

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

1090 SCOMM 33: WORKERS COMPENSATION, 1979-1982 / 1090

TAPE 4, SIDE cont'd.

Brian Rogers

This is Brian Rogers. Just a word of explanation. Mr. Fineberg did have a contract with the House Labor and Finance Committee during the 1979 interim. The cost was over \$2,000 dollars for the report to the committee. It reported that everyone filed a rather quick report. I asked him to come today to go over the recommendations of the report and to point out, in particular, the recommendations which have not seen any action in the 1980 legislature. Richard?

Fineberg

Thank you very much. Do you read me on volume? You do? I shall proceed then. I will take off the button one more. I'm not sure I hear you there. Do you read me on the volume?

Rogers

Yes, we do read you very well. Thank you.

Fineberg

Ok. Thank you would like to hit some of the points that I raised in my project for the House Labor and Management Committee, which I was required to complete in January and which Representative Rogers mentioned. I should say that since I did the report and testified, I have not tracked worker's compensation in the same detail. T'PE BREAK the individuals are safely in the way of problems. I think that ought to be a primary requirement of the task force. You ought to begin there and that ought to be a starting point simply because there have been a large number and nobody is quite sure as to that number of long-term disability OFF TAPE task force of the pipeline feel a need of help that they are not receiving from the system at this point. It is my belief that, that number may be sizeable, 5,100 or more. I don't know. We don't have the data. I think we ought to know how the system is treating the individuals in it at

TAPE 4, SIDE 2 cont'd.

Fineberg cont'd.

this point, rather than saying, well, you win some, you lose some. We'll take it from here and do the best we can.

While I'm not on that one, I should mention that Mr. Johnson made that recommendation in the process of trying to figure out whether or not a state investigating arm of the board would be of service. He said he couldn't figure out how it would help. Since you're going to get six or seven conflicting medical opinion, how would your investigating arm help? I would like to point out that the nature of alot of the compensation problems in conflicting medical opinions. The board is compelled to play Solomon and make a decision, in some cases. That's the one thing I think you ought to look into procedurally. That is one of the recommendations I suggested looking into in the report.

Very quickly, I'll name some of the problems in the report and for which I suggest a need of attention. One thing you might look into, the legislature has not covered them at all to this point. One is AS 23.32.250 in the worker's compensation statute has a provision that makes it a misdemeanor for a claimant to commit a fraud. In view of the wide-spread assertion that there are claimants who are fraudulent, I suggest, that the task force might want to look into the non-enforcement of this provision. I submit that, at times, the claim of compensation fraud is a valid one. Very often it is generalized and aggregated. The complaint comes up all the time as a source of high compensation costs and problems or they're faking it, always with no substance data except for particular individual cases. How wide-spread is it? The law that would penalize it has not, to my knowledge, been enforced at all.

The next recommendation refers to AS 23.30.155 (c). You'll find it on page 50. It is a violation of the compensation

TAPE 4, SIDE 2 cont'd.

Fineberg cont'd.

practices if I tell you not to notify the board when the carrier stops the payment. The carrier does notify the board, as far as I can tell, when the case is actually controverted but I understand that something, like twice the number of controversion are OFF TAPE not controverted. The payment is stopped. The board is not formally notified. I think, it's a provision that ought to be enforced if nonenforcement is a situation to which I would direct your attention.

On page 51, I referred to the applicability of AS 23.30.030 (7) which indicates that the Division of Insurance shall take action if the carrier fails to meet its requirements. At the present the Division of Insurance does not do so. The Insurance Statute 21.36, also has fair trades practices that might be applicable in this regard. The Division has not, to date, enforced that statute with regard to worker's compensation. There's a need for, as you're quite well OFF TAPE can find a clue that is not structured to operate efficiently to accomplish the ends set forth in worker's compensation. Specifically, the interface between the Division of Insurance and the Worker's Compensation Division is very sadly lacking. It's much better than it was eighteen months ago but it's still sadly behind what it ought to be to provide efficient delivery of the services that the compensation law sets out to provide; for example, I'd like to give you one specific one from my research.

The Division of Worker's Compensation found that for 1978, of 3,889 cases surveyed, for which first payment was required by statute, fourteen days of notification to the carrier, only 1,093, something like 26 or 27% were actually paid within the fourteen days. This fact was retrieved by the Division in an in-house report in September of 1979. When I asked the Division of Insurance if this, was a violation

TAPE 4, SIDE 2 cont'd.

Fineberg cont'd.

of the law, was not the Division of Insurance's responsibility with regard to AS 23.30.030 (7) and possibly the fair trade practices under 21.36, the response from the Division (point man) the Division of Insurance, was one of surprise. This was in December of 1979. The first question was whether or not it was a fact. I said it was. It came from a Division of Worker's Compensation Report. He was completely unaware of it and it just caught him completely by surprise. I believe all of you, especially Chancy Croft and Dwayne Carlson, are quite well aware and not at all surprised that only 26 to 27% of the payments were (of the first payment) made within the required fourteen days. I am surprised that the Division of Insurance's (man) responsible for worker's compensation did not know this was the case. That's one of the examples of the lack of interface. Again, there's some progress here, I sense but there's a need for attention and improvement. I think, you're the logical group to look into this. I'd like to suggest with regard to three sets of institutions.

I would like to conclude with a general observation of three of the parties to worker's compensation. First of all, to the lawyers, with respect to my friend, Chancy and Gil Johnson and other fine attorneys within worker's compensation. I would have to caution the task force against making the mistake that because the lawyers speak for the claimant, the claimant is all right. I would like to point out that the claimant has the injury and the lawyer has his job. The more litigation, the more money the lawyer is going to make. I do not mean to impute bad faith to any lawyer, certainly not to Gil or Chancy, but there is an institutional framework there that indicates that you, as a task force, should not conclude that the lawyer's interests are identical to the claimant's.

TAPE 4, SIDE 2 cont'd.

Fineberg cont'd.

The research I have done indicates that the claimants often have a terrible time with the lawyer and they just don't know what to do because the lawyer's the only person who can cut through the law for them. With regard to Dwayne Carlson and the union, I should say that Dwayne was the first person, I'm aware of, to call for computerization of the compensation system. He was way ahead of the State and ahead of the industry in recommending it. I think that the claimants are quite lucky to have Dwayne Carlson as a union representative in Juneau. Again, however, I have to indicate the same caution with regard to presuming that because the unions are there the claimant will be well represented.

It is a fact, I believe, and you may correct me if I am wrong on this, that the Laborers International has one safety person. He is a part-time person nationally. It is hard to look at that fact and presume that the unions definitely cover the problem of worker safety. With regard to the Insurance Industry, I have been told again and again by compensation adjustors, by carriers, that they genuinely represent the worker's interest. I believe, the workers sincerely believe that to be the case. I think, very often they do not. I will not take you through the case studies, which I reported, both in the report for the legislature and in articles I've done to document the case. Again, nobody seems to speak well for the claimant and I think, that's a serious problem because very often the claimant can't speak well for himself or herself. Very often the pain, the drugs, the bureaucratic hassling leads the claimant to overstate the case; so that, no one can tell what the validity is of the claimant's plan. You've got an institutional problem there.

I will conclude my remarks with those observations. If anyone has any questions, from the report or from the comment

page 92

TAPE 4, SIDE 2 cont'd.

Fineberg cont'd.

I've made, I'd be delighted to answer, inso far as I am able. Thank you.

Stimson

Thank you, Richard. We do have some questions. Dave Rasley.

Rasley

Mr. Fineberg, I would like to ask you, if the statute is written for the claimant's attorney at 25 and 10, how prolonging the case could make more money for him?

END TAPE 4, SIDE 2

TAPE 5, SIDE 1

Fineberg

How prolong the case could make OFF TAPE system, that's a nationwide over-view. At this point in time, if you could get the lawyers out, the lawyers would not make any money. I do not assert that, that ought to be done. I am not saying that lawyers are bad for the claimants. Good Lord, I sent some claimants to Chancy and I've just been grateful that he is there, that he's the kind of lawyer he is and that he has the concerns he has. The claimants are quite lucky he is there. However, the claimant would be far better off, if he or she didn't need a lawyer. Chancy wouldn't be. That was my point.

Rasley

Thank you.

Stimson

Yes, Thank you, Richard. Other questions?

TAPE 5, SIDE 1 cont'd.

Stimson

Richard, there's been a question raised about what your background is. Could you share that with us?

Fineberg

Ok. I am a newspaper reporter. I free-lance. At the present, I edit my own monthly newsletter in Fairbanks. I came into workers' compensation as an investigative reporter in late 1978. I was aware of compensation of the increase in the compensation workload through the pipeline. I did alot of reporting free-lance for the Fairbanks Daily News Miner, the All-Alaska Weekly and the Daily News, in Anchorage during the oil pipeline.

In the post-pipeline period, I became aware of several comp. cases. My approach, as a reporter, is to do in-depth investigative research. I spent, oh, many months, I can't recall exactly the time-lack between the time I began on compensation intensively and the time I did my first articles, but I did a set of articles for the Alaskan Advocate in January of 1979.

Then, with some assistance from the Fund for Investigative Journalism, I went to Juneau and did further research for a series for the Anchorage Daily News in April and May of 1979. I also went to California and picked up some legal and court records that were pertinent to the series. I think for much of the period between October of 1978 and February of 1980, I spent, somewhere between a third and half-time on worker's compensation. I believe that would be the background you seek.

Rogers

Are there any other questions from the members of the committee? Thank you Mr. Fineberg. Is there anyone else, either in Juneau or in Fairbanks, wishing to testify at the time?

TAPE 5, SIDE 1 cont'd.

Koch

This is Don Koch in Juneau. No comments at this time.

Rogers

Mr. Carlson?

Carlson

I think in about February or whatever it was, you testified before a subcommittee chaired by Representative Rogers. You testified, at that time, that the Division of Insurance was not fleecing those carriers who just stopped payment. That's what Richard mentioned, I think?

Koch

This is Don Koch. No, there hasn't. We haven't lost sight of it completely. It's just a matter of getting some other systems on line before we'll have a means to check that. But to answer your question, no we haven't.

Carlson

Well, I'm curious. If it is as large a problem as it appears to be? Pardon me, excuse me, gladly ignore that section of the law. OFF TAPE an important feature but currently we should just open the mechanisms to enforce it. I guess it's a matter of their or somebody brush fires it, we're stamping out. We just haven't gotten to that particular one suggesting is if you ran a man down, there has to be a way to get the law enforced.

Koch

If I may add one point. This is Don Koch again. The enforcement of that type of feature does involve OFF TAPE the field and actually do the investigative work necessary. We've just not had the manpower or the funds to do that. Hopefully, that will improve. We've been trying to do a lot of things with what staff we have but that's certainly a piece of it.

page 95

TAPE 5, SIDE 1 cont'd.

Carlson

I have no further comments but I'd like to point out again OFF TAPE these problems. There's a multitude of problems and that's only part of the problem. The burden on the injured will prove, with a big cost to the employer that these OFF TAPE.

Stimson

Mr. Fineberg, are you there?

Fineberg

Yes, I am here.

Stimson

I'm reminded in reviewing your study of OFF TAPE comments that you made OFF TAPE from the legislature and I can't OFF TAPE comment on that?

Fineberg

In Juneau, he can correct me if I am wrong, I OFF TAPE insurance has made request for OFF TAPE to try to bring the legislature around to give it insight with regard to worker's compensation. I may have misinterpreted there and I may be several months out of date but I am not aware of the Division of Insurance making the kind of request for manpower to solve the problem that Don Koch just identified.

Stimson

Thank you. Don, would you respond to the same question?

Koch

Yes sir. This Don Koch. I'm the person incidentally, that Mr. Fineberg was referring to when he indicated that a problem existed. I was very much surprised. I found out this in December; in fact, after Christmas, December 1979. At that point, of course, it was late to change budgets. In

TAPE 5, SIDE / cont'd.

Koch cont'd.

the meantime, we have talked in the Division and we are looking to the possibility, hopeful, impossibility of getting some additional staff. Frankly, we are trying to get a shared attorney for our division, and the Division of Occupational Licensing. If we are to proceed on any of these things, particularly under the Unfair Trade Practices Act, we're going to need a bit more expertise than we presently have in prosecution and in holding effective hearings. We are looking to that and a shared attorney is a beginning. That person would be expected to perform hearing, officer type duties and other sorts of things along that line.

Rogers

Have you requested from the Department of Law that they give you some assistance in that area, in the meantime, while you are waiting for your next budget request?

Koch

No sir, we have not. Let me add one thing further to that, if I may. We have not requested that kind of direct assistance. However, where we have had problems come up, involving a hearing that we are involved indirectly, we have then gone to the Attorney General's Office and asked for assistance on those particular cases. Generally, we've had advice and what-have-you. However, we just feel it would be much better to have somebody there full time, for the two divisions anyway.

Maloney

I know that under AS 23.31.45 (b) that if took fifteen days, and the claimant hires an attorney, the attorney fees will then be paid. It seems to me that the claimant knew that the amount had to be paid OFF TAPE standard fee was for OFF TAPE would be processing a claim OFF TAPE If the insurance company knew OFF TAPE the employer knew that somehow the check OFF TAPE

TAPE 5, SIDE 1 cont'd.

Rasley

Mr. Chairman. Unless you have some type of penalty or unless the department is going to enforce the law, it's going to happen with what's happening right now. They're going to cut those payments off and they're not going to notify anybody. As long as nobody is monitoring the thing, or whatever you know you can notify from now on, they're not going to change their method of operation.

Maloney

My point made was that, I'm sure that most of them, claims are eventually OFF TAPE

Rogers

We're going to take a five minute break for equipment problems?

Stimson

If I could have your attention. I'm not sure if we have our problem corrected but we will proceed. Don go ahead.

Koch

Thank you, sir. This is Don Koch in Juneau. I just got a copy of the worker's compensation law. I didn't bring my copy with me. Back in December, as I indicated earlier, when Mr. Fineberg mentioned the degree of the problem with non-payment or late payment of claims, he told me that only 24% of the claims were paid in a timely fashion. He also pointed out that the enforcement device that was left to us was to be found in AS 23.30.030 Sub. 7 and that, that particular provision calls for the Insurance Commissioner Director to revoke the approval of policy form utilized by the company and to not accept further proofs of insurance from it until it had paid, or had complied with the violated provision of the chapter. That presents a couple of functional problems.

TAPE 5, SIDE 1 cont'd.

Koch cont'd.

It certainly should be looked at. One is, that the filings of policy forms are not made directly by the company but rather by the National Council on Compensation Insurance for a number of companies. Also, that could present some problems. In effect, what it amounts to is the revocation of that particular company's certificate of authority. Perhaps, there ought to be some re-work, in some clearer form of penalty stated, for the insurer, that has made a violation. That would certainly make enforcement a bit more simple. I am not excusing the fact that we have not enforced it, but merely that the device that is there, comes close to being unworkable.

Further, it also refers to not accepting further proofs of insurance. Well, the Division of Insurance doesn't have a role that is anything like that and so there appears that there maybe some old language in there that is just not up to snuff with the apparent law, especially the Compensation Law and the Insurance Law. That's all I had to add to it. Thank you.

O'Keefe

Mr. Chairman

Stimson

Yes, Mr. O'Keefe? Go ahead.

O'Keefe

My name is Tom O'Keefe. I would like to comment just briefly on the issue of on-time payments, in particular first-time payments. The law, in terms of the State of Alaska, is quite similar to some other states regarding the timeliness of the first payment for injured party and regarding termination of payment and the notification justifiably given to the claimant. However, like any

TAPE 5, SIDE 1 cont'd.

O'Keefe cont'd.

other law that is presented, it does have its difficulty. We as individual insurance companies, speaking only for ourselves, are concerned about this..

Being a service oriented organization, and being dependent on our ability to meet the needs of the worker's compensation community, we are obviously concerned about on-time payments. We do some record keeping in this area but admittedly, it is not what this committee is looking for. We do it simply because it's an insurance company and for the interest we have. We know that any delay that we make on a first-time payment, any any annoyance we cause through a claimant, only hurts us because they have no recourse but getting an attorney and this can be more expensive.

So, it is to our best interest and not only to pay on time, it is not to say statistically, because of the inability of the company to get the employer's report from a far off location in Alaska, through a secretary who perhaps just quit, etc. If an insurance company can match up the doctor's first report of injury and the employer's report in such a fashion that we can meet the ten day notice, the issue of notice to the employer, notice to the insurance company and how does the insurance company find out from the employer in a location, Alaska, which perhaps doesn't have a ratio. This can be difficult. I think it's much more. It's a much easier task for this committee to address the issue of stopping payments arbitrarily. This is an issue where, in all due conscience with any insurance company, we should look at that. But before we chastise the industry on statistical basis, let's take into consideration that the insurance company has no vested interest in alienating claimants.

Stimson

Ok, thank you, Tom. We're going to take some time now

TAPE 5, SIDE 1 cont'd.

Stimson cont'd.

for Brian to go over a few items with you.

Rogers

There was a question earlier about the resources of the committee. We do have, through the Legislative Affairs Agency, an attorney available to the committee, Tom Sofo, who will be handling any drafting and legal research for the committee to the extent of time we have available and will be attending all the committee meetings to make sure that we do have a continuity in getting a bill drafted.

In addition, we do have the availability of a House Research Aid for all research requests. Anything of a major size will have to be approved by the Oversight Committee on the House Research Aid. They don't allow it to be three people applying for six months without some kind of a major policy position. After covering the cost of an aide to the committee, secretarial costs and travel, it's time for the committee to come up with something quickly. We have roughly \$35,000 dollars available at the present time for contractual work; that would be, printing statistical work we wanted to have done, any rate making, designating people to do the work, etc. We have those available through the legislature.

In addition, I would expect, from Mr. Block's comments earlier that industry will make the information available we will need. I expect a fair amount of data may be obtained without spending a lot of money, by requesting of the parties.

One of the things that Terry and I did talk over earlier is that we have five members from Anchorage, three from Fairbanks and one from Juneau. In trying to cut travel costs, we did look at the idea of breaking down into sub-committees for some of this work, some of the people in these committee meetings doing background work, and so on. What I think we

TAPE 5, SIDE 1 cont'd.

Rogers cont'd.

should probably do is break into three sub-committees, one composed of three members from Fairbanks; one of three from Anchorage; and one of one person from Juneau and two from Anchorage, in order to minimize the travel costs for any sub-committee work. That would be background work in preparation for both committee meetings. We don't think we really want any decisions made by three people but rather by the committee as a whole. When we do get into recommendations we'll have to spend some time on them.

I think based on what we heard earlier, there were four things that we need to develop prior to the next meeting. One will be a list of all the recommendations you people think ought to be considered by this commission over the course of the quarter. We had a number of recommendations here today. There have been a number of recommendations of the National Commission on Worker's Compensation Laws and recommendations by the Fineberg report, the Block report and I think we want to basically list or group those recommendations, list them out and then decide which ones are worth time and sub-committee time.

The second major thing would be in terms of what data, what statistical information we think we need to ask the Chairman, the people we can get for free and hire someone to develop the rest of the data.

Third, would be the bibliography, Mr. Block gave us a good beginning. I think perhaps the rest will want to look over what else might be available to make sure we all are working on the same amount of statistical information.

The fourth theory would be to try to get from each member of the committee a list of four people who might be available

TAPE 5, SIDE 1 cont'd.

Rogers cont'd.

for developing information for the committee on any issues that might come up in the future. My suggestion would be that we spend at least an hour going over, firstly, what statistical information the members of the commission think is most important to develop and if anyone knows where that information is readily available we'll send for that. If it is not readily available, whoever the Chairman hires to develop that information prior to the next meeting. That secondly we go over the bibliography and it's potential development. Finally, I think we do have time before 4:40 to start going through the major recommendations that we know and between now and the next meeting, the staff will get the information out to the people.

The members of the commission can send their many additional recommendations, requesting for data or suggestions for developing the bibliography and try to, basically, build our information base between now and the next meeting. If you have any comments on that procedure for the rest of the afternoon we can go over any problems with that.

Carlson

I would like to hear from the board themselves, the members from board as to the problems as they foresee them before we go too much further into developing any resource data, we'll probably have to have quite an input to develop the resources information. I don't know how you propose to do this. I really don't know if you have a board in Anchorage and in Fairbanks OFF TAPE

Rogers

Yes, there is

Carlson

I don't know if it would be necessary OFF TAPE Their input

page 103

TAPE 5, SIDE 1 cont'd.

Carlson cont'd.

is the problem OFF TAPE

Rogers

I'm told that the boards are meeting August 18th through the 22nd. Is that still on?

Maloney

I concur with Brian Rogers. I concur with that suggestion let's get the board members OFF TAPE That might be something to lay out for the morning of the next meeting.

Carlson

Well, I wonder if their meeting Representative Rogers, if the sub-committee OFF TAPE What I was going to suggest was that the subcommittee meet down there in September OFF TAPE

Rogers

There is a possibility that there may be some new legislative members OFF TAPE Nex, why don't we start with going over what specific data areas people think we should try to develop as necessary information.

Croft

I would suggest that you try something like this, have someone with legislative research go through the 200 cases all with the 78' number on them; so that, we'll now they were filed a couple of years ago. They could go through and just at random pull out the final report from the carrier end and then have a check list. The person would collect the following information maybe alot more but I was just curious about: how many cases was the only issue payment of medical benefits? How many cases only involved temporary total disability? How many cases involved permanent partial disability. How many cases involved, of this permanent ottal, are dead? How many cases are still open? How many cases have been closed? The date of the increase and the

TAPE 5, SIDE 1 cont'd.

Croft cont'd.

and the date of the first payment and date of last payment. First if a hearing had been requested and secondly if there had actually been a hearing in the case? I think that if we had compensation statistics like that, we would then have some idea of what we're talking about. If we find that only five percent say of the cases ever go to a hearing, I think OFF TAPE 95% of the cases were involved in a hearing, we would have a pretty good system. If most of the cases are medical expenses, and we find that, that what we consider additional portions, maybe the problem is medical. I'd be curious to find out how quickly compensation is paid. If we find that 60% of the people are getting their compensation OFF TAPE are injured, that's actually pretty good statistics. If it's two month, OFF TAPE but I think, we can get the statistics rather quickly, that would be my suggestion.

Rogers

I think that's a good idea. Are there other members of the commission who have other questions they'd like to have on this random sample of the 200 cases?

O'Keefe

Yes. I just want to verify something in my own mind. Clarify a point. Are all cases, whether medical only, reported to the commission? In other words, do they have everything or do they just have those that did involve some complaints?

Croft

There should be a report on the file.

O'Keefe

They get copies of all medical only?

Croft

There would be a final report indicating they only OFF TAPE

TAPE 5, SIDE 1 cont'd.

Hansen

If there is a first report of injury filed, they've got it down there somewhere, there is no final report filed unless there is complications.

Rogers

One suggestion for the attorney is to note how many cases there appears to be on worker's compensation.

O'Keefe

We'll just kind of clarify that again. So, that if we look at this random sample, the only meaningful statistics we could get would be those that had complications. It would not involve the medical because you have not followed up. Is that right?

Hansen

No, I said that any reports of medical reports, or if the medical has been filed, it'll be there. That is OFF TAPE but all of the time loss complaints, complete file of medical reports, reports filed by the insurance carrier, first injury reports, final injury reports but the majority of the cases that were controverted. I can't tell you what the percentage is. I don't know what the majority is that's been controverted. We'll find all those documents in the time loss cases there. First reports and final reports.

O'Keefe

Thank you.

Carlson

Can I ask you a question? OFF TAPE

Hansen

No, the majority of the claims OFF TAPE

TAPE 5, SIDE 1 cont'd.

Carlson

I was just wondering OFF TAPE It really isn't necessary for the data either OFF TAPE.

Croft

It could. I would like to see it because I think it would be interesting to see out of 200 cases the total amount of expenditures by the OFF TAPE then find out what percentage of that is medical OFF TAPE.

O'Keefe

Mr. Chairman. This information in its aggregate is available through the National Council of Worker's Compensation in the rate making formula in terms of allocations and expenses. Statistically, they can determine how much of this would be, ah, how much loss is attributable to medical, temporary disability, permanent, etc. The formula does calculate this. So, that this information should be available. I would believe that the information that Mr. Koch has in Juneau may already have that in his file from the last filing.

Croft

I've been waiting sixteen years for it if it is. That's fine but I have a suspicion that we're going to get more information out of the random sample than OFF TAPE.

Hansen

I would just like to add that the filing in Juneau is such that the time loss claims are filed in one area and medical only in controverted claims is in another area.

Rogers

Are there any other items of information you people would want from the random sample?

TAPE 5, SIDE 1 cont'd.

Rasley

Yes. Mr. Chairman. Dave Rasley. I would like to know the percentage of cases that come from uninsured employers. I think that, that particular area is an area where it's difficult for the claimant to collect any compensation. This is where, I don't mean self-insured, I mean where the guy is flat out there violating the law and doesn't have any compensation coverage at all.

Rogers

From uninsured employers. Any other items?

Rasley

I have one of them. I would like to mention that Sec. 125 of the Act, sec. C had to do with Rule 45. "If not in accordance with the law, a compensation order maybe suspended or set aside in full or in part through injunction being in the Superior Court brought by a party and interest insubordinate in all other parties as seen before the board". I would like to know how many of those cases, Rule 45 was involved with, you know in relation to how many cases go before the board.

Rogers

Any other suggestions from this?

Chapados

I'm concerned about, who is going to OFF TAPE

Rogers

That would be staff from the direction of the Chairmen, setting the guidelines and working with either House Research Commission or if House Research can't do it, the staff will find out who can.

TAPE 5, SIDE 1 cont'd.

Chapados

OFF TAPE

Rogers

I would agree with that. One thing I'd like to add is that we make the request of the Insurance Carriers, that they provide us with any data they have which answers any of the questions and also of the Division of Worker's Compensation and the Division of Insurance depending on which one would be the one likely to have the information. If we get entirely different answers from asking the same question from three, there's probably something wrong but I think by doing the random sample and asking both the industry and OFF TAPE to answer the question, we'll probably get a pretty good handle. If all three agree, we'll probably get good data. Statistically, then, we can look and find the corrections.

Croft

It would be my idea to take both and if there was any problem with making sure it was a random statistical sampling, I would take the number of cases which involve compensation. We could count those. That would be pretty easy, take 78' or whatever the last number is, then you'll know the number of medical payments, make a portion of the medical only, the total number cases.

Rogers

Thank you. I'd like to hear from Mr. Koch for just a second. Go ahead.

Koch

Ah, yes, this Don Koch in Juneau. We made some studies a little bit ago. In fact in the past year, through the firm of Milliman and Robertson because we were concerned with the data base that goes into the rate-making process. It dealt

TAPE 5, SIDE 1 cont'd.

Koch cont'd.

with the area that Mr. Block referred to this morning, as the cause. We have that and can make that available to your committee, along with a wealth of other data that somebody on the task force may wish to review before we start in discriminately we can pull this information up.

Maloney

Maybe someone could go down there, take a look at that information, see what they have, take a look at what's developed in the cases prior to getting back together again, add something that one or two of us requested. I would also urge that the raw data be brought back to the committee so that, that information OFF TAPE

Rogers

Ok. That takes care of the first group of data from the cases. Are there other areas that the members of the commission feel we should have information? There was a question earlier about rate-making data, premiums. Is there anything else anyone else wants to ask for? Mr. Maloney?

Maloney

I don't know if we want to punch into the probabilities or not. I don't care OFF TAPE supposed to be regulated OFF TAPE should have some idea of what the problems are. Get that information. Also, what the reserves are. How long is this held? If you can't find out what the profit is, find out what the reserves are and how long it's held? I think that the investment income question. I think that might be an area to start developing data.

Rasley

Mr. Chairman. Dave Rasley. I thought that in the area that Dick Fineberg mentioned in his report. (I think it was on

TAPE 5, SIDE 1 cont'd.

Rasley

page 53 or 54), where he lays out the area that might be looked into. The worker's compensation premiums. That's really one of the only places I've ever seen that the contractor really doesn't know where his money is going. Usually, your contractor knows where every penny is going what he's spending it for and why he's spending it but in worker's compensation it doesn't seem like he knows that. He has to pay he goes ahead and pays it but he doesn't really know what he's buying.

END SIDE 1, TAPE 5

TAPE 5, SIDE 2

Fineberg

This is Richard Fineberg from Fairbanks.

Rogers

Go ahead.

Fineberg

I refer to the question of investment income and the overview pages 42 to 48. The reference to the Millman and Robertson Report, that Mr. Koch referred to, is on page 46. I think, before you send someone to Juneau, you should take a look at the bottom paragraph on page 46, at the scope of that report. That was a rather narrow focused report. It doesn't deal with investment income at all. I think, before you send someone to Juneau, at the tax payer's buck, you ought to find out from Mr. Koch if you can guess clear answers to the categories I outlined on page 42 of my report.

Rogers

Thank you. Two of the members of the commission will be in

TAPE 5, SIDE 2 cont'd.

Rogers cont'd.

Juneau and can check on that without any additional expenses. That will be Senator Stimson and Dwayne Carlson. Is there any other data that we want to develop, that you can think of right now, before the next meeting?

Carlson

This is Dwayne Carlson. I didn't necessarily have other data but I'm concerned OFF TAPE committee and subcommittee gathering the data that's been mentioned the profitability and the reserves. I don't feel that the expertise OFF TAPE If that helps add ratio to ratio, where benefits are concerned, the premium dollar OFF TAPE profitability of the insurance industry OFF TAPE benefit the premium dollar. All our other insurance program OFF TAPE I don't know if they have the expertise to handle it OFF TAPE.

Maloney

What I would suggest we do on that is that the committee try to find out what data is available on profitabilities and then by our next meeting, where we know we don't have the expertise or any data, at that point, we'll be contracting out to develop the data. I would ask Mr. O'Keefe to come up with whatever he might want to offer with regards prior to the next meeting. Then after the next meeting, we should decide how far we want to go into the profitability question, to what extent we want resources. In that regard, it may be helpful to talk to the other States and their commissions, to see if they looked at that. In my own opinion, probably it will be very difficult to figure out the profitability figures because, as we all know, the insurance companies help write the tax laws. OFF TAPE as an accramation, in approximate terms, most of us have looked at profit, whether the reserve is current and productive. OFF TAPE very difficult to accurately figure out what the profit is and

TAPE 5, SIDE 2 cont'd.

Maloney cont'd.

and you're probably going to have to OFF TAPE how you want to do it. It would take a very bright person OFF TAPE.

Rogers

Ok. In the question of data needed, what I would request is that by next Friday, a committee member define areas on which he feels data should be developed, prior to the next meeting. Have the members send a letter to the committee staff letting us know. From that, we'll ask the staff and the House Research Division to develop much of that data, if they can. If it becomes necessary we'll hire outside to pick-up what data we can, prior to the next meeting. I'll be seeing alot of that as they come in.

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

The second thing I'd like to go into is the bibliography. What resource material do we feel that all committee members should read priot to the next meeting. I'll start building that list with the following: One is the 1971 National Committee Report which all of you were given during the lunch break. Second is the Interagency Task Force Report. I'll ask that a copy of that be made available to the members of the Committee. The third is the four studies of Florida, Minnesota, Oregon and California OFF TAPE the essential items from those reports we'll try to get copies to the members. Everyone has the Fineberg report and the Block report. We need to make these reports available to everyone. Are there other suggestions and background information that would be valuable for all of the committee members prior to

page 113

TAPE 5, SIDE 2 cont'd.

Rogers cont'd.
the next meeting?

O'Keefe

Yes. I have a few copies of the Reinstatement of Worker's Compensation Expense Program. Again, this would address the issue of rate make-up and the expense stand point. There is some explanation there. We will endeavour to get additional copies, so everybody can read this. OFF TAPE.

Rogers

Are there any other questions at this time or items which should be made available?

Hanson

I wish to mention, that it is my understanding that in the State of Delaware they're been some comprehensive changes in their law and OFF TAPE.

Rogers

OFF TAPE

Hanson

They may have done some studies though.

Rogers

In addition, at the law library OFF TAPE seven or eight volumes OFF TAPE

Stimson

Do you have a copy of that? I would suggest that we send a letter down there and try to make that available to Brian.

Maloney

I would also suggest OFF TAPE report be made available.

page 114

TAPE 5, SIDE 2 cont'd.

Stimson

Any other suggestions?

Rogers

OFF TAPE area of worker's compensation. I think on that, rather than getting OFF TAPE try to compile a list of what the committee does need in a specific area and try to get it quickly OFF TAPE and have them shop around. The more we end up with OFF TAPE all reports will be coordinated into one recommendations and we won't have to really read the reports to get OFF TAPE and be reading the same thing. It'll be consolidated down into one set of recommendations OFF TAPE

Stimson

If there is no other business, I would like to thank everyone for coming and suggest that we adjourn.

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

Alaska State Legislature



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Worker's Compensation Study Commission

TO ALL MEMBERS

At the request of Senator Terry Stimson, attached is a verbatim transcript of the presentation given by Mr. Jack Thompson.

This particular presentation was recorded by staff that was in attendance at the October 13, 1980 meeting of the Chamber of Commerce in Anchorage.

CHAMBER OF COMMERCE MEETING

October 13, 1980

INTRODUCTION:

Jack Thompson, Vice President and General Manager of Air Van Lines and member of the Board of Directors of the Worker's Compensation Committee.

He is going to discuss the problems in regards to Worker's Compensation and to put forth a few recommendations in hopes of bringing about solutions.

Jack, first came to Alaska in 1951, resided in Fairbanks and worked for Nerland's until 1954. He entered the household moving business in 1956 and began a career that took him to Japan, Germany, California and then back to Germany.

In 1977, he returned to Alaska. At this time Anchorage is his home. His position in life is Vice President and General Manager of Air Van Lines.

JACK THOMPSON:

I am glad to be here today. I find it kind of timely, in regards to last year, the speaker, Dr. Lesher, the President of the National Chamber, in his comments he mentioned, that one of the big pushes that the Chamber is making, is to get the business community involved in setting up political action committees around the United States, to accomplish things that will help the employer community. That's what we are-a political action committee; so, that's a step up on Lesher's plans.

I'd like to take a couple of minutes to give a little biographical data in how we came into existence. Some two years ago, a group of concerned employers, concerned with the escalating costs of Worker's Compensation joined together and formed a group called the "Alaska Compensation Employer", called "ACE". The reason they were formed was

page 2

Thompson continued

to research the Worker's Comp. problems, to identify them and propose solutions.

From this end, they hired a consultant, a former Director of Insurance for the State of Alaska, Richard Block. Dick went to work and after a sundry of time came out with the Block Report. It's a report like this and it's called "The Application and Elimination of the Causes of the High Cost of Worker's Compensation Insurance to Alaskan Employers".

The report listed 34 recommendations. It's fairly hard reading. He had the report finished and what we were going to do at that time. The next step, we formed a political action committee, "The Worker's Compensation Committee of Alaska" and we were formed.

At the same time our group was formed, there was a House Concurrent Resolution passed in the Legislature, HCR 59, which was to set up a Study Commission, to study the Worker's Compensation problems in the State. We monitored the progress of the Joint Resolution and were able to have some input to the number of members that were finally appointed to this State Commission.

The State Commission is Co-Chaired by Senator Terry Stimson and Representative Brian Rogers from Fairbanks. On the Labor side of the Commission was Dwayne Carlson of the AFLCIO; Chancy Croft, the Labor attorney; Dave Rasley, a business agent with Operating Engineers 302 in Fairbanks. On the management side, Frank Chapados who has business warehouses up in Fairbanks was appointed along with Dennis Maloney, Chief Council for Wien Air Alaska and Mike Swalling of Swalling Construction Company. We were able to get representation in the Resolution appointing a voting member of the Insurance Industry on it and that was Dennis O'Keefe of Industrial Indemnity Insurance Company.

Thompson continued

This Commission was charged by the Legislature to study and report to the Legislature some preliminary findings and recommendations relative to changing the current Workmen's Compensation laws. They were specifically charged to eliminate antiquated and inadequate provisions. They were to provide for legitimate rights of the injured Alaskan workers. They will bring the Worker's Compensation law into harmony with current needs and conditions and number four they were to minimize the cost of Worker's Compensation to the Alaskan employers.

We took that charge as, basically, our charge to accomplish the same. Along with this, we took as our responsibility, to get the business community and the employers involved in a compilation of data to be presented at these hearings, which are held around the State, and solicit a broad based input from the business community.

To date, there has been two hearings, one in Anchorage and there was one in Fairbanks. The hearings have been interesting, to say the least. They have been full of horror stories from both sides of the coin. There has been some interesting ones. One that comes to mind was a story that was actually a part of a report that was commissioned by the Legislature, which was called the "Fineberg Report".

This is supposed to be an unbiased report. This was put on the tables at the hearings and one of the interesting stories in there is about this man that (I don't know if he is still there or not) but he was arrested in California, charged, convicted of rustling. It appears that he had to kill a cow to feed his family, because Worker's Compensation in Alaska didn't treat him right.

During a meeting up in Fairbanks, I had an occasion to meet the hearing officer that heard that case and the hearing

Thompson continued

officer told me, "Tere was no way that there was any legitimacy to that particular claimant and that's why it was turned down". That's the more exaggerated end of what happened.

The bad part of all this is the cost, of course. We feel one of the main problems is the excessive level of benefits paid in the State of Alaska. For instance, taking a salary comparison into account, the level of benefits paid here is 2.7 times that paid in Washington and 4.3 times that paid in California.

We feel that one of the solutions to this high level of excessive benefits is to tie the Alaska benefits to the benefit levels of Washington, Oregon and California, by taking into consideration the proportion difference in the wage levels.

Back in 1975, the so called Croft Bill was passed and I think, when it was passed, there were things put into that statute that nobody really knew what the end result would be cost wise.

One of the worst features of it was that the benefits were based upon average wages in the past 3 years. In other words, in Worker's Compensation, you arrived at his weekly wage. You took the best years salary for the prior 3 years.

With the Pipeline Syndrome, that recreated a real obvious problem as the pipeline wound down and workers went on Worker's Compensation. They were paid based on those higher income earnings on the pipeline and of course the last employer they were working for was the one that got stuck with the bill.

We feel that there should be a change to reflect earnings

page 5

Thompson continued

held at the time of injury, and where appropriate, it should be stretch and reflect to seasonality of the job. As it currently is, a man can make, and in many cases does make, more money tax free than what he makes in his normal job.

Testimony at these hearings, shows that the existing system give little incentive to return to work. If you're making more money not working, what's the real incentive to come back to work?

We feel that the law should be changed; so that, there is an incentive to work and rehabilitation should be more heavily stressed.

This is a very controversial point in the hearings it is a great emotional point. One of the things brought up is what is known as the Alaska Layoff Syndrome. I came up here a long time ago and was a little bit aware, that when you are in a seasonal job and things get slow and it's November and that's a heck of a time to have a bad back, because you can go on Worker's Compensation; so, we feel, that is one of the most important things that has to be corrected.

We also feel there are no incentives for workers' physicians to contain costs. An injured worker can solicit a physician or member of the medical profession in one spectrum or another and get a diagnosis which is beneficial to him. We have no question with the legitimate injuries but the so called doctor shopping leaves this open and it's difficult to find out what is a legitimate injury, especially in the so called soft tissue injury which are related to back problems.

We feel the schedule of usual or customary fees should be established by the State. If the employer or carrier is not satisfied then he has the option to draw a physician or

physicians. END SIDE I, TAPE I

TAPE I, SIDE II

The Worker's Compensation Division and just about every employer I've talked to and the insurance companies, feel is one of the big problems and that is the condition of the Worker's Compensation Division in Juneau.

There seems to be no question that it is under staffed and is under funded to meet its statutory obligations. That's where a lot of problems start-right down there.

We feel that a complete reorganization should be done to streamline that division, to provide a prompt document flow and provide timely professional services to the workers. We also feel it should include some full time professional hearing officers. Some of these cases drag out for months and years, because of the backlog.

The testimony in Fairbanks a couple of weeks ago, I believe, that Mrs. McClintock stated it would be 1982 before the State's system are geared to handle this problem. That means, we are going to have that problem for another year. We feel its absolutely necessary to correct it.

Parallel to these hearings, we have been giving talks to various groups around the State, soliciting them to come to these hearings because the business community, they are aware of their problems. They've got to tell their horror stories, as it is, and give their recommendations and do all we can to get the input before the Legislature. If all the input is from one side, the story is not going to be weighed as heavily if we don't show up.

I'm sure that the Legislature has the best intentions to

page 7

Thompson continued

correct this problem; however, we know what the problems are collectively. We have the solutions. I'd rather bet on us going to those hearings and giving this input, than relying on what happens down in Juneau.

We are in the process of revising, amending and making a more readable Block Report. It is very large and difficult to read. We are trying to prioritize some of the 34 recommendations that are in this report. Some of them are politically not acceptable at this time. We are trying to edit the ones out that have an impact on the career loss and get it down so everybody can read and understand it.

When we finish this report we are going to give it as an informational tool to the Legislators and also to business people that become supporters to our group. Then they'll know what we're doing and what we're pushing for and that they can have the proper input with their Legislators.

I can't stress too heavily how important it is for those of you that have problems and have had problems and have got stories, to come to these hearings. There are two more hearings scheduled, one in Juneau and one for Anchorage. I believe, they are having a hearing on the 16th of October. It's not a full hearing. It has to do with the ways that statistics are prepared for the rating bureaus; but there are some more hearings and there is one here. We would sure like to get people out to it.

People are sitting here wondering, well, what's Worker's Compensation got to do with me? I don't have many employees right now. It's not a problem with me. The Worker's Compensation Bill in this State is at 100 million dollars and that has an impact on everybody. Take the logging industry; for instance, 35% of their labor costs are directly

page 8

Thompson continued

attributed to the Worker's Comp. problem. Build a house, buy lumber, anything to do that comes from a tree, you're paying for that bill. In the trucking industry, our percentage is 10 to 15% of our total labor costs are involved in Worker's Comp. premiums. Even that lunch included that 10%; so it is a problem that everybody has.

Further, we will talk to any group of business people, trade groups or anybody that's interested in hearing what we are proposing. Because, we want to get down to the broad grass roots group of people, to get them interested in this on a statewide basis. It's something that is very emotional. It's got to have some participation, more than just our group. It's got to have everybody in it..

We intend to monitor the State Commission to insure that they follow the charge that they were given and especially where it talks about minimizing the cost to employers. We don't want to have everything solved, except to have the cost keep going out of sight.

Towards the end of this, we also intend to draft a bill, if required, to be able to have entered by the Legislature. We don't always agree on the ways we put things together but we feel, when we get this bill put together, we'll have a broad base in it.

I was reminded by one of the Legislators, who happens to be an attorney, about the proper kind of offership. He said, "Don't come up with something that you're so proud of you don't want to change it. He says, sometimes, we in the Legislature have that problem. I mentioned to him that I thought, that generally, attorneys had that problem because their first year in college they take on dividends and 101.

Thompson continued

He kind of laughed and said, "Well, that's true and he said, but you know who our teachers are". I said, "No" and he said, "Well, they are the doctors".

In conclusion, I would once again strongly urge you to get involved in this. There's a list on the tables of those of us who are on the committee. You can call us at our business place. We'll get together with you and get you involved in this.

We've got plenty of space available left on our committee. There's just the seven of us. We're looking for people who will sit on our board, representing certain parts of the industry; so, please give us a call and let's get together on these problems. Thank you.

QUESTIONS FROM THE AUDIENCE AND ANSWERED BY MR. THOMPSON:

Question: Do you have any dollar value as to what this is costing the Alaskan employers?

Answer: The premium is 200 million dollars. Does that answer your question?

Question: Given that, I'll assume you'll believe there should be some law. How much should the cost be in the state's law and how much of that is unfair?

Answer: I really don't know. That's a very good question for those on our committee, if somebody will look into it. I may not have some answers to a lot of questions. We do have a lot of time to gather it. I'm sorry, I don't have the answers for you.

Questions and answers continued

Question: Can some of these procedures be changed administratively and some of them changed legislatively? If so, which ones can be administratively handled and which ones legislatively?

Answer: The administrative changes, some are in the mill right now. Ms. McClintock did testify that it's gonna take a year to get a grip on it. We have an understanding that the rest of it has to be done legislatively. I understand they may approach that in two methods: one, to accomplish some part of it in one bill and some parts of it in another bill to get the more controversial stuff in one bill and the non- controversial in another bill and get some of the easier things solved right away.

Question: Is there an alternative to Workers' Comp.?

Answer: There are certain perimeters where one can be self-insured. I don't know where all those perimeters are. I'm not in the insurance business but there are a lot of people who are self-insured who are not large employers and I guess there are benefits in terms of loss factor, because the law indicates certain things.

Question: I understand there's a movement in Washington D.C. to federalize Workers' Comp. Is there any momentum in that?

Answer: Oh God! I hadn't heard that but maybe our State's Commission is gonna take a look at where our relationship is with the federal government and put that into their offer too.

I really think the Workers' Comp. in every state is federally locked in; of course, not in all the states but in terms of an overall end. I sure hope it doesn't happen.

Chaired by:
Senator Stimson

October 27, 1980
Insurance Sub-Committee Meeting
with Anchorage/Fairbanks/Juneau

TAPE 1, SIDE 1

STIMSON

Bob, I'd like to ask what topics you would like to address in this sub-committee meeting.

WILLIAMS

Senator, most of this week, I spent working on the Second Injury Fund and I don't know if this falls directly in the line of insurance but I would like to take a couple of minutes on the Second Injury Fund.

As far as the insurance, I'd like to go over briefly the areas. I talked to the Director of Insurance. (He is not here.) I'd like to give, at least, my perspective of what he is waiting for on the issues that we've raised. That's about it.

STIMSON

Thank you, Bob. Brian, does Joan want to entertain any questions or does she just want to listen in?

JOAN GOMIER (BLUE CROSS)

Good afternoon, Terry. No, I came in to try to get some idea as to what was going on this afternoon with no intention of participating. All of my homework on this is still in Seattle. I'm not that far along on it.

page 2

STIMSON

Thank you, Joan. For the people on the line, we have the Administrative Assistant in Anchorage, Licia Piceno, who has been working on Controversions and I'm going to turn this portion of the meeting over to her.

PICENO

Mr. O'Keefe was very kind in letting me come over and talk to some of his claims adjustors, as well as taking a look at some of the controverted claims that he had on his files.

The claims that I did look at were just pulled, at random. The claims that were done by Diane Simonson, down in Juneau, I was unable to use, as some of the information was not sent here to Anchorage, due to Diane being out of State at the present time.

Some of the things that I found out from the claims adjustors that the reasons for controverting a claim would be from lack of medical reports. One of the big problems that they did have was that out in the bush areas, as far as having information released to the insurance companies for a particular claim. There is a policy of the hospitals for the native people, that they have to have a release form signed prior to any information being released. This is, apparently, causing some problems for the insurance companies and it might be an area that you might want to take a look at.

Some of the things that I did find out is that, the information that is needed by the insurance companies would be reports filed by the employers on a timely basis. What has happened is that some of the reports are not being submitted to the insurance companies, by the employers, in what I would say, a

page 3

PICENO continued

proper amount of time. Therefore, it would slow down the process for the employee, as well as, the insurance company, in going through all of the paperwork.

Some of the reasons a case would be controverted, would again, be due to lack of medical reports, lack of the employer filing his notice to the insurance company.

One of the big factors is employer lack of incentive. In other words, if an employee has particular forms to fill out, appointments to keep with his doctors, etc., they're not doing their part. I feel that, if employees want a much faster process, they have to do a little bit of work, with their employer, as well as, the insurance company, to expedite things for them.

Some of the cases I looked at today were very minimal. I found, in one of them, lack of employer information. The employer had no knowledge of a particular injury. There were many questions relating to it. The other would be, again, no medical information. Those were just a few of the cases I had an opportunity to look at.

If you wish to go into a more detailed study, it takes approximately 6 to 10 minutes for a single file that's not into great detail. If it was a controverted case, that had quite a few reports to look at, you could figure on a maximum of 15 minutes per file. That, so far, is about all I've found out.

STIMSON

questions for Licia?

page 4

O'KEEFE

Licia came into the office and, basically, our objective was to see if we could put a guage on a timetable on how we could go back and look at the 250 that we had previously looked at through the Commission, if we could identify exactly which ones they were. Then, go to the carriers and complete our studies and how long that would take. So, using Industrial Indemnity, as an example, she first made an effort to try the 12 that we had but was unable to give us a name of the claimant. Rather than just drop it there, then, we decided we'd, at least, let her, on a random basis, pick some out and see how long it would take to identify the problem area. While she was there, she also talked to claims adjustors to get their input, as to, what generally is the reason that a claim is controverted.

So, with information in mind, if the Commission feels that we want to identify the specific cases looked at before the 250, we'd, at least, have a timetable that we could use to see how long it would take to go back and finish that study.

STIMSON

Tom, we don't know how many of those cases are with Industrial Indemnity do we?

O'KEEFE

twelve

STIMSON

a total of 12, OK. Do we have any indication who the other carriers are?

O'KEEFE

They're identified on the report and my understanding in looking through that, your major carriers would have most of them, like Alpac, Providence Washington and some self-insured. I would think that it would all be something we could accomplish right here in Anchorage. If we could get the names or some identification numbers, we could complete that in a relatively short period of time.

STIMSON

It's our intent then, to explore right now the feasibility of going ahead with the study of the controverted claims. Bob, maybe, you and Brian could share your observations on whether you think that would be a worthwhile endeavor for us to get into. The purpose, of course, being, to see if we can identify patterns in controversions we might be able to address.

WILLIAMS

I think, that's probably a good idea. I think, when Diane started on the claims study, one of the recommendations there was that (These claims aren't really what this Commission or Legislature would like to deal with.) perhaps, a better idea is to start with the problem area. I think, the area of controverted claims is, probably, where most people's interest lie and I think, if we did a claims study that, that would be the logical area to begin.

ROGERS

I, generally, agree with Bob. I do think it might be worthwhile to look a little further into controversion.

STIMSON

I have a question on the release form, Licia, that you made

page 6

STIMSON continued

reference to as being a problem in the rural areas. I just wondered if you could explain that (I know you've just had a very brief look at it.) Tom. Maybe, you even have a better idea of what the problem is?

O'KEEFE

When Licia was over at the office, she was discussing the issue of controverted claims and we were discussing, at that point, the problem, in terms of, the medical information to verify the loss. The claims adjustors indicated that they, particularly, have a problem when they're dealing with communities that use the (I don't know the exact term.) I believe, it's the administrative arm of the government for medical in the bush.

They do not accept a Workers' Compensation claim and send the report into the insurance companies. The insurance company has to turn around and probe and find some way to get the information. So, what happens is the employer turns in a report saying an individual was injured and has time off. The company, then, has to verify that this is an accident or injury that a doctor said, indeed, would have disability. At that point, we don't have a medical release from the injured claimant and time lapses before we can get that approval and, then, turn around and get that information from the hospital. When you're not dealing with that type of environment, generally, all the hospital or doctor would need is an indication that it's a compensation claim. Then, they release the information.

STIMSON

I assume, then, what we are talking about is the Public

page 7

STIMSON continued

Health Service. That's interesting. That's a problem I hadn't even considered. So, then, what do you ultimately do? Do you oftentimes go without ever receiving anything from them?

O'KEEFE

No. Generally, we have to go through the extra steps of getting an injured party release which we then present to the hospital and they, in turn, release the medical information. Then, we can pay it. When you're doing this by mail, we have to get hold of the injured party in the bush. Then, they send the information to us. We, in turn, send it to the hospital and they send it back. A time passes and they're payments just can't be on time.

I'm, also, of the opinion that this has been discussed with the Workers' Compensation Board and I believe, they have made some efforts. The problem is they just released it on the one and there's no uniform policy for releasing this information. Maybe, that's what we should look at.

STIMSON

Any other questions or comments?

WILLIAMS

I have a question. Licia looked into the claimants at Industrial Indemnity. Is it my understanding, for my own benefit, that the information she was looking for was not on record at the Division of Workers' Compensation?

PICENO

Bob, there were a couple of them already, where paperwork had been turn back in from the Division of Workers' Compensation.

page 8

PICENO continued

Compensation in Juneau. What I was looking at was not what Diane had done. I just went in and requested to pull a few of the controverted cases that they had. It was just a random pulling.

WILLIAMS

OK. I guess, what I'm asking for is that the information that's in the Insurance Company's file would not be in the files at the Division of Workers' Compensation?

MALONEY

Bob, this is Dennis. I think, that what Licia was looking for and the reason they were going to go into this is because after Diane did her work, there were some questions we had about the date that the claim was filed, versus when the first payment was made. I don't believe that was documented in the State files and which would be in the Insurance Company files. I think that, that's what they were looking for. The reason she wasn't able to get it is the study that we had, that Diane did, didn't identify the cases in significant detail to allow her to do that. I think, one of the questions we had was the timeliness of the payments. That was one of the things, I think, she was going to address.

WILLIAMS

Thank you, Mr. Maloney.

STIMSON

It's my understanding that we need to get the list of claims or cases from her that she worked with, in order for Licia to go ahead with her controversion study. Is that correct? Maybe, Bob, you could try to track her down and try to find out where that list is so Licia could get started on that.

page 9

WILLIAMS

OK.

PICENO

Bob, this is Licia. The list that I'm looking for is the alphabetical listing. It is not the one listing the case numbers.

WILLIAMS

Is this her own list or is this the list that the Division of Workers' Compensation has?

PICENO

This would be her own list.

WILLIAMS

OK. I'll get hold of her and try to find it.

PICENO

Thank you.

STIMSON

OK. Anything else for Licia on controversions at this time? If not, Bob, we'll go ahead and turn this portion of the meeting over to you.

WILLIAMS

Thank you, Mr. Chairman. I don't have a whole lot to say but I would like to go over with this sub-committee the problem with the Second Injury Fund. I'm not sure that it's really the sub-committee to handle it but I don't think it'll hurt. I, also think, that, at least, the insurance companies seriously are concerned about it.

WILLIAMS continued

It's my understanding that the Second Injury Fund right now is on the verge of being bankrupt. The Fund serves two purposes. The first purpose is to provide funds to the Department of Education through the Vocational Retraining Program. The second purpose is to pay insurance carriers for an excess of their liability under Sec. 205 of the Comp Act, which, basically states, that if they hire someone with pre-existing impairment that they only have to pay 104 weeks compensation.

I talked with Jackie McClintock about that and they're very concerned that they will not have the money, come January, to pay any fee out of the Fund. As I understand it, (I don't have any writing on this.) the outstanding amount owed is almost a million dollars. They, right now, and this is in lump sum payments; this is in back payments; along with, what they're going to accrue in just through the normal operation of that Division. What they're doing is they're trying to take in receipts and pay them out and do so in monthly installments. The Division thought they may not even be able to continue that.

What I've done, is I've called the Department of Revenue and I've asked them if it would be possible to arrange a loan. It seems to me that, and we're not sure about this, the Department of Labor might be subject to some liability if they can't make these payments. So, I talked to the people at the Department of Revenue. Unfortunately, the Department of Revenue can't make loans to other departments, unless, it is explicitly provided for in that Act and it's not explicitly provided for in the Second Injury Fund Act.

So, where we are is, I think, the Commission may wish to deal

WILLIAMS continued

with the Bill that the Division of Workers' Compensation has submitted. It's very similar to HB 1011 and, perhaps, make an action on it. We, also, may wish to see if we can figure out some method of protecting the solvency of the Fund, at least, until January. Are there any questions?

STIMSON

Yes, Bob. You referred to an outstanding debt of about a million dollars. Is that what the Division of Workers' Compensation owes the insurance carriers?

WILLIAMS

Yes. That's what I understand. They don't have any problem with sending the money for retraining over to the Department of Education. (That's another point that we may want to talk about.) As I understand in talking to Michael Morgan, who's the Director over there, they send over 90,000 dollars for vocational retraining to the Department of Education. The way I understand it, they use that 90,000 to leverage federal funds. As it turns out, that's not the case because they've already reached the limit allowed under federal matching funds and 90,000 dollars is a recap of the problem. They aren't having problems sending over the 90,000 dollars on the Second Injury Fund. Where the problem comes in, is the repayment to the carriers and to the employers who are under Sec. 2 of Comp Liability.

O'KEEFE

I can add to that. In many cases, when our company's waiting for the Second Injury Fund reimbursement, it either is slow or they only make a partial payment. Once again, they don't have the money.

STIMSON

Bob, have you had a chance to get a copy of the Bill that the Workers' Compensation Division has put together?

WILLIAMS

Yes. Mr. Chairman. I sent a copy of that--telex to Licia. I think it was on Friday or Thursday. I was under the impression that you would all have a copy of that.

STIMSON

I understand that we do and we're getting it right now. I wonder if you've had a chance to review it and what you think about the provisions in it, dealing with the Second Injury Fund?

WILLIAMS

I can go over it real briefly. First of all, under the current system, the funds for the Fund are collected by an assessment and that assessment is 8% of the maximum paid to permanent partial disability. What this new Bill does is it lowers the assessment to 6% but it's 6% for temporary total, temporary partial, permanent partial, permanent total and, I believe, the amount paid for rehabilitation.

Now, there are a couple questions that I have and that the Commission may want to consider. The old Bill had a limit on that fund. The receipts from that fund couldn't exceed 400,000 dollars. Now, this new draft doesn't have that limit. The only question that pops into my mind is I'm not sure what the estimates are on 6% of all compensation but I suspect that we wouldn't want a big fund going over there. I mean, if we find, in a year or so, they can pay off the million dollars and they can pay their liabilities that incurred, it maybe wise to put in some flexibility, with a provision on there

WILLIAMS continued

own motion, to lower the assessment or eliminate the assessment.

There's other provisions in this Bill that I'm sure the Commission would want to be aware of before they consider taking any action on it. At least, the portion on the Second Injury Fund. Under Section E, this places a limit on the amount that can be paid to one person for retraining rehabilitation and necessary transportation. Under current law, those are 5,000 dollars per person. This piece of legislation raises that maximum to 10,000 dollars.

There is also a provision in Subsection E of AS 23.30.040, where the major benefits are raised from 100 dollars to 200 dollars. These, certainly, aren't just technical changes and the Commission should be aware, that, at least, they're in this piece of legislation before they make an action on it.

That's pretty much all I have to say, at least, on the Second Injury Fund. There are some other provisions in this draft and probably, the Division of Workers' Compensation, at some point, will want to testify. Well, what I want to say is (This is off the subject.) that, I think, that softens the Second Injury Fund.

We listened to the Department of Revenue not having the abilities to make a loan and, again, I'm not sure, they probably, can skate by until January but they're not sure they can. We may want to take a look and see if the Council or Legislative Budget and Audit can make a loan or somebody like that. We talked to Billy Berrier about it and I'm not sure if it's that much of an emergency.

page 14

ROGERS

This is Brian in Fairbanks. I'd like to ask, Bob, what the differences are. I've got a copy of HB 1011 in front of me, the version that was passed out at Labor and Management. I'd like to ask what the differences are between that and the Division's proposal that they made? As I recall, it's almost exactly the same, except, we added authority for the Commissioner of Revenue to loan surplus money to the Second Injury Fund. That is appropriated by the Legislature. Are there any other differences between the Labor and Management version and the Division's version?

WILLIAMS

No. I believe, they're pretty much the same.

ROGERS

The main difference between that and current law are, the addition of what 6% applies to, the doubling of rehab expenses and the ability to loan. Were those the only changes that were made in the overall expenses?

WILLIAMS

Yes. That's, basically, it.

ROGERS

Thank you.

STIMSON

Did you have a question, Dennis?

MALONEY

There was, also, in addition to the amount expended, an increase in the benefit paid during the rehab time period?

page 15

WILLIAMS

Yes, Mr. Maloney. That's when we referred to the total of 10,000 dollars per person for retraining rehabilitation. That's the current draft that I have from the Division. It's 10,000 dollars per loss, 5,000 dollars in the maintenance benefits and a draft for 200 dollars. The current law is 100 dollars.

ROGERS

Going back to Subsection E, of the proposal, which benefits now are subject to 6% fee?

WILLIAMS

The current assessment is 8% of just that amount for permanent partial disability.

WILLIAMS

Thank you.

STIMSON

anything else on that particular issue? Dennis?

MALONEY

I think, Brian, wants to say something.

STIMSON

Brian, you want to go ahead?

ROGERS

No, Mr. Chairman. Go ahead, Dennis.

MALONEY

I would hope that while we were addressing the question of

MALONEY continued

the solvency of the Fund that we also get into the deeper questions. I think, that if we do address the bigger questions, like: Is there a better way to do it or are we doing it the right way? Does the individual have an incentive to return to work? I think, that if we can address those things, before we start beefing up the funds and the problem goes away, it's going to be some kind of a motivating factor for us to address the real problems that underlie the rehabilitation question.

I, for one, would like to see us address the whole area as comprehensively as possible, rather than, slipping in a supplemental appropriation or putting some additional funds in to make the Fund healthy and not addressing the more basic questions. I would not be opposed to some limited period of time, which would have a definite duration. That, either the State could loan money to the Fund, or some special assessment could be made to make the Fund healthy again. I think, there should be a time limit, beyond which, if we don't address the whole area, we have to come back and attack this problem again.

WILLIAMS

Dennis, this is Brian in Fairbanks. I'm not sure I understand that. It seems to me that the Second Injury Fund is an incentive to employers to hire someone who's had a second injury.

TAPE 1, SIDE 2

MALONEY

Well, Brian, in one sense you're correct. In terms of the

MALONEY continued

individual employee standing before you, you're going to be more likely to hire him or her; however, if it's merely another 2% added on to your insurance bill, you're paying that cost, anyway. I think, there are some basic questions that I'd like to see addressed. I'd like to take a look at the length of time that it's paid.

I for one, as an employer, although my liability is limited, looking at someone who's just suffered a back injury or who's just had a laminectomy and who has come to work for us in the cargo department, the Human Rights Commission has said, if you don't hire this person, you're going to discriminate against him. Even though the penalty is limited to 104 weeks, that's a substantial amount of money.

I think that there's some other related areas that we should take a look at, including the overall question of rehabilitation. I'd like to see us address the whole problem and get it all resolved into one piece of legislation, hopefully.

WILLIAMS

Mr. Chairman. This is Bob Williams in Juneau.

STIMSON

Go ahead, Bob.

WILLIAMS

First of all, the Department of Labor presented a version of this Second Injury Fund Bill. It was first introduced as HB 705. Then, in the session, the Division decided to take it out of HB 705 and introduced it separately as HB 1011 because it was important in getting it passed. I'd like to read a

WILLIAMS continued

quote from the Postion Paper that stayed attached to this Bill. That paper is dated April 24, 1980--"that the actuaries of the National Council on Compensation Insurance have indicated to the Alaska Division of Insurance that this legislation would cause impact on Workers' Compensation insurance premium rates". I think that, that may help the deliberation along, at least, in determining how we want to consider it.

Second of all, I'd just like to briefly say that my work with the Second Injury Fund hasn't just been concentrated on its solvency. I have looked into a couple of things. Maybe, this is as good a time as any to talk about them.

First, I was looking into transferring that vocational retraining section over to the Division of Workers' Compensation. Second, I think, and this was brought out in the September meeting in Fairbanks, I believe, by Virginia Collins and that is on shortening the liability of 104 weeks in Sec. 205. Maybe, if we look at the Second Injury Fund, along with, the transfer of it over to the Division of Workers' Compensation, and perhaps, some of the other divisions, that we're getting to where, what Mr. Maloney means, by taking a more comprehensive look.

MALONEY

Yes, Bob. I think, those are the kinds of things I was talking about, in terms of, addressing them--the whole problem.

STIMSON

Bob, if your discussions with the Division of Vocational Rehabilitation, what did you find out about that 90,000 dollars,

STIMSON continued

in regards to, how it was used for receiving federal funds? According to your statement earlier, they do not use it for the receipt of federal funds and, as I recall, that's contrary to what we've heard in our meeting in Fairbanks.

WILLIAMS

Mr. Chairman. I talked to Michael Morgan, Director of the Division of Vocational Rehabilitation. Now, the way I understand it, the permanent funding for this retraining program, the 90,000 dollars shows up as an interagency receipt collected pursuant to the Second Injury Fund. The Division of Workers' Compensation then transfers it over to the Division of Vocational Rehabilitation in its interagency transfer. Then, it's just thrown in with the rest of the general fund money that the Division of Vocational Rehabilitation uses.

Now, they take their general fund money and they leverage federal funds, in terms of, a match but what I understand from Mr. Morgan is that the cap, and this is contrary to what I previously thought, I thought that we'd be losing some federal funds but the federal funds for that Division is three million dollars. Evidently, the state matching funds are now, at least, 90,000 dollars above where we need to leverage that maximum.

According to Mr. Morgan, in fact, this sort of surprised me at first and it surprised Jackie. They have not used that 90,000 dollars to leverage any federal monies for the last seven years. So, what I have in mind here is that, at least in terms of funding, that question could be put aside in determining whether to transfer that over to the Division of Workers' Compensation. We can examine that issue more on

policy

WILLIAMS continued

policy and whether we can, indeed, create a better retraining program over that division that currently exists in the Division of Vocational Rehabilitation.

O'KEEFE

My recollection was that when Mr. Young spoke in Fairbanks, he was talking about how what a good deal we were getting, in as much as, we were putting 90,000 dollars in and then, on leverage basis, we were getting 172,000 dollars back. It appears that, because of the maximum on federal funding that, that would be irrelevant. This gives more credence to the idea of Jackie's concerns about a separate department being more interested in rehabilitation, from a compensation standpoint, then, the goals and objectives that might be set with the present rehabilitation program in the state.

WILLIAMS

Mr. Chairman. This is Bob Williams again. I'm not an expert in this. I can't just say that. In reading the recommendations of the National Commission, that is one of the recommendations that they do make. They say the retraining program is a problem and it should be included in the Division of Workers' Compensation because of special types of clients and oftentimes the other vocational retraining programs aren't designed that way. Just for your information, that is a recommendation included in the National Commission's 1972 study.

STIMSON

Bob, this is Terry. I think, at least, if I'm able to sense what the committee is interested in, most committee members are very interested in pursuing the feasibility of separating the Division, or the portion of it that deals with Workers' Compensation and put that back into the Division of Workers'

STIMSON continued

Compensation. I assume, if the money is not a major factor, as we previously thought, then what kind of reaction did you get from Mike Morgan, in terms of, just the whole concept of removing vocational rehabilitation from having any responsibility to Workers' Compensation injured employees?

WILLIAMS

Well, his reaction was sort of vague. On the one hand he said that the comp claims that his division handles are sometimes the most difficult and cause some trouble. On that respect, I suppose, he wouldn't violently object. He did say, however, that the division that we mentioned in relation to the Second Injury Fund, currently, under current law, limits the amount that can be paid for vocational retraining.

The 5,000 dollars we just discussed raises that to 10,000 dollars. The current practice right now with the Division of Vocational Retraining is, that if the amount exceeds 5,000 dollars, they kick in, either their general or federal fund money, for that particular claimant. But, again, I think, that if we take the issue, maybe, that would be to the core of the issue of vocational rehabilitation. Certainly, we would look at the Second Injury Fund and consider that.

MALONEY

Bob, one of the things I'd like to see us look at and, again, I'm not an expert in this area, but if we do make the transfer, it might be appropriate to take a look at the feasibility of using private rehabilitators; such as, Virginia Collins. I'm not saying, Virginia Collins, but that there could be, perhaps, some state people doing that at an allowance of a fee per case or percentage of some amount received that could be paid to a private rehabilitator. We could have the private sector

MALONEY continued

participating and competing. That way, we can keep the system as effective as possible.

I'd, also, like to see, might like to see, either the employee or the employer have some input, as to whether, you know, which group they go with. They can either go to the state rehabilitation person, or maybe, there's an x amount of dollars that you figure is spent in that effort, or the same, or an equivalent amount of money, go to a private person engaged in that business.

STIMSON

For the Committee's verification, I might explain that what I've asked, Bob, to do is to explore the ways in which we could remove the Workers' Compensation responsibility from the Division of Vocational Rehabilitation and put it back into the Division of Workers' Compensation. Then, I've asked, Licia, to pursue a proposal regarding the Vocational Rehabilitation Program, as it might be restructured in Workers' Compensation. So, that's essentially, the lines of responsibility, as I understand them at this point. Bob, do you have something else that you want to raise that we haven't discussed so far?

WILLIAMS

Not really. I kept notes last week on this Second Injury Fund and vocational retraining. I haven't got a whole lot that's new to say on insurance, except perhaps, to questions.

We tackled that insurance quite a bit. I guess, I'm really not sure which way we're going to go here. We've got a way to go yet in just establishing a State Fund. We've got deregulation

WILLIAMS continued

and, at least, a thought in deregulation and opening it up to competition. On the other hand, we've got regulating for investment income. I guess, what I'm asking is, I'd like the Commission or this sub-committee to give an idea of which of those three major areas they're leaning toward; so, I can just concentrate my effort in that particular area.

MALONEY

The problem I'm concerned about, in terms of the economics, after listening to the National Council people and listening to the presentation made by the Commissioner from Oregon, I would, for my own personal preference, head in the direction of allowing some competition, perhaps, using the Oregon model as a guideline, in terms of, not being able to go below the absolute level but some competition as to the expense provisions. I think that's logical.

One other thing has to go hand in hand with that and I've said it before. I hope I'm not meeting a dead horse but, I think, that the payments for a defaulted company, or by a defaulted company, should not lie in the back so the people who are running their business, especially, if you get into more of a competitive model. In other words, company x fails. Company Y shouldn't be forced to pick up the pieces. The State should have to pick up the pieces. It has authorized company x to do business and has allowed it to charge rates which are below the standards set by the National Council, including its estimates for overhead.

STIMSON

anyone else?

WILLIAMS

I guess the reason that I'm saying this is because we've been asked to look into it and this is briefly. As far as the State Fund and a lot of these decisions, they can be made, I think, without a big study. People know what a State Fund is. The Legislative Affairs Agency did a study on the State Fund in 1977. They do operate some. They say they can operate with less than the expense costs us. On the other hand, I agree that they're less sufficient and that kind of wipes out that advantage.

On the second area, we had a lot of discussion on deregulation, or at least, regulating the pure premium and requiring the companies to compete on that expense portion of their premium.

The last area, which I think, perhaps, the Legislature hasn't really quite dealt with and that we haven't dealt with, is the regulation of Investment Income. Again, this is a fairly radical departure from the way that we regulate rates now. The only State, that I know of, that does this is Massachusetts and, I think, we had testimony from our own Director of Insurance that Massachusetts is having some problems--something like, 50% of the insurance is in the assigned risk pool. I think, it is indicative that the companies just won't write us a set that regulate a different rate.

I can say, I guess, I talked to, Ken Moore, this afternoon and, while the Division of Insurance is not going to come out front on any of this stuff, if there is a recommendation in one of these three major areas, that's got to come from this Commission. Of the three approaches, let me go over these again--the State Fund, open competitive income, the most repaire from the Divison of Insurance will come from the

WILLIAMS continued
question of deregulation.

As far as the other areas, we have self-insurance, use of deductibles, pooling without safety services and I might throw out one more idea at this point. This was brought to my attention by Ken Moore. That is, there's an 8% surcharge in the assigned risk pool. It's an automatic surcharge and Ken thinks that, that ought to be negotiated. It doesn't, necessarily, have to be 8% and he leans towards deregulation--to compete from their 68% permissible loss ratio all the way up to 108% of the assigned risk pool.

Anyway, I guess, while I'm on the line here, the four latter subjects--self-insurance, deductibles, pooling without safety services, well, at least, those three, I don't see a reason why we couldn't draft a bill that included all of those. That way, we get into the three above, which is the State Fund, deregulation and regulation of Investment Income. I think, those are three totally separate approaches to a problem and, I think, it would be obviously impossible to draft a bill that deregulates on the one hand and regulates Investment Income on the other. If you're talking about actually setting up a program by a draft bill, which, I think, ought to be the next step, then, someone's got to make a decision.

ROGERS

I've got a couple of questions. Firstly, Bob, is there any State where the State Fund is working and solvent?

WILLIAMS

I don't know for sure. I'm sure there are. I understand that there are a number of them that are working fairly well. I

WILLIAMS continued

believe, there's a couple of them; such as, Pennsylvania, that aren't working very well. I guess, I'll have to say that I don't know.

ROGERS

I'd like to request that you do go ahead and get that, the open competitive rating law so we can take a look at just what would be in that. Then, I have a couple of questions on the assigned risk pool.

As I understand it, the way that works, now, is if someone can't get into a regular carrier, they go into the assigned risk pool-----that goes out to anyone of us and the carrier charges an 8% surcharge. The loss ratio doesn't seem to justify that 8% surcharge. Can you or can, Tom, answer that for me?

O'KEEFE

Yes, you are correct, in terms of, the 8%. I just gave, Senator Stimson, a copy of the surcharge plan that is in effect in other states. Essentially, it appears to me that, other than those who are involved in the underground mining--coal exposure, the surcharge doesn't seem to be prevalent. I would think the only concern I'd have in Alaska is the aircraft situation, which is quite hazardous and, perhaps, a surcharge might be appropriate there. In terms of, putting a surcharge on an account simply because it's a small account, that obviously, ought to be addressed regarding its equity.

In answering your question on loss ratio, the National Council did supply information which would indicate that on a three year basis, the loss ration was, I believe, 74%. There was one good year and two poor. Again, that does include, with the surcharge, if you dropped the surcharges off, the loss

ratio

O'KEEFE continued

ratio, obviously, would go up.

ROGERS

OK. I wonder if there are other ways the states handle an assigned risk. For example, could the State put it out to bid? Which company will handle all the risks that all the other companies refuse to, and whichever company did below surcharge or are there other ways of handling assigned risk situations?

MALONEY

The study that, Tom, has doesn't show that. It does indicate there are thirteen states, which charge about 8% surcharge. It seems to have been a uniformly developed percentage. I would just point out, for whatever reason, an insurance broker or company is not willing to take a risk on, it, maybe, because it's uneconomical. Certainly, if it was economical, you would think that they would go after the buck, particularly, in light of the, what did we figure, 6 million dollars in premiums or 7 million a year that is what is currently being collected. It seems like a substantial amount of business that's out there.

Perhaps, Terry, someone would like to bid on it. Brian, I think, your suggestion might be a good one. There might be someone who could start a company this way.

WILLIAMS

I'd like to make a comment. I don't know. It doesn't sound like a bad idea. They just might draw a parallel between what you're talking about and the issue that we've been talking about for the last month, and that's deregulation. You allow your autolines. You get subservice companies and while they don't go out and, necessarily, bid, what they do is file an

page 28

WILLIAMS continued

upper deviation and that prices them out of the normal insurance bracket. I mean that's their hook of business, these high risks.

I don't know whether or not that really gets to it. I think, and Tom O'Keefe can, probably, straighten this out. The Workers' Compensation plan in Alaska, I believe, (Isn't this right, Tom?) it's negotiated. Don't all carriers participate but don't they just sit down or didn't they three or four years ago, sit down and negotiate a surcharge?

O'KEEFE

I don't have, firsthand, the information as to how it was formed. I do believe, at that time, Director Block called the carriers together and did formulate a plan.

I would like, on my own, perhaps, to do some polling of the insurance industry and see if they would like to come up with some better, alternative recommendations on that pool business. In other words----- (interrupted)

ROGERS

Tom, I can't hear you.

O'KEEFE

Can you hear me?

ROGERS

Yes, I can.

O'KEEFE

This is Tom O'Keefe, again. What I was going to suggest is that, perhaps, as step one, and, obviously, the Commission

O'KEEFE continued

could do what they wanted, in terms of, the overall plan. As step one, perhaps, I should get back to the carriers in the State--come up with some consensus of opinion as to readdressing the current plan regarding the 8% surcharge, as it applies to the small account and second, in terms of, which follows closely, would be the area of how much income the carriers would get for servicing the accounts that they presently have in the pool. I would be willing to get some opinions from the carriers in that area, if that would be of any significance.

ROGERS

I think, that's a great idea.

O'KEEFE

In other words, what I'm thinking of is seeing if they can solve the problem before this Commission solves it for them.

I might also add one more thing that, Dennis, brought to my attention. In looking at these things, we were talking about a State Fund deregulation, including Investment Income in calculations of rates. There's, also, one more that, Mr. Williams, forgot and that is no change.

I will go ahead and see what I can do about this because I have to add some concerns on that, in terms of, some of these other pools that I have here. There seems to be a question as to whether we ought to readdress that. It's been a while now and, perhaps, it just needs some readdressing, at this time, in many areas. I'll go ahead and do that, report back as soon as I get the information.

page 30

STIMSON

OK. Bob, you were asking for direction. Do you feel like you've got it now?

WILLIAMS

Yes, Mr. Chairman.

STIMSON

OK. Are there any other areas we want to cover at this subcommittee meeting?

ROGERS

This is, Brian. I would like to see what the three other issues that, Bob, mentioned--pooling without safety services, self-insurance and deductibles--I'd like to see that on paper and how it might look in a draft bill. I wonder if he could look at that, draft that up or something and give a little explanation of the issues.

MALONEY

I'd like to make sure we even know what the issues are, especially, as a self-insurer, I'm, particularly, interested in the self-insurance area. I do believe there are some holes in the law. Once you have qualified, you appear to have qualified forever and there doesn't appear to be any review mechanism, other than, filing an annual update--saying we wish to continue and here's what our losses were.

With respect to maintaining, as in our case, we maintain a very large deductible policy, which is on an annual aggregate basis. I think, there needs to be some guidelines in that area. I'd like to talk to, Bob, or see what he's drafting before we put something in, which may affect those people whom I represent.

WILLIAMS

Mr. Chairman, on the self-insurance thing, the only thing that I have in mind was it's my understanding that, right now, the Division of Workers' Compensation certifies health insurers and it's, fairly, an informal process. They just, basically, send them a notice.

I think, what we were discussing, with turning that portion over to the insurance, because they're more along the lines with what they would seemingly do, which is, regulating the solvency of the carriers versus the Division of Workers' Compensation, which is really handling claims procedures. I guess, more specifically, what I would envision is seeing a function that exclusively requires a division to certify self-insurers' rate of insurance.

MALONEY

I have some questions about that, Bob. If it's left open-ended, I assume that they would draft regulations dealing with that question but I had a very difficult time, for instance, self-insuring in the State of California. There arguments had meant to me that you're too small an account in California. I argued and pointed out to them that I'm already self-insured in Washington and in Alaska and already have the excess insurance policy. They had some very stiff guidelines. I'm just concerned that, that could happen in Alaska.

TAPE 2, SIDE 1

MALONEY continued

If you look at your reserves, merely, because our current ratios weren't high enough, which is, as you know, the current

MALONEY continued

debt to current asset level.

The California people, also, pointed out, when I mentioned we were a subsidiary of Household Finance Corporation, which is a multibillion dollar corporation, that Household Finance wouldn't qualify under California rules either. I'm sure that Household Finance is double A bond rating in New York, which was adversely affected by this ruling. However, I would hate to see the Alaska Workers' Compensation Self-Insurance Program end up following the guidelines that were used in California. That's all I've got to say.

WILLIAMS

I think, I'm sure, Ken Moore, has a few things to say on it and I talked to him, briefly. Basically, he doesn't want the responsibility but I don't personally have a good feeling for what the criteria for self-insurance would be if I requested those legislative legal council people to draft a bill. I would leave it pretty much open to the Division to establish those criteria by regulations. Then, I think, what would happen would be a notification of the people who were interested. They'd have to come in and testify on it.

MALONEY

I'd like to see some of their criteria laid out just in a general philosophical point of view--that we point out that the self-insurer in Alaska would not have to have the same qualifications that an insurance company does. Obviously, very few of your employers in Alaska can meet those stringent guidelines. Perhaps, just a few of the criteria could be laid out in the legislation. You could talk to the insurance people to see what they might line out; so that, I know what

MALONEY continued

I'm buying when it's transferred.

WILLIAMS

Mr. Chairman. Why don't I sit down with the Director and see what we can come up with? Then, we'll talk about it when we get a draft?

STIMSON

OK. I think that sounds real find, Bob. What about the other two areas, now?

WILLIAMS

Well, the deductibles is one that we discussed and since we discussed it at the sub-committee meeting, with----, he was asked if we met with the people from the Insurance Trade Association. I believe, we talked about deductibles with the National Council and we were kind of confused, actually.

The National Council didn't seem to think, one way or the other, about--Ken Moore, gave me some idea, at least, mechanically, how they would work. I suppose, as far as this Commission, you could mandate that the companies offer deductibles or you could just allow them to offer deductibles. Maybe, the best way would be that they would have to file, basically, made to file, the percentage premium reduction for whatever amount that the employer was going to be willing to take on himself.

Finally, that deductible would have to be, whether the deductible would be offered, it would have to be decided between the employer and the carrier. The carrier would be the one on the hook. It would have to be drafted in such a way that the carrier would have a lot of subrogation against the employer

WILLIAMS continued

should he not be able to make those payments.

I guess, if we were to go ahead and draft a piece of legislation, what I would do, I'd make an option, allow the carriers the option and then require them to make a filing with the Division of Insurance and then leave the first burden of payment on the carrier. Include in there, a provision of subrogation.

MALONEY

Again, I'm somewhat concerned with that approach from just a business standpoint. Depending on how high the deductibles get, especially, since we're talking about a situation where we've got an assigned risk pool, where people are forced to take certain risks. Say, for example, we had Mr. Fly-By-Night Trucking Company that starts out and because of the reduction in his rates, he chooses the highest deductible possible--comes in for a season and either goes bankrupt or disappears with the funds, leaving the company, which has been forced to take his business with this worthless right of subrogation against the Fly-By-Night Company.

I would think that in your competitive model, you seem to be pushing and which I would support, at least, in part, you would have that as part of your competitive skeem.

WILLIAMS

Mr. Chairman. This is Bob Williams, again. Maybe, I didn't make myself clear. I think, the problem that Mr. Maloney points out is a valid one. I don't think that we should force the insurance companies to offer deductibles to companies that they don't feel can financially carry that risk. Somewhere

WILLIAMS continued

in there there's got to be the choice. I can't see how we can work it, other than, the choice of whom the company offers the deductible to. It would have to be left up to that company, particularly, if they have the notice of first payment.

STIMSON

Bob, at this point, it strikes me that what we need is for you to put together some concepts that we could take a look at on paper and explore, in both these areas we've talked about so far--also, that pooling. Why don't you discuss that pooling a little bit?

WILLIAMS

Yes, Mr. Chairman. I think, you're right. We've talked about these a number of times and what I'd recommend is my going ahead and requesting that some legislation be drafted so we can look at it and examine, specifically, how they work. We've dealt with all of this and, I think, we all are at the point where we need something in writing. I think a bill, with a section by section analysis would be the right step.

On the pooling, from what we have, there was, in relationship to the fictitious group law--right now, it's against the law for groups of insurance to go in and, just form, what the law calls, a fictitious group, just for the advantage of obtaining group policy. The recommendation there was along the lines of--as long as an employer falls within the same rating classification as other employers, that those employers get together, band together, and go in and get a group policy. The immediate advantage there is that if you get the policy

WILLIAMS continued

amount high enough, one, you don't get placed into the assigned risk pool and, two, you're eligible for some premium discounts.

STIMSON

OK. Bob, why don't you go ahead with something like that. You can bring it back to the Insurance Sub-Committee and we can review those ideas when we can take a look at something.

WILLIAMS

OK. Then, I'll go ahead. Tom Sofo, is still on vacation. I suppose when the legislative drafting is requested that it doesn't have to be, Tom Sofo.

STIMSON

Jack Chenowith is available.

WILLIAMS

OK, fine. Then, we'll go ahead and draft up a bill along the lines of Oregon, where the insurance companies are still required to file information with the National Council. The National Council comes up with a premium ratio and then the companies are required to file expense premiums above that. We will, also, start drafting up some legislation on self-insurance, deductibles and pooling relationship to the fictitious group law.

STIMSON

OK. any questions for, Bob?

MALONEY

I would, again, just as long as we're drafting things and

page 37

MALONEY continued

these, supposedly, are going to be options, hope that we would, either vote on it or address it. Ask that when the deregulation bill is drafted--that an additional paragraph be included that we can look at, which would require the State to pick up the tab, if a certified state licensed company fails, rather than, requiring these companies which are competing to pick up the tab. I think that, that's equitable.

WILLIAMS

OK. I'll include that language in the draft then.

MALONEY

It can be deleted if the Committee feels it should be deleted.

STIMSON

Yes. I think, that's fine. It will give us something to look at and a basis for some discussion. Anything else we need to address at this time? Brian, anything else you want us to take a look at?

ROGERS

Nothing, right now. I'll hold Fairbanks clear.

STIMSON

Dennis has a couple of questions before we sign off here, if you want to hold on.

MALONEY

Brian, I just would like to know. You're the Chairman of the Benefits Sub-Committee. I'm wondering when we're going to have some meetings relating to the benefits?

page 38

ROGERS

I decided to hold off until after the election on sub-committee meetings.

MALONEY

I can understand that position.

ROGERS

The difficulty would be, you'd, probably, have to carry on the meeting without the Chairman.

STIMSON

Bob, anything else you want to say before we sign off?

WILLIAMS

No. Thank you, Mr. Chairman.

STIMSON

OK. Thank you and thank you, Brian and Joan, if she's still sitting in. We'll sign off, then.

WILLIAMS

Terry?

STIMSON

Yes. Go ahead.

WILLIAMS

I did have one last thing. Joan's been sitting there and I'd just like to tell the Commissioner, with the sub-committee present, that I did send Blue Cross a letter, with the suggestion, that we're considering the feasibility of Blue Cross writing that Workers' Compensation package. I mailed, with the

page 39

WILLIAMS continued

with the letter, a copy of the law. I don't know if Joan's still there but, I guess, that's in the works.

STIMSON

Yes. Joan, said you were keeping her busy.

WILLIAMS

OK. That's all I have.

STIMSON

OK. Thank you. We'll sign off, then.

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Chaired by:
Senator Stimson

November 15, 1980
Workers' Compensation Study
Commission Teleconference
Anchorage/Fairbanks/Juneau

Members Present:

Anchorage: Chairman, Senator Stimson

Committee Members: Dennis Maloney
Michael Swalling
Thomas O'Keefe
Chancy Croft

TAPE 1, SIDE 1

STIMSON

Good morning. Welcome to our meeting. We know who we have in Juneau. Do we have anybody on line in Fairbanks? No one in Fairbanks. For the information of those folks that are in attendance, we are without our Co-chairman, Brian Rogers. He's in Sitka working on another committee and I do believe that---(interrupted)

DEBRA

This is Debra in Juneau. If you're speaking, we're not hearing you down here.

STIMSON

This is Terry Stimson. Are you reading me now?

DEBRA

Yes, Senator Stimson, we hear you fine.

STIMSON

OK. Thank you. If, Bob Williams, is there and ready, we would like to have him present the draft legislation. Bob?

page 2

WILLIAMS

I'm here. Thank you, Mr. Chairman. With distribution, you have six bills, their amendments and you should also have two reports that I sent to Licia.

STIMSON

I believe we have it, Bob. Go ahead.

WILLIAMS

OK. With this report and the progress report, they outline where the Committee is and they outline in a narrative form how we got there. I went through each of the meetings, highlighted them, the pertinent points, to further lead into why we're addressing these particular amendments. The second memorandum is a more technical memorandum with a section by section analysis of each of the pieces of legislation.

Very briefly, the legislation covers four general areas. The first amendment deals with the licensing of the self-insurers. The second amendment deals with eliminating restriction on employers who wish to obtain group insurance policies. The third amendment allows deductible policies for Workers' Comp and the fourth establishes a limited form of open competitive rating. This is more on the insurance proposal which Commissioner Fritz testified on before the Commission in Anchorage. I don't know if the Commission wants to recap where we are, or whether or not we should just go into the legislation.

CROFT

Mr. Williams, I'd like to ask a question in regards to the first proposed piece of legislation, the licensing of self-insurers, whether the sub-committee considered removing that provision altogether, in other words, prohibiting self-insurers and requiring everybody to have an insurance policy?

WILLIAMS

Mr. Croft, the answer is no. What the proposal does is, basically, transfer the function of licensing self-insurers from the Division of Workers' Comp to the Division of Insurance. The rationale being there is that the Division of Insurance has the type of financial expertise that would allow them to be able to review the records of a firm applying for self-insurance and being able to make the judgment as to whether they can carry that risk. As far as eliminating the opportunity for self-insurance, we have not done that. In fact, I think, we've gone a little bit the other way by providing policies that would encourage self-insurance; again, if it can be determined by the Division of Insurance that they're able to carry that type of risk.

STIMSON

OK, Bob. Why don't you just go ahead.

WILLIAMS

OK. What we did was on the self-insurance and Tom Sofo, who drafted the bill is here, the provisions in the Workers' Comp Code for self-insurance we just listed those right out and wherever that needy reference was made to the board, we replaced that with the words "Insurance Commissioner", which, I think, is a slight technical drafting mistake and it should be the "Director or self---(Tom is shaking his head.) In Title 21, which is the Insurance Code, the Insurance Department is a Division and not a department; so, we have the Director as head and not the Commissioner. He's shaking his head that it is not a technical mistake but, I think, that it should be "Insurance Director". Basically, what we did is we took just a lead-in reference to the board and replaced it with the Insurance Commissioner.

Maybe, I can go over exactly what specific provisions they are.

WILLIAMS continued

I think, that at the sub-committee meeting, we had talked about what criteria we should use and as I found out, those criteria are already contained in the Law. We did add one change, based on the Minnesota Statutes that, Licia, sent me and I'll be going over that as I go through this Bill.

I refer you, at this point, to Amendment 1, which is three pages long and if you'd like to follow along, I also have the memorandum, entitled, "Review of Draft Legislation", from which the first section will deal. The sections on the Draft Bill aren't numbered and I took the liberty of just numbering them in the memorandum.

The first section repeals AS 23.30.005 (f), which is a requirement that the Board notify any contracting agency of the state, if it revokes a self-insurance certificate. We repealed that and later on it's added back in but it's added in as a requirement for the Division of Insurance.

The second provision, again, is in Law in the Workers' Comp Statute. It, basically, disallows the awarding of any state contract to any person or corporation who can't show proof of self-insurance. The only change we made here is changed the reference to the Board, the Workers' Comp Board, to the Insurance Commissioner.

The third section (We're now on page 2, about the middle of page 2) grants the authority to any state agency to terminate a contract with any person if they receive notice that the person's Workers' Comp Policy has been cancelled, and grants the agency the right to terminate the policy if the Insurance Commissioner revokes a certificate of self-insurance. However, as I'm reading, 075, I think that, that's the section it's based on. OK. I see the problem. Section 3 is actually on