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# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

REPLY TO:

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March 9, 1992

Senator Virginia Collins  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Re: HB 313

Dear Senator Collins:

This letter responds to your request for comments on HB 313, familiarly known as the "softball bill". The bill is now before the Senate Labor and Commerce Committee. I understand the bill was intended to reverse a decision by the Alaska Supreme Court in LeSuer-Johnson v. Rollins Burdick Hunter of Alaska, Op. No. 3681 (April 12, 1991). A little background on that case may be helpful to understanding the legal and drafting issues raised below.

The present Alaska Workers' Compensation Act provides that injuries "arising out of and in the course of employment" will be covered by workers' compensation. Some of the injuries which arise out of and in the course of employment are listed at AS 23.30.265(2). Covered activities include "employer sanctioned activities at employer provided facilities." Activities performed at the direction of or under the control of the employer are covered, regardless of where they take place, because those activities are not tied to "employer-provided facilities". Only "employer-sanctioned activities" must also take place at an "employer-provided facility" for coverage.

Judy LeSuer injured her knee playing on a softball team in an "insurance league" made up of teams gathered from various brokerages and adjustors. The teams included members not employed by the insurance industry. They played on public city fields; in order to obtain scheduled times on the fields, the league paid a nominal "league fee" to the city. Judy LeSuer's employer paid part of the league fee, posted a sign up sheet and otherwise encouraged participation on the team.

The Supreme Court found that the softball team was an activity "sanctioned" by the employer and, by paying part of the league fee, the employer "provided" the facility at which the

activity took place. This decision was widely criticized as tending to inhibit employer or business support of various recreational and charitable activities, such as softball or bowling leagues and charity balls or auctions.

This bill seeks to exclude certain recreational activities from coverage by the Workers' Compensation Act. However, the bill would not necessarily exclude the very activity Judy LeSuer performed when injured. Judy LeSuer's team was "sanctioned" by her employer, that is, permitted or approved. Permission to form a team or even approval of the activity, as a level of employer involvement, will not always rise to the level of sponsorship<sup>1/</sup>. As presently worded, the HB 313 leaves intact language including "employer-sanctioned activities at employer-provided facilities" and excludes only "recreational activities sponsored by the employer". By excluding only employer sponsored recreational activities, the bill creates a potential whereby the employer who financially supports a team is excused from liability while the employer who merely permits his employees to form a team is subject to liability should a team member be injured in practice. If the intent is to reverse LeSuer-Johnson, it is advisable to use language parallel to that interpreted by the court.

The use of the phrase "nonremote facility not owned or leased by the employer" presents another problem of interpretation. A combination of negatives, as this exclusion from an exclusion, often creates confusion. For example, does "nonremote facility" mean "not at a remote job site" or "recreational facility readily accessible to the employment site" or "recreational facility accessible to the general public in large cities"? Is "nonremote facility" to be defined in relationship to Alaska as a whole or to the employer's usual place of business? Are "facilities" defined differently in terms of remoteness than job sites?

The concept of "remote job sites" is well understood in Alaska law and practice. Remote job sites are, in mathematical terms, a subset of all Alaska job sites. On the other hand, "non remote facilities" implicitly establishes two subsets of facilities: nonremote and remote, leaving the rest of Alaska in an uncertain relationship to the two subsets. Because there is no

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<sup>1/</sup> Perhaps the drafters felt that "providing" a facility was sufficient to establish employer sponsorship of a team; however, given the attenuated connection between the employer and the city fields on which Judy LeSuer was injured, it may well be that an employer could "provide" a facility without actually sponsoring the activity which takes place. Employee participation in charity games and similar recreational activities sponsored by nonprofit organizations is an example.

standard against which the remoteness of a recreational facility can be measured, it is impossible to tell whether many activities are covered. If an Anchorage employer sponsors a fly-in fishing trip to Lake Iliamna, is he liable for compensation? Since the exclusion is only for "non-remote facilities" it may be that he is liable for workers' compensation - but the same employer paid fishing trip on the Susitna River is not. Would a King Salmon employer's fishing trip to Lake Iliamna be covered?

"Owned or leased by the employer" presents similar interpretive problems. I assume the intent was that employer sponsored activity on real property controlled by the employer should be covered. However, does this extend to the private homes of employers, their officers, or agents? In the case of public employers, of course, recreational activity of many kinds take place on property "owned" by the employer. An example is, of course, the Miners' and Trappers' Ball held in the municipally owned warehouse. Is the bill intended to cover city employees engaged in city-sponsored recreational activity at city gyms and recreation centers? And, returning to the fishing example, is an employer's charter of a vessel a "lease" sufficient to give rise to liability? What about a picnic site in a public park?

I do not know what recreational activities the House intended to cover and which they did not. The present statute specifically covers all activities (recreational or otherwise) "under the direction or control" of the employer. It is not clear if the drafter of HB 313 intended to include or exclude recreational activities actually done under the direction or control of the employer, regardless of where such activities occur. The present bill excludes all recreational activities at nonremote facilities unless such participation is a condition of employment. The double exclusion method of drafting creates a conflict in any case involving recreational activity performed at the direction of the employer, as it needs to be determined whether the employer's direction created a "condition of employment".

This method of drafting also creates the implication that all employer-sponsored recreational activity at remote facilities (not job sites) or facilities owned or leased by the employer (whether remote or otherwise) will be covered by the employer's workers' compensation coverage. Thus, by implication, an employer who sponsors an employee on the Iditarod Race, for example, extends workers' compensation coverage for the entire journey to Nome.

I feel the intent of this legislation is perhaps unartfully expressed. Assuming the drafter wanted to exclude from coverage recreational activities unless the activity occurs (1) anywhere if under the direction or control of the employer (as would be the case now), (2) at remote job sites if merely sanctioned by the employer, or (3) on the employment premises if

merely sanctioned by the employer (an office party at the office, for example), I feel there is a better means of expressing this concept. I suggest that a single sentence be substituted for the exclusionary phrase added by HB 313:

"Employer-sanctioned activities" do not include recreational activities unless (1) the activity occurs at a remote job site or (2) the activity occurs on the employment premises.

This narrowed exclusion is aimed ONLY at refining "employer sanctioned activities"; any activity undertaken at the employer's direction remains covered. Thus recreational activities engaged in at the employer's direction (e.g., a welcome party at a sales convention) are covered -- regardless of where they occur. It is the voluntary, undirected, recreational activity that is excluded UNLESS it occurs (1) at a remote job site (a long established rule in Alaska) or (2) on the employment premises. This covers office parties which occur on the employment premises, but excludes city workers' voluntary basketball games after work hours at the local city gym.

The Legislature may choose, as a policy, to include in coverage other forms of employer sanctioned recreational activity. In regard to employer sanctioned (but not directed) trips to remote recreational locations, such as fishing lodges, I would point out that it is a well-established in law ("going and coming rule") that workers' compensation does not cover the employee's journey to work UNLESS it is employer required or supplied travel to a remote job site. It would be inconsistent with this rule if voluntary, employee supplied travel for recreational purposes was covered by workers' compensation but the mandatory employee travel to work was not. If the legislature intends that travel to remote recreational facilities, and the activities performed thereat, should be covered by workers' compensation, I would suggest adding to the above a subsection (3) "the activity takes place at a remote site provided by the employer for the employee's recreation if travel thereto is supplied by the employer." This would cover trips to fishing lodges provided by employers as "incentive awards". This additional third clause is perhaps unnecessary; in the event of receiving a fully employer-paid trip to Hawaii there is inherent "direction" by the employer to go on the trip.

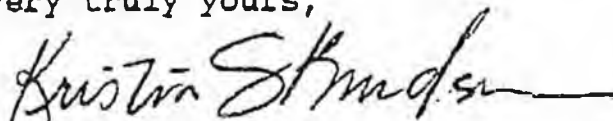
If travel to a remote site is NOT supplied by the employer, the facility is not practically "provided" by the employer for employment related purposes; instead it is really personal activity at an employer's facility. The situation would be analogous to a worker's after hours visit to the office to type a personal letter. The coverage of "personal activities" at employer-provided facilities is the realm of much and varied case

law, based on weighing a number of factors balancing the employment connection and the personal nature of the activity.

AS 23.30.265(2) itself was enacted in response to a series of workers' compensation decisions by the Supreme Court extending coverage to, e.g., a pipeline camp employee traveling by motorcycle to cash his payroll check at a bank in town, M-K Rivers v. Schleifman, 599 P.2d 132 (1979), or injured while returning to a remote job site from a village tavern, Anderson v. Employers Liability Assurance Corp., 498 P.2d 288 (1972). The current statute does not attempt to define every inclusion and exclusion, for what activity arises out of and in the course of employment is the subject of many volumes of jurisprudence. An excluded "frolic and diversion" is, after all, a recreational activity. It may be inferred that the Legislature wished to leave the Board sufficient room to exercise its discretion as the facts of each case demand.

In suggesting the above language, I have tried to more clearly express the intent of the drafters of HB 313 without in any way varying that intent. It is not my desire to intrude on considerations of public policy. Nothing in my comments should be taken as a statement of position by this administration or the Department of Law.

Very truly yours,



Kristin S. Knudsen  
Assistant Attorney General

KK:reb

cc: Deborah E. Behr, Assistant Attorney General  
Brad Thompson, Deputy Director



alaska women's run

3605 Arctic #AA, Anchorage, Alaska 99503 ■ (907) 562-2161 ext. AA

March 13, 1992

Senator Drue Pearce  
Chair, Senate Labor and Commerce Committee  
Alaska State Senate  
Juneau, Alaska

Dear Senator Pearce:

I urge your support of HB313, a bill relating to workers' compensation as applied to recreational activities. In my opinion the present state of the common law in Alaska, in light of the recent Alaska Supreme Court decision, serves as an impediment in the contractual bargaining process between special events/recreational activities and potential sponsors of these events/activities. Psychologically, potential sponsors view this court decision as adding a significant cost to their sponsorships, due to increased perceived risk. The statutory effect of HB313 will be to remove this obstacle, and ensure free and open negotiation between events/activities such as the Alaska Women's Run and commercial sponsors, based upon the true sponsorship costs and benefits of these events/activities.

I appreciate the job you are doing in Juneau, and look forward to your attention to the passage of HB313.

Sincerely yours,

Larry L. Ross  
President and  
Racc Director

SENATE CONCURRENT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Introduced:

Referred:

A RESOLUTION

1 Suspending Uniform Rules 42(e), 41(b), 24(c), and 35 of the Alaska State Legislature  
2 concerning House Bill No. 313, relating to excluding certain recreational activities from  
3 coverage provided under workers' compensation.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 That under Rule 54 of the Uniform Rules of the Alaska State Legislature, the provisions of Rule  
6 42(e), Rule 41(b), Rule 24(c), and Rule 35 of the Uniform Rules, regarding changes to the title of a bill,  
7 are suspended in consideration of House Bill No. 313, relating to excluding certain recreational activities  
8 from coverage provided under workers' compensation.

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR COLLINS

TO: CSHB 313 (2d JUDICIARY)

Page 1, line 1, after "excluding":

Insert "certain"

Page 1, lines 1 - 2:

Delete "that are performed at nonremote facilities not owned or leased by the employer"

Page 1, lines 9 - 11:

Delete "recreational activities sponsored by the employer that are performed at nonremote facilities not owned or leased by the employer, unless participation is required as a condition of employment, and"

Page 1, line 12, after "facilities;":

Insert "employer-sanctioned activities" do not include recreational activities unless

(1) the activity occurs at a remote job site; or

(2) the activity occurs on the employment premises;"

FISCAL NOTE

No. 2  
 Bill Version: CSHB 313(2d JUL)  
 (H) Publish Date: 2/12/92

STATE OF ALASKA  
 1992 LEGISLATIVE SESSION

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

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Linda Rexwinkel, Director *LR* Phone: 465-2790  
 Division: Workers' Compensation Date: 1/29/92  
 Approved by Commissioner: John Abshire, Acting Commissioner  
 Agency: Department of Labor Date: 1/29/92

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

# AMATEUR SOFTBALL

# ASSOCIATION



PATRICIA A. LILLIAN  
Alaska State Commissioner  
2950 Drake Drive  
Anchorage, Alaska 99508  
(907) 272-7683

March 12, 1992

Senator Drus Pearce  
Chairman, Senate Labor & Commerce Commission

Dear Senator Pearce:

HB 313 is scheduled to come before your committee early next week. I am writing to you to urge your support and positive action on this bill.

The local sports organizations in the state, particularly Anchorage and Fairbanks, have experienced significant concern by sponsors regarding the court decision on workers compensation for sports' injuries. Fairbanks had a major tournament sponsor drop the program as well as sponsorship of several teams. Anchorage Sports has received approximately 12 calls from sponsors voicing their concern and reluctance to sponsor summer softball teams. The Sheraton Hotel and USKH Architects and Engineering are two specifically who feel they cannot sponsor without direct reassurance regarding workers compensation responsibility.

There may be many others who simply have not made contact, but just are not sponsoring because of the workers compensation issue.

Softball may be the first of many recreation activities to feel the effects of the court decision. Sponsors are the life line of recreational programs. There is a need to reassure these folks in order to keep them involved in these programs and I would urge you to support HB 313 and recommend its passage.

If I can provide any additional information, please contact me by telephone at 271-3496 (Work) or 271-5020 (FAX).

Sincerely,



Pat Lillian  
ASA Commissioner  
Alaska

ALASKA STATE LEGISLATURE  
REPRESENTATIVE MIKE NAVARRE

Co-Chair  
House Finance Committee  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3779

March 13, 1992

To: Senator Drue Pearce, Chair  
Senate Labor and Commerce Committee

From: Representative Mike Navarre 

Subject: House Bill 313, "the softball bill"

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This measure was introduced to address a problem in Alaska's Worker's Compensation laws, demonstrated in the case of Lesuer v. Rollins-Burdick-Hunter of Alaska. A copy of the State Supreme Court Decision is attached. Attached also are some newspaper articles from last year outlining the potential impact of the Supreme Court decision.

HB 313 bill clarifies that recreational activities sponsored by an employer that are conducted at non-remote facilities are not covered by worker's compensation insurance, unless participation in those activities are required as a condition of employment.

As you are aware, the substance of HB 313 was included in SB 219, which passed the Legislature last session. SB 219 was vetoed by Governor Hickel for reasons unrelated to this particular statute change.

I respectfully urge your support of HB 313.

DISTRICT 5

34824 K-Beach Road • Soldotna, Alaska 99669 • (907) 262-7842



PRINTED ON RECYCLED PAPER

CS FOR HOUSE BILL NO. 313 (2d JUDICIARY) (efd add)  
 IN THE LEGISLATURE OF THE STATE OF ALASKA  
 SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 2/12/92

Offered: 2/12/92

Referred: Today's calendar

Sponsor(s): REPRESENTATIVES NAVARRE, C.Davis, R.Phillips, Sharp, Zawacki, Moyer, M.W.Miller, Donley,  
 Baker, Leman, Bruckman

A BILL

FOR AN ACT ENTITLED

1 "An Act excluding recreational activities sponsored by an employer that are performed at  
 2 nonremote facilities not owned or leased by the employer from coverage provided under  
 3 workers' compensation, unless participation is required as a condition of employment; and  
 4 providing for an effective date."

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 \* Section 1. AS 23.30.265(2) is amended to read:

7 (2) "arising out of and in the course of employment" includes employer-required  
 8 or supplied travel to and from a remote job site; activities performed at the direction or under the  
 9 control of the employer; and employer-sanctioned activities at employer-provided facilities; but  
 10 excludes recreational activities sponsored by the employer that are performed at nonremote  
 11 facilities not owned or leased by the employer, unless participation is required as a  
 12 condition of employment, and activities of a personal nature away from employer-provided  
 13 facilities;

14 \* Sec. 2. This Act takes effect April 1, 1992.

Notice This is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska, 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

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

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, Coch. & 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 Larson, 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.

3531

# SPORTS

SUNDAY

SECTION D April 28, 1991

## Ruling rattles Alaska softball

### Supreme Court rules some injured players eligible for workman's comp

By BETH BRAGG

Daily News assistant sports editor

The Alaska Supreme Court threw a curve at softball when it ruled this month that players are entitled to workman's compensation if they are injured while playing for a team sponsored by their employer.

The ruling could mean increased insurance rates for a majority of the companies that sponsor Alaska's nearly 1,000 softball teams, which in turn could mean fewer sponsors.

"This could be kind of scar-

said state softball commissioner Pat Lillian. "Sponsors are the life-line of the whole amateur sports organization."

Of the estimated 15,000 people who play softball in Alaska, only those who are employed by the same company that sponsors their team would be eligible for workman's comp. Lillian estimated that at least 50 percent of the teams in Alaska feature at least one player who is employed by the sponsor.

"Nobody has a crystal ball, but I think it has a substantial potential to discourage team sponsors,"

said Ben Esch, who is the attorney for the Anchorage Sports Association, the organizing body for more than 400 Anchorage softball teams. "(And) if the sponsors back out, if there's no sponsor's fee, you can only increase players' fees."

The Alaska Supreme Court ruled earlier this month in favor of Judi LeSuer-Johnson, who was injured in a 1986 softball game in Anchorage while playing for Rollins-Burdick Hunter, her employer and the sponsor of an Insurance League softball team.

LeSuer-Johnson filed a claim for

workman's comp, and the Workers' Compensation Board ruled in her favor. After appeals, the state Supreme Court upheld the original ruling, which was based on a 1982 statute that says work-related injuries include those occurring at "employer-sanctioned activities at the employer-provided facilities."

Although Anchorage Sports Association teams play on municipal fields, they are maintained by the association, which collects entry fees to help pay for their maintenance. "My belief is that simply paying a league fee would be ade-

quate (evidence that an employer is providing facilities)," Esch said.

Chancy Croft, the attorney who represented LeSuer-Johnson, said Saturday that by paying a team entry fee, Rollins-Burdick Hunter helped make a softball field available to its team. Without entry fees, "they wouldn't have had a regular field at the time they had it," he said. "They wouldn't have been able to play the schedule."

Though the ruling was the result of an accident in the loosely orga-

Please see Page D-4, SOFTBALL.

## SOFTBALL: Supreme Court ruling could scare off team sponsors

Continued from Page D-1

nized Insurance League, the Supreme Court's ruling is expected to affect almost all recreational sports leagues.

Lillian, Esch and others hope to amend the law before the effect is widespread.

"There's less than a month left in the (legislative) session, so it's not possible at this date to introduce a new bill," Esch said. "So the question would be, is there an existing vehicle that could be amended? The next question is, what is the likelihood of it passing?"

Esch thinks the answer to both questions is yes. He said there is a bill pending in the Senate Labor and Commerce committee that could be amended to prevent sponsors of recreational sports teams from being

held liable for workman's comp claims. Esch thinks getting an amendment introduced and passed this session "is within the realm of possibility."

If it isn't, sponsors who might be affected by the supreme court decision have a handful of options. One is to not let any of their employees play on their team. Another is to pay higher insurance rates, although companies whose insurance is paid through this summer shouldn't have to worry about rates increasing for the current softball season, which begins next weekend. With any luck, said Esch, the issue will have been resolved by next summer.

Another option is to pull out of the league, although Anchorage Sports Association director Rod Hill said



chances are slim those who do will get their entry fee refunded. "We tell people all the time if somebody wants to take your (team's) place, we'll gladly refund your money," he said. "Otherwise it's out of the question. We'd be tearing schedules apart all season."

Just how many sponsors will back out of their commitment to sponsor teams is critical to the future of recreational sports in Alaska.

"It wouldn't change my attitude about having a team," said Rick Nerland of Nerland/Mystrom Associates, which sponsors a coed team that includes several of

his employees. "I would probably have to check and see what the stipulations of our workman's comp policy would be. (But) the bottom line is, I believe it's a worthwhile enough activity that we will ... resolve the issue and play ball."

Dr. Jay Caldwell, who sponsors a coed team that involves several of his employees at the Alaska Sports Medicine Clinic, said much the same thing.

"It wouldn't stop me from sponsoring a team, but I can see that more prudent employers than I would," he said.

Jerry Grilly, publisher of the Anchorage Daily News, counts himself as one of the prudent ones. The News sponsors a team that is almost entirely made up of employees of the newspaper.

"My reaction is I'm probably going to talk to my lawyer and (the personnel office) and reconsider," Grilly said. "We're just trying to do something recreationally for our employees, and all of a sudden it gets complicated and complex."

"It's not like (playing softball) is a job. It's recreational. They're doing it in their own time. It's real unfortunate. You're just trying to be a good employer and support employees. We're really reaping nothing in this endeavor."

Croft disagrees. "I think a lot of times companies sponsor teams because they get a lot of benefit from it — increased morale, advertising, increased efficiency, more stability in the work force," he said.

# SPORTS

WEDNESDAY

SECTION C May 1, 1991

## Softball ruling reaches Senate

By BETH BRAGG

Daily News assistant sports editor

A recreational athlete's right to claim workman's compensation benefits is expected to be officially discussed in a Senate committee meeting today, but Juneau is already abuzz about the issue.

"The story broke on the same day as the legislative softball tournament, and seven people were taken to the hospital with injuries," said lobbyist Jack Heesch. "It became a joke. Everyone

was walking around wanting to know if they'd get workman's comp.

"Everybody's real aware of what's going on."

The state Supreme Court recently ruled that athletes who are injured while playing for a team sponsored by their employer are eligible for workman's compensation benefits.

Reaction has been mixed, although as of Tuesday, teams wanting into the Anchorage Sports Association's softball league have outnumbered those wanting out.

"Since this happened we've lost one team, and since then five teams have called and said they want into the association, so we're 5-to-1," said Rod Hill, director of the association, which governs more than 400 local softball teams.

Katy Castillo, the head of the Fairbanks softball association, said two sponsors have pulled out of that city's 130-team league.

As of Tuesday afternoon, the Westmark Hotel was the

only Anchorage business to drop out of the softball league because of concerns over workman's comp, but there may be more defections to come.

Mike Buza, the head of Spenard Builders Supply, said he will no longer sponsor adult teams as long as the threat of workman's comp claims exist.

"I have sent out a memo. We will not be sponsoring any teams," said Buza, who said Spenard Builders Supply sponsors about six adult

teams, including ones in softball, hockey, basketball and bowling.

"It was pretty much a no-brainer for us. We just can't afford to take the risk."

But if supporters of softball and other recreational sports have their way, there won't be a risk for much longer.

An omnibus bill on workman's compensation is among those expected to be discussed today by the Senate committee on Labor and

Commerce. And when it is, "there's no doubt (softball) will be brought up in that conversation," a committee aide said Tuesday.

Heesch, a lobbyist for the State Softball Association, plans to meet with committee chairwoman Sen. Drue Pearce before today's meeting. Heesch is hopeful that legislation will be introduced to make the recent Supreme Court ruling moot.

The Supreme Court ruled

Page 666 Page C-2, RULING

### **RULING: Reaction mixed; several sponsors pull out**

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April 12 that Judi J. LeSuer-Johnson was eligible to receive workman's comp benefits for an injury she suffered in a 1986 softball game. LeSuer-Johnson was playing on a team sponsored by her employer, Rollins-Burdick Hunter.

The decision was based on a 1982 statute that defines work-related injuries to include "... employer-sanctioned activities at the employer's provided facilities..."

Heesch's proposed amendment would add these words: "... but excludes recreation activity sponsored by the employer, unless participation is required as a condition of employment."

Heesch claims that softball has many friends in Juneau, although those numbers may have dropped since Sunday, the final day of the 12-team legislative softball tournament. Besides the seven who were hospitalized, a total of 20 players were injured — including Rep. Mike Miller of North Pole, who broke his ankle.

"The thing we've got going here is everybody's aware of it," Heesch said. "So many people here are personally involved. Everyone wants to fix it."

At risk, potentially, is the structure of the state's recreational sports leagues. Pat Lallian, the state commissioner of softball, calls sponsors "the lifeline of amateur sports."

At risk for sponsors is the threat of higher insurance rates.

Though no one's insurance is likely to go up this year — insurance salesman Kirk Ledbetter said most premi-

**The thing we've got going here is everybody's aware of it. So many people here are personally involved. Everyone wants to fix it.**



— SSA lobbyist Jack Heesch

ums are purchased for an entire year, and do not come up for renewal in the summer — they could next year. Rates are based partly on something called an experience modification, which is dependant on the number and types of claims made. If the experience modification goes up, so do the rates.

"If you had one big claim it could have a definite effect, or if you have a multiple amount of small claims," Ledbetter said.

Ledbetter said workman's comp benefits have been paid in the past to employees injured while participating on teams sponsored by the employers. Usually, though, people make medical claims through their primary provider of health insurance benefits.

Ledbetter thinks the significance of the Supreme Court ruling is that the regular provider of health insurance might refuse to pay claims for injuries that meet workman's comp criteria.