

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

1091 SCOMM 33: WORKERS COMPENSATION, 1979-1982

WILLIAMS continued

the bottom of page 1 and that is, the agency may either terminate the contract if they receive from the Insurance Commissioner notice that the self-insurance policy has been revoked.

Section 4 is the general section in the Workers' Comp Statute that requires an employer to maintain insurance. In that section, they include insurance, self-insurance, as covering that liability as long as that self-insurance is authorized by the Insurance Commissioner. This section states that he has to show the Insurance Commissioner proof of financial responsibility or the ability to pay any direct losses. It also, at the discretion of the Insurance Commissioner, allows him to require the deposit of what they call acceptable security or bond to secure the insurance payment. Again, this is taken right out of the existing Law.

Section 5 (and here we're on the bottom of page 2, the last section) AS 23.30.085 (a)) exempts showing certificate of compliance with the Board as long as he has certification from the Insurance Commissioner.

Section 6, is at the top of page 3, AS 23.30.087. Here, we took a section from the Minnesota Law that authorizes group self-insurance, again, as long as it's approved and under regulations adopted by the Insurance Commissioner.

Section 7, deals with the actual issuance of self-insurance certificates by the Insurance Commissioner. It adds in a provision, that was deleted in Section 1, making it a requirement that the Insurance Director has to notify any contracting agency of the state if and when they revoke a certificate of self-insurance.

That's, basically, kind of a brief and rough outline.

STIMSON

Bob, what changes does this proposed legislation make in the respective roles of the Board versus the Insurance Commissioner? Are there any changes or is it all just transferred over to the Insurance Commissioner?

WILLIAMS

No. Every requirement that the Board has now has been transferred directly over to the Insurance Director. The only change is at the top of page 3, where we added in a provision to allow group self-insurance. That's the only substantive change in this whole piece of legislation. What that section says is that two or more employers with the same rating classification can group together and apply for a certificate of self-insurance with the Insurance Director and pursuant to regulations adopted by him, he can either decide to issue it or to not issue it.

STIMSON

OK. Questions? Dennis?

MALONEY

This is Dennis Maloney.

WILLIAMS

Reference to this is on top of page 3, AS 23.30.087.

MALONEY

Bob, this is Dennis Maloney. Your group self-insurance program, is there a requirement? I don't see a requirement that members of the group agree to indemnify each other. How are you proposing that this work?

SOFO

Dennis, this is Tom Sofo. We looked at the Minnesota Statutes and the Statutes didn't give us any of the mechanics as to exactly how these insurers would operate.

SOFO continued

and the Statutes didn't give us any of the mechanics as to exactly how these insurers would agree--if they'll agree among themselves or under regulation by the state. So, the only reason for the insertion of 087 is to raise the issue. We may or may not be able to draft the exact line which would clarify the relationship between each of the insurers but, at this point, from the drafting standpoint, I've given no thoughts to it at all. I would assume that some of the mechanics are for them to sign their own private agreements. There's nothing in the legislation in front of you today that indicates whether they have to do that at all and, if so, with what incentive?

MALONEY

Well, I think, it would be helpful if we inquired of Minnesota, precisely, how that is accomplished. Without something like that, a proposal for group self-insurance, such as this, is meaningless.

WILLIAMS

I think, it's a little vague but I believe, at least the way I understood it, would be that the actual provision and the mechanics of it would be handled by the regulations adopted by the Insurance Commissioner and that's the way it reads. Don Koch, may have a comment on that.

DON KOCH

This is Don Koch in Juneau.

STIMSON

Don, we need to have you speak up.

DON KOCH

I'll move the mike a little closer. Maybe, that will help.

KOCH continued

I think, that Mr. Maloney has hit the nail right on the head. There has to be some kind of, I don't know what you'd call it, an agreement or what, but, I believe that, that should be in statute rather than in regulation.

Unfortunately, none of what we have here gives us any guidelines, any statutory guidelines for saying who can do this and who can't do this. So, we're going to end up with some contested things. We're not all that happy about the idea of transferring the function to the Division of Insurance but, if that is the policy decision that you make, we'd certainly be encouraged a bit more in the way of specific language as to a guideline. I can go on about this but I'll finish for now.

STIMSON

Tom?

O'KEEFE

This is Tom O'Keefe. I'd like to pursue that last comment, Don. You say you're not all that happy with this possible transfer. Could you elaborate on the reasons for that?

KOCH

One of the arguments for placing the self-insurer function with the Division of Insurance is that we have the, quote, "expertise" to do these kinds of examinations and draft regulation, etc. I would point out that we do this kind of function for insurance companies but if you were to take a look at Title 1, the Insurance Statute, you'll find that there is a very elaborate and structured set of statutes that, basically, outline everything you want to look at. It includes: capital, insurance function requirements, investments--what they can do and what they can't do, reporting requirements, drafting subsidies. It deals with

KOCH continued

a whole string of subjects, holding company action, etc. All the guidelines are well defined and there's stability; for instance, to examine; so that, we can determine the reason they're there.

Another book that we did would exist for a self-insurer because the statutes in Title 21 deals, specifically, with insurers. This particular amendment has nothing in it, that I can see, that, specifically, places any statutory language in Title 21. I think that will be needed.

O'KEEFE

Don, this is Tom O'Keefe, again. From what you're saying, you don't feel that there would be anything particularly accomplished by moving it from one government agency to another, unless something's done, in terms of, the guidelines for establishing self-insurance. Is that right?

KOCH

That's right. I guess, in defense, we haven't. It can be argued that we have a bit more expertise than they have because we've been dealing with our own insurers and if we had to deal with them, on this basis, we'd probably try to copy as much as we could out of the Insurance Statutes. I think, it would be much clearer to make specific references to the sections of the Insurance Statutes as to which ones should apply to self-insurers. It would give us a guideline.

O'KEEFE

Don, this is Tom O'Keefe, again. In the event that a self-insurer is unable financially to meet its obligations, are there any provisions right now as to how the employee is protected?

KOCH

Of course, as you know, Chapter 80 of the Insurance Statutes, the Alaska Insurance Guarantee Plan is a program that deals with insurers. Again, that fits into that structure, to the policy structure, that we have for insurers. There would be no protection for the employees of a self-insurer. I, frankly, don't see how you could amend Chapter 80 to include self-insurers. I think that, that would foul-up the whole works.

O'KEEFE

I agree with that statement, Don.

CROFT

If the Division of Insurance took over the existing authority of the Workers' Comp Commission and the Division of Insurance does have the ability to look at insurance companies to determine their solvency but can't, under the authority that would be transferred, determine whether a self-insurer was solvent or not and granted that the Workers' Comp Division has absolutely no ability to determine insolvency, it seems to me that we've got a situation now, in which, basically, a lot of people are unprotected. That's why I brought up, at the beginning of this, the question of whether or not we should just simply remove the self-insurance provision altogether. The thing that worries me about it, as well, is I think that it's a great opportunity for a lot of large businesses to take off a lot of the low risk insurance business and leave the higher risk to people who have to buy insurance policies.

MALONEY

I couldn't disagree more about what, Mr. Croft, has stated. The ability to self-insure is something that the company I'm working for has taken advantage of to its great benefit. It's

MALONEY continued

my experience that there aren't that many corporations or organizations which are self-insured, currently. I'm unaware of any failure to pay any claims and prior to going on a witch hunt, I'd like to see some statistics regarding failure to pay, by self-insurers, in states that have allowed self-insurance for an extensive period of time. The State of Washington, I think, has upwards of half the insurers in the State which are self-insured. I think the program is very successful. At least, it's been my experience, that most corporations or organizations, which self-insure, do have a very large deductible blanket policy covering the shop loss that one would, ordinarily, be concerned with.

In terms of the overall operating costs of the company, I think that you'll see this self-insured retention is, probably, a very small percentage of the operating costs of the companies which are self-insured. Now, I have no objection to drafting regulations covering that. I would object where we try to wholesale import the financial requirements, which are put on insurance companies, to a company, which is to self-insure. There are all kinds of financial rules of thumb--current ratios, the amount of reserves which are retained, all kinds of questions, which really don't apply to the self-insurer, who, ordinarily, pays his ongoing costs of Workers' Comp out of his operating money.

CROFT

I'd like to ask, Dennis, do you agree that it should be transferred out of the Workers' Comp Division?

MALONEY

It seems to me that it would be no problem in moving. I have no problem with it. In terms of performing some kind of

MALONEY continued

an analysis, it seems to me that, presumably, the Insurance Commissioner is better suited to make that kind of analysis. I don't think, by any stretch of the imagination, that you should try to say in order to self-insure, Wien Air Alaska, or any corporation like it, would have to have the same kind of financial wherewithal that the insurance companies do. We're not out selling insurance. Our Workers' Comp costs, although they are running, maybe, one percent of our operating costs, are not that significant, in terms of, our ability to pay. As I said, we also have a large excess policy should we suffer a big shop loss. I think, most self-insurers have those kinds of excess policies.

O'KEEFE

Don, this is Tom O'Keefe. I'd like to ask you two questions. One of them is concerning the philosophical use of offshore reinsurance. How attainable is the reinsurance on that to some of the self-insurers? Is the market such that at the prices you could get to these? Do you have any feelings on that?

KOCH

Are you talking as to our ability to regulate them?

O'KEEFE

I'm talking, in terms of, the large deductible that an employer might have for self-insurance and then have a reinsurance or an excess policy to cover. I assume you do the monitoring of the licensing of the company but are there any statistics to find out how many, what you might call, foreign companies versus alien companies?

KOCH

I have further insurance programs for those but not really. -- I

KOCH continued

suspect we have the ability to look at it but we wouldn't have the ability to say to an insurer you can't use that one.

I'd like to throw in one other thought. We've had some discussion with the Division of Workers' Comp, with the idea in mind, that, perhaps, this function of determining whether or not a self-insurer should receive his certificate should be a dual role function. I think the Board has a strong interest in monitoring just what's going on with that. Perhaps, by leaving that function with the Board, but by requiring any panel that is making that determination be members of the Division of Insurance might be helpful a little bit if you're throwing in the so-called, "expertise", that we have.

O'KEEFE

Would anybody here want to comment on that? That sounds feasible to me. In other words, share the talent, is that what you're saying there, the talent that's available between the two departments?

KOCH

Yes, sir. That's right.

CROFT

I don't think the Board has any interest at all in self-insurance and has refused, as a matter of fact, to even get into the question of whether somebody is complying with the self-insurance law. Secondly, I don't know of any expertise that they're going to have that's going to help to make the determination of, whether or not, somebody is a solvent self-insurer.

STIMSON

That's been my impression too, Chancy. I'd be interested in hearing Jackie McClintock's reaction.

MCCLINTOCK

Yes, this is Jackie McClintock. Actually, this had been suggested for a period of five years by, John Cook, the previous Director for Workers' Compensation. In last year's Bill, there had been drafted that provision to switch that responsibility over to the Division of Insurance. We have no objection to that switch at all. I would say that Workers' Compensation would have a vested interest to make sure that, that employer, to look at prior claims of that employer, and I can see that's how we would come into the picture, as far as, advising the Division of Insurance.

I think, the feeling has always been that the self-insurers, for all purposes, act as insurance companies when they self-insure. It is our feeling, again, that the same criteria, same guidelines that are with the Division of Insurance right now, in policing insurance carriers, would apply and really belongs in that Division.

O'KEEFE

I'd like to direct another question to, Don. Could you highlight, for the Committee here, a little bit of what goes on, at least a starting point, for the monitoring of insurance companies and their financial ability to pay and some of the difficulties that you, as a department, may have in trying to implement the same thing for self-insurers? You gave the example of the differences in the criteria of the Law but how about, in terms of, location? What about the self-insured who is out of state and who does not have local records? Would this, in fact, involve sending your staff to New York or California or to some other state to do this?

O'KEEFE

Second, does a self-insurer pay for these audits like the insurance company does?

KOCH

Well, to answer your last question, first, there's nothing in the current structure that would have a self-insurer pay for it that I'm aware of. The insurance companies do pay for their own examinations. To a degree, if you have an out of state employer, who's a self-insurer, that's not going to pose a problem because they're going to have to have funding in advance. That's going to remove the element of surprise, if you will.

The Division has a financial examination section that participates with other states, in the examination of other insurance companies. As to the examination of a self-insurer, that burden would be on us alone. We are able to keep a rather small financial examination staff because of this sharing of the load, as to insurance companies, with the other states. As a matter of fact, we have, currently, one examiner who's qualified in the State to do these types of examinations. We do rely on some contract work as well.

As to insurance companies, generally, when they are examined financially, you'll see a number of states in there at the same time and they're all working together for the same purpose. I can't speak for what goes on in one of those because I've not participated in a financial examination. My role with the Division was to do market conduct examinations, which are different in substance. Tom, I don't know if I'm answering your question or if you need a further answer on that.

O'KEEFE

Yes, I think, you have. You've hit a couple of points--first,

O'KEEFE continued

The financial expense to the State--of going, particularly, out of the state to make these audits, at the expense of the State, and second, the fact that for the more complicated self-insurance programs, you are sharing this responsibility, from an insurance standpoint, with other states and on a self-insurers basis, you would be stuck with the bill yourself. That's, basically, the point I wanted to make to this Commission.

MALONEY

I have a few comments based on what I just heard. First of all, our company is self-insured in the States of Washington and Oregon, as well as, in Alaska. We have gone through the process of, currently, becoming self-insured in the State of California. This discussion of putting forward the financial requirements and the audit requirements, that are present for insurance companies, on a company where, again, I say the Workers' Comp costs are a small part of the overall operating costs of the company, doesn't make a lot of sense.

In some states, for instance, in Washington, a bond requirement is set. The bond is, relatively, inexpensive. The bond is set at a level required by the Insurance Commissioner. That protects the people, who would, ordinarily, sustain a loss that an employer couldn't cover if he became insolvent. It seems to me that, that would do away with all requirements that these companies be audited because of the fact that the self-insured person has a bond backing him up, saying that he is capable of paying all claims. So, there's no need to go out of state.

Audit a self-insurer or not even audit him at all, other than an annual or semiannual, quarterly, or whatever, review of his financial statements just to make sure that he's paying his

MALONEY continued

current liability. I wouldn't think that we'd need to require a person, who is self-insured, to have the kind of financial wherewithal that we're demanding of an insurance company.

We're not asking for self-insurers to go out and insure other risks--just themselves and, presumably, prior to issuing a self-insurance certificate, the Insurance Commissioner, the Board, or whomever has that obligation, is going to take a look at the financial wherewithal of the company and make a determination that they have paid their bill overtime, that the Workers' Comp loss isn't insured below the excess policy that they might purchase, is not going to drive them into bankruptcy.

That's the kind of examination that the Insurance Commissioner should make. This wholesale importing of the financial requirements that's been suggested would make it impossible for most companies, including my company, to self-insure. I think that, before we draft some legislation, we ought to know what we're talking about.

I think we ought to look at some of the other states on self-insurance requirements; such as, Washington. They have a very difficult self-insurance in Washington. Only half of the people who apply receive the certificates. It's an involved process and the process that they have there is much less complicated than has been suggested today.

CROFT

Did I hear you say that they require the posting of a bond?

MALONEY

In Washington, there's a minimal bond requirement. I think

MALONEY continued

the minimum is a hundred thousand dollar bond and the Insurance Commissioner sets the bond level. If the company is very solvent, if Workers' Comp, making an objective analysis of the company, is a very small part of the operating cost, the Commissioner in Washington will, ordinarily, set the bond at the minimum hundred thousand dollar level. If the company is one that some losses, which are retained, could cause substantial financial problems, it's my understanding they're set at a higher bond level.

CROFT

But, for many of them, the minimum bond in Washington is a hundred thousand dollars?

MALONEY

As I recall, I think it's a hundred thousand.

KOCH

I might point out that when a Workers' Comp loss occurs, there can be a long-term liability. This is the type of thing that the insurance company has to respond to with a structure that appears in Title 21. Certainly, a concern with any self-insurer is their ability to pay this overtime. We can look at their financial statements, perhaps, and say that, sure, they have the ability to pay it on the short-term basis but we'd have to have some ability to be able to take a look at the long-term.

Another point on this is that in Washington the benefit levels don't resemble the benefit levels in Alaska. So, while a hundred thousand bond might be adequate in that State, I think we'd have to, certainly, look at whether it's going to be adequate here.

MALONEY

I don't know how the hundred thousand dollar level was set, in Washington. As a practical matter, for some self-insureds, there's no need for a bond at all. It seems to me that the bond will protect the employee. If we haven't seen any cases of insolvency among self-insureds, I think, if you examine the facts in the State of Washington and I would hope that we would examine the facts before we runoff some draft legislation, you'll find that there had not been failures among self-insureds and you don't have workers going without receiving the benefits that they're entitled to.

If you want to create a bureaucracy and have auditors in the field going over the financial statements of every self-insured and looking at the reserves that are established, I think you can do that but the bond protects the individuals without the necessity for the bureaucracy.

WILLIAMS

I'd like to direct the Commission's attention to page 2. The middle of that section is AS 23.30.075 (a). This section is in the Workers' Comp Law that requires that an employer maintain insurance, basically. The last sentence of that section reads, if an employer elects to pay directly, the Insurance Commissioner may, in his discretion, require the deposit of an acceptable security, indemnity or bond to secure the payment of compensation liabilities. My point here is that the Insurance Commissioner, under direct status, had the authority to require a bond.

MALONEY

I think that's a good point. I think that this language protects the worker. Apparently, this is the current language, except for the reference to the Commissioner. Is that right?

WILLIAMS

Correct.

O'KEEFE

Bob, first of all, have you, in your research, looked at a few states in regard to their handling of self-insurance requirements; such as, Washington? Do you have any copies of their information?

WILLIAMS

We haven't looked at Washington. What we did look at was Minnesota and we, basically, went through the Minnesota Law and we went through this Law. Minnesota just recently enacted on that Law, related to Workers' Comp. I think, the session date was 1979.

What we did was try to match our requirements in the Workers' Comp Statutes with the new requirements that they have in Minnesota. As I mentioned, the only thing that we added was the provision on group insurance because we found that the Statute in Workers' Comp was almost identical to the provisions in the Minnesota Statutes. In fact, I would say that they're, probably, a little more strict because the Minnesota Law didn't have provisions allowing the Insurance Commissioner or the Board, or whomever has the responsibility of notifying any contracting agencies in the State, that certificates have been revoked; thereby, that contract should be annulled.

In the Minnesota Law that we looked at, the most stringent requirement was, that at the discretion of the Insurance Commissioner in that State, the requirement of security or a bond. We found that requirement in the existing Law and felt that it was a strong enough requirement and didn't look any further.

O'KEEFE

Perhaps, I'd suggest to the Committee that we consider getting for the members a copy of the Washington Law, like Dennis mentioned, and, perhaps, the one that you're looking at, the Minnesota Law, so that we can get some ideas here.

CROFT

I understand that what you're saying is the Alaska Statute is, currently, almost identical to the new Statutes that were passed in Minnesota?

WILLIAMS

That's right, except, in the Minnesota Law, after just a brief review, this Statute is a bit more strict. In that Law, it did not list out any criteria for self-insurance, which is passed out, as it is in this draft, to the discretion of the Insurance Director. This Law, as I stated earlier, has provisions relating to the issue of state contracts and the ability for the Insurance Director to notify any contracting agency that, that contract be annulled if they don't have the insurance.

Those two provisions, the provision of the State to not issue contracts or terminate contracts with an employer and combined with this provision in AS 23.30.075, that allows the Insurance Commissioner to require the deposit of a bond, I don't know how strict you want to get but, those do seem to, at least, provide some means of control.

STIMSON

Bob, does the Board, currently, require bonding very often?

WILLIAMS

I think, Jackie, can answer that better than I can.

MCCLINTOCK

I believe they have, at times, in the past. However, we don't have a good set of guidelines to do that and we have not followed it, as of yet.

MALONEY

The point is that the current legislation and this proposed change is putting the burden on the Insurance Commissioner or the Board to make a determination, whether or not, the person is going to be able to pay his Workers' Comp claims and, presumably, at that determination, that he isn't, they do not have to authorize self-insurance. I think, the provision for the bond puts the monkey on the Insurance Commissioner's back to make a determination, whether or not, the person is going to be solvent. If he isn't; then, I don't see what the concern is.

CROFT

I don't know how much longer you want to go on this but I'd say you ought to introduce that one piece of legislation of transferring it from Workers' Comp to Insurance. How much further you want to go with regards to bonds and the like, or whether you want to eliminate it altogether, is another thing. If there's going to be any apportionment at all of this, it seems to me, it properly belongs in insurance and not in Workers' Comp.

KOCH

Given that, we would encourage some reference in Title 21 to the fact that we're doing that. Find some of these pretty clear references in Title 23. We'd, also, have something in Title 21; so that, the regulatory making authority of the Director, which is in 21, can be used, rather than having to go to the Labor Code and using that regulatory base for authority.

STIMSON

Bob, with that in mind, could we have you work together with the Division to include their concerns in those specific titles that, Don, made reference to? Go ahead with the concept that is embodied in this piece of legislation and present it to us again at the December meeting?

WILLIAMS

Yes, Mr. Chairman. We can do that. I think, maybe, we should add to that. We'll look at some other law besides, Minnesota. The only one we did look at was Minnesota. The reason we looked at that was because it was a brand new Law and it seemed like a fairly good piece of legislation. I think, we ought to go beyond that and look at Washington and Oregon. Excuse me. Oh, Jackie McClintock says she has a lot of material on self-insurance.

When you look at this piece of legislation and compare it to those other states that (I'll just reiterate this.) in this piece of legislation, the Insurance Commissioner has the authority to require bonds. He, also, is required to notify any state contracting agency and any local political subdivision of their contracting agency if he revokes a certificate of self-insurance. These do seem to me to be fairly strong provisions. I think that, maybe, we ought to look at some other states.

STIMSON

The other area, of course, Bob, that you want to address a bit more would be the group self-insurance.

WILLIAMS

Yes, Mr. Chairman. Again, we tried to mesh the Minnesota concept with what we have under the Workers' Comp Law and the

WILLIAMS continued

only provision that we found there, in addition to what we already have. I would say that this Law is more stringent than Minnesota because of the provisions relating to contracting. The only provision that we didn't have was the one relating to group self-insurance. I would make the suggestion of pursuing the idea of allowing small employers in the same rating classifications to go ahead and group for self-insurance. We'll try to expand on this particular provision. What I'm asking is, is the Commission interested in allowing the idea of group self-insurance?

MALONEY

Personally, I wouldn't object to it. However, I would object if each member of the group didn't agree to be responsible for any claims made against a member of the group who wasn't able to pay. In other words, have language in the statutes stating that any group, which is formed, agrees to and any member of such group, agrees to pay losses of another member of the group in the event that they are unable to pay. Then, we don't have this group only newly formed and then have some people maybe drop out overtime and disappear.

CROFT

Dennis, wouldn't that be more of a question of what the insurance companies themselves would want rather than what we should put in the statutes?

MALONEY

No. I think, we're just addressing the self-insurance group.

CROFT

Oh, just the self-insurance, OK.

WILLIAMS

I think it's a good idea. The way these items would have

WILLIAMS continued

handled under this provision is that the Insurance Director would be required to make regulations but as far as expanding on this and clarifying it and requiring cross-exemplification, I don't think it is any problem in redrafting this particular section.

STIMSON

OK, Bob. Do you want to go ahead and take us onto the next piece of legislation?

WILLIAMS

OK. The next piece of legislation is Amendment II. I'd like to give some background information as to why we suggested this change. I think, we heard testimony that the small employer is discriminately placed in the assigned risk pool. When the small employer is placed in the assigned risk pool, it isn't related, necessarily, to his loss experience or to his safety program or to the fact that he is apparently a bad risk, it is more related to the fact that he is a small employer. He doesn't generate the premium volume that makes him an interesting insured, from the standpoint of a large insurance company.

The second disadvantage that a small employer has and, these can be clearly shown, is that if his premium is below a thousand dollars, he is not eligible for any of the premium discounts that are built into the rate schedule promulgated by the National Council Rating Bureau.

So, what we have here is a situation where, if an insured policy is less than a thousand dollars, first of all, he is likely, or we heard testimony, that he is assigned to the risk pool and that's an 8% surcharge on his premium, plus, the fact that he's not eligible for the first level of premium

WILLIAMS continued

discount which is 9.4% for any policies between a thousand and four thousand dollars.

What we have done to address this problem is, first of all, to get the small employer out of the assigned risk pool and, second of all, to, hopefully, get up to the level where he would enjoy a premium discount, gone to AS 21.36.190 (d), which is part of the Statute called the Fictitious Group Law. What this section does is it's a section in the Law which prohibits people from forming groups solely for the purpose of obtaining a group policy at a preferred rate. There's an exception in Subsection D that relates to Workers' Comp. It was amended in 1977. It was amended to the effect that the Workers' Comp Associations of Employers could, in fact, go and get these group policies, if they met the criteria that are laid out in Subsection D.

Those criteria are, first, the group has to be formed for a purpose other than the purpose of insurance. They have to have a constitution and by-laws. They have to have a safety program and, as a group, they have to have preferred characteristics over similar risks written on an individual basis.

What we have done is eliminated these conditions and to effectuate the provisions of groups of employers, specifically, to obtain a preferred rate. So, the Amendment, as you can see, deletes a large part of the language in Subsection D. It eliminates all the conditions except two. In fact, we added one condition in there. First of all, the Association of Employers has to be in the same rating classification. In other words, the same employer classifications, as set out by the rules of the National Council and second, the group has to file and receive approval from the Director of Insurance. The purpose here is to allow the policy to get up to a large enough

WILLIAMS continued

level so the small employers, in this group, can collect some of the benefits that are provided in the Council's rate structure.

MALONEY

Bob, what is the underlying reason for the Fictitious Group prohibition in the Statutes?

WILLIAMS

I think there are various opinions on that. Maybe, Mr. Koch, can answer that. I'll offer you and, it's certainly my opinion, that, I guess, you could in some casualty lines. You can, probably, see where it would cause problems; for example, if entire blocks of communities decided to form groups to insure their homes. What they would do is form an association of home owners and then insure, cross-exemplify, insure themselves together and go in for a rather high group policy.

MALONEY

What's the problem with that, now? I'm not sure I understand.

WILLIAMS

I think it's a great idea. That's why I recommended this change. I don't really know if I should inject that much opinion but I think it's a fairly self-serving piece of the Law, as far as, the insurance certificates go.

KOCH

To some degree, Bob is correct. There are, also, other elements. One is to avoid a high concentration of risk within a given location. Of course, that's more of a property or casualty concern as opposed to a Workers' Compensation concern. One of the arguments that's been presented in the past is what happens to the guy who can't get into one of

KOCH continued

these groups? If everybody is in a group, then there's not going to be anyplace for him to go. While that may not be a strong argument, it is one that is reflected in these Fictitious Group Statutes, where they exist. Other than that, I guess, maybe, Tom O'Keefe might have some thought to this, as well but I don't have anything else to add to that.

O'KEEFE

Let's use the example of the homeowners which somebody brought up earlier. Let's take the example of the neighborhood where it's, what's considered as, an upper class neighborhood with a very desirable low crime rate, etc. A large group of people get together and form a fictitious group for the purpose of cutting the premium. It sounds good. Down the street, you have a neighborhood that is less desirable. Insurance companies want to spread risks, in other words, a little bit of this and a little bit of that. If you, in effect, cream all the business into some selective groups that are, perhaps, more profitable, it leaves the residue or a group of accounts that are not so desirable. Then, you have the public concerned about those that don't fit. That's when statutes come and say, well, we'll have an assigned risk program to take care of that and things of this nature.

So, at first, I'd say it sounds great but in, practicality, what you're doing is you're restricting the market to some extent, in as much as the insurance industry. They come into a community and they find that, perhaps, the better segments are taken and they may just decide not to be a player because what's left isn't desirable. Then, you have a problem for the public to face.

Let me use one more example. Let's talk about the air line business, since one of my colleagues is more familiar with

O'KEEFE continued

that. Just before one of his airplanes was to take off, all the customers came up and said, if you don't give us a group discount, we won't get on your plane. It would, probably, if done enough, cause some havoc with their rating position. I'm not sure, if ten people go up to the window at one time and want to pay their fare versus one at a time, that it changes the cost of doing business or flying that airplane. So, perhaps, some of these analogies will broaden the scope and make it more meaningful.

MALONEY

I'm afraid the people wouldn't get on the airplane in that type of a situation.

O'KEEFE

That's exactly what I'm saying about the insurance.

MALONEY

The reason I asked is because we're changing this section, presumably, other than just a suggested change. I'm not convinced that there's any reason there should be any prohibition against fictitious grouping for insurance. I think, the insurance companies did that sort of thing with redlining and the mortgage companies did the same kind of thing. For years, they have charged higher rates in riskier neighborhoods. If we're going to change it for Workers' Comp, I wanted to know is there any reason why this prohibition should exist at all or for any other kind of insurance? If there is; then, presumably, the same logic applies to the small Workers' Comp Group. You're going to have everybody grouping together, except, that one poor employer who can't get into the group. That's the argument we just used for the homeowners. I'm not convinced but, maybe, somebody else has some thoughts on it.

KOCH

While I don't have any strong objections to Amendment II as it relates to the Division of Workers' Comp., I guess, I would have more of a problem if you were to expand the scope of this review to all lines of insurance in the Fictitious Group Statute. It, certainly, has a place in the property line, particularly, in the property line.

MALONEY

Why is that? I hate to get off the subject. You know we're not supposed to be looking at property insurance but if you license the insurance companies to have the financial wherewithal to write the kind of risks that they're going to take, what difference does it make if one insurance company insures a whole block?

KOCH

The difference it makes is that you, then, are exposed to a complication hazard that you would not ordinarily have if you've got to spread the risk. In other words, if you're writing it in town and you're spread all over town or all over the State, as opposed to writing it in town and having your business all concentrated in a one, two, three, four, block area, you stand a greater chance of losing all, if that set of blocks goes up, than you would, if you had a set of blocks go up and you had to spread the risk throughout the town. It becomes the solvency question.

In addition, I'd like to offer one more thought. If the concern is for business involved being, particularly, placed into the Workers' Compensation because of the premium size, there is another alternative that you might want to consider. That is to eliminate the surcharge that applies to that business that goes into the pool below a certain premium size. That can be done and I don't know if the carriers would have

KOCH continued

a strong objection to it. They might not be happy with it but it certainly can be done.

O'KEEFE

Don, I have written to gather the Alaska C & R Committee together, hopefully, within the next month, to address that very issue. I've written to New York and I've asked them to give me the updating on the assigned risk pools nationwide, the surcharges that may or may not apply. In all honesty, I must say, the trend has been to drop that surcharge in most cases. That information should be with me shortly and I, obviously, will share that with the Commission. We will call together the carriers to see what we should be doing, in terms of, the assigned risk pool.

MALONEY

It seems to me that, with the changes that have been proposed, in terms of, competition and variance from the Rating Bureau's current method of determining what rates are, this whole question may become aloof as there is no standard premium in the future. There won't be, it is my understanding. You won't be able to determine whether or not there's an 8% surcharge and it'll just be competition for whatever the going rate is.

WILLIAMS

I think that's right, as far as, the 8% surcharge on the assigned risk pool that Mr. Maloney just mentioned. However, the other thing is here. There's two intents to this thing. The second is to allow them the economy scale's preferential treatment incorporated directly into the filing by the Council. I'm not sure that going into some kind of competitive rating is going into that premium discount program.

KOCH

If, indeed, you do go to a procedure where the Council can no longer file expenses, you will, probably, see a variety of premium discount programs filed because premium discount really addresses the expense portion of the premium rather than the loss portion. So, that also, may become aloof but his arguments are still, to some degree, valid.

MALONEY

My basic point is we're going to competition. There's not going to be any premium discounts anymore. That's going to disappear, entirely. In terms of a standard premium, to which you could add an 8% charge, there won't be a standard premium anymore. All there will be is the pure premium and, presumably, everyone will have to bid on whatever risk they take.

KOCH

I guess I missed that. I think you're still going to have to have an administered rate for the assigned risk plan. In other words, that is going to have to be something that will have to be the same for everybody that goes to it and not depend merely on where the insured is assigned. Otherwise, what you would have is insurers not, particularly, liking the assigned risk plan.

MALONEY

My point is, Don, I think that what's been proposed does away with the ability of the Commission to set a rate which includes expenses. So, there won't be that guideline published.

WILLIAMS

It won't be published but it, maybe, a matter of insurance company policy that the larger the premium the less expense provision they're going to tack onto it. I fail to see why this provision is not compatible with that because if the group went

WILLIAMS continued

into the insurance company and had a big policy based on whatever their company policy is. I'm for a premium discount and I'm not sure that just going to a different system of rate regulation is going to end the company's desire to offer these kind of attractive policies to large risks.

KOCH

I concur.

MALONEY

I don't see any problem with what you're saying. I think the terminology is wrong. It's not going to be a premium discount anymore because that's not going to be the way they're going to write the insurance. It's going to be pure premium as X and then there's administrative costs tacked onto that. That's what, presumably, various companies and organizations will be charged for Workers' Compensation.

I'm not arguing with Amendment II or attempting to say that, that Amendment isn't appropriate. My point is that there is a problem I think we've overlooked with the legislation that's been proposed. That is how you set the rates for the assigned risk pool. There will no longer be a standard premium published, which will include the expense allowance that, currently, is published. So, there won't be anything you can add 8% to and the whole question of how the assigned risk pool rate will be developed has been overlooked.

KOCH

I don't think that's true because what you're going to have is a filing for an assigned risk, which will include the expense. The assigned risk is not an individual insurer and the expenses that you have there will have to be filed. The

KOCH continued

companies, in effect, are acting conscious for the assigned risks and if you bar that, I don't see how you're going to have an assigned risk.

There's one other problem with what you say and that is that the entire amount that is charged to an individual employer for his Workers' Compensation is called premium. What you're not going to have is identification to the employer that says this much is your loss premium and this much is your expenses. What you're going to have is your employer approaching one company and they'll say this is the rate for your business. He'll approach another company and they'll say this is the rate and the two will be different. However, I don't think you're going to have that identification, except, if the information goes on file and it may in Juneau.

MALONEY

I may have misunderstood you, Don, but I still don't see without the Council publishing the administrative cost estimates, how you're going to come up with the base for the assigned risk pool, how you're going to determine what the rates of the assigned risk pool will be.

KOCH

OK. The assigned risk pool is not anyone insured. It is all insurers doing business in the state. Basically, what this means is that when an insurer writes a policy that is a policy of all of the companies. Therefore, the expenses for that policy, the assigned risk policy, has to be the expenses or a composite of all of the companies. When the Council makes a filing for the assigned risk plan, they're, in effect, making it on behalf of all of the companies because, in that case, that's exactly what it is.

MALONEY

Somebody correct me if I'm wrong but I thought we were going to prohibit the Council from publishing the expense figures, the administrative costs and that was one of these other pieces of legislation that we were looking at, in terms of, having competition.

KOCH

For your general rate filing, that is absolutely true.

MALONEY

Well, then, if there's no general rate filing or no base line because we're going to allow competition expense above the pure premium rate, how is the expense portion determined? Who is going to determine it? Is that expense portion going to be determined based on the new competitive administrative rates or is it going to be some other fictitious number that is generated?

WILLIAMS

Actually, this is a very pertinent discussion, as it relates to open competitive rating. One of the arguments for open competitive rating is that you're going to loosen up the market. First of all, I think, we're going to see the population of the assigned risk pools decline as the risks are now going to have the opportunity to shop around. Hopefully, at some point, some insurer is going to write it. Particularly, combined with the fact that they would now have the opportunity to form a group and generate a larger premium. One of the ideas of going to competitive rating laws is to loosen up that market and I think, you'll see that the residual market plans, like the assigned risk pool, the population will decline.

I think that, Mr. Koch, is right. Even though we've got a market that's a little bit more flexible and you may, over a period of time, see the development of substandard companies

WILLIAMS continued

that, actually, market insurance to attract these substandard or poor risks because of the fact that they can charge a surcharge and even with a loosened up market, you're going to, still, have some people who are not going to be able to obtain insurance.

That raises a difficult question and one I hadn't thought of is how we'll handle the assigned risk pool. I suspect that, in fact, we may have to have a filing dealing with the assigned risk pool. That's a very good point and it deserves more research.

KOCH

What I would suggest, as to rates that are going to be used by various numbers of subscribers of the Council, is that the pure premium is all that the Council can file, on their behalf. As to a filing made by the Council for, mainly, the assigned risk plan, they can make a whole filing. You may have to change the wording there but I think, it's still appropriate.

Further, that may provide a protection for the small employer, in that, by the use of the average data, the small employer is going to have, what it amounts to, a ceiling on the rate that he's going to have to face. Now, if indeed, the carriers developed are writing for the small employer a surcharge rate, it's like a higher expense, the assigned risk pool will likely devise some kind of a ceiling on that.

MALONEY

I think that what you're saying is, totally, illogical. The question of what the expense rates will be in the assigned risk pool can't be determined by looking at what the expenses are, now that we've got competition. Presumably, the bigger

MALONEY continued

accounts will have lower expense ratios and to say, well, we are going to allow competition and discounts given to the good accounts, which is what we're talking about when you're allowing free competition and groups to be formed. Then, we're going to say that the average ratio expense dollar to pure premium dollar will be applied to the small accounts. I think, it's, totally, illogical.

If they're going to have competition, they're going to have competition. It seems to me that, if you're going to have an assigned risk pool, with this kind of program you suggested --open competition above the pure premium rate--your're going to have to have some filings relating to the administrative costs associated with the assigned risk pool, alone. In other words, that the insurance companies would write the assigned risk pool at no profit level or some marginal profit level that is determined to be appropriate. There's going to have to be some changes to do that, that I don't think we've looked at.

KOCH

I don't know if it's, generally, understood what the assigned risk pool is or how it functions in this State. Maybe, it might be helpful to say that, currently, the assigned risk pool is serviced by five carriers. Those five carriers, physically, write the policies after the risk is assigned to them and on a rotating basis. The insured has no control over which of the serving carriers it gets.

In order to provide the same rates for everybody going into the assigned risk pool and I think, that's important, you're going to have to have a common expense level. I have no problem with saying that, that expense level should be the expense level that is developed by the assigned risk pool.

KOCH continued

That means that you're going to have to composite the five servicing carriers.

WILLIAMS

I think, Mr. Maloney's, right. What we really need to do is find out how open competitive rating works in relationship to the assigned risk pool. It occurs to me that if you go to open competitive rating and you're looking at the competitive market, really, the assigned risk pool should disappear, I mean, in the world of perfect competition. I'm not sure that, that's going to happen. Frankly, I don't know offhand how to handle it.

O'KEEFE

I'm having some real trouble keeping my mouth shut lately. Don, if in today's market, the insured is in the assigned risk pool, paying an 8% surcharge for whatever reason he's in the pool--the type of risk, the smallness of it, etc., and the competition today, then, would be the alternative, which would be the standard market without the 8%. I can't see how you're going to draw anything out of the assigned risk pool by saying that, now, that the standard market is going to deviate their prices, the spread between the two is so good that, now, all of a sudden, the standard carrier wants to go take this out of the pool. It seems to me that you'd make the problem worse, not better.

Generally, the point I want to get across is that the assumption all along, for the last twenty to twenty-five minutes, has been the desire to write all this profitable business in Alaska; therefore, there's people waiting at the starting gates to write this business. If you all refer to some of the notes that I passed out this morning, let's look at the information out of the best report for Workers'

O'KEEFE continued

Compensation premium discounts and leading carriers by State. I thought, maybe, we could start with an overview. I see most of you have those notes out now.

This lists all the States in the United States. In terms of Workers' Compensation premium, it lists loss ratio by State and, of course, the aggregate on the average. I think, there's some things we ought to be concerned about, when we talk about changing the system in Alaska. (1) Alaska represents one half of one percent of the premium in Workers' Compensation in the United States. I think, that's important when you're talking about nationwide companies and where they're going to spend their time in the years to come. (2) We ought to look at loss ratios for 1979 as compared to the nationwide average. You can see that there's only seven States that's had worse results than Alaska. Again, you're talking one half of one percent of the nationwide premium. You're talking of the loss ratios that are higher than all the seven States in the Nation. You're talking about a spread of business that, as you can see on the charts, is, primarily, nationwide companies with a small amount of regional companies and twenty-two percent direct writers. Again, direct writers are nationwide companies. You see the spread of risk for the three carriers.

I'm not going to belabor this but I want to make the point that Commissioner Fritz made. He said in his last testimony to us when he came up from Oregon, that if you want to make the State competitive and open, you have a profit opportunity. I suggest that, at least, for 1979. I don't see it and I don't see where carriers, who are doing it under the existing system, which is getting lots of criticism, in terms of their expense rates, are going to cut their rates and jump in for more of, what I would consider, a blood bath in the loss area of Alaska. Now, you can disagree with what I say. You can say my statistics

O'KEEFE continued

are biased but, I think, in the realistic approach, you have to say where are they going to spend their time and effort in the future and how difficult are you going to make it for them to participate in the market in Alaska?

Moving onto my other chart, Don Koch, I'd like you to pay particular attention to this. I did this in the last week and, if I've made some mistakes, in terms of filing, let's talk our way through it so that there's some accuracy here.

When we talked about deregulation, in the past, we talked about expense provisions and we talked about the possibility that carriers were getting more expense side than they needed for Alaska because we were using nationwide averages. It's hard to say, one way or another, as to whether that's true or isn't true. What I did on this chart is I went back for eight years through our actuarial department and used the filings that were presented to the Department of Insurance on a year by year basis. I had our actuaries make an estimate and, I agree right away, that it is an estimate. It's subject to some variance that actuaries allow for, in terms of discounts, so I could come up with, what you might consider, the paid premium or the net premium to employers. That would be line 2 of the chart.

Then, I went through and had my actuaries take the provisions and the rates for losses, loss expense, loss adjustment, general expenses, profit and contingency. In other words, that's what would have happened if everything was perfect in a utopia. Line 7 would, then, indicate the expected results combining everything to get to the hundred percent or the total premium involved year after year after year. Line 8 is the actual incurred losses. That is, the losses that were paid and again, for those skeptics among us, it does include reserves. However, as you look back in the past, the reserves become less

O'KEEFE continued

significant because most of them become paid. If you look through there, you will see that, for the last eight years, the total losses are almost forty million dollars or 12.8% of the premium.

We talked about investment income. Obviously, investment income is not in these figures and, obviously, that offsets the losses of the forty million. We talked about questions as to whether the loading for expenses is appropriate. I would hope that they were a little high because, again, I would say that they'd have to cover the forty million dollars of losses.

I'm not suggesting in any way that this is a perfect answer. I would think that we should back up a little and take a step at a time, in terms of just how much deregulation and how much adjustment we want to make, with the marketplace that is dominated by national companies that are looking at less than one half of one percent of their writings. Alaska, and I think, Don, you can address this, I think, that the Department of Insurance has been, for years, trying to improve the market situation in Alaska, in terms of getting more competition in terms of more carriers. I would suggest that, as Commissioner Fritz said, in the free enterprise system, the profit motive is important. I'm very concerned that, with the track record Alaska has developed here, to tamper with the system to a great extent, is going to develop uncertainty and uncertainty means risk. When there's risk, I'm afraid a lot of carriers might be considering the other forty-nine States.

WILLIAMS

I'm not sure where that leaves us. We were talking about Amendment II and I think, we jumped to Amendment IV. I don't think that we're arguing here that the insurance industry has

WILLIAMS continued

made money but what we're arguing is about a system of rate regulation that's very rigid. We're arguing about a system of rate regulation that lumps all companies' experiences together. We're talking about a situation that doesn't allow the consumer to go shopping around and get a preferred price. We're arguing about a system that, even though you have three companies with high losses and two companies that are making a considerable amount of money, when you lump them altogether, they all, under this system of rate making, might be entitled to rate increases.

We are, basically, talking about providing the consumer the opportunity to shop around and doing that by going to a system of more competitive pricing. I think, the term "deregulation" is probably misappropriate. They are not deregulation under the proposal that we're going to get to when we talk about Amendment IV. They're reregulated and in a way that the company, with the lowest loss ratio, which really needs a rate increase, may get one, under the current system; thereby, providing the insurance at a lower rate. This would provide the employers in the State the cheaper rate for insurance.

O'KEEFE

Let's get back to the issue of the assigned risk pool. Don, did you make note, if the pool doesn't contain its losses, where the losses are paid?

KOCH

No, I didn't, Tom. Those losses are considered-----
--(inaudible)-----There have been a couple of years where the losses from the pool can go to the other carriers to acquire the money to pay for those losses.

O'KEEFE

So, in other words, under the present system that any defaults

O'KEEFE continued

in the assigned risk pool are borne strictly by the carrier on a prorata basis that are last year's writings. So, if the premium decreases in the pool and the losses stay constant, the more losses go back on the carrier. Is that correct?

KOCH

That's what happens.

WILLIAMS

I'd, also, like to point to Mr. O'Keefe's chart. The total for percentage loss figure in the column, labeled "Total", is 79.6% over a period of--going back to 1973. I assume that, that's been adjusted for the net earned premium--(interrupted)

O'KEEFE

That's correct.

WILLIAMS

---divided by the current losses. I think, we heard testimony from the National Council; maybe, you can correct me here, that after the expected loss ratio in calculating rates is based on standard premium and it's around 69% but after you adjust for a net earned premium, what you get is a loss ratio up around 80%. That's done by averaging the expense provisions over all of the different policies. It appears to me that the overall actual incurred loss ratio that you have on this chart--79.6% is exactly in line with the Council's filings for the expense loading after deductions for the premium discount that they can still use in rate making. My point is that I'm not sure that this figure indicates that they will really be losing a lot of money.

O'KEEFE

I'm sorry. I thought forty million was a lot of money.

WILLIAMS

Excuse me. I was referring to the loss ratio of 1979 which is only 6%.

MALONEY

I don't want to comment on that but I think that, Mr. O'Keefe, brought up a salient point again, with respect to the losses of the assigned risk pool. It seems somewhat illogical, again, as we talked about it when the sub-committee met, to lay off the losses from writing those policies to insurance companies that aren't participating in the pool. I'm not sure. Were you talking about only in a default situation, Tom? I think, that's what he meant. Had there been any defaults, Mr. Koch?

O'KEEFE

I'm sorry. I correct that. No, as an industry, we pick up all of the losses of the pool. Again, it's not a matter of insolvency. In other words, there's a sharing of premium, a sharing of losses and it's the losses we share. The default only comes in when a carrier is insolvent and we pick up the pieces on that too.

MALONEY

OK. So, in other words, the pool doesn't pay for itself. That's what you're saying?

O'KEEFE

Dennis, none of the pools pay for themselves. If they were profitable, they wouldn't be in the pool.

CROFT

I'm curious about the figures you were mentioning. On the first set of figures for 1979, it shows a total direct premium of seventy-seven million, two hundred and sixty-five thousand and on the other figures, it shows standard earning premium

CROFT continued

totals of seventy-four million, thirty-nine thousand or net earned premiums of sixty-three million, which really gives us three different figures for, supposedly, the same item.

O'KEEFE

The best report, to my best understanding, includes the Alyeska. As we talked about in the last filings, my records, except for the year 1973 which I couldn't pullout, doesn't include that. So, that's----- (interrupted)

CROFT

So, the first figures you provided did not include Alyeska?

O'KEEFE

The nationwide figures from the best report, which is the one on your right. That's the long sheet of paper that-----
---- (interrupted)

CROFT

It lists all of the States?

O'KEEFE

That's all of the States. That's the total and that should, to my understanding, include that.

CROFT

Well, that should include Alyeska?

O'KEEFE

Yes. I have some hesitancy on that. I realize there's a difference on that one column. I could look to the Department of Insurance in this area. They could check their filings and see if they could come up with a reason as to whether that was Alyeska or not. I don't know the size of Alyeska; so, whether

O'KEEFE

that represents a difference or not, I don't know. That's what I was told by my actuaries who figured it up. If there's more than that, let's look at it. The point is that this kind of a chart, when it's done correctly and if it isn't done correctly, I want it redone so it is correct, is something we should start with, in terms of, where we go from here.

CROFT

I understand that but if that's correct, that the figures include all of the States, includes Alyeska and the 1979 figures, with regard to Alaska alone but does not include Alyeska, that explains the difference between the profit ratio. On the one set of figures, the loss ratio is 87.4% and on the other, which apparently, excludes Alyeska, the loss ratio is 82.2%.

O'KEEFE

That's right. It does make a difference when you change the base.

MALONEY

Bob, what do you intend to do with the assigned risk pool? I think, we brought up a number of questions today that haven't been resolved.

WILLIAMS

You're right. There are a number of things that I hadn't, actually--It did not occur to me how the assigned risk pool was going to work with each amendment. Frankly, this discussion hasn't been resolved in my mind and we're going to have to look at, exactly, what's going to happen when we find legitimate law in the language that we're looking at on insurance. I don't really know. I feel we'll just have to tell the Commission that. I think, it's going to take some

WILLIAMS continued

work. I, frankly, am not sure how you're going to file the provisions for the assigned risk pool, given the amendments that we're going to talk about later on. I really think it needs some work.

MALONEY

Is there some reason why the assigned risk pool couldn't simply be pooled together and then bid on, as long as we're going to a competitive structure?

WILLIAMS

I don't see why anybody would want it.

O'KEEFE

I think what, Dennis, meant was in terms of servicing, not in terms of paying the losses. Is that right, Dennis? Is servicing what you're talking about?

MALONEY

Yes, servicing. It seems to me that you're heading for a state fund for assigned risk pools the way you have this structured. I'm somewhat opposed to that. We've seen that the Oregon experience didn't work nor does Washington State work. We have to take a look, in an innovative way, at that. If we're going to open up the cream to competition, we're going to have the buttermilk left. We have to figure out how to have people handle those risks. If you don't pool them altogether and have one bid, including the risks; perhaps, you should have some retrospective method of rating the assigned risk pool. In other words, if you have bidding by the various companies for the claims handling and make the assigned risk pool self-sustaining overtime, this may require a loan from the State, if you will, in order to make it. If the assigned risk pool losses exceed the premiums paid; then, overtime

MALONEY continued

adjustments are made to increase the premiums so that it does become self-sustaining.

I don't think if you're going to go into competition that it makes a lot of sense to throw the excess losses back onto the other insurers in the State. Presumably, they're out there competing to get the rates down as low as they can. If you have this contingency hanging over their heads, they're going to have to throw a five or ten percent factor into that.

O'KEEFE

Dennis, addressing your first question of concern and, it was brought up by you before, and that is, perhaps, having one company bid on the servicing of the assigned risk pool. There's two points I want to make. First of all, the losses in the pool are paid by the carrier and not redistributed back directly to the employer. Secondly, the carriers that are, ultimately, going to pay the losses that come out of the administration's signed risk pool are going to be quite concerned about the carriers that do the servicing of the risks. Anytime a carrier does a poor job, bids on that business, in terms of low expenses, and does a processing rather than a claims adjusting approach; then, the losses fall back on the other carriers. In that case, the State would be very reluctant to just take any carrier in that pool, I'm sure.

MALONEY

Well, that was one reason why I was suggesting that the losses not be thrown back onto the other carriers. I have some other mechanism of making the assigned risk pool self-sustaining; so that, the pure risk, the pure loss ratio overtime, plus the fee for servicing equals the premiums paid.

O'KEEFE

Dennis, as I indicated earlier, we are trying to gather together the Alaska C & R Committee to address issues on the assigned risk pool and, if it's all right with this Committee, I would like to be able to come back with that, as a separate issue, after the carriers get together.

WILLIAMS

One thing that has occurred to me is that we're going to have difficulty with those questions because the packaged legislation is unique, as far as regulating and giving the rate making for Workers' Comp. We might be able to look at some of the other States. I would suggest that, as a start, we look at, at least administratively, how California handles the automobile insurance assigned risk pool because they do have competitive rating and Illinois, as well. Maybe, what we should do is go to a State that has other casualty lines that are competitively related and see how they handle their assigned risk pool. It's just not clear to me that it would be significantly different under the proposal that we have here for Workers' Comp. I just would like to throw that out for suggestion.

O'KEEFE

I can answer that question. You don't have to go to California. I'm sure, Don Koch, could fill you in on that. Essentially, the assigned risk pool for automobile here in Alaska files its own rates. I'm talking about the commercial pool, Don.

KOCH

I don't know if you want a response on that or not. It's my understanding that in places where there is Workers' Comp type rating in line, generally, there is an assigned risk pool with, usually, a fixed rate structure on how high this goes

KOCH

with the Workers' Comp rating. Whether that, also, extends to Workers' Comp, I don't know. I think, that Workers' Comp is, generally, excluded from this competition. To get more information on that, I'd suggest that you look to more of the assigned risk plans and see how they operate.

(Don Koch's answer was almost inaudible.)

STIMSON

Well, if the Committee agrees, maybe, we've spent enough time discussing the assigned risk pool. It seems like we have provided, Bob, with some direction. Tom, you're going to come back with some ideas too. What I'd like to suggest is that we take about a ten minute break right now. Then, Bob, will continue on with the draft legislation.

WILLIAMS

-----his position is. The first one we have deals with the deductible, when, Don, says that insurance departments figured out a way of getting around the National Council's rating files and, possibly, can approve deductibles without a statutory change; such as, Amendment III. Amendment IV deals with the Oregon Competitive Rating Law. Amendment V has enough provisions in there dealing with the reporting of investment income. Amendment VI is Mr. Maloney's amendment, at his request, that if we go to competitive rating, the insurance association not be liable for payments of insolvency. What I'd like to do is let, Don, make his comments to the Commission because he has to leave.

STIMSON

That's find. Don, I'd like you to ask you to speak close to that mike, please. We've had quite a bit of trouble hearing you.

KOCH

Thank you. As to Amendment III dealing with deductibles, this might be a boot. We've had some discussion with an insurer recently, who was interested in filing a deductible plan and we encouraged him to go ahead and do so. We now have the filing and we've had an opportunity to review it and we are going to approve it.

Basically, what the filing does is it keeps the insurance company on for first dollar. In other words, they have, as far as the payment is concerned and as far as the Workers' Compensation Act is concerned, full responsibility for all dollars to be paid in compensation and medical under the Comp Act. So, that complies with the requirements of Title 23. In addition, they will have in their policy an agreement between the employer and the insurer for reimbursement of those dollars paid up to a given deductible limit. There are a number of features in there, including some of the things that we were concerned with; such as, protection of the statistical base. The carrier, in all senses, will be complying with what the National Council requires and the things that we require, as far as, statistical reporting and just how they operate.

The scenario that we see going with this particular filing is that, after our approval, we will anticipate that the National Council will object, saying that this is an illegal deviation. We will, more than likely, take the position that it is an independent filing since there is no Council rule, rating rule this is, that addresses this particular issue. Further, it isn't equipped with any existing rating rule. Then, I guess, we'll see where it goes from there. It is likely they will ask for a hearing. Whether we'll grant the hearing or whether we'll sustain the action, remains to be seen. That's what we intend to do. If we're successful, this Amendment III won't

KOCH continued

be needed. Further, I guess, we have a little bit of a problem with putting all of it into Title 23. I think, that if anything was needed, it would be a very short addition to AS 21.39.070 for making deductible plans for Comp. I don't think we need to go through all of those deductions. We'd still want to keep the Workers' Compensation insurer responsible for the first dollar.

MALONEY

I have a question. Amendment III seems to me, as written, would cover the excess policies that a self-insured might purchase. I don't think that's what's intended. If Amendment III is adopted or anything resembling it, either in statute or in regulation, it seems the exclusion of an excess policy of a self-insured should be made because you're not going to find an excess carrier that's going to want to come forward and be responsible for the first dollar coverage.

KOCH

I agree. If you have a qualified self-insurer, we have not treated any excess policy that they purchased as Workers' Compensation coverage. We treat that as, either excess insurance or as reinsurance. So, once there is that certificate of self-insurance, the self-insurer has removed himself from that arena. The thing that worries us is the person, who is not qualified as a self-insurer but who still wants the advantages of some form of deductible. I think, there's a way to do it under the current law. If there is a question and the question, I think, we want to address is AS 21.20.070, which I've reported. As it happens, administratively, you're going to achieve this and I think, you'll be successful.

MALONEY

My point is that I just want to make sure that somewhere in the

MALONEY continued

legislative history of the regulations in the statutes, that are assuming exemption for the excess carrier of a self-insured, it should be spelled out, specifically, to avoid litigation, which, undoubtedly, will occur if we don't make some mention of that.

KOCH

Very good. I think, we can take care of that without any problem.

O'KEEFE

Don, I have a suggestion, as we review the issue of deductibles, that you might consider. I believe, Illinois has a plan that sounds like it's, probably, along the same line that you're thinking. A plan with a slight variation, I believe, is present in Florida. The Florida plan is one in which the employer pays the first dollar and then has a reporting responsibility, which I understand is rather cumbersome. The Illinois plan sounds similar to what you're talking about and that is the employer, the company pays and gets reimbursed and there are some provisions for lien rights. If you're investigating this, I would suggest that you might look at those two Laws to get some idea on the wording.

KOCH

We have the one from Florida and, frankly, it doesn't come anywhere close to doing what this proposal will do. There are really too many limitations on it and it just doesn't quite work. I haven't seen the Illinois provision but I will, certainly, take a look at it.

O'KEEFE

Don, I think, the Illinois one sounds pretty close to what you're talking about. I haven't seen it either but I've heard that that's the one operating now.

O'KEEFE

that, that's the one operating now.

KOCH

OK. I'll just go on to Amendment IV, the competitive rating approach. We have, in the Division, developed a position or adopted a position that we are in favor of the competitive rating approach. In the last part of September, I attended a meeting in San Diego, where a sub-committee, which is the only one dealing with competitive rating in the United States, met. The atmosphere there was very much in favor of some form of competitive rating for Workers' Comp. Commissioner Fritz was there and we had some discussions with him.

Although, I have not read the Oregon approach, what he described sounded pretty good. With the NAIC proposals, I think, when they come out, we'll, probably, go a bit further and you may wish to reserve a final opinion on just what kind of a competitive rating approach to take until you see that. That is due out, in final form, at the December meeting of the NAIC, which should occur about the first week of December. There has been, since the September meeting, three more meetings. One was in Hartford, Connecticut. One was in Springfield, Illinois and the final one was on November 7th in Chicago. The purpose being to finalize the form of the NAIC proposal. I have not seen that. I have some idea as to where it's going and, frankly, it sounds good.

The primary concern was for the preservation of the statistical data going tense; so that, we could get valid, comparable statistics for particular classes. What this does mean is that you would have to preserve a fairly rigid classification system. The Division takes the position that we have no problem with competitive rating as to the rates for a class. We would want to see preservation of a very strict classification system. So,

KOCH continued

we, basically, are in favor of Amendment IV. If there are no questions on that, I'll go on to Amendment V.

As to Amendment V, I understood that's part of number four. We have no difficulty with the concept, except to say that our insurers are not presently subject to AS 10.05.699. As a matter of fact, they are exempted from AS 10.05 in AS 21.03.010 (b). We would further suggest that AS 21.21 is not the appropriate place for this type of provision. That section deals, generally, with the general investments of an insurer. AS 21.09.200 deals with the requirement that an insurer provide an annual statement. We think that a minor amendment could be made to that statute, to AS 21.09.200. That would accomplish this but the reference to AS 10.05 should be removed.

O'KEEFE

Concerning Amendment V, is there any other State doing this now?

KOCH

Tom, I have not researched that. I really couldn't tell you. I know that there are States that are using investment income in their rate making requirements. As to a specific requirement, that's been reported in the annual statements, I'm not aware of it. AS 21.09.200 does allow for the Director to make additional requirements as he sees fit. I think that this particular part of it, even in spite of that language, ought to be specified in the statutes. It is my understanding, that it will run counter to what it, generally, does in the way of additional statements back to the annual statements.

Incidentally, that annual statement is pretty highly stylized, also. It is developed by the National Council, excuse me, the

KOCH continued

National Association of Insurance Commissioners. They have a committee that deals with it. It's called the Blanks Committee. There are States that have made additional requirements which are added in, in addition to what is developed by NAIC.

MALONEY

Don, how would you propose that the insurance company break out the specific investments relating to the premiums paid for Workers' Compensation?

KOCH

You have hit a flaw in the pudding and I, honestly, don't know. Obviously, if they do this, there are going to have to be certain assumptions made. The insurance statutes require that all investments be--I guess, the most comparable things would be like the general fund. You can't have separate accounts for certain types of investments, mainly those, that are there for insurance reserve purposes. So, it would present some problems. You'd have to have allocations. Those allocations would have to--you'd have to make certain assumptions. Those would be subject, I guess, to what the Division would accept or wouldn't accept. There's going to be a lot of discussion on that, on which Division it's going to go into.

MALONEY

I have a lot of questions, in that regard. What type of income method are you talking about? Taxable income? My company would keep three or four separate sets of books, one for the income tax people; one for the CAB because they have different rules; one for our shareholders and we'd have a cash flow analysis. I think, what you're saying on reported income isn't clear. I don't really understand the need for this filing, if we're going to the competitive approach but I'm willing to

MALONEY continued

listen to the arguments as to why it's necessary.

KOCH

I guess, our position is that we don't, necessarily, object to it. We haven't done any indepth analysis as to how you would go about it or on what basis it should be made. I guess, if anybody is going to object to it, it would be the insurers. I think, that if they have any problems with the approach, they should, probably, be the ones to identify those problems and come up front with them; so that, we can analyze whether or not they're valid objections.

O'KEEFE

This issue was brought up at one of our sub-committee meetings and, I believe, the Alliance talked about it as well as the American Insurance Association. I'm sure there's been plenty of papers written. I'm surprised we don't have a stack of them already with the rest of them. I can check it out if there is any interest but I'm sure there are already papers done if the staff wants to pick them up. What I'm saying is I really doubt if it's a new issue.

MALONEY

I just fail to see the necessity for it. I don't think that we should just ask the insurance companies to come forward. I am opposed to any unnecessary regulation, if anybody. Unless somebody can give me some intelligent reason as to why we should propose this kind of an amendment, which will require more work, more paperwork and, presumably, more State employees to review the work and unless it's going to benefit someone in some meaningful way, I don't see why we should adopt it.

KOCH

One of the reasons for a provision of this kind or, at least, one the the generators for it is the fact that investment

KOCH continued

income is not directly addressed in the rate making process for Workers' Comp, currently. By directly, I mean that they don't analyze just what the investment income is. The National Council has done some work on investment income. They've got some statements out. If you don't have those available, I believe, we have them in the office and we can make them available to you.

They argue that the profit in the contingency portion of their rate making or the rate filing is deliberately set at a low figure, mainly, at 2½% to reflect the fact that they have not included investment income. There are pros and cons on that argument and I just haven't gone any further into it.

MALONEY

My point is if we're going to have competitive rates, that the profitability or lack, thereof, is irrelevant. They're not going to be filing the rates as they have previously. It seems to me, if you're talking about competition, in terms of the expenses, one of the elements of that competition, presumably, is the amount of profit that the insurance company is able to make. If it has good investments and makes more money, a more return on its dollar, it can, presumably, offer a lower rate. That will be reflected in the competitive rates that the other legislation we proposed puts forth. I just don't see a need for this.

KOCH

I think, you've been reading the work by the National Association of Insurance Commissioners. They issued a publication called, "Monitoring Competition". One of the arguments that's presented in there for open competition rating is just what you said. To the degree that competition exists in an area; then, many of the alternates that you presently consider in rate making are

KOCH continued

really not necessary because, to the degree that competition exists, you are going to have reflections of a different kind of thing. So, that's an element, certainly. If there are no further questions, I'll go on to Amendment VI.

This one, I don't know what generates it but we have a problem with it. I believe that this exception in the Guarantee Act will create a class of employers who are, excuse me, employees who are not entitled to recovery based on an a presumption that may or may not be true but which, in any case, is beyond the ability of the employee to control or, for that matter, for the employer to foresee. The assumption is that the insurance company has cut its rates below the pure premium point to the point that has affected its solvency.

The problem with it is that you have to assume that the insurance company has done that in all classifications in order to buy business. The provisions, as we read them, would require that an insurer, if it is going to use the rates below the pure premium level, would have to file those for approval with the Division. Frankly, that's going to be a concern of ours because, if their capital, their surplus and their surplus to policyholders is as insufficient as it seems in that kind of rating, we're, certainly, not going to permit it to go on. There are, at least, two areas in the Division that would be concerned with that kind of action. I don't think that this is going to be necessary and further, it's really not protecting the insurance company. Rather, it will end up penalizing the employers and employees who have the misfortune to be insured with an insolvent insurer.

I have one other final comment. That is one for which you don't, currently, have a bill but which is mentioned in the memorandum, concerning Blue Cross writing Workers' Compensation. I guess, I have some problems with that. One of the problems is that

KOCH continued

Blue Cross is, certainly, expert in its field, which is medical and hospital expenses. You pay into those. They're well under costly payments in all of these issues but Workers' Compensation Insurance, the Workers' Compensation, generally, is not all medical. As a matter of fact, the medical portion represents something on the order of 28 to 30% of the losses paid, which leaves you with another approximate 70%, which is compensation and an analysis of that on what you should do in that general area. Frankly, Blue Cross, doesn't have the expertise to deal with that end of it. Certainly, they have the expertise to deal with the medical but not with the compensation. Also, their financial structure is not geared to long-term liabilities of the kind that you would have with compensation. So, I believe, that would have to be changed if you were to seriously pursue this. With that, I guess, I'd better turn it back to you. Thank you.

STIMSON

Go ahead, Dennis.

MALONEY

I have a comment relating to your comments on Amendment VI. The proposed change in the Law coincides with the competitive approach. It was suggested by me and the reason it was suggested is because there appears to be no logical reason why the solvent companies, that are being competed against by a cost cutting or low cost jippo insurance company that goes belly up, should have to pay its claims. It seems to me that, if anybody should pay those claims, it should be you. That is the person who licensed that insolvent company to stay in business. If you license a company that shouldn't be in business in this State, I'd like to see you come before an appropriation committee in January of the following year and say, Mr. Chairman, I'd like to have a million and a half dollars

MALONEY continued

and the chairman will say, why? You'll say, because we licensed this insolvent company and we didn't do our job. That's why that amendment is there.

KOCH

I apologize to you, Mr. Maloney, but I had to say what I felt was right. Aside from that, the rules under which we determine whether an insurer is to be admitted or not are pretty well structured in the Statute. We can determine, over a period of time that those rules or those amounts; for instance, for capitol surplus, are not sufficient but as long as an insurer meets those criteria, we would have to issue them a certificate of authority. We could limit some of the things they can do and we, certainly, would not be approving rates for an insurer that, we felt, was borderline as to whether it was solvent or not. As a matter of fact, we want them to be very conservative. Generally, our whole approach to the regulation of insurers, primarily, from a solvency standpoint, is fairly conservative.

Insurance regulation has conflicts within it. In other words, on one hand you have to take a very conservative position from the solvency approach and on the other hand, the public expects us to take a fairly liberal view of rate making. The two conflict and we have to walk a tightrope, admittedly. You can rest assured that, if the carrier is insufficient to support this kind of rate cutting, if indeed it is rate cutting, I think, we'd be looking to more support for a rate level below the pure premium thing than, just the fact, that they want to compete. We'd look for some sound and logical reason as to why they would expect to have a deal to use the rate that is, actually, below the pure premium level. I'm rambling, at this point; so, I'd better shut up.

MALONEY

I would think that, in light of what you said, the burden should fall back on the State. You're talking about a social policy to make sure that a worker isn't left without insurance, after a company has been licensed by the State. Since the State is adopting that social policy, we won't let a worker have a claim that is not covered. The State should recognize that, that's, merely, a social policy and it should come out of the social funds of the State--not the other insurers that are not operating, in less than, a businesslike manner. Shifting it to the competitors that are efficient is an inefficiency in the system.

KOCH

The argument that you presented is one that has, also, been made in opposition to the general legislation, by some insurers, when it was being presented in this State and in other States. As a matter of fact, the same argument could be made for an insurer who is writing at, what you could call, the standard rate. There's nothing to assure that the standard rate is going to be sufficient, for a particular insurer, because their claims settlement practices could cause them an insolvency. So, it need not be, in other words, the argument is equally valid for the whole scheme of Chapter 80 as it is to this one area of Chapter 80.

I guess, my primary concern is that, given the fact that Chapter 80 exists, I would have some problem with creating a particular class within that Chapter. The people who would be the ones hurt are those who have the least control over it, namely, the employees. They rarely, if ever, have any say as to who is going to provide a Workers' Compensation Insurance that protects them.

MALONEY

What I'm suggesting is that, in that case, the poor uninsured

MALONEY continued

employee or employer, who comes to the State, there should be a common amendment which would allow the State to fund those failures.

KOCH

I guess, I really can't respond to putting the State into the position of, basically, reinsuring those insurers who do go belly up. I guess, I just can't add anything to that.

STIMSON

anything else for, Don?

CROFT

I have one question with regard to Amendment V. I was looking back through some information we have and there's a statement that says, "We have, also, included a requirement that they report investment income." This, too, was taken from the Oregon proposal on competitive rating. I just ask that, Bob, or somebody check with Oregon and see what their experience has been with it. Otherwise, it seems to me that, if we are going to a competitive system, we, probably, don't need it.

KOCH

Mr. Croft, the provision is in the Oregon code or in the Oregon proposal. Of course, they are pretty much pioneering in their area. I don't know what their reason is for including it. I don't recall seeing a similar provision in the NAIC proposal. The NAIC's competitive approach, I believe, goes a bit further than the Oregon approach. Again, I would urge that as soon as that proposal is out, which should be early December, that you consider it for Workers' Comp. I will make sure that you get a copy of it as soon as I can get it.

STIMSON

Thank you, Don. I appreciate your being with us this morning.

STIMSON continued

Bob, you want to go ahead?

WILLIAMS

After listening to this discussion, I'm not sure that I have a whole lot to add. If you want me to go back to starting with number three, I'll, at least, give you the rationale as to why Tom and I, basically, worked it into our drafting.

On number three, I didn't talk to, Don Koch, until yesterday. It was then that he told me that the Division of Insurance is trying to work out some arrangement where the carriers can allow deductible policies. Of course, the philosophy behind it is to allow a limit on self-insurance to small employers who couldn't bear the whole risk. I think, there's an additional benefit here, in that, the small employer who has to have two to three thousand dollars a payment is going to be more likely to implement some safety program or loss control program. For those two reasons, I think, it's a good idea.

I don't think you have the actual bill request. In that bill request, I did make the point that it seems funny to enact a provision in the Law, like this, to allow carriers to write deductibles. The only reason I went ahead with the request was because of the system of the National Council. I had assumed that this would be a deviation from that filing. It's, certainly, not a uniform percentage deviation. I'm sure that they would, in fact, claim that it's illegal and not permitted under the Alaska Insurance Code. For that reason, we drafted the amendment and now, Don, is telling me that the Division of Insurance has figured out a way to, well, he hopes, go go ahead and allow it without a statutory change.

Briefly, as I listened to this discussion, the deductible provision, as allowed in Amendment III, is more like the Illinois plan that was discussed. The carrier is liable for payment.

WILLIAMS continued

He has the right to go against the employer for any amount that he's paid, in the deductible amount. The deductible plan has to be approved by the Division of Insurance and, finally, to use the carriers' expression, as to which insurer the insurer wants to issue this policy for. Obviously, he's got to make a determination in his own mind or the insurance company has to make a determination that the company, who has been offered the deductible policy, has the financial wherewithal to be able to pay it back. That's how it's structured and, Don Koch, tells me that's how his program is structured.

I really don't know where to go. I think, we can go ahead and make a one line or an authorization allowing carriers to do that, if it helps the Division of Insurance. It may or may not be necessary. It, certainly, would be a statement by the Commission that they approved the policy of allowing this kind of limited self-insurance. That's pretty much all I had to say on Amendment III.

MALONEY

Maybe, Mr. Koch, can tell us whether or not he anticipates any litigation over the position he's taking. If it does, maybe, we should just go ahead with something along the lines of what you proposed.

KOCH

We don't anticipate litigation. We do anticipate objection and request for hearing. We haven't decided, in the Division, whether we will grant that hearing or deny the hearing and state a reason for the denial. That's kind of where we're at right now. We finished analyzing the program. In fact, I finished it up this morning. I've had it on my desk for the last two or three days. I just finished going through the last of it this morning. It's a good program. We want to see it implemented.

WILLIAMS

Well, if there's no more discussion on Amendment III, we can move to Amendment IV. The is the Oregon insurance proposal. We followed the Oregon insurance proposal because it already relates to the prior approval statutes, which we already have.

Basically, the important section here is AS 21.39.045 and that limits the filings made by any rating organization to pure premium. What would result is that the companies wouldn't tack on expense provisions. I'd, also, like to make a point here that, in looking at the draft, I'm going to have to talk over some technical things with the legislative draftsman. I don't know if we need to talk about them here. Under most competitive rating laws, there is a provision allowed the Insurance Director to reinstate prior approval. I notice that, that wasn't contained in the Oregon insurance proposal. He can reinstate prior approval if some conditions are met and most of those conditions are that he makes a determination, in fact, that there is no competition. Tom, says that he believes that, that authority is in the existing Law and I think, that we're going to have to check it out to make sure it is.

I'm, also, not sure from the staff that it's clear that, if the company files a deviation below the pure premium level, it's subject to prior approval. That's the way the Oregon Law is. Maybe, it is in Section 1. I'm going to have to read that. Basically, this Amendment IV is what we've determined we need to put in statute to implement the proposal that was discussed by Commissioner Fritz at the last full meeting of the Commission.

STIMSON

any questions for, Bob? OK, Bob.

WILLIAMS

Amendment V is, again, I can't really speak to rationale. The reason it's in there is that it was part of the Oregon Open

WILLIAMS continued

Competitive Rating Law and their amendments dealing with investment income. I included it because, from previous discussion, I know that one of the major areas that the Insurance Sub-Committee mentioned is the question of investment income. It is not figured in the rates. I think, we've discussed how it could be figured in the rates by going to regulation of the insurance industry, like a public facility. I'm sure that the Division of Insurance is totally opposed to that type of concept. This provision, I thought, was in the Oregon Insurance Booklet. It would require the companies to tell the State how much they make in investment income. Maybe, this is Commissioner Fritz's rationale that it may assist the Insurance Director in determining the solvency under this new type of competitive rating law.

STIMSON

Bob, before you leave that, I might suggest that you get back to, Mr. Fritz, and find out what the rationale is for the Oregon Law, in that regard. Then, give us a little more background on how that would relate to the open competition legislation that we're looking at.

WILLIAMS

Yes, I think, that's a good idea. I'll do that.

Amendment VI is Mr. Maloney's request. Basically, this section exempts the Alaska Guarantee Association from covering the policyholders due to any insolvency, if the Legislature did, in fact, pass Amendment IV. We've heard it discussed with, Don, and I don't have anymore to say about it.

STIMSON

any other comments, here?

WILLIAMS

That, I think, covers all of the Insurance Sub-Committee's preliminary recommendations. I would like to conclude, by saying to the Commission, that these sub-committee recommendations are rough and nobody's claiming they're not going to need a lot of work. I'd, also, like to say to the Commission, that it's not been the sub-committee's position to pass these bills out, as they haven't, actually, approved them.

We have been discussing a number of things, sectionally, which are the issues that you see. We've just begun to rough out the draft legislation. The reason we're doing this is because, I think, we've talked to the point where we, now, need to examine the mechanics of how these are going to work. That's what we are trying to do this morning. Obviously, there's a lot of problems. Some of this is a fairly, complicated insurance law legislation. I think, it, certainly, needs a lot of refinement. The comments made by the Commissioner will help, Tom and I, to improve on this.

STIMSON

OK. Thank you, Bob. We're going to go on to our next item on our agenda, which is the sub-committee reports. We can go through those very briefly.

I think, we've pretty well covered the Insurance Sub-Committee's Report. The Insurance Sub-Committee met several times, on October 7th and 8th and again, on October 27th. We wanted an opportunity to present this draft legislation to the Commission before the Insurance Sub-Committee worked with it any further. So, we'll be having some follow up meetings now.

The Procedures Sub-Committee has not met. That was, primarily, because, Tom Sofo, has been on vacation. Tom is back now and it is our intent to have a meeting in the near future.

STIMSON continued

Vocational Rehabilitation Sub-Committee has a meeting scheduled for November 20th. They'll meet from 7 to 10 in the evening and it is a teleconference.

The Benefits Sub-Committee will meet on November 21st, starting at 9 in the morning and running until noon. That is, also, a teleconference.

Any questions or comments about sub-committees, at this point? All right. What I'd like to do now is go on to a review of the proposed legislation that the Workers' Compensation has put together. I think, we all have copies of that. Bob, I guess, you're going to lead us through that.

WILLIAMS

Actually, no. I think, the person to talk about this is Jackie McClintock. It's her division who drafted it and it relates to her division. She's here. I talked to her last week and she's ready to discuss this legislation with the Commission.

STIMSON

Well, we'd be delighted to hear from her.

MCCLINTOCK

Thank you. As you may recall, when I testified in Fairbanks, I indicated some emergency problems. Two of those would be the additional board members. Under Section 1, the provision has enclosed an additional state-wide panel to the Alaska Workers' Compensation Board, as each panel member would serve only when the regular regional members were not available.

The Section II portion deals with the funding of the Second Injury Fund. There were some changes to that by the direction of, Licia, on Thursday. It will be on Section 1 and it will be the same as the last sentence in 040 (b) that you, currently,

MCCLINTOCK continued

have. That states, "the provision of this subsection will be raised in and during any calendar year when the unincumbered balance on January 1st, in the Second Injury Fund, is equal to or exceeds the sum of four hundred thousand dollars". We did not have that cap on in our initial proposal and that is on, as of yesterday.

The last one, Section III, we discussed in Fairbanks and that allows for the liability of any kind of Workers' Compensation coverage for a person that is in retraining with an employer, to be covered by the State, with or without wages. I think, we find that a justification and the draft is what we discussed in Fairbanks. If you have any questions, I'll stand by.

STIMSON

This is the first time we've had a chance to look at this legislation. So, it's taking us a little while to look through it. Jackie, we'd be happy to have you draw our attention to any other portions of it that you think we should be made aware of.

MCCLINTOCK

Basically, it's the same thing we discussed in Fairbanks. As far as the funding of the Second Injury Fund and the provisions under 045 (b), it's the same that was contained in 705 and in HB 1011 that we entered last year.

CROFT

What's the purpose of Section IV? Exactly, what does it do?

MCCLINTOCK

As stated in 040 (b), the portion of Section II, the Act does not apply for an employer or an insurance carrier required to make payments to the Second Injury Fund for injuries to an employee which occurs before July 1, 1981. We, basically, are

MCCLINTOCK continued

saying, as far as the 6% on all disability types, that would not be effective for any injury prior to July 1981. As of July 1, 1981, the 6% assessment will be paid.

CROFT

I assume that the reason for increasing the money in the Second Injury Fund was because there isn't enough, now, in there. The effective date of the increase from the 6% isn't going to be until July 1, 1981. How is the Second Injury Fund going to get by until then?

MCCLINTOCK

I just happen to have, Paul House, here. He is going to explain what we've done.

HOUSE

On October 1st, the Director of our Division of Administration Services submitted a memo from, Mike Miles, to, Ron Lear, outlining our problems for the remainder of fiscal year 1981. We anticipate revenues of, no more than, eight hundred thousand dollars for FY81. Our budget, however, has been authorized, in the amount of, one million, two hundred and eight thousand dollars. We have asked the Governor's Office to mention to you people to give us permission to request, between four and six hundred thousand dollars of the general funds. This will provide us with adequate funding to meet our essential obligations through the remainder of FY81.

CROFT

One other question is, is that why the reinsertion of the four hundred thousand dollar limit? Is it, presently, a two hundred thousand dollar limit? Do you think four hundred thousand dollars is adequate?

HOUSE

The four hundred thousand dollars became effective in 1977. The amendment was made in 1977, Mr. Croft. When the original draft was made, HB 1011, they neglected, for some reason, to put in the four hundred thousand dollars. We have discussed this since and we feel it should be put back in, at this point.

CROFT

Granted, there should be a cutoff. Is four hundred thousand dollars an adequate figure or should it be raised again, just as the two hundred thousand dollar figure was raised several years ago?

HOUSE

Mr. Croft, this is the proposal that we're putting in. I just hope that we will be given ample time to determine if the 6% will be adequate to meet our statutory obligations and, also, during this time, if four hundred thousand dollars is a level that's appropriate to stop that. It has been up to this point. It depends entirely on the revenues taken in, in general.

O'KEEFE

Has any estimates been made, as to how much additional revenue will be raised by changing the system to the 6%?

HOUSE

Based on figures that have been submitted to the Division of Insurance, (They have our own figures kept within the Department.) we anticipate, at this point, that the revenues will be in the vicinity of one million, eight hundred thousand dollars for the year 1982, when this Bill would become effective, if approved by the Legislature. Our budget for FY82 is one million, seven hundred thousand dollars.

O'KEEFE

If no change took place in the Law, what would your revenue

O'KEEFE continued

anticipations be for the next year? In other words, what is the net cost difference between the two approaches, the present system and the proposed system?

HOUSE

We have protected it, at this point, based on last year's revenues, including pipeline, when we had an excessive amount being contributed to the Fund. We anticipate no more than eight hundred thousand dollars over the next, I would say, three years of the present revenue system.

MALONEY

What is not covered under the 6%, other than, the medical payments?

HOUSE

Contributions will be made on all disabilities and on Section 191, which is retraining benefits that the carriers are required to take. At this point, we receive contributions only on permanent partial disability. However, we have to reimburse the carrier or the employer on all disabilities, plus death, and the retraining benefits they carry under Section 191.

MALONEY

Well, what I'm saying is you're saying that 6%, essentially then, of all payments to the individual for rehabilitation, you're not collecting it on medical? Now, it's my understanding that about half the losses are related to wage payments. If that's true, when you look at the loss rates for 1979, you had losses of forty-four million dollars. You have about twenty-two million dollars covered and then, you end up with, you said, about 1.4 million in income. Is that what you estimated?

HOUSE

about 1.8

MALONEY

OK. That's in the ballpark.

STIMSON

Are there any other questions on this proposed legislation?

OK. Thank you, Jackie and Paul. What's the Commission's pleasure, at this point? We have set aside some time to hear from some folks about problems with Asbestosis and, I think, we told them after lunch. What do we have, in the way of, people testifying here or who would like an opportunity to speak? OK. It will be my suggestion then, that we recess for lunch and reconvene at 1:30 p.m. Thank you.

TAPE 2, SIDE 1

STIMSON

This is Terry Stimson. Is Jackie McClintock there?

MCCLINTOCK

Yes, Mr. Chairman, I'm here.

STIMSON

My intent, at this point, is to go into a discussion of Asbestosis. I had hoped to be able to have you available to answer some questions as they arise.

MCCLINTOCK

I'll sure try.

STIMSON

Folks, could I have your attention? We're going to go ahead and get started here. Last Monday evening, I met with the local Union of Asbestos Workers and I was quite concerned at the kind of response that I received at that meeting. I wasn't aware that Asbestosis was of any particular concern up here. What I ran into was a group of people who were very concerned

STIMSON continued

about being treated, in their opinion, in a very inequitable manner regarding Workers' Comp and Asbestosis. I had no knowledge on the subject, whatsoever. So, I suggested that they come to our meeting today and make a presentation. Unfortunately, we don't have any of those members present with us now. We do have a lady with us who has been doing some research on the subject. You're name is, Sue? Sue Johnson? Sue has no background in Workers' Comp but has agreed to answer some questions, of a general nature, that we might have about Asbestosis. Sue, maybe, you could just come up at the table here, if you would.

I ended up with a variety of concerns as a result of my meeting with these men the other evening. First of all, I suppose, the most dramatic aspect of what I found out was the tremendous fatality rate that this local has. Sue, can share that with us as we progress. We started talking about a variety of problems related to the chemicals they work with. They seemed to suspect that, not only was asbestos causing problems, but that there were other chemicals, (I don't happen to have those names in front of me, right now.) also, of some serious concern. In addition, there was some real suspicion about fiberglass.

I don't know what all that amounts to. In the course of their discussion with me, they went on to point out that, without even being aware of it, a lot of us, maybe, are dealing with Asbestosis just in the various buildings we work in; in that, many of the vents have a lot of asbestos on the inside lining. This creates problems. Their position was that many of the schools, probably, have a lot of asbestos floating in the air without people even being aware of it. Anyway, they raised a number of general concerns like that. I thought it would be good for us to be aware of them. Then, we'll try to address, rather specifically, their concerns about the way in which they've been dealt in regards to Workers' Comp on occupational diseases, typically, the

STIMSON continued

Asbestosis.

What I'd like to do is stop here and, Sue, if you feel comfortable in sharing some general information with us about problems that you're familiar with, regarding Asbestosis; then, maybe, we could ask questions and just have a general discussion.

SUE JOHNSON

I want to tell you that our Business Agent did, very much, want to come to this meeting. He was unable to come and I am here, not to participate, but just to observe, take notes and see whether we're covered, in relation to, Asbestosis.

This Local 97 is the sister of the International Union of Heat, Insulators and Asbestos Workers. They have had, as their sister Locals, a very high mortality rate. This has been caused, not only by Asbestosis, but also, by Mesophelioma and other forms of cancer. This has been, directly, the results of over and prolonged exposure to asbestos. The Local up here doesn't use asbestos to do insulation as much as they have in previous years. They can get their exposure from doing removal, maintenance and things like that. The mortality rate and the reasons for the deaths have been extremely well documented. We have that documentation from Dr. Irving Selikof, who is based in New York City at the Mt. Sinai School of Medicine. He was the first to take the position to link asbestos and cancer.

As far as Workers' Compensation, all I can say about that, as far as Local 97 is concerned, is that in a series of letters that, Dr. Selikof, and I have been sending back and forth, I mentioned to him and so did, Jack Endsley, of Local 97, that there was a problem up here with Workers' Compensation. Basically, Jack Endsley's analysis was too little too late, which Dr. Selikof thoroughly agrees with.

SUE JOHNSON continued

I suppose an example of that, and which is public information, is a case of a member of Local 97, who is now deceased. He had gone before the Workers' Compensation Board to try to be compensated for his occupational exposure to asbestos and the disease. He was turned down. He died. Other evidence was introduced and it was appealed. The Board, then decided, that he should have been compensated. However, it was to nobody's benefit because he had no family. The Business Agent had put out fourteen thousand dollars of his own money to try to pay for his medical expenses, or assist paying for them. Of course, he doesn't get compensated later on because he's not a blood relative.

I can answer any general questions that you have. I don't feel at liberty to give out too much.

STIMSON

Jackie, a question that I would like to address to you and it came up in this meeting that I had the other evening with the union members is their interpretation of Asbestosis, that it is not compensable under Workers' Comp. I haven't spent any time researching that and I just thought that we could spend some time in discussing it.

MCCLINTOCK

No. That's not correct. Any kind of occupational disease that arises out of the scope of employment and has a causal relationship to that employment is, certainly, covered under the Act--an occupational disease, or injury, or anything else. I'm not aware of the case that she's talking about. I did take time to go through some of the occupational diseases that we've had in recent times and couldn't find one on Asbestosis, that may have caused the problem. Now, maybe, it's an older case. It appears to be.

MCCLINTOCK continued

We went through our records for '78 and '79 where we found four cases filed under Pneumoconiosis, which includes both, Silicosis and Asbestosis. Again, I'm not too sure what the problem is that she's addressing for the State of Alaska; other than, perhaps, that one case but I would repeat that any occupational disease is covered as long as there's a causal relationship to the employment.

SUE JOHNSON

The case is the case of, Bill Anderson. It's in the Workers' Comp files. I don't think it's too hard to get. Like I said, I'm not here to discuss Workers' Compensation. I am not familiar with the laws but they don't feel that they are being given a fair deal. I really don't feel comfortable discussing Workers' Compensation. I was asked, generally, to address Local 97.

MCCLINTOCK

I don't want to put you on the spot on this. I would like to know the full case, or, maybe, you can get it for me if you don't have it. I would assume that it's, William Anderson. I need to know the employer and, if you can, the date of the accident; so that, I can review that case. Also, I'd be interested in knowing of any other cases that they feel haven't been given a fair shake; so that, we can review them.

STIMSON

Are you able to provide that, Sue?

SUE JOHNSON

Yes.

STIMSON

OK, Jackie. Sue said she can provide those names for you, for those various cases. Maybe, since we are at a standstill here,

STIMSON continued

in terms of information, and we don't have the people in attendance that we expected to have, the best that we could do is get that information to you and ask that you take a look at it.

I was, particularly, concerned because these folks, that I met with, seemed knowledgeable. They seemed to feel as if they just hadn't been able to be heard; that their concerns were of such a nature that we could deal with it with some legislative corrections. I'm disappointed that we're without the representatives. I understand there's been a problem and, Jack Endsley, can't be here. I do appreciate, Sue, being here. I did ask her to step-in and share with us in a general way.

As I said, I wasn't aware that there was a problem with asbestos workers up here. It's, probably, one of the more dramatic experiences I have had, sitting in on that meeting and listening to them talk about some of the problems that they've had. This, Bill Anderson's, name came up quite often in the course of the evening, as an example, of how unjust the system is.

MCCLINTOCK

Yes, I would like to pull that case and I'm kind of at a loss here if they've not been able to give it to him or if the Board has denied him. Again, we don't have a track record showing that there's been that many cases filed on Asbestosis.

STIMSON

Well, the word that I got that evening, as I recall and I'm not looking at my notes from that meeting at this time, was that they had brought three different cases before the Workers' Comp Board and lost all of them. The basis for their cases was that these individuals suffered from an occupational disease, Asbestosis. They made reference to some kind of limitation, like Statute of Limitation. I don't know what the

STIMSON continued

limitation was. They could only go back so many years for an employer to be responsible for this Asbestosis, or something like that. I wasn't knowledgeable enough to understand what they were referring to.

MCCLINTOCK

Under Section 105, this will be particularly true in occupational disease cases. The claim would be barred, unless, the claim for it had been filed within two years after the employee has knowledge of the nature of the disability and how it related to his employment. Again, Asbestosis, and there's a lot of that type of disease, takes quite a long time to manifest. Still, that time doesn't start clicking away until two years after the person does have knowledge of the disease and how it relates to employment.

SWALLING

There are two attorneys, I believe, here in the audience in Anchorage who might be able to shed some knowledge on the application of the Statute of Limitations in occupational diseases of this sort that do have a long development time. I wonder if one of them could comment?

PAT JAMES

Jackie's correct in 105 and it's like a latent defect. Until the individual has knowledge, the Statute doesn't begin to run. What it precludes is the person who has knowledge of an injury or industrial accident or disease and doesn't do anything about it and two years elapse; then, that person is precluded. Where the person does not have any knowledge or the correlation between, in this case, Asbestosis, and his work, he can be expected to react to it. Consequently, the Statute does embark.

I have two cases currently going, involving COPD, which is Chronic Obstruction Pulmonary Disease. That is a general

JAMES continued

classification Asbestosis is involved with. What I have found and, I think, it has to be addressed in, probably, a factual basis, most people that have COPD, also smoked. He either still continues to smoke or he has smoked in the past a great deal and COPD, one of the known causes of it is smoking, because you get your tars, what have you, inside the lungs. The real dilemma is where you've got both factors working.

There's a case out of Fairbanks that came down, where an individual worked for the school district. I'm just going to rough over that. He claims there was a lot of dust in the air and that's what caused his problem. The Board found no evidence that his problem wasn't in the smoke. So, they put it on his smoking. I don't know which way the Board's going to go there because we haven't brought the cases before them. I am concerned that they may very well connect it to smoking, even though there's been an aggravation in the situation due to the industrial employment.

STIMSON

Dennis?

MALONEY

I would just remind the Chairman----(interrupted)

MCCLINTOCK

The case you're talking about in Fairbanks, as I recall, the Board did find there was some temporary total disability due to that aggravation. However, they felt that the permanent or any kind of permanent total disability would be because of the smoking. I agree. That is a problem with a lot of these cases and, of course, trying to track down the causal relationship, particularly, if that person smokes.

MALONEY

Mr. Chairman, I just want to remind us that we've previously taken a position that we wouldn't discuss pending cases. Anyway, I appreciate, Mr. James's, remark. Again, I think, that the problem he's talking about, the one that we're thinking of, is the establishment of the causal relationship, which is a factual determination, that only the Board can make. We can't offer them any guidelines in that regard.

STIMSON

No, I think, that does give us some indication of the degree of the problem we're dealing with though. I appreciate you folks sharing that with us. I think, the best we can do, at this point, is to suggest that, Jackie, take a look at those cases and share with us at the next meeting what has taken place. Oh, pardon me----(interrupted)

MCCLINTOCK

Let me interrupt you. If I could have a list of those cases they are talking about up there; then, I would know what to look for.

STIMSON

Yes, we'll get those to you, Jackie. I've just gotten a message from, Dan Middaugh, who was one of the individuals who was going to be here to speak to us about Asbestosis. He, apparently, is just a few minutes away. He'll be here shortly and then, we can continue this discussion. Is there anything of a general nature that the Committee would like to deal with right now?

One of the things I might suggest is that we take a look at our next meeting date. We had, originally, talked about having a meeting in Juneau in December. We have, since, talked about having a meeting in Juneau in January. My suggestion to the Committee would be that we consider having our December meeting here in Anchorage and then, decide on what date that would be.

STIMSON continued

We hadn't firmed up that date yet. We'd left that tentative.

CROFT

Are you going to try to meet in January prior to the session?

STIMSON

I think, our thought was to meet right after the session has begun. December 13 was what we had, tentatively, set for Juneau. Is there any problem with the Committee if we switch that to Anchorage?

CROFT

What date?

STIMSON

That's Saturday, December 13th. Great. Do you want to determine the January meeting date, now, or do you want to wait until the December meeting to do that?

CROFT

You're talking, roughly, the middle of January though?

STIMSON

Yes. The session begins the 12th and so, as I recall from our discussions, we were talking about, maybe, the next week after that. Then, the Legislature will have already convened. Ok. So, we'll meet December 13th here in Anchorage and we'll determine our January meeting date at that time.

MALONEY

Mr. Chairman, in terms of a general nature, at one point, we were going to get copies, or at least look at, recent supreme court decisions relating to interpretation of the Workers' Comp Statute. I have some concerns in the benefit areas - to examine some of those decisions. I think, some of them are illogical.

MALONEY continued

I know there can be some debate about them.

We've had a recent case where the Supreme Court found that an individual, irrationally and unreasonably, refused to have an operation which would have corrected part of his problem. They found that even though this was wholly irrational fear of having an operation, he was entitled to be compensated.

Those are some of the things I'd like to take a look at, to see whether it's really what the Legislature intends, in terms of the whole scope of things. Some of the others, the cashing of the checks on the week-ends and being covered, I think, there's some areas we can look at. Maybe, the Supreme Court has gone a little far afield on some of these points.

CROFT

I'd like to discuss them too. The check cashing is one case but the other case didn't hold that, so---(interrupted)

MALONEY

What did it hold?

CROFT

It held that--in the first place, there was an indication that the operation would have been successful. At best, there was mixed medical testimony on the desirability of it and secondly, they concluded it was not any irrational reaction on the part of the injured worker.

MALONEY

Excuse me but I thought that the Board withheld that it would have been medically--had made a factual determination that it would have assisted in overcoming the problem. Then, the Supreme Court reversed the factual findings?

CROFT

That's correct.

MALONEY

At any rate, I'd like to take, if we could, copies of the more recent ones that are distributed or are available to us, and examine some of the findings. I think, some of them don't appear to be logical.

CROFT

I think it's a good point. I think, there is a substantial difference in quite a few recent cases between what the Board has done and what the Court has finally done. It, maybe, a philosophical question of who's right and who's wrong but I do think there is a philosophical difference in the approach that is taken between the Board and the Court. I'd, certainly, like to see that discussed.

MCCLINTOCK

I think on that one case, if I'm thinking of the right one-- that you're talking about the operation, you'll find that the Supreme Court case, actually, upheld what the Board determined.

MALONEY

I was looking for the case, today. We can't seem to find it. We don't have it here. I would like to, at least, look at some of those cases.

MCCLINTOCK

We'd be glad to go back through our files and pull out the recent ones. It was my understanding though that the Commission was going to go to the Library to get them. I do know the case that you're talking about and some of the other recent ones I'd be glad to send to the Commission.

STIMSON

Dennis, Licia, says she has some on file here. We might just have you get together with her and we can identify some of those that we could share with the other Committee members. Thank you. Is that it, Dennis? Was there something else?

MALONEY

No.

STIMSON

We have, Dan Middaugh, with us. We were attempting to have a discussion on Asbestosis, Dan, but we weren't having much luck without your input. So, I'm glad you're here. We did have, Sue, share some comments with us but we had, essentially, decided to get the cases that have been brought before the Board to, Jackie McClintock, and have her take a look at those-- to brief us at our next meeting. I'd be real interested in having you share with the Committee some of the concerns that were expressed at the union meeting the other evening.

DAN MIDDAUGH

I'm not prepared with facts and figures. I expected, Mr. Endsley, to be here to make a total presentation on the asbestos situation. We've done quite a bit of research. We have Dr. Silikof. I'm not sure it's come up before but he is, basically, tied in with the research for the Asbestos Workers Union, an international organization, and he's been doing quite a bit of research. I'm not totally prepared; so, it's going to be a little sketchy.

I'm not totally prepared so it's going to be a little sketchy. When I started this trade, it was 1968. At that point, asbestos and the hazards around it, were sometimes joked about by the older members. I think they were trying to phase over it because they knew that the danger was imminent. I wasn't totally aware until after I had worked in the field five or six years. It

MIDDAUGH continued

really came down to me that I had a real strong chance of getting Asbestosis. That was pretty close to the time that they started outlawing all asbestos in the products and that type of thing.

I have seen a few presentations on television, and what not, showing the guy carefully scraping the asbestos filled fibers out of the school houses. That's a pretty major concern for us because we all have an overall view and understanding of the danger involved. I've got two little children. I don't care to see them come down with Asbestosis because they are going to school in a school house that has insulation in the mechanical room, which goes into the air handling units and blows directly into the classrooms. Compounded with that are the fiberglass fibers, as we brought out at the meeting the other night.

Fiberglass, according to some recent Japanese studies, is as bad or worse than the asbestos fibers, anyway. In this building right here, and I'm sure you can hear the air handling units running, I can open up the ceiling for you, right now, and show you fiberglass particles being blown into this room. It's a normal situation in all of the buildings in town. It's something that our Locals have been working at--trying to stop it.

We would rather see the air handling units and systems in the buildings being put in with metal and, then, insulated on the outside. That takes the fiberglass fibers out of the air that's being blown into the rooms. Also, if you take the asbestos fibers out of the mechanical areas, they're not picked up by the air handling units and blown into the rooms. So, it's simple enough to see, rather than exposing a couple to three hundred Pipecoverers that go out there and do this work and

MIDDAUGH continued

rather than exposing the total population that works inside any buildings in which those products are used.

One that I mentioned at the meeting the other night is the Native Hospital. I was working for Owens-Corning Fiberglas at the time and we started an insulation project on a new boiler system that they put in. The building is set up; so that, it exhausts more than it takes in, which makes it, basically, a negative building. When you open the door, the wind hits you in the back of the face rather than pressurizing the building with a minor amount of outside air intake; so that, when you open the door, warm air hits you in the face.

Well, as we were working in that building, they shut down our production because the dust from the new products that we were using, which are supposedly "non-hazardous", were blowing clear to the upper floors of the hospital and we were working in the basement level. The old part of that mechanical area is all old asbestos fiber material. It's ragged. Its' been torn apart for repairs. When they tear apart a valve or whatever, you have a ragged end with the air blowing around and the fibers are being sucked right through the hallways in that hospital.

We have made efforts. My Business Agent, Jack Endsley, has made efforts to make complaints. We were told that we can't make the complaint because it's a work issue to us. It will create more work for the asbestos worker to put the insulation on the outside of the duct, rather than have the sheet metal worker put the duct in as a solid fiberglass duct, as all the work in the new airport building. It's all solid fiberglass ducting, rather than metal ducts. It's a work issue, yes. It's, also, a health and safety issue to everybody in the whole State. We can't make the complaint because of the fact that it's a work issue. We have to wait. We were told by "someone" that we

MIDDAUGH continued

would have to wait until someone, who didn't have any idea of what the heck he was living with, made the complaint. This sounds like a pretty backward operation to me.

I'm glad to see this Committee getting together and starting to put some study into these things. To blow fiberglass fibers throughout a building, in conjunction with whatever asbestos fibers are there, is ridiculous. I know that it has been outlawed in the State of California. They can no longer line the intake duct. Fresh air intake goes directly into a mixing plenum. That mixing plenum, nine out of ten times, is fiberglass lined. It's a joke to call it a fresh air intake. Do you guys have any questions? I know I'm not totally prepared here.

STIMSON

Dan, can you share with us more specifically the kinds of work related diseases that have developed, references made to several cases that have been brought before the Workers' Comp Board and how they were handled? That was the kind of thing I wanted to focus on today.

MIDDAUGH

OK. One that was mentioned the other evening, I believe, was Bill Anderson, the late Bill Anderson. It took until well after he was dead before they would admit to the fact that he had Asbestosis or that he died of Asbestosis. The thing that we were kind of pushing for, trying to push for, and nothing against lawyers but there's no reason we can see why a man should have to pay a lawyer an exorbitant fee to get something that he should get in the first place from a Workers' Comp situation. They were getting nothing.

We're fighting a case right now. Mike Steffen has a case that he's attempting to make. To the best of my knowledge, he has Asbestosis, which is, basically, a cancerous situation from