment, I question that we should simply revert back to that rather than revising the regulation so as to rectify the problems inherent in both the old and new language. In Randy Weddle's June 22, 1982 regulation comment letter to the Board, he stated:

I have considered this problem at length, and I have spoken with Chancy Croft regarding some means of revising the regulation so as to remedy this problem. I am hoping that Mr. Croft will be able to come up with a good solution.

Given the fact that you and Randy are two of the State's leading workers' compensation attorneys in your respective fields, I can think of no better solution to this dilemma than for the two of you to propose regulatory language correcting the problems in 8 AAC 45.120 and present it to the Board at its next annual meeting in Anchorage, to be held in September or October.

Thank you for bringing your concerns to the Board, Chancy.

Very truly yours,

  
Jacquelyn L. McClintock  
Director

cc: Governor Steve Cowper

Senator Tim Kelly, Chairman  
Labor & Commerce Committee

✓ Representative Dave Donley, Chairman  
Labor & Commerce Committee

Commissioner Jim Sampson

Attorney Randall Weddle  
Faulkner, Banfield, Doogan & Holmes

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to Worker's Compensation"  
Sponsor: House Labor & Commerce  
Requestor: House Labor & Commerce

Agency Affected: Labor  
BRU: Worker's Compensation  
Components: Worker's Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		112.0	46.7	46.7	46.7	46.7
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		112.0	46.7	46.7	46.7	46.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		112.0	46.7	46.7	46.7	46.7
FEDERAL FUNDS						
OTHER						
TOTAL		112.0	46.7	46.7	46.7	46.7

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jacque McClintock Phone: 465-2790  
Division: Worker's Compensation Date: 2/16/88  
Approved by Commissioner: Jim Sampson Date: 2/16/88  
Agency: Labor

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

## Analysis of Fiscal Note

For HB 352

This bill would require the Department of Labor to keep track of certain Workers' Compensation information it is not currently tracking, and would also require an annual cost of living survey of the 50 states. Details of these two additional costs are as follows:

### 1. Additional Information Requirements

As a result of this bill, additional detail on information items for each workers' compensation claim would have to be reported by employers/ insurers on a by claim and annual basis. This additional information would be input into our computer database which would require a change in the computer programs associated with that system. Estimated costs are \$49,500 to modify the programs, and an additional \$12,500 in CPU time to test and verify the modifications. The total one-time data processing cost would therefore be \$62,000.

### 2. Annual Cost of Living Survey

An annual cost of living survey would be required to adjust the compensation to those workers compensation recipients who move from Alaska. We estimate that 250 locations (an average of 5 per state) would have to be surveyed each year. At \$200 per site, the total cost the first year would be \$50,000. The cost of the survey in future years would decrease slightly to an estimated \$46,700 a year.

### Assumptions:

1. An effective date of July 1, 1988.

MANAGEMENT/LABOR AD HOC COMMITTEE

RESPONSES TO

MEMORANDUM FOR POINTS OF DISCUSSION  
DATED FEBRUARY, 5, 1988

We have examined the concerns raised in the above referenced memorandum. For ease of comparison, our replies follow the same sequence as that used in the memorandum.

1. We are also concerned about the "any evidence" standard and have asked that John Lewis provide some direction as to the standard used in other jurisdictions. The concern of both management and labor is with the overly broad interpretation the courts have applied to the "substantial evidence" standard currently in effect. We will hopefully have a recommendation by February 12

2. Our language was drafted and reviewed by attorneys knowledgeable in the constraints imposed by the courts. It is their opinion that the language will withstand a constitutional challenge

3. For the system to operate as designed, it must be fair to both the injured worker and the employer. Therefore, providers to the system must provide services free of bias for or against either party. It is our desire that the regulations should allow for a bias free system and providers that exhibit bias will not be allowed to provide IME's or rehabilitation services. Health care providers could still continue to operate in the system if chosen by the employee or employer even if they were not on the list of IME providers

4. We think that the standard for knowingly making a false statement is sufficiently strict that it will be difficult to abuse by an employer. If an employee withholds information from an employer for any reason, he could be endangering himself or others since he does not know what duties might be called for on a given job. We think that this section is important to the bill.

5. We have recommended to the board that the lists be maintained on a geographical basis to remove a certain amount of the unnecessary expenditures. We are concerned however that if we deal with the concerns expressed, we are losing sight of the needs of the injured worker, and instead place the travel costs of the rehabilitation specialist above the needs of the worker.

02/25/63 13:15

6. Under the present system, it is estimated that approximately 90% of those that have been rehabilitated have gone back to their prior occupation. It is our belief that when this occurs, it is not necessary to rehabilitate someone for yet another job should they receive a subsequent injury. They have already received the training necessary to compete in a new occupation and we would encourage them to enter that labor market.

The concerns about the minimum threshold of 60% of pre-injury wages fail to recognize that this is the minimum threshold and it would represent an entry level wage. As skills improve, it would be anticipated that salary levels would increase.

7. Dispute resolution language was omitted by legislative drafting. We have included a rewrite of Section 041 which deals with that and other problems.

8. We have modified the time for the eligibility determination from 50 days to 90 days. The time frames are now consistent with the current statute.

9. We have attempted to remove the rehabilitation section from the litigation process. To accomplish this we have put the injured worker in control of his plan, and we have given the administrator the authority to quickly resolve disputes. Since the administrator reports to the board, the board can review his performance on an ongoing basis and accordingly modify the general approach to the job when it does not conform to the guidelines of the board. We believe that this approach is in the best interests of the worker and the system.

10. Employment in this economy is a difficult standard to achieve. Employability is better in that it defines the time when the person is available and prepared to work, and it additionally puts some of the responsibility for the acquisition of a job on the worker.

11. The opposition to the labor market definition is based on misunderstandings. We have established a priority which starts with the area of residence, then the area of last employment, then the State of Alaska, and finally other states. We do not understand the concerns.

12. We have modified this section to include Certified Rehabilitation Counselors. It is the desire of the committee that these specialists be professionals in the area of vocational rehabilitation. That is not the case currently and as a result, both the employee and the employer suffer.

13. See number 6 above.

14. It is the desire of the committee to see that the employee is provided good quality medical care in a timely, efficient manner. Abuses currently exist in the system and we believe that our

language will remedy many of the problems. We think that the suggestion that we allow no more than one change within each speciality does not eliminate the problem. The treating physician can still refer the patient to specialists as necessary.

The concerns regarding the definition of treating physician are inappropriate as the concept is part of the current law and does not cause a problem.

15. See 14 above and 16 below.

16. This section of the bill requires that a treatment plan be submitted if continuing and multiple treatments are prescribed. It seems reasonable that both the employee and employer should know what the physician is intending to do and what he anticipates will happen. The limits on the number of visits was based on the recommendations of experts, but we provided an exception when needed. All the physician would need to do is document the need for additional services. Again we were attempting to deal with abuses to the system.

17. The current statute has no limits at all, therefore we have restricted the frequency of the employer IME. We have modified our recommendation to every 60 days thereafter. It should be acknowledged that the employer is restrained by the costs of such IME's which must be borne by the employer. It should also be remembered that in the case of a dispute, the board's IME will determine the outcome.

18. While no one on the committee was aware of any problems in this area, we have added language which should deal with the concerns expressed. We suggest that when medically appropriate, the IME physician should use already existing diagnostic data to make his determination.

19. Our proposal suggests the adoption of a usual and customary fee schedule. Such schedules are normal in health care plans and under the Social Security System. It does not envision a separate schedule for an employee's physician and an employer's physician.

20. This language merely gives the board the authority to administer the act by hiring experts, be they Alaskans or not.

21. We were concerned about the supreme court giving the presumption to the treating physician in cases where evidence clearly suggests that they were in error. Since the board selected IME will be independent, we believe that giving his opinions greater weight is appropriate.

22. We have added gross incompetence to the language. We do not believe that misrepresentation is an appropriate standard and its inclusion will lead to litigation.

02/08/88 15:26 003  
23. We do not understand the constitutionality question on this issue. We believe that this standard is legal.

24. See #1.

25. See #2.

26. See #11.

27. It is our belief that if a person has skills which can be used in the job market, they are not a permanent total disability.

28. We have added language which will clarify our intent. We are suggesting that after two years, a person be tested to determine their degree of impairment and given a lump sum settlement.

29. It is our desire to pay more money for severe injuries and less money for less severe injuries. We have attempted to do so without increasing the overall costs of this section.

30. Medical stability in this section is essential to determine the timing and the degree of permanent impairment. Medical benefits are not limited and will continue for the duration of the injury.

31. This section currently exists as Section 210 of the Statute. We merely moved it to section 200 since it now only applies to that section.

32. We did not receive Attachment 3, so we are unclear as to their concerns.

33. Vested benefits were used to make this section manageable and to recognize that a worker have no legal right to "unvested" benefits. Vesting has nothing to do with union vs nonunion.

34. Workers' compensation was created to deal with work related injuries and should not be seen as the vehicle to address other social goals. The items outlined represent issues that are adequately addressed in other State and Federal statutes.

35. See #30 above.

## OTHER ITEMS

1. Our agenda for 1988 includes a review of the Division of Workers Compensation. We are particularly interested in the timely resolution of a workers' compensation claim and will examine both the delays caused by the system and those caused by the employers or employees attorneys.

2. We believe that our proposal will include system modifications which will result in cost savings of at least 15%. We hope the insurance community will concur and ask for a rate reduction effective July 1.

3. Issues regarding the insurance industry were not addressed in this bill because of the complexity of the problem. We will be addressing these issues in 1988.

4. This problem is particularly difficult since the courts have held that the contractors insurance carrier is liable when the sole-proprietor has a work related injury. The insurance company takes the position that they need to collect premiums to cover the risk and accordingly charge the contractor

5. Final billing after audit is necessary to make sure that adequate premiums are collected for the actual wage exposure. Quotes given at the initiation of the policy are based on the employers estimates of wages by classification, and if accurate will result in no additional premiums. Unless insurance companies are given the ability to audit payroll records, everyone will underestimate payroll and the system will become even more chaotic.

6. We will examine this when we examine the insurance company, but an "all states rider" does not eliminate the Alaska rates. They will be charged during the audit on the policy. We believe that the problem comes from misrepresenting and misclassifying payroll and the insurance carrier not catching the problem at audit.

7. We would have no problem with such an amendment to the unemployment law.

## SUGGESTED CHANGES TO LEGISLATION

- Page 2, Line 4       The department shall [may] adopt [identical]
- Page 2, line 7       , and shall [may]
- Page 13, Line 5       commencement of such ...
- Page 13, line 24     board When medically appropriate, the IME physician should use already existing diagnostic data to make his determination.
- Page 14, line 22     board. In no event shall the injured worker be responsible for any fees in excess of those determined by the board.
- Page 15, Line 4       treatment, the ability to enter a re-employment services plan,
- Page 15, Line 16     fraud, or gross incompetence.
- Page 18, Line 29     or death [for a recipient residing in the state]
- Page 19, Line 7       wages If the employer can verify that the employees spendable weekly wage is less than \$154, the employer can pay the lesser amount without board order.
- Page 19, line 20     cost of living index of the state [locality]
- Page 19, line 21     cost of living index of Alaska [the state]
- Page 19, Line 25     if the gross [average] weekly earnings [wage]
- Page 20, Line 5       for Alaska [the state] and other states [localities]
- Page 20, line 19     the state of Alaska or the state of residence.
- Page 21, Line 27     percent. If an injury cannot be rated by use of the American Medical Association Guides, the Manual for Orthopedic Surgeons may be used.
- Page 21, Line 29     supplemental recognized schedule.
- Page 22, line 19     stability [ , unless otherwise provided under AS 23 30 041.]
- Page 27, line 4     APPLICABILITY. Except for sections 5, 19, 20, and 21, this

\* Sec. 3. AS 23.30.005 is amended by adding a new subsection to read:

(m) If a regulation adopted by the department and approved by a majority of the full board is determined to be invalid by the state supreme court, the department may adopt new regulations that conform to the department's statutory authority as interpreted by the court. These new regulations shall apply both retrospectively and prospectively.

\* Sec. 5. AS 23.30.041 is repealed and reenacted to read:

Sec. 23.30.041. REHABILITATION OF INJURED WORKERS. (a) The board shall select and employ a reemployment services administrator. The board may authorize the reemployment services administrator to select and employ additional staff. The reemployment services administrator is in the partially exempt service under AS 39.25.120.

(b) The reemployment services administrator shall perform the following functions:

(1) enforce regulations adopted by the board to implement this section;

(2) recommend regulations for adoption by the board that establish performance and reporting criteria for rehabilitation specialists;

(3) enforce the quality and effectiveness of reemployment preparation benefits provided for under this section;

(4) review on an annual basis the performance of rehabilitation specialists to determine continued eligibility for delivery of rehabilitation services;

(5) submit to the Department of Labor on or before January 1 of each year, a report of reemployment benefits provided under this

*REV. 2/8/88*

section for the previous fiscal year; the report must include a statistical summary of all rehabilitation cases, including

(A) the estimated and actual cost of each active rehabilitation plan;

(B) the estimated and actual time of each rehabilitation plan;

(C) a status report on all individuals completing or terminating a reemployment services program including a return to work date;

(D) the cost of reemployment preparation services;

(6) maintain a list of rehabilitation specialists meeting the qualifications established in this section;

(7) promote awareness among physicians, adjusters, injured workers, employer, employees, attorneys, training providers, and rehabilitation specialists of the reemployment program established in this subsection.

(c) If an employee suffers a compensable injury that may permanently preclude an employee's return to the employee's occupation at the time of injury, the employee or employer may request an eligibility evaluation for reemployment benefits. The employee must request an eligibility evaluation within 90 days after the employee gives the employer a notice of injury unless the reemployment services administrator determines the employee has unusual and extenuating physical limitations that prevent the employee from making a timely request. The reemployment services administrator shall, on a rotating and geographic basis, select a rehabilitation specialist from the list maintained under (b)(6) of this section to perform the eligibility evaluation.

(d) Within thirty days after the referral by the administrator, the rehabilitation specialist shall perform the eligibility evaluation and issue a report of findings. The reemployment services administrator may grant up to an additional 30 days for performance of the eligibility evaluation upon notification of unusual and extenuating circumstances and the rehabilitation specialist's request. Within 14 days after receipt of the report from the rehabilitation specialist, the reemployment services administrator will notify the parties of the employee's eligibility for reemployment preparation services. Within 10 days after the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110. The hearing shall be held within 30 days after it is requested. The board shall uphold the decision of the administrator except for abuse of discretion on the administrator's part.

(e) An employee shall be eligible for benefits under this section upon the employee's written request and by having a physician predict that the employee has permanent physical capacities that are less than the physical demands of the employee's job as described in the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles" for

- (1) the employee's job at the time of injury; and
- (2) other jobs that exist in the labor market that the employee has held or received training for within 10 years before the injury or that the employee has held following the injury for a period long enough to obtain the skills to compete in the labor market, according to specific vocational preparation codes as described in the dictionary of occupational titles.

(f) An employee is not eligible for reemployment benefits if

(1) the employer offers employment within the employee's predicted post-injury physical capacities at a wage equivalent to at least 60% of the employee's gross hourly wages at the time of injury and the employment prepares the employee to be employable in other jobs that exist in the labor market;

(2) the employee has been previously rehabilitated in a former workers' compensation claim and returned to work in the same or similar occupation, in terms of physical demands, as the employee held at the time of the prior injury; or

(3) at the time of medical stability no permanent impairment is identified or expected.

(g) Within 10 days after the employee receives the reemployment services administrator's notification of eligibility for services, the employee shall notify the employer in writing of his selection of a rehabilitation specialist who shall provide a complete reemployment services plan. If the employer disagrees with the employee's choice of rehabilitation specialist to develop the plan and the disagreement cannot be resolved, then the reemployment services administrator shall assign a rehabilitation specialist. The employer and employee each have one right of refusal of a rehabilitation specialist.

(h) Within 90 days after the rehabilitation specialist's selection in (g) of this section, a reemployment plan must be formulated and approved. The reemployment plan must contain at least the following:

- (1) an occupational goal in the labor market;
- (2) a plan to acquire the occupational skills to be employable;

(3) the cost estimate of the reemployment plan, including provider fees; the amount of tuition, books, tools, and supplies; transportation; temporary lodging; or job modification devices;

(4) the estimated length of time that the plan will take;

(5) the date the plan will commence; and

(6) the estimated time of medical stability as predicted by the physician.

(i) Reemployment benefits shall be selected from the following in a manner that ensures remunerative employability in the shortest possible time:

(1) on the job training;

(2) vocational training;

(3) academic training;

(4) self-employment; or

(5) a combination of (1) - (4) of this subsection.

(j) The employee, rehabilitation specialist, and the employer shall sign the reemployment services plan. If the employer and employee fail to agree on a reemployment plan, either party may submit a reemployment plan for approval to the reemployment services administrator; the reemployment services administrator shall approve or deny a plan within 14 days after the plan is submitted. Within 10 days after the administrator files the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110. The standards and time periods allowed for review are the same as those in (d) of this section.

(k) Benefits related to the reemployment plan may not extend beyond two years from the date of plan acceptance or approval, at which time benefits expire. If an employee reaches medical stability before completion of the plan, temporary total disability benefits

shall cease and permanent impairment benefits shall then be paid at the employee's temporary total disability rate. If the employee's permanent impairment benefits are exhausted before the completion or termination of the reemployment plan, the employer shall provide wages equal to 60% of the employee's spendable weekly wages but not to exceed \$525, until the completion or termination of the plan. A permanent impairment benefit remaining unpaid upon the completion or termination of the plan shall be paid to the employee in a single lump sum. The fees of the rehabilitation specialist or rehabilitation professional shall be paid by the employer and may not be included in determining the cost of the reemployment plan.

(l) The cost of the reemployment plan, not including the fees of the rehabilitation specialist or the benefits provided in (l) of this section, shall be the responsibility of the employer, but may not exceed \$10,000.

(m) Only a rehabilitation specialist may accept case assignments as a case manager and sign eligibility determinations and reemployment plans. A person who is not a rehabilitation specialist may perform rehabilitation casework if the work is performed under the direct supervision of a rehabilitation specialist employed in the same firm and location.

(n) After the employee has elected to participate in reemployment benefits, noncooperation by the employee shall result in the termination of reemployment benefits on the date of noncooperation. Noncooperation means but shall not be limited to, failure to

- (1) keep appointments;
- (2) maintain at least average grades;
- (3) attend designated programs;
- (4) maintain contact with the rehabilitation specialist;

(5) cooperate with the rehabilitation specialist in developing a reemployment plan and participating in activities relating to reemployment of a full-time basis;

(6) comply with the employee's responsibilities outlined in the reemployment plan; or

(7) participate in any planned reemployment activity as determined by the reemployment services administrator.

If the employer believes the employee has not cooperated, it may terminate reemployment services and wages under (1) of this section. However, upon the request of either party, the reemployment services administrator shall decide whether the employee cooperated. A hearing before the administrator shall be held within 30 days after it is requested. The administrator shall issue a decision within 14 days after the hearing. Within 10 days after the administrator files the decision, either party may seek review of the decision by requesting a hearing under AS 23.30.110. The standards and time periods allowed for review are the same as those in (d) of this section.

(o) In this section

(1) "employability" means possessing the ability but not necessarily the opportunity to engage in employment that is consistent with the employee's physical limitations resulting from the compensable injury.

(2) "labor market" means a geographical area that offers employment opportunities in the following priority:

- (A) area of residence;
- (B) area of last employment;
- (C) the state;
- (D) other states.

(3) "physical capacities" means objective and measurable physical traits such as ability to lift and carry, walk, stand or sit, push, pull, climb, balance, stoop, kneel, crouch, crawl, reach, handle, finger, feel, talk, hear, or see.

(4) "physical demands" means the physical requirements of the job such as strength, including positions such as standing, walking, sitting, and movement of objects such as lifting, carrying, pushing, pulling, climbing, balancing, stooping, kneeling, crouching, crawling, reaching, handling, fingering, feeling, talking, hearing, or seeing.

(5) "rehabilitation specialist" means a person who is a certified insurance rehabilitation specialist, a certified rehabilitation counselor or a person who has equivalent or better qualifications as determined under regulations adopted by the department.

(6) "remunerative employability" means having the skills that allows a worker to be compensated with wages or other earnings equivalent to at least 60 percent of the employee's gross hourly wages at the time of injury, if the employment is outside the state, the stated 60 percent shall be adjusted to account for the difference between the applicable state average weekly wage and the Alaska average weekly wage.

\*Section 18. AS 23.30.155(c) is amended to read:

(c) The carrier or independent adjuster [EMPLOYER] shall notify the board and the employee on a form prescribed by the board that the payment of compensation has begun or has been increased, decreased, suspended, terminated, resumed, or changed in type. An initial report shall be filed with the board and sent to the employee within 28 days

after the date of issuing the first payment of compensation. If at any time 21 days or more pass and no compensation payment is issued, a report notifying the board and the employee of the termination or suspension of compensation shall be filed with the board and sent to the employee within 28 days after the date the last compensation payment was issued. A report shall also be filed with the board and sent to the employee within 28 days after the date of issuing a payment increasing, decreasing, resuming, or changing the type of compensation paid. If the [EMPLOYER FAILS TO NOTIFY THE] board and the employee are not notified with the 28 days prescribed by this subsection for reporting, the carrier or independent adjuster [EMPLOYER] shall pay a civil penalty of \$100 for the first day plus \$10 for each day thereafter that [THE EMPLOYER FAILED TO GIVE] notice was not given. Total penalties under this subsection [SECTION] may not exceed \$1,000 for a failure to file a required report. Penalties assessed under this subsection are due and payable and eligible for reduction under (m) of this section.

\*Section 20. AS 23.30.155(m) is repealed and reenacted to read:

(1) On or before March 1 of each year the carrier or independent adjuster shall file a verified annual report on a form prescribed by the board stating the total amount of all compensation by type, medical and related benefits, vocational rehabilitation expenses, legal fees and penalties paid on all claims during the preceding calendar year.

(2) If the annual report is timely and complete when received by the board and provides accurate information about each category of payments, the commissioner or his designee shall review the timeliness of the carrier or independent adjuster's reports filed during the

preceding year as required by (c) of this section. If the carrier or independent adjuster timely filed at least 99% of the reports for the preceding year, the penalties assessed under (c) of this section shall be waived. If the carrier or independent adjuster timely filed at least 97%, of the reports for the preceding year, 75% of the penalties assessed under (c) of this section shall be waived. If the carrier or independent adjuster timely filed 95% of the reports for the preceding year, 50% of the penalties assessed under (c) of this section shall be waived. If the carrier or independent adjuster's reports for the preceding year were not timely filed at least 95% of the time, none of the penalties assessed under (c) of this section shall be waived. The penalties that are not waived shall be due and payable within 28 days after the Commissioner of Labor mails the notice of the penalties due.

(3) If the annual report is not filed by March 1 of each year, the carrier or independent adjuster shall pay a civil penalty of \$100 for the first day plus \$10 for each day thereafter.

(4) If the payment under (2) of this subsection is not paid timely, the carrier or independent adjuster shall pay a civil penalty of 20% of the penalties due plus interest at the rate prescribed by AS 45.45.010.

\*Section 21. AS 23.30.155 is amended by adding a new subsection to read:

(n) If the employer does not have a carrier or independent adjuster, (c) and (m) of this section apply to the employer.

NOTE: ALL SUBSEQUENT SECTIONS SHOULD BE RENUMBERED.

\*\*\*\*\*  
\* DELIVER TO: LIOCROG \*  
\* \* \* \* \*  
\* ORIGINAL \*  
\* SENT: 01/19/88 TIME: 15:54 \*  
\* FROM: LTCCSOL \*  
\* SUBJECT: AUDIO PROBLEMS \*  
\* PRINT DATE: 01/19/88 TIME: 15:54 \*  
\* \* \* \* \*  
\*\*\*\*\*

ROGER.

MY PARTICIPANTS STATE THEY CANNOT HEAR THE QUESTIONS ASKED. THEY SAY IT SEEMS LIKE THE PERSONS ASKING THE QUESTIONS ARE NOT CLOSE ENOUGH TO THEIR MIKES OR THE MIKES ARN'T WORKING. WHAT DO YOU THINK?

VESTA IN SOLDOTNA

*Rep. Donley, could you ask  
Members to use mikes for questions  
thanks -*

LOS ANGELES TIMES

# Classified Ads

LOS ANGELES TIMES

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SUNDAY, OCTOBER 12, 1980

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- ★ Harassed At Work? ★
- ★ Headaches? ★
- ★ Poor Sleep? ★
- ★ Stomach Aches? ★
- ★ Depressed? ★
- ★ Nervous/Irritable? ★
- ★ Back/Chest Pain? ★
- ★ Unfairly Fired? ★
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PSYCHOLOGICAL  
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TELECONFERENCE PARTICIPATION

SPONSOR JOINT (H'S) LABOR AND COMMERCIAL

DATE/TIME 1-19-88 TUESDAY

SUBJECT WORKER'S COMPENSATION

LIO'S

(moderator)

TESTIFY		OBSERVE	
ANCHORAGE ( DAVID )	1 Person	PETERSBERG *	( )
BARROW *	( )	SITKA	( )
BETHEL ( )		SOLDOTNA ( VESTA )	1 PERSON
DELTA JUNCTION *	( )	VALDEZ *	( )
DILLINGHAM *	( )	LTC'S	
FAIRBANKS ( FRAN )	3 PERSONS	HOMER	
GLENNALLEN *	( )	WRANGELL	
JUNEAU ( )		OFFNETS	
KETCHIKAN ( BESSIE )	1 Person	OFF1	
KODIAK ( )		OFF2	
KOTZEBUE ( )		OFF3	
MAT-SU ( )		OFF4	
NONE ( )		OFF5	
		OFF6	

VTS'S ON BACK

\* SESSION ONLY

VTS'S	W	U	O	TOTAL		W	U	O	TOTAL
AMB - AMBLER					MET - METLAKATLA				
ANA - ANAKTUVUK PASS					MOS - MOSQUITO LAKE				
AND - ANDERSON					NAK - NAKNEK				
ANG - ANGOON					NEN - NENANA				
CAN - CANTWELL					NEW - NEWHALEN				
CHS - CHISTOCHINA					NIK - NIKISKI				
CHI - CHITINA					NOR - NOORVIK				
COP - COPPER CENTER					NOT - NORTH TONSINA				
COR - CORDOVA					NOW - NORTHWAY				
CRA - CRAIG					PEL - PELICAN				
DOT - DOT LAKE					PTH - POINT HOPE				
EAG - EAGLE					SAV - SAVOONGA				
FTY - FT. YUKON					SDP - SAND POINT				
GAK - GAKONA					SEW - SEWARD				
GAL - GALENA					SLW - SELAWIK				
GAM - GAMBELL					SHS - SHISHMAREF				
HNS - HAINES					SLA - SLANA				
HEA - HEALY					SKG - SKAGWAY				
HOO - HOONAH					STP - ST. PAUL				
HPB - HOOPER BAY					TOG - TOGIAK				
HYD - HYDABURG					TOK - TOK				
KAK - KAKE					OOK - TOOKSOOK				
KAT - KAKTOVIK					UAK - UNALASKA				
KEN - KENNY LAKE					UNK - UNALAKLEET				
KLA - KLAWOCK					WAI - WAINWRIGHT				
MEN - MENTASTA					YAK - YAKUTAT				