

HB

313

LEC waived 5/3/91

HOUSE COMMITTEE REPORT

(7)

Date Referred: May 3, 1991

FURTHER REFERRALS:

Date of Committee Action: 5-12-91

The JUDICIARY Committee considered:

HB 313

HOUSE BILL NO. 313

NO WORKERS CGMP FOR RECREATIONAL ACTIVITY

"An Act excluding certain recreational activities sponsored by an employer from coverage provided under workers' compensation."

RECOMMENDATIONS:

be replaced with CS HB 313 (Jud)

the same title  
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note Labor

zero fiscal note(s) \_\_\_\_\_

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Terry Martin</i>	<input checked="" type="checkbox"/>				
<i>Kevin Paul Parnell</i>	<input checked="" type="checkbox"/>				
<i>Bob Gandy</i>	<input checked="" type="checkbox"/>				
<i>Dave Douley</i>	<input checked="" type="checkbox"/>	<i>J. J. Ellis</i>			<input checked="" type="checkbox"/>

*Dave Douley*  
CHAIRMAN'S SIGNATURE

**FISCAL NOTE**

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

**BILL NO :** HB 313

Revision Date: \_\_\_\_\_  
 Title: "An Act excluding certain recreational activities...from ... workers' compensation"  
 Sponsor: Navarre, C. Davis  
 Requestor: House Judiciary

Department Affected: Labor  
 BRU: Workers' Compensation  
 Component: Workers' Compensation  
 COMPONENT SERIAL NO. 344

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

**ANALYSIS:** (Attach a separate page if necessary)

Prepared by: Linda Rexwinkel *LR* Phone: 465-2790  
 Division: Workers' Compensation Date: 5/6/91

Approved by Commissioner: Nancy Bear Userd *NBU* Date: 5/6/91  
 Agency: Department of Labor

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

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THE SUPREME COURT OF THE STATE OF ALASKA

JUDI J. LESUER-JOHNSON,	)	Supreme Court No. S-3493
Appellant,	)	
v.	)	Trial Court No.
	)	JAN-88-9367 Civil
ROLLINS-BURDICK HUNTER	)	<u>O P I N I O N</u>
OF ALASKA and NATIONAL	)	
UNION FIRE INSURANCE CO.,	)	
Appellees.	)	[No. 3681 - April 12, 1991]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Ralph Stemp, Judge.

Appearances: Chancy Croft, Anchorage, for Appellant. Patricia L. Zobel, Deirdre D. Ford, Staley, DeLisio, Cook & Sherry, Anchorage, for Appellees.

Before: Matthews, Chief Justice, Rabinowitz, Burke, Compton, and Moore, Justices.

PER CURIAM

Appellant Judy LeSuer-Johnson (LeSuer) was injured on June 4, 1986, while playing softball at an Anchorage ballpark for the Rollins-Burdick Hunter (RBH) team against an "insurance league" opponent. The injury occurred after work hours, on a field rented by the insurance league. LeSuer, an employee of RBH, filed a claim for workers' compensation, alleging that the injury arose out of and in the course of her employment. An Alaska statute enacted

in 1982 defines "arising out of and in the course of employment" to include

employer-required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer-sanctioned activities at the employer-provided facilities; but excludes activities of a personal nature away from employer-provided facilities.

AS 23.30.265(2).

LeSuer's argument that her injury arose out of and in the course of her employment is based on her employer's connection to the softball team. RBH provided balls, bats, T-shirts and caps for the team members. It paid \$250 to the league's organizers who rented the ballfield and purchased bases. RBH encouraged its employees to either play on the team or attend the game as spectators. In her job interview LeSuer was asked if she played softball and if she would like to play on the company team. She stated that joining the team was voluntary, but she personally felt pressured to play by co-employees who wanted to be sure that RBH had enough players to field the team each week.

The Workers' Compensation Board found for LeSuer. The board concluded that participation on the softball team was both employer-sanctioned and that it occurred at an employer-provided facility:

We find RBH gave support and encouragement for their employees to participate on the team. By paying the league fee, providing part of the uniform, providing bats and balls and permitting employees to perform activities such as picking up the T-shirts and hats as part of their work duties RBH sanctioned the activity. . . .

Next we consider whether the injury occurred at an employer-provided facility. Defendants argued that the injury was not on Employer's premises. However, the legislature chose to use the term "facility" and not premises. We find this terminology distinction is important. Thus the injury does not have to occur on an employer's property to be compensable.

The term "provide" is defined in Webster at 1144 as "to make available, supply, afford; furnish with . . . ." We find that paying the league fee RBH made available to its employees a field on which to play softball. We conclude that the softball game was at an employer-provided facility.

RBH appealed the board's decision to the superior court. The court held that where, as here, a remote job site was not involved, a four-part test rather than the two-part test set out in the statute was appropriate. The court stated:

The criteria analyzed in Carson, 1A The Law of Workman's Compensation § 22.24(a)-(f), for determining whether an injury on a company team is compensable are the appropriate factors to weigh in deciding this case. They are primarily the time and place of the recreation, the degree of the employer initiative and encouragement, the financial support and equipment furnished, and the benefit to the employer.

The court remanded this case to the board for an analysis using these factors. On remand, the board found in favor of RBH with one member dissenting.

LeSuer then appealed to the superior court, which affirmed the board's decision on remand. LeSuer now appeals this decision.

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In our view, the first decision of the board was correct. That portion of AS 23.30.265(2) which pertains to employer-sanctioned activities at employer-provided facilities is not limited to remote job sites as the statute is written. If the legislature had intended such a limitation it could have easily been expressed. The board's conclusions that playing for the RBH softball team was employer-sanctioned and that the injury occurred at an employer-provided facility are supported by substantial evidence.

For the above reasons, the decision of the superior court is REVERSED and this case is REMANDED to reinstate the first decision of the board.

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