

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

1110 SCOMM 33: WORKERS COMPENSATION, 1979-1982

3 February 1981

Dear ~~Mr~~ Richard

Thanks for your memo of January 29th and the corrections you sent. I will see that they get into the final report.

I appreciate your comments and weigh them very heavily whenever I approach the present worker's compensation situation. Although I wish we always agreed on these matters I recognize the value of the way it is (not to mention the value of your work and input).

Thanks again and keep in touch.

Sincerely,



Rep. Brian Rogers

January 23, 1981

Senator Terry Stimson and Rep. Brian Rogers, Co-Chairmen
Alaska Workers' Compensation Study Commission
Pouch V
Juneau, Alaska 99811

Dear Brian and Terry:

When the Workers' Compensation Study Commission voted to recommend pure-premium rate-filing Jan. 16, the proposals listed for Study Commission acceptance/rejection were:

1. status quo
2. pure-premium rate-filing
3. inclusion of investment income in rate-base

There is another proposal the Study Commission should have considered: the examination of carrier reserving practices, coupled with penalties for over-reserving. The rationale for this proposal, along with the best hard-number data I could come up with from the scanty information on file at this time, are contained in the enclosed report. I believe this proposal offers two advantages over the ones the Study Commission voted on:

1. Reserve monitoring offers hope for rate relief without making radical changes in the rate-making structure. As I indicated in my presentation to the Study Commission Dec. 13, pure-premium rate-filing appears liable to make major changes in the structure of the comp industry in Alaska -- and the effects of the trans-Alaska oil pipeline boom on workers' comp demonstrated that rapid changes are liable to result in deterioration in the quality of claims service.
2. Reserve monitoring will generate reliable numbers that can serve as a yardstick with which to gauge the profitability of workers' compensation in Alaska. Since there is a great deal of uncertainty about the effects of pure-premium rate-filing (even its proponents admit they don't know if this system, which has never been tried in any other jurisdiction, will work) and since workers' compensation has been a perennial problem, it would seem advisable to gather that information.

If I may make a procedural point, I note that the third proposal -- inclusion of investment income in the rate-base -- was never seriously considered by the Study Commission. Consequently, the options were status quo or pure-premium.

The enclosed report grows out of the materials I presented to the Study Commission Dec. 13, 1980 in Anchorage. Those working papers on litigation, competition, profitability and open rating fulfilled a contractual commitment to conduct interviews in various states and "prepare a brief written report . . . on statutory reforms, implementation and effects."

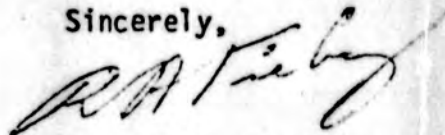
Fineberg to Rogers and Stimson
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During the Dec. 13 meeting I tried to assign hard-dollar numbers to the figures the carriers report on losses incurred in a given year. The Division of Insurance advised the Commission by teleconference phone that the crucial breakdown between actual paid losses and unpaid (outstanding) losses was not available and I used some numbers from Minnesota (a state that has devoted considerable time and effort to developing information on the economics of the workers' comp transaction). There were problems with the Minnesota numbers -- and with my interpretation of them. The Alaska Division of Insurance subsequently directed me to a better set of numbers for approximating paid v. unpaid losses during a given year; those numbers are reflected in the report I am submitting today (see table, p. 9, and Appendix A). Because these numbers are available only in the Division's Juneau office, I was unable to gather this information until last Thursday, Jan. 15.

More sophisticated economic analysis is necessary; it is my belief that recommendations for major policy changes should be supported by hard-dollar analysis rather than generalizations and theory without real-world reference.

In addition to the proposal for reserve monitoring, the enclosed report also lists several other specific measures that might yield savings to employers by reducing comp premiums.

Sincerely,



Richard A. Fineberg
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PURE-PREMIUM RATE-FILING FOR WORKERS' COMPENSATION

A Report Prepared By

**Richard A. Fineberg
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Fairbanks, Alaska 99708
907/479-5363**

January 23, 1981

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Author has previously prepared written reports in fulfillment of contracts with the Alaska State House of Representatives Labor and Management Committee (Jan. 20, 1980) and the Alaska Workers' Compensation Study Commission (Dec. 13, 1980).

PURE-PREMIUM RATE-FILING FOR WORKERS' COMPENSATION

I. Synopsis

This report summarizes arguments against a proposed new system of rate-making for workers' compensation insurance known as pure-premium rate-filing. The new system, approved by the Workers' Compensation Study Commission Jan. 16, 1981, was first recommended in the report of Richard L. Block & Associates and has not been tried in any other state.

Despite past high profits, the absence of competition in the Alaska workers' compensation field stands in marked contrast to most of the contiguous states. Since no barriers to entry exist, the lack of competition appears to be due to factors inherent in Alaska -- small size of employers, harsh climate, high costs of doing business, etc. In view of the history of price-fixing in the insurance industry, state regulation seems advisable -- especially for a line that is dominated by a small number of carriers.

Hard data on the comp transaction in Alaska is not available, but it is clear that (1) the amount of money the carriers report as incurred loss constitutes a major portion of the comp premium; (2) there are both past and current indications of over-reserving by Alaska comp carriers. The analysis in Part III. uses limited information available on Alaska workers' comp transactions for 1978 (the worst year for the carriers in recent history) to suggest that carrier profit from the Alaska workers' compensation trade may be considerably under-stated -- even for 1978.

It appears likely that comp rates could be cut by monitoring reserves and penalizing over-reserving. Additional savings to employers might result from measures such as reducing litigation over comp claims, promoting on-the-job safety, standardizing medical fees and adopting a workable group-insurance program for small employers.

II. Analysis of Shortcomings in Pure-Premium Rate-Filing

In its analysis of rate-making the Workers' Compensation Study Commission has been hampered by the complexity of existing procedures, ambiguity of terms and -- most important -- absence of reliable hard-number data on what Alaska comp carriers make (or don't make). Everybody agrees that a carrier can underwrite at a theoretical loss and still make a profit because the investment income on the money the carrier reserves to pay its losses is not included in rate-making calculations. And most people outside the insurance industry believe workers' comp premium rates are too high. But due to the absence of meaningful figures, the question of profitability -- and the best way to reduce workers' comp premiums -- is subject to debate.

In this valley of darkness, the proposal the Study Commission latched onto is to alter the rate-making mechanism by removing the carrier's expenses from regulation and setting a minimum on the loss pay-out (wage replacement, medical and rehabilitation payments for the claimant). Ostensibly, this proposal -- originally introduced in the Feb. 1980 report of Richard L. Block & Associates and known as pure-premium rate-filing¹ -- would require the carriers to compete on expenses while leaving the loss pay-out (pure premium) in the regulated rate base.

No other state has tried pure-premium rate-filing.² Because the concept is untested, there is naturally a great deal of uncertainty as to its effects.

¹ See Block & Associates, "Identification and Elimination of the Causes of the High Cost of Workers' Compensation Insurance to Alaskan Employers," Feb. 1980, p. 105 (recommendation #34).

² See Albert J. Millus, "Open Competitive Rates for Workers' Competition," undated manuscript, presented to Study Commission Dec. 13, 1980 with a series of brief reports prepared in fulfillment of this writer's contract with the Legislative Affairs Agency.

The proponents of pure-premium rate-filing are asking the Legislature to make a speculative judgement on the effects of a radical departure from established procedures -- and to make this guess in the absence of reliable figures on the profits (or losses) to carriers of this compulsory insurance whose premium constitutes nearly one-fifth of all insurance premiums written in Alaska.

The rationale for pure-premium rate-filing appears to be heavily dependent on competition among many carriers. But absence of competition is one of the most striking characteristics of the Alaska workers' comp market in comparison to other states. Alaska is the only private-carrier state in the nation in which three companies write over 2/3 of the comp premiums. In the second least-competitive state (Oregon) three carriers hold 54.4% of of the market, compared to Alaska's 70.4%. In the typical state, the top three carriers write roughly 25% of the market.¹

It has been argued that Alaska's domination by a small number of carriers indicates that workers' comp in Alaska is not profitable. But a Study Commission staff report suggests that nationwide profits on workers' comp exceed those of other industries.² And data from the National Association of Insurance Commissioners indicates Alaska carriers beat the national profit rate for workers' comp by a healthy margin in 4 of the last 7 years.³

¹ See Best's Review, "Workers' Compensation Insurance Premium Distribution and Leading Writers by State" (on file with Study Commission).

² Robert Williams, "Worker's Compensation Ratemaking and Rate Regulation" (preliminary report), Jan. 15, 1981.

³ NAIC data presented to Study Commission by author in Dec. 13, 1980 reports. For additional data on workers' comp profitability in Alaska, see Part III (below).

Although no barriers prevented carriers from entering the market and sharing these high profits, Alaska's workers' comp trade during the past decade centered around a small number of carriers. This centralization -- not found in any other private-carrier state -- suggests the lack of competition may be due to factors such as the relatively small dollar-value of most Alaska workers' comp policies, dangers inherent in a harsh environment and the added costs of doing business in an isolated area.

On the basis of reported operating losses in 1978 and 1979 (a notion that will be questioned in Part III., below), Alaska comp carriers now consider that business unprofitable. If carriers are indeed losing money, it seems highly unlikely that technical changes in the rate-making system will bring rate relief to employers. It has been shown that high profits did not result in competition during apparently fat years; is it reasonable to expect a change in the technical aspects of rate-making to encourage competition during lean years? If pure-premium rate filing were to result in increased competition during an unprofitable period, the most likely cause would be because the new procedure made it easier for carriers to raise prices.¹

The history of insurance price-fixing aptly summarized for the Commission in Robert Williams' draft report² suggests another problem: In the absence of state regulation, industry price-fixing is a danger. The smaller the number of actively-competing companies, the greater this danger. In this context the domination of Alaska's comp market by a few carriers assumes new importance. The public's defense against pricing collusion is vigorous policing of rates by the Division of Insurance. The pure-premium proposal does not provide the state with the data necessary to respond to consumer complaints in a prompt or effective manner.

¹ By discarding state-regulated prices in favor of a floor on pure-premium, this is precisely what pure-premium rate-filing does.

² Williams, "Worker's Compensation Ratemaking. . ." (preliminary draft), pp. 2-3.

One expert witness who recommended pure-premium rate-filing told the Study Commission that "the secret of lowering rates . . . lies in trying to figure out ways to cut out the expense portion."¹ But when comp premiums are translated into hard numbers (see Section III. below), one finds that the dollars reserved for future loss payments constitute two to three times the dollars the carriers spend in the expense portion. In other words, the meat is in the reserves -- not the expenses.

The fat may be in the reserve portion as well: The president of a lower-48 insurance company that has made a mark delivering workers' comp cheaper than its larger competitors explained his secret: cut the fat in the reserves. According to this insurance executive, it is well known that reserves are merely estimates -- and that they are subject to manipulation.²

The insurance executive's opinion is borne out by a 1976 Insurance Division financial examination of Alpac, the largest comp writer in Alaska. That examination includes a closed claim study in which Alpac reserved more than twice the amount (224%) actually needed to close the workers' comp claims surveyed.³ According to two well-placed and well-informed sources, the Division of Insurance has strong indications at this time that major Alaska comp carriers may be over-reserving for comp claims.⁴

It would appear from this analysis that comp rates could be cut more effectively by monitoring reserves closely and penalizing over-reserving than by experimenting with the rate-making mechanism.

¹ Williams, "Worker's Compensation Ratemaking," p. 15.

² See "Goodguy Insurance Company: A Competitive Company" (interview notes by the author presented to Study Commission Dec. 13, 1980).

³ Division of Insurance Financial Examination of Alpac (1976), p. 36. Carrier reserved \$2,141,714 but only paid \$954,423 to close claims.

⁴ Division of Insurance advised author Jan. 15 that the report that allegedly confirms present over-reserving will be available to the public in 90 days.

There is a non-economic reason for favoring reserves monitoring and penalties for over-reserving over major changes in the rate-filing mechanism. Good claims service is associated with a stable market.¹ During the past decade Alaska experienced poor claims service in many respects as the major carrier expanded rapidly.² The responsible state agencies (Workers' Compensation Division and Division of Insurance) were unable to provide relief. The proposed change to pure-premium rate-filing carries with it the likelihood of another period of rapid growth for individual carriers. Unless the responsible state agencies were equipped to handle the service problems liable to result from rapid changes in the market, past experience demonstrates claimants would be liable to suffer.³

¹ See "Goodguy Insurance Co."

² See author's "Workers' Compensation Problems in Alaska: An Assessment Prepared for the Alaska Legislative Affairs Agency," Jan. 20, 1980. Although the Study Commission has taken testimony from several claimants with complaints, comprehensive data on Alaska claims-handling practices is not available. Despite recommendations from all staff members and consultants to the Study Commission that more attention be devoted to claimant problems, the Study Commission did not interview claimants in a systematic manner or gather data on claims-handling to provide a convincing picture of the strengths and shortcomings of the delivery system for workers' compensation in Alaska.

³ For scenarios on some possible effects of pure-premium rate-filing, see author's attachment to letter to Workers' Compensation Study Commission, Dec. 18, 1980.

III. WORKERS' COMPENSATION PROFITABILITY IN ALASKA: A CHALLENGE TO PREVAILING NOTIONS

It has been asserted that during the past two years workers' comp carriers in Alaska experienced "a cyclical downturn in profitability due primarily to high losses," and that "the rates increased basically because the actual losses exceeded the permitted losses."¹

The term "loss" in this context is somewhat misleading because it does not refer to actual pay-out on claims during the calendar year; rather, that term refers to the amount reserved for future pay-out, as well as the amount actually paid during the calendar year.

Because figures on the workers' compensation business in Alaska are not reported anywhere in a manner that the lay person can readily comprehend, the significance of the distinction between paid loss and outstanding loss is not widely understood. To make clear the economics of the workers' compensation transaction, this analysis takes NAIC profitability results reported for Alaska carriers in 1978 (the worst year in recent history) and translates the percentages into hard numbers. Admittedly, this is a crude approximation of the Alaska workers' comp business; if more precise, comprehensive hard-number data with which to build a picture of the workers' compensation transaction is available, this writer has not seen that information developed.

¹ Robert Williams, "Worker's Compensation Ratemaking and Rate Regulation" (preliminary report to Workers' Compensation Study Commission, Jan. 15, 1981), pp. 8, 15.

The following tables and worksheets indicate that if Alaska carriers earned 10% interest on the portion of the premiums collected in 1978 and reserved for outstanding losses over a five-year period, the insurance companies apparently profited on their comp transactions resulting from 1978 policies.¹ 1978, it will be remembered, is the year in which Alaska carriers reported an 11.8% underwriting loss and a 5.3% operating loss.

Assuming 12% interest on the 1978 reserves, that year's comp transactions would result in a profit of \$7.6 million; at 15% interest, the actual five-year profit on the 5.3% reported operating loss would approximate \$15 million.

This simplified analysis suggests that cursory reviews of workers' comp profitability on file to data apparently understate the profits resulting from workers' compensation in Alaska: From this conservative, rough-cut approximation, it appears that for the worst year in recent history, the comp transactions that produced a reported 5.3% operating loss easily broke even or made up to \$15 million, depending on the interest rates assumed.

The experience of the New York State Workers' Compensation Fund provides real-world confirmation for the suggestion that even a supposed high-loss year such as 1978 can result in a profit. The New York Fund wrote for several years in a row at a loss ratio similar to Alaska's in 1978; by the end of the decade the New York Fund had gathered approximately \$400 million more than the amount needed to pay all outstanding losses.

¹ This simplified analysis focuses on investment income because workers' comp is what the insurance industry calls a "long-tail" line of insurance -- a term used to denote the fact that the carrier holds portions of the premium for relatively long periods of time. Although the investment income earned on the "float" from the insured is a major component of the long-tail insurance transaction, investment income is not part of the rate-base.

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS 1978 PROFITABILITY RESULTS (000,000 OMITTED)

ALASKA 5/29/79 (p. 15)

LINE OF BUSINESS	Premium Earned	Investment Income	Incurred Loss	Loss Adjust- ing Expense	General Expenses	Sales Expenses	Taxes, Lic. & Fees	Dividends to Policyholders	Fed. Income Tax	Underwriting Profit	Operating Profit
Workers' Comp	\$107.1	9.0 %	95.8 %	9.3 %	6.3 %	7.3 %	3.5 %	0.4 %	-8.4 %	-11.8 %	-5.3 %
Approx. \$ Value	\$107.1	\$9.6	\$102.5	\$10.0	\$6.7	\$7.8	\$3.7	\$0.4	\$-9.0	\$-12.6	\$-5.6
			Paid Loss*	Total	Expenses						
	\$116.7		\$23.5	\$52.1	\$28.6						
Surplus on hand, year-end		\$64.6									
Outstanding liabilities		\$79.0		(\$102.5 - \$23.5)							

* First year paid loss assumed equal to countrywide paid loss reported by INA for 1979 (see attached INA annual report). First year paid loss = 22.9% of total reserved.

NOTES ON CONVERTING NAIC 1978 PROFITABILITY ANALYSIS TO REAL DOLLARS

1. Premium earned + investment income = \$116.7 million
2. 1978 estimated paid loss + operating expenses (\$23.5 + \$28.6) = \$52.1 million
3. Year-end surplus = \$64.6 million
4. Outstanding Loss (total incurred loss minus paid loss, or \$102.5 minus \$23.5) = \$79.0 million

Sources: NAIC Profitability Results for Workers' Compensation in Alaska, 1978. (Percentage figures converted to dollars.)

NAIC does not provide information on pay-out rate. Since Alaska-specific data was not readily available, pay-out rate was calculated from Schedule P, Part 3D of the 1979 expense exhibit INA filed with the Alaska Division of Insurance.

NOTES ON WORKSHEET FOR CLOSING OUT CLAIMS AGAINST 1978 ALASKA WORKERS' COMPENSATION PREMIUMS

1. Starting point: Data derived from NAIC Profitability Results
2. Loss pay-out rate over the first 5 years of a claim taken from Schedule P, Part 3D of the annual statement of INA (parent company of Alaska's largest comp carrier). According to that schedule, by the end of 1979 INA had paid \$142,245 on 1975 incurred losses totalling \$191,792, countrywide. $142,245 \div 191,792 = 74.2\%$.
3. To meet INA's countrywide pay-out of 22.9% on first year and 74.2% by end of fifth year, Alaska carriers would have to pay \$52.6 million of the total incurred loss between the end of year one and the end of year five. $(74.2\% - 22.9\% = 51.3\% \text{ of } \$102.5 \text{ incurred loss. } \$102.5 \times .513 = \$52.6)$
4. To keep the worksheet in visible form for the lay reader, pay-out in eight equal semi-annual payments of \$6.6 million is assumed. This figure overstates the semi-annual target payments by \$50,000 each, understating the declining balance and resulting investment income.
5. Interest accrued every six months was calculated after subtracting \$6.6 million from the declining balance. This method also understates investment income carriers would receive.
6. This simplified model isolates 1978 transactions from the reserves and loss payments on policies written in previous years. Since 4 of the 5 previous years were reported profitable, this seems to be a conservative assumption that understates the carrier's over-all profitability for 1978. (The basic concern here is: does the carrier lose money by underwriting at a paper loss for a given year? Other years' profits are not at issue.) Also removed from this model are federal income tax credits (1978 was reported as a tax loss; again the omission would tend to understate the company's profits.)

NOTES ON WORKSHEET FOR CLOSING OUT CLAIMS AGAINST 1978 ALASKA WORKERS'
COMPENSATION PREMIUMS (CONTINUED)

7. Results:

- At 10% interest at the end of the fifth year the (understated) balance to meet future payments was \$29.2 million -- \$3.0 million over the outstanding payments of \$26.2 million.
- At 12% interest, at the end of the fifth year the understated balance to meet future payments was \$33.8 million -- an excess of \$7.6 million over the amount needed to make future payments.
- At 15% interest, at the end of the fifth year the understated balance was \$41.2 million -- an excess of \$15 million over the amount needed to make future payments.

NEW YORK STATE WORKERS' COMPENSATION FUND

<u>Year</u>	<u>Combined Ratio *</u> (%)	<u>Premiums</u> (\$000,000)	<u>Investment Income</u> (\$000,000)	<u>Surplus</u> (\$000,000)	<u>Total Admitted Assets **</u> (\$000,000)	<u>Unpaid Loss **</u> (\$000,000)
				23.5		
1969	115	90	14.6	NA		
1970	116	NA	16	NA		
1971	110	NA	19	NA		
1972	112	NA	20	NA		
1973	123	116	24	+20		
1974	125	NA	27	NA		
1975	126	NA	32	7		
1976	119	NA	45	NA		
1977	108	NA	52	22		
1978	99	NA	63	47	923	656***
1979	82	NA	86	140	1,123	778****
1980e	100	400	120e	260e		

Source: Testimony of Donald Kramer, Kramer Capital Consultants, to Minnesota Workers' Compensation Study Commission, Sept. 3, 1980. (Copy of testimony presented Alaska Workers' Compensation Study Commission Dec. 13, 1980.)

* "Combined Ratio" = Incurred Loss + Expenses (New York expenses are roughly 20% of premium). Alaska's 1978 combined ratio was 122.6. Note that New York wrote for three years in a row at a combined loss worse than Alaska's -- and the state fund still showed a healthy profit at the end of the decade.

** Asset and liability information provided by New York Insurance Department Examinations Bureau

*** Loss-development factor at 15 months: 8% (\$53 million)

**** Loss-development factor at 3 months: \$22 million

NA = not available on transcript; e = estimated

Kramer comments:

1969-73: "And even with a 123 combined ratio this surplus held constant. . . ."

1973-79: "First, it went through some periods where, by the way, it suffered some investment losses; it also went through periods where it suffered, as I say, 123 for three straight years -- '73, '74 and '75. And its surplus dropped to \$7 million. . . . finally, it had a 99 and 82. The first two years it ever made so-called underwriting profit . . . with an 82, surplus went to \$140 million."

1969-81: "Between 1969 and 1981, this Fund will have accumulated approximately \$380 million out of retained earnings. And during that period only two years did it have an underwriting profit. And the result of that underwriting profit . . . was to foster substantial reduction in rates in New York State And again, I showed you the combined ratios were well over 100 in '81 (there) is almost an embarrassment of riches to the State Fund . . . and there is no incentive for it to . . . maximize reported profits. They take all the security losses they can . . . and take . . . conservative investment position."

IV. Conclusions / Recommendation

A. Conclusions

If nothing else can be agreed upon from the preceding analysis, three things seem clear:

1. All numbers on the profitability of workers' comp insurance are suspect: a staff report reduces the carriers' listed 1978 5.3% operating loss to 1.6%; the analysis in the preceding section points to the conclusion that the 1978 operating loss was, in all probability, an operating profit. What these numbers from the dismal science indicate is that Alaska simply does not have reliable data on insurance carrier profits. Therefore, any policies based on assumptions of carrier profitability should be regarded with caution.

2. Pure-premium rate-filing has not been tried elsewhere. There is a good deal of speculation and argument about how it will work.

3. The surplus Alaska carriers held Dec. 31, 1978 for unpaid losses on 1978 claims was over twice the amount listed for carrier expenses that year. In view of past and present indications of over-reserving, it appears that attention to this area of workers' compensation could result in far greater savings to the employer than focus on the expense portion.

B. Recommendations

1. Require Alaska comp carriers to file an annual report on reserves, paid v. outstanding loss and investment income.
2. Add a provision in the law penalizing over-reserving.
3. Add a financial analyst in the Division of Insurance to audit carriers' reserves on a spot-check basis.
4. In addition to the preceding package, the Legislature might explore other methods of cutting workers' comp premiums with the same vigor that the Workers' Compensation Study Commission has explored pure-premium rate-filing. Other proposals that might result in significant

Recommendations

4. (cont.) savings to employers include:
 - (a) Take measures to reduce litigation on comp cases.
 - (b) Determine what steps might be taken to promote on-the-job safety, thereby reducing incurred loss.
 - (c) The Workers' Compensation Division should consider posting standard medical fees; fees would be monitored to reduce carrier over-payment on medical bills.
 - (d) Explore actively the mechanics of group insurance to make sure that small employers will actually be able to utilize that provision of the proposed law to join other small employers on group policies, thereby reducing the rates they would pay separately.

APPENDICES

Calendar Year Premiums Earned, Accident Year Loss and I

Calendar Year Premiums Earned, Accident Year Loss and Loss Expense IncurredCalendar Year Premiums Earned, Accident Year Loss and Loss Expense Incurred[illegible]

Traditional loss developments for 1974 and 1975 showed a deficiency development as reflected in the above exhibit. This surprised the Division of Insurance Examiner in view of the Company's stated and demonstrated conservative reserving procedures. He then had Peat, Marwick, Mitchell & Co. prepare a closed claim study. The study was not intended to be a reserve development, but only a study to see if the experience on the claims that the Company closed between December 31, 1976 and September 30, 1977 correlate with the Company's traditional loss development. The study only reflected those claims which were open at December 31, 1976 and closed by September 30, 1977 and the net amount required to close them. Salvage and subrogation was automatically included in the study due to the fact that the Company handles those items as negative payment. The study was limited to the Company's regular business. The results of the closed claim study are summarized as follows:

<u>Line</u>	<u>Case basis reserve open at 12/31/76</u>	<u>Net amount required to Close</u>	<u>Excess of case basis reserve over net amount required to close</u>
Inland Marine	\$ 346,560	\$ 254,766	\$ 91,794
Workmen's Compensation	<u>2,141,714</u>	<u>954,423</u>	<u>1,187,291</u>
Other Liability	132,657	69,002	63,655
Auto Liability	627,022	593,263	33,759
Auto Physical Damage	<u>306,835</u>	<u>214,412</u>	<u>92,423</u>
Totals	\$3,554,788	\$2,085,866	\$1,468,922

The excess of December 31, 1976 reserves over the ultimate net settlement on the claims closed during the period January 1 through September 30, 1977 may result from one of the following factors or a combination thereof:

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT

December 18, 1980

Representative Brian Rogers
Senator Terry Stimson
Co-Chairmen
Alaska Workers' Compensation Study Commission
1024 Sixth Avenue
Anchorage, Alaska 99501

Dear Brian and Terry:

As a follow-up to my presentation to the Study Commission Dec. 13
I am enclosing the following materials:

- == Analysis of some of the assumptions behind pure premium rate-filing and some of the scenarios liable to occur, in my estimation, should we adopt such a system on the basis of our present understanding. Scenario #4 points out that if workers' comp is in fact a money-loser for carriers, that the downward pressure on premiums could force major carriers to pull out. Scenario #3 suggests that if invaders prevail, cut-rate pricing coupled with rapidly expanding business could lead to a repeat of Alaska's unfortunate experience in the '70's, when widespread claims-handling problems were associated with the rapid growth of one carrier. Scenarios #1 and #2 assume competition -- and point to some potentially undesirable consequences.
- == Also included with this scenario is a worksheet I drew up using data from the Minnesota Insurance Division's required annual report on in-state workers' compensation business. In Minnesota I discovered that outstanding losses -- a major source of investment income -- increased twenty-fold in dollar-value between 1969 and 1978. Adjusted to assume constant premium and loss rates (my figures are on the worksheet), the actual increase in outstanding losses as percent of premium was 285% (from 13.2% to 37.7%, adjusted). This analysis shows the way in which slight shifts in numbers can result in tremendous accretions of dollars to the carriers.
- == Finally, I drafted a memorandum covering (1) the adequacy of the New York State Fund's reserves, (2) a conversation with Albert Millus and (3) my concern that the Study Commission has failed in its responsibilities to claimant problems by failing to address this area in a systematic manner.

With regard to the New York State Fund, you may recall that I brought those numbers to the Study Commission because that fund, for several years running, wrote at a loss as bad as the worst year in the recent Alaska experience -- and had a net surplus of \$380 million at the end of the decade. I looked briefly into the suggestion the New York Fund might not be properly reserved. As the memorandum states, I find no indication the New York Fund is inadequately reserved.

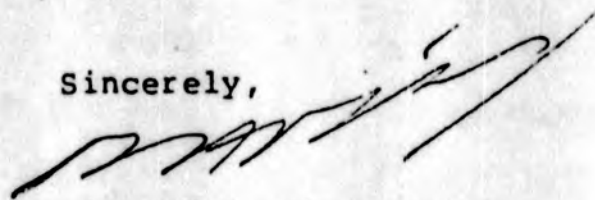
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Page Two

Donald Kramer of Kramer Capital Consultants (from whose testimony to the Minnesota Workers' Comp Study Commission I borrowed the numbers) says he did not bring the liability numbers to the Minnesota hearing because he had not heard anyone question the New York fund's reserving practices. To his knowledge the New York State Fund is fat, sassy -- and properly reserved. Kramer, who has been a consultant to that Fund, suggests that anyone who wants to confirm the Fund's reserving practices might look at the conventional forms, such as Schedule P (loss development) which the Fund, like any other insurance carrier, files annually. Since I brought up these numbers to make a simple point -- that you can underwrite at a paper loss and still come out ahead -- I do not believe it is worth either the Commission's time or my own to pursue this matter further.

But I think the numbers from Minnesota and New York do make clear the point that small percentage changes in discrete elements of the comp-pricing system may yield tremendous sums of cash for the carriers -- and that we are still pretty much in the dark as to what the numbers mean for comp carriers in Alaska. It is my belief that we should be going over past rate filings and examinations with a fine-tooth comb to learn which of our assumptions reflect experience before we make major changes in the rate-making procedure.

With best regards, I am

Sincerely,



Richard A. Fineberg
Box 81835 - College Sta.
Fairbanks, Alaska 99708
tel 907/479-5363

(enc.)

MEMORANDUM

TO: WORKERS' COMPENSATION STUDY COMMISSION

FROM: RICHARD A. FINEBERG

DATE: DEC. 18, 1980

RE: NEW YORK STATE FUND / MILLUS / CLAIMANTS

In presenting information on the profitability of workers' comp to the Study Commission Dec. 13, I cited numbers from the New York State Workers' Compensation Fund. One commission member noted the absence of liability data and asked whether the New York State Fund--having written at a large paper loss for much of the 1970's while showing a tremendous net surplus accumulation -- was able to meet its future commitments.

With limited personal time available to pursue this question, I contacted Donald Kramer, Kramer Capital Consultants, from whose testimony to the Minnesota Workers' Compensation Study Commission I took the New York figures.

Kramer's response: He did not go through the liability data in his oral testimony in Minnesota because the New York State Fund's ability to meet its commitments is not, to Kramer's knowledge, in question. For those who wish to raise the question, Kramer noted that the Fund files conventional insurance forms required of any carrier, including Schedule P (loss development) and that any glaring defects or shortfalls in projected claims payments should show up there. He added that he has served as a consultant to the New York State Fund and that he is not aware of concern about solvency. To the contrary, he says, after two good years at the end of the decade the Fund is blessed with what he terms "an embarrassment of riches."

Additionally, I note that Albert Millus, whose article on competitive rating in workers' comp appeared in Best's in November, directed the New York State Fund from 1972-78, the years the Fund was underwriting at a paper loss. If Millus had led the Fund to insolvency, I doubt that we would find him consulting on workers' comp at \$100/hour and writing cover articles for Best's (he has a follow-up scheduled for January).

Since I brought up the New York Fund numbers simply to point out a tremendous change in net surplus in the face of years of underwriting loss and I know of no challenge from anybody who has examined the New York numbers, I do not feel it necessary to pursue this matter further.

I. General Assumptions Underlying Open-Rating Proposal

A. In the absence of meaningful numbers from the Alaska experience -- figures that might clarify our understanding of the way in which the workers' compensation pricing mechanism works in the Alaska market -- we must make some assumptions to proceed with consideration of rate-filing on pure premium.

Assumption 1. The existing rate system keeps prices somewhat higher than they would be in a truly competitive market. (1)

Assumption 2. The proposed rate-filing on pure premium would not destroy or detract from the integrity of the data-base and would induce competition. (2)

II. General Assumptions about Workers' Comp

A. It is also necessary to consider at all times the nature of workers' compensation. Three key factors will be identified here:

Assumption 1. Workers' comp exists to provide necessary services for injured workers. Delivery of insurance services may be adversely affected by sudden market changes. (3)

Assumption 2. Workers' comp is a long-tail line in which small incremental changes in base numbers may have significant effects in long-term calculations. (4)

Assumption 3. Alaska's comp market is unique in that this line is dominated to a great extent by a small number of carriers. (5)

III. Some Possible Scenarios

A. Again in the absence of meaningful numbers, let's consider the possible effects of rate-filing on pure premium in terms of abstract scenarios:

III. Some Possible Scenarios (cont'd)

Scenario #1: TRADITIONAL PRICE WAR

Some new carriers will spot the possibility of gaining investment income and will enter writing at reduced rates. The dominant carriers will come down to meet the invaders. The dominant carriers, already established, have a major advantage: they already have shops set up and know what their costs are. They can also under-reserve in Alaska for a few years, adjusting comp reserves in other markets upwards slightly to compensate. (Since Alaska does not keep close, systematic tabs on reserving practices in workers' comp, this practice would be difficult to detect.) In short, the carriers may do precisely what other marketers do when faced with competition in a market they wish to preserve: drop prices under the competition to drive out the invader. Once the invader is gone, the carriers who had previously carved out this market can once again kick premium prices up.

Scenario #2: MICRO-APPROACH TO TRADITIONAL PRICE WAR

Same scenario, but let's focus on how the major carriers might cut overhead. It was asserted during the Dec. 13 Study Commission meeting that some carriers might write comp as a no-profit "add-on" to package insurance already being written for an employer. If this were the case, the same employer would still be paying the same price for insurance and would be no better off; the workers' comp costs he/she perceives to be breaking the business would merely be described on the insurance bill as all lines of insurance together instead of workers' comp.

III. Scenarios (cont'd)

Alternatively, if the packaging plan actually succeeded in shifting costs out of workers' comp and into other lines, the premium costs on those lines would be artificially inflated to cover part of workers' comp. Is it rational to expect purchasers of (say) commercial liability insurance -- or homeowners insurance or some other line, for that matter -- to subsidize workers' comp? If workers' comp is to be subsidized from another sector of the economy, should that sector be the purchasers of other lines of insurance, or should that sector be society as a whole? I don't know the answer to this question. But I believe the implications of pure premium rate-filing need to be considered carefully in terms of effects that flow from the operative assumptions.

Scenario #3: CUT-RATE INVADERS PREVAIL

Invaders compete successfully, offering cheaper comp policies with reduced services, poor claims practices. The Division of Insurance has demonstrated its inability and/or unwillingness to monitor comp trade practices in the past.⁽⁶⁾ And it is not clear that the Division of Workers' Compensation has yet mastered the administrative problems that kept that division from preventing workers' compensation service problems that plagued Alaska during the '70's. The costs of poor claims service to society as a whole has been covered elsewhere; likewise the effects on the individual claimants. If delivery of services is the basic purpose of workers' comp, then policies that adversely affect delivery should be judged accordingly. Before advocating pure premium rate-filing I would want to make sure claims-handling practices were under control AND well-monitored by state officials to insure that services would not suffer as a result of a destabilized market.

III. Some Possible Scenarios (cont'd)

Scenario #4: DOWNWARD PRESSURE ON RATES FORCES MAJOR CARRIERS OUT

If I understand the argument put to the Study Commission for pure premium rate-filing, it is that the existing system is keeping the price of workers' comp up by inhibiting deviations, and that workers' comp in Alaska is a loser.⁽⁷⁾ If carriers cannot make money on workers' comp in Alaska, why do they write it at all?

Answer: They want investment income. In this situation, anything that pressures carriers to reduce comp prices carries the risk that with the downward pressure on prices other insurance markets in other areas would become more desirable to the major carriers.

I do not believe workers' comp in Alaska is a loser. However, the data on which a firm conclusion can be based is simply not available at this time; that is one reason I advocate a statute or regulation requiring carriers to file an annual statement on their comp experience in Alaska that would include premiums, expenses, paid and unpaid losses, investment income and experience. Minnesota has such a law, and it yields data on which modification of the rate-filing system might be intelligently predicated.⁽⁸⁾ It is my premise -- which I presume the Study Commission shares -- that workers' comp exists to deliver a necessary service. If pure premium rate-filing might force carriers out of the market, in view of the extreme importance of the top three carriers (70.4% of the market) that provide this necessary service the numbers should be examined carefully before such a policy change is made.

IV. RECOMMENDATIONS

1. Adopt a comp-specific reporting system for Alaska similar to Minnesota's Form I-57.

2. Increase budget/personnel provisions for Division of Insurance to make sure the I-57 reports are drafted to glean significant information, then tabulated and analyzed.

3. Examine the Milliman and Robertson Oct. 1, 1979 report to the Division of Insurance to determine whether its conclusions are (a) valid and (b) applicable to the general reserving practices for Alaska workers' comp claims for the 1976-80 period.

4. Analyze previous rate filings with emphasis on outstanding losses and investment income.

5. Assess similarities and differences in the comp markets of Alaska and other states.

6. After completion of a thorough examination of workers' comp profitability in Alaska and the unique characteristics of the Alaska workers' comp market, make recommendations concerning ways to improve the pricing mechanism for workers' comp in Alaska.

V. FOOTNOTES

- (1) See articles by Fairley and Hill in the Bell Journal of Economics, 10(1): 1979 (cited in author's 12/13/80 presentations to the Study Commission.)
- (2) I am not persuaded that either assumption is valid. (See arguments presented Dec. 13.) For the purpose of analyzing the proposal, however, let's grant this assumption and proceed.
- (3) The Alaska comp experience during the '70's may be an example of the premise that sudden market changes result in deteriorated service delivery. (A former ALPAC official tells me that when the company shipped several Alaskans to San Francisco for evaluation by a psychiatrist whose firm consistently reports _____ to carriers that claimants are frauds, ALPAC sincerely believed that psychiatrist to be "the best medical opinion money can buy." This kind of honest mistake is precisely the kind of problem that occurs when a carrier is expanding rapidly. It is the claimant who pays the highest price for such honest mistakes.)
- (4) Indications from other states where data is available are that the size of the tail -- the amount of money in outstanding losses -- is increasing. (For Minnesota's experience see accompanying worksheet.)
- (5) According to Best's 1979 compilation, Alaska is the only state in the nation in which three private carriers write more than 2/3 of the comp premiums. The only other state that comes anywhere close is Oregon -- a three-way state -- in which three carriers write 54% of the comp. (Commissioner W.W. Fritz of Oregon therefore has the distinction of having served as Commissioner in the two states with this unusual market characteristic.)
- (6) See author's report to House Labor & Management Committee, Jan. 21, 1980 (on file with Study Commission).
- (7) Data from NAIC reports presented to this Study Commission Dec. 13 indicate Alaska workers' comp profits in four of the seven years for which data is available (1973-79) exceeded the national average for workers' comp -- and outweighed the loss in the worst year (1978) in three of those four profitable years.
- (8) Minnesota form I-57 filed with Study Commission Dec. 13, 1980. Figures on the amount of money in outstanding losses derived from that form are presented in the worksheet on the following page.

OUTSTANDING LOSS DATA: MINNESOTA WORKERS' COMPENSATION EXPERIENCE, 1969-1978

Year	(1) Total Net Earned Prem. (\$ 000,000)	(2) Factor to make (1) = 100	(3) Loss Ratio (Net) (%)	(4) Factor to make (3) = 70%	(5) Total Paid Loss (\$ 000,000)	(6) Adj. Paid Loss (5) x (2) x (4)	(7) Total Loss Outstanding (\$ 000,000)	(8) Adj. Outstndng. Loss (7) x (2) x (4)
1969	\$69.7	1.43	61.2%	1.14	\$34.5	56.2	\$8.1	13.2%
1970	77.1	1.29	62.0	1.13	39.1	57.0	8.7	12.7
1971	83.8	1.19	65.3	1.07	41.9	53.4	12.8	16.2
1972	99.7	1.00	68.1	1.03	48.1	49.5	19.7	20.3
1973	110.9	0.90	65.6	1.06	52.2	49.8	20.6	20.0
1974	138.1	0.72	60.1	1.16	63.3	52.9	20.8	17.3
1975	162.6	0.62	61.5	1.14	72.4	51.2	27.6	19.5
1976	204.0	0.49	74.9	0.93	90.8	41.4	61.8	28.2
1977	254.3	0.39	84.8	0.82	113.9	36.4	101.8	32.6
1978	351.5	0.28	91.4	0.77	146.3	31.5	175.0	37.7

Note: Columns (1), (3), (5) and (7) taken from "Minnesota W.C. Experience -- Insurance Division Form I-57," provided by Minnesota Insurance Division from tabulation of Form I-57 ("Workers' Compensation Experience Exhibit -- Report to the Insurance Commissioner").

Columns (6) and (8) represent paid losses and losses outstanding, adjusted to assume premium for workers' comp at 100 (000,000 \$) per year and loss ratio at 70% of premium. Cols. (6) & (8) expressed in % or \$ (000,000).

The factoring of the Minnesota numbers was done by the author to demonstrate the marked increase in the outstanding loss reserves for workers' compensation claims in Minnesota during this ten-year period. Similar data for Alaska is not readily available.

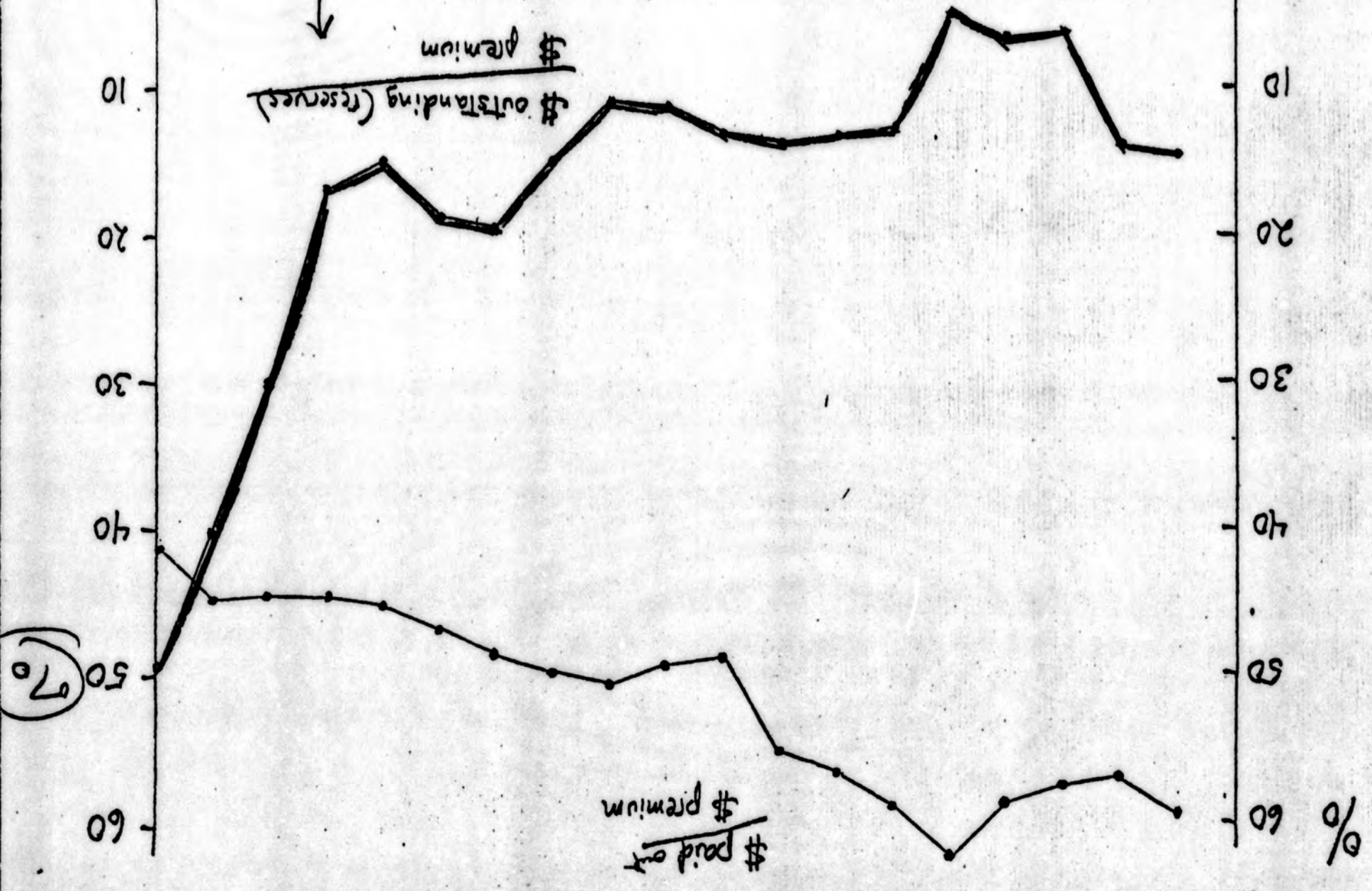
Prepared by Richard A. Fineberg
Alaska Workers' Compensation Study
Commission
Dec. 18, 1980

(A)

MINNESOTA W.C. EXPERIENCE - INSURANCE DIVISION FORM I-57

Total Net Earned Premium	Total Losses Paid	Premium Minus Paid Losses	Paid Loss as a percent of Premium	Total Losses Outstanding	Outstanding Losses as a percent of Premium	Paid + Outstanding = Incurred Loss	Loss Ratio (Net)
\$ 31,848,448	\$ 18,944,301	\$ 12,904,147	59.48%	\$ 4,680,221	14.73%	\$ 23,624,522	74.18%
33,845,016	19,355,608	14,489,408	57.19	4,737,451	14.00	24,093,059	71.19
36,017,863	20,837,661	15,180,202	57.85	2,197,690	6.10	23,035,351	63.96
37,528,668	21,865,703	15,662,965	58.26	2,484,174	6.62	24,349,877	64.88
37,621,387	23,342,977	14,278,410	62.05	1,983,570	5.27	25,326,547	67.16
40,470,137	23,828,184	16,641,953	58.88	5,235,874	12.94	29,064,058	71.82
46,450,567	26,197,534	20,253,033	56.40	6,187,275	13.32	32,384,809	69.72
50,653,527	28,121,604	22,531,923	55.52	7,061,969	13.94	35,183,573	69.46
64,468,252	31,483,069	32,985,183	48.83	8,645,973	13.41	40,129,042	62.25
69,706,029	34,540,118	35,165,911	49.55	8,136,473	11.67	42,676,591	61.22
77,145,653	39,081,015	38,064,638	50.66	8,729,423	11.32	47,810,438	61.97
83,806,848	41,893,239	41,913,609	49.99	12,791,334	15.26	54,684,573	65.25
99,749,269	48,106,963	51,642,306	48.23	19,793,305	19.84	67,900,268	68.07
110,868,665	52,195,646	58,662,919	47.08	20,560,898	18.55	72,756,544	65.62
138,091,624	63,255,078	74,836,546	45.81	20,787,977	15.05	84,043,055	60.86
162,615,905	72,418,070	90,197,835	44.53	27,648,114	17.00	100,066,184	61.54
203,956,112	90,840,912	113,115,200	44.54	61,830,671	30.32	152,671,583	74.86
254,315,762	113,914,431	130,401,331	44.79	101,815,802	40.04	215,730,233	84.83
351,454,462	146,270,601	205,183,861	41.62	174,950,913	49.78	321,221,514	91.40
\$1,930,614,194	\$916,492,714	\$1,004,111,380	47.47%	\$501,269,107	25.96%	\$1,417,761,821	73.44%

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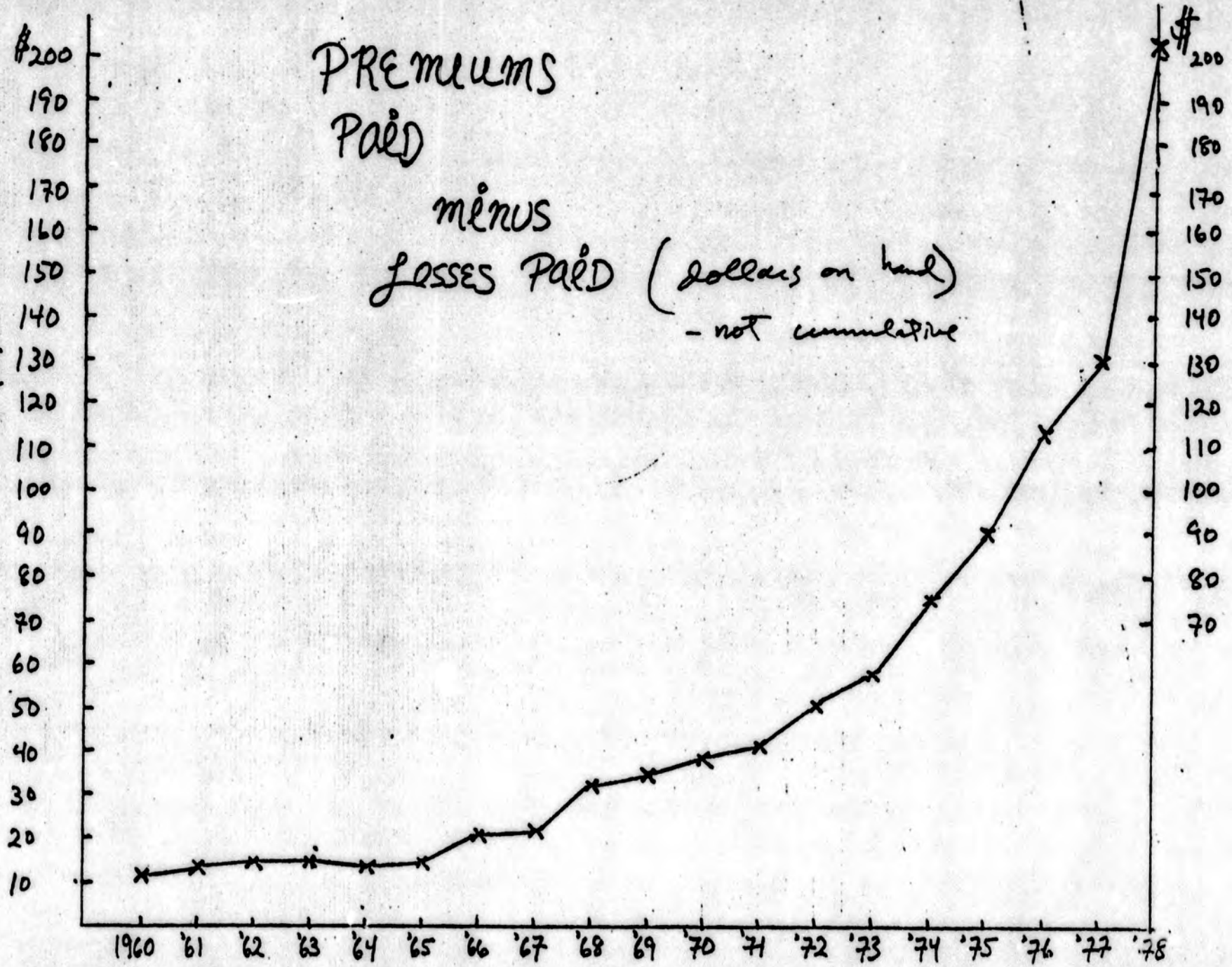
(B)

(C)

PREMIUMS
PAID

MINUS
LOSSES PAID (dollars on hand)
- not cumulative

DIFFERENCE
(millions, \$)



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

January 29, 1980

Peter Kelley, Administrative Assistant
House Labor & Management Committee
Alaska State House
Pouch V
State Capitol
Anchorage, Alaska 99511

Dear Peter:

Press reports in Fairbanks indicate you fellows have hopped on the workers' comp issue with admirable alacrity; I was surprised to learn you may be holding hearings as early as next week. If inquiries about problems identified in the report are going to be directed to officials of the Division of Insurance and the Division of Workers' Comp, I trust you will make sure those officials receive the report in time to prepare responses. (I feel this is especially important because the limited budget available for this study did not provide for the costly steps of circulating a preliminary draft for review by agencies and including those comments in the report.)

In discussing the report today with an insurance adjuster who has handled comp claims for most of Alaska's carriers, we determined that there is one loophole in the law that might lend itself to immediate legislative correction: As the report notes (pages 30 and 50), AS 23.30.155(c) requires the carrier to notify the board on suspension of payment for any cause, but carriers often violate this provision without penalty. In addition to strengthening enforcement, it may be that AS 23.30.155 should be changed to require the carrier to notify the claimant, as well as the board, whenever the carrier stops payments. I would list this statutory change with the recommendations for immediate legislative attention, listed in Chapter 5A.

I'm going to be tied up putting out a newsletter during the next ten days, but I will be happy to discuss comp questions with you if you need information to supplement the report and its appendices.

With best regards,

Richard A. Fineberg
Box 81835 - College Sta.
Fairbanks, AK 99708

Copy to: Rep. B. Rogers

January 21, 1980

Representative Brian Rogers, Vice-Chair
House Labor & Management Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Rogers:

The House Labor and Management Committee asked me to assess workers' compensation problems in Alaska. The enclosed report to the Committee, prepared under your supervision, is the result of that request.

Although the report supports the Administration's request to beef up the Workers' Compensation Division with staff and equipment, the burden of this analysis suggests that this limited action is too narrow in scope to solve Alaska's workers' comp problems. There are two basic shortcomings in the Administration proposal:

(1) The proposal makes no provision for the unspecified number of claimants who are still caught in a cruel squeeze that is in part the result of past inattention to workers' comp. How many such individuals are there? I do not know; more important, the Workers' Comp Division does not know. The material presented in Chapter 2 of this report, coupled with the documents in the appendices and other chapters, should convince any skeptic that those who have complained about comp problems are representative of a larger group — and that there is merit to some of the complaints. The Administration proposal may reduce the number of complaints about the system by 1982 or 1983, but the proposal will not help those individuals who are suffering now.

(2) In my opinion the Administration's proposed reforms do not address the basic problems that plague the workers' comp system. In the report I suggest several areas that require further study. For example: We spend \$100 million per year on comp premiums, but do we really know how the insurance companies use those dollars? How do the Workers' Comp Division (which oversees the comp program under AS 23.30) and the Division of Insurance (which has statutory responsibility for all insurance companies in Alaska under AS 21.) work together? In conducting the research for this report I found that although comp accounts for more premium dollars than any other form of insurance in Alaska, we don't really know how comp dollars are spent; I also found that the agency that regulates the fiscal end of insurance (the Division of Insurance) isolates itself almost completely from questions concerning the services comp dollars are paid to provide. It is my belief that unless this kind of problem is tackled and solved, when it comes to workers' comp the State of Alaska will be playing catch-up ball forever.

In evaluating the present situation, I am struck by the fact that although agency personnel are unfailingly delightful to deal with it must be remembered that the proposed limited reforms were initiated long after the problem was out of hand, after comp claimants had demonstrated in front of state buildings

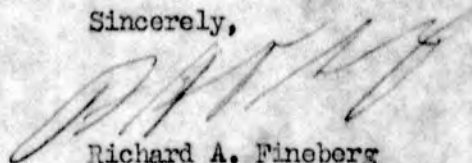
in Fairbanks and Anchorage, after some comp protestors formed an organization to try to help others with similar problems and after repeated cries of anguish from comp claimants had been repeatedly ignored by responsible authorities. One reason the problem developed and went uncorrected for so long, in my estimation, is that the individuals who carry out the comp program for the state have been far too busy handling day-to-day assignments to take a long-range view of the situation. In the Workers' Comp Division, for example, some staff people often work evening and weekends trying to keep from sinking deeper into their paperwork swamp.

I compiled extensive files on workers' comp from this investigation and from previous research. If you, the Committee or other legislators desire additional information or corroboration on points raised in this study, please let me know and I'll try to get the materials to you as quickly as possible. Alternatively, if you prefer, I can send you a big batch of papers in a box and you can have your aides sift through those materials when they don't have anything better to do. I hope that the rather extensive appendices attached to the report will anticipate most of your questions.

Although I had hoped to deliver a shorter report, I make no apology for the length of this one. I made a serious attempt to winnow out extraneous material while retaining sufficient detail to give the reader a feeling for the situation as I found it. (The reader who is not interested in that detail will find a three-page summary and conclusions at the front of the report.)

I have enjoyed the opportunity to serve you and will be happy to provide whatever additional information you may need. Hoping the enclosed report will contribute to solution of the workers' comp problems in Alaska, I am

Sincerely,



Richard A. Pineberg
Box 81835 - College Sta.
Fairbanks, AK 99708

(tel) 479-5363

CONTRACT BETWEEN

STATE OF ALASKA
LEGISLATIVE AFFAIRS AGENCY
Pouch Y, State Capitol
Juneau, Alaska 99811

and

RICHARD FINEBERG
P. O. Box 81835
Fairbanks, Alaska 99708

The parties of this agreement are the LEGISLATIVE AFFAIRS AGENCY, on behalf of the Alaska State Legislature's House Labor and Management Committee, hereinafter referred to as the AGENCY, and RICHARD FINEBERG, hereinafter referred to as the CONTRACTOR.

THE ABOVE PARTIES TO THIS CONTRACT, in consideration of the covenants hereinafter contained, hereby mutually agree to the terms and conditions hereinafter set forth:

CLAUSE I - STATEMENT OF WORK

- (A) General Tasks - The Contractor shall define current critical problems in the workers' compensation law and delineate areas that need further study and/or possible legislative attention in 1980. Specific areas will include:
1. Workers' Compensation Rates -
Define how industry sets the rates and how the Division of Insurance regulates this process.
 2. Delivery of Services -
Define how industry executes the program and how the Department of Labor supports/regulates this program.
 3. Legislative Analysis -
Analyze how the workers' compensation law is working and suggest legislative action.
Establish how insurance law is working in regard to workers' compensation and suggest legislative action.
 4. Study of the experiences of other states in approaching and resolving workers' compensation-related issues.

(B) Work Products

1. Phase One
Phase One will consist of research through interviews and document analysis in Juneau and Anchorage.
2. Phase Two
Phase Two will consist of the evaluation and writing of the report placing current information in context of the legislative/political history of workers' compensation.
3. Schedule
 - a. Phase One shall be completed by January 1, 1980.
 - b. Phase Two shall be completed by January 15, 1980.

CLAUSE II - PERIOD OF PERFORMANCE

The Period of Performance shall be November 6, 1979 through January 15, 1980.

CLAUSE III - TERMINATION

This contract may be terminated by either party on written notice to the other.

CLAUSE IV - PROJECT DIRECTOR

The Project Director shall be the Honorable Brian Rogers, Vice-Chairman of the House Labor and Management Committee.

CLAUSE V - COMPENSATION AND METHOD OF PAYMENT

- (A) Total compensation shall not exceed \$2,203.
- (B) Payment for Clause I(B)(1) shall not exceed \$900 and shall be payable immediately upon billing by the CONTRACTOR.
- (C) Payment for Clause I(B)(2) shall not exceed \$1,303 and shall be payable immediately upon submission of the report.
- (D) The CONTRACTOR shall receive no payment in addition to that specified in Clause V(A) for travel and related expenses unless the Project Director requests that the CONTRACTOR travel between the CONTRACTOR'S place of business and Juneau.

CLAUSE VI - RECORDS, DOCUMENTS, AUDIT

The CONTRACTOR shall maintain accurate records, including detailed time records, as may be required by the AGENCY. The records are subject to inspection by the Project Director of the AGENCY at all reasonable times. All documents, reports and writings produced in the course of the work performed under this contract are, upon delivery to the Project Director or the AGENCY or at termination of this agreement, the property of the AGENCY, and/or in the public domain; provided that the CONTRACTOR will have the right to use any such materials for purposes of writing about or discussing the issues.

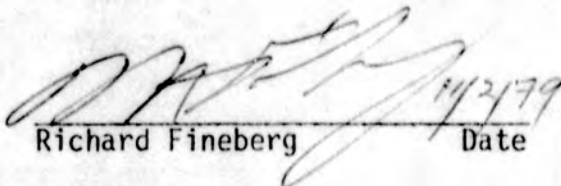
CLAUSE VII - ALL WRITINGS CONTAINED HEREIN

This agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind either of the parties to this agreement.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates indicated.

CONTRACTOR

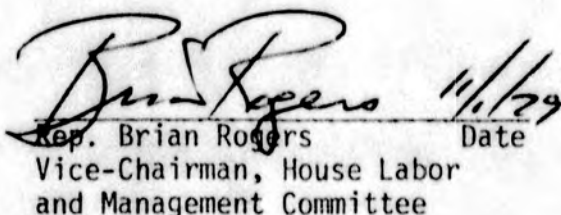
LEGISLATIVE AFFAIRS AGENCY


Richard Fineberg Date 11/2/79

Myrton R. Charney Date
Executive Director

Accepted:

Approved as to form:


Rep. Brian Rogers Date 11/1/79
Vice-Chairman, House Labor
and Management Committee

Agency Legal Counsel Date

recd 1/15
final payment
due upon
submission
of report

[Signature]
Workers
Comp

TO: REP. BRIAN ROGERS

FROM: RICHARD A. FINEBERG
Box 81835
Fairbanks, AK 99708
(tel. 479-5363)

RE: INTERIM RESEARCH ON WORKERS' COMP

DATE: OCT. 7, 1979

Workers' compensation has been the subject of recent discussion, reform suggestions coming principally from two different sources: businesses concerned about rising comp rates they pay and individuals who claim they have been unjustly denied long-term benefits and/or rehabilitation they believe the comp system should provide. In February 1977, Legislative Affairs published two studies (Workers' Compensation Rates in Alaska and Workers' Compensation: The Feasibility of Establishing a State Fund); since then, the legislature has not taken a close look at the operation of the workers' comp system. During this period, the effects of pipeline construction and the 1975 legislative overhaul of workers' comp have made significant changes in the system.

On funding available through interim committee budget (see attached budget proposal), this project will attempt to define current critical problems and delineate areas that need further study and/or possible legislative attention in 1980. Specific attention will be given to:

1. workers' comp rates
 - = how industry sets the rates
 - = how Division of Insurance regulates this process
2. delivery of services
 - = how industry executes the program
 - = how Dept. of Labor supports/regulates this program
3. Legislative analysis
 - = how the workers' comp law is working: does it need complete rewrite, another major overhaul or minor revision?
 - = how insurance law is working re: workers' comp — are there additions, deletions or revisions that might help resolve any problems identified in 1. and 2. above?
 - = it is anticipated that some attention may be devoted to the experience(s) of other states in approaching and resolving workers' comp-related issues

This project will consist of a two-phase research program to be completed Oct.-Dec. 1979, resulting in a report to the House Labor Committee, to be submitted in writing on or before Jan. 15, 1980. (The two research phases will consist of interviews and document analysis in Juneau and Anchorage, followed by evaluation and writing of report, which will place current information in context of the legislative/political history of workers' comp.)

Enc: proposed budget, researcher's resume

TO: REP. BRIAN ROGERS

FROM: RICHARD A. FINEBERG

RE: INTERIM RESEARCH ON WORKERS' COMP (PROPOSED RESEARCH BUDGET)

DATE: OCT. 7, 1979

This budget supplements memo of this date outlining Interim Research on Workers' Comp. It is my belief that a useful and significant report to the legislature outlining issues relating to workers' comp that need further attention can be produced on the following limited budget.

<u>Item:</u>	<u>Amount:</u>								
1. Travel to Anchorage/Juneau	\$253								
Researcher will drive to Anchorage; vehicle in Anchorage will enable more efficient use of time, since Div. of Ins., Dept. of Labor and industry sources are in widely separated locations. Trip to and from Anchorage to be covered from this item; driving expenses in Anchorage to be covered out of per diem. If possible, to facilitate flexible ticketing and scheduling between Anch. and Jmu, researcher would prefer total travel payment in payment rather than TR. Travel costs are: <table border="0" style="margin-left: 40px;"> <tr> <td>RT, vehicle, Fbks-Anc-Fbks:</td> <td style="text-align: right;">\$40</td> </tr> <tr> <td>vehicle, Anc.</td> <td style="text-align: right;">n.a.</td> </tr> <tr> <td>RT, air, Anc.-Jmu-Anc.</td> <td style="text-align: right;">\$213</td> </tr> <tr> <td></td> <td style="text-align: right; border-top: 1px solid black;">\$253</td> </tr> </table>		RT, vehicle, Fbks-Anc-Fbks:	\$40	vehicle, Anc.	n.a.	RT, air, Anc.-Jmu-Anc.	\$213		\$253
RT, vehicle, Fbks-Anc-Fbks:	\$40								
vehicle, Anc.	n.a.								
RT, air, Anc.-Jmu-Anc.	\$213								
	\$253								
2. Per diem, Anchorage/Juneau (\$55/day, 10 days) . .	\$550								
3. Consulting fee to write report (est. 9 working days at \$150/day)	\$1350								
4. Contingencies (misc. supplies, long-distance phone)	\$50								
TOTAL	\$2203								

Resume

RICHARD A. FINEBERG
Box 81835
Fairbanks, Alaska 99708

Born: Sept. 9, 1941 Place of Birth: St. Louis, Mo. (USA)

Nationality: U.S. Citizen Marital Status: S Sex: M

Present Position: Freelance writer

Previous Positions: Assistant Professor of Political Science, University of Alaska, 1969-1971; Director, Cambodia Research Project, Indochina Resource Center, 1972; reporter, Dispatch News Service, 1972; staff writer, resources, Fairbanks Daily News-Miner, Nov. 1975-May 1976.

Partial Publications List:

Newspaper articles on a variety of topics including chemical and biological warfare, U.S. involvement in Cambodia, AEC testing in the Aleutians and the trans-Alaska pipeline have appeared in various U.S. dailies, including: The Anchorage Daily News, The Boston Globe, The Chicago Sun-Times, The Philadelphia Inquirer, The St. Louis Post-Dispatch, The Washington Star.

Magazine articles include: "Trouble in the Vineyards," The Progressive, May 1969; "Chemical-Biological Warfare: Setting the Record Straight," Lithopinion, Fall 1972; "No More Chemical-Biological War?" The New Republic, Dec. 2, 1972; "Cambodia: Unanswered Questions," ch. 3 of Vietnam: What Kind of Peace (Indochina Resource Center, 1973); "Nerve Gas: Return of a Nightmare?" Saturday Review/World, March 23, 1974; "Meet the Yukon River People," Alaska, Sept. 1974; "Birchers on the Campaign Trail," The Progressive, Sept. 1975; "The Pipeline and the Party Line," The Weekly, April 14, 1976; "The Trans-Alaska Pipeline: Promises and Betrayals," The Nation, Oct. 1, 1977; "Anger on the Last Frontier: The Alaska Land Question," The Nation, April 28, 1979.

Journalistic Awards: Alaska Press Club 1975 "Best Column" Award; Davenport Fellowship in Economic Reporting, University of Missouri, June 1976; first prize, 1978 Media Awards for Economic Understanding (national competition sponsored by Champion International).

Academic and Research Grants: National Defense Foreign Language Fellowship, 1966-67; California State Fellowship, 1968-69; National Endowment for the Humanities Post-Doctoral Fellowship, 1971 (declined); research grants from
= the Council of Christian Social Concerns, 1968;
= the Louis M. Rabinowitz Foundation, 1973;
= the Fund for Investigative Journalism, 1970, 1972, 1974, 1975, 1976, 1977, 1978, 1979.

Education: B.A., Beloit College, 1964; M.A., Claremont Graduate School, 1967; Ph. D., Claremont Graduate School, 1970 (all degrees in Government; areas of focus include behavioral studies, comparative politics, contemporary China, Southeast Asia, California farm labor).

References: Available on request

Phone: (907) 479-5363

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

January 21, 1980

Representative Brian Rogers, Vice-Chair
House Labor & Management Committee
Pouch V
Juneau, Alaska 99811

Dear Representative Rogers:

The House Labor and Management Committee asked me to assess workers' compensation problems in Alaska. The enclosed report to the Committee, prepared under your supervision, is the result of that request.

Although the report supports the Administration's request to beef up the Workers' Compensation Division with staff and equipment, the burden of this analysis suggests that this limited action is too narrow in scope to solve Alaska's workers' comp problems. There are two basic shortcomings in the Administration proposal:

(1) The proposal makes no provision for the unspecified number of claimants who are still caught in a cruel squeeze that is in part the result of past inattention to workers' comp. How many such individuals are there? I do not know; more important, the Workers' Comp Division does not know. The material presented in Chapter 2 of this report, coupled with the documents in the appendices and other chapters, should convince any skeptic that those who have complained about comp problems are representative of a larger group — and that there is merit to some of the complaints. The Administration proposal may reduce the number of complaints about the system by 1982 or 1983, but the proposal will not help those individuals who are suffering now.

(2) In my opinion the Administration's proposed reforms do not address the basic problems that plague the workers' comp system. In the report I suggest several areas that require further study. For example: We spend \$100 million per year on comp premiums, but do we really know how the insurance companies use those dollars? How do the Workers' Comp Division (which oversees the comp program under AS 23.30) and the Division of Insurance (which has statutory responsibility for all insurance companies in Alaska under AS 21.) work together? In conducting the research for this report I found that although comp accounts for more premium dollars than any other form of insurance in Alaska, we don't really know how comp dollars are spent; I also found that the agency that regulates the fiscal end of insurance (the Division of Insurance) isolates itself almost completely from questions concerning the services comp dollars are paid to provide. It is my belief that unless this kind of problem is tackled and solved, when it comes to workers' comp the State of Alaska will be playing catch-up ball forever.

In evaluating the present situation, I am struck by the fact that although agency personnel are unfailingly delightful to deal with it must be remembered that the proposed limited reforms were initiated long after the problem was out of hand, after comp claimants had demonstrated in front of state buildings

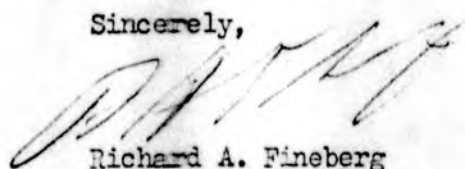
in Fairbanks and Anchorage, after some comp protestors formed an organization to try to help others with similar problems and after repeated cries of anguish from comp claimants had been repeatedly ignored by responsible authorities. One reason the problem developed and went uncorrected for so long, in my estimation, is that the individuals who carry out the comp program for the state have been far too busy handling day-to-day assignments to take a long-range view of the situation. In the Workers' Comp Division, for example, some staff people often work evening and weekends trying to keep from sinking deeper into their paperwork swamp.

I compiled extensive files on workers' comp from this investigation and from previous research. If you, the Committee or other legislators desire additional information or corroboration on points raised in this study, please let me know and I'll try to get the materials to you as quickly as possible. Alternatively, if you prefer, I can send you a big batch of papers in a box and you can have your aides sift through those materials when they don't have anything better to do. I hope that the rather extensive appendices attached to the report will anticipate most of your questions.

Although I had hoped to deliver a shorter report, I make no apology for the length of this one. I made a serious attempt to winnow out extraneous material while retaining sufficient detail to give the reader a feeling for the situation as I found it. (The reader who is not interested in that detail will find a three-page summary and conclusions at the front of the report.)

I have enjoyed the opportunity to serve you and will be happy to provide whatever additional information you may need. Hoping the enclosed report will contribute to solution of the workers' comp problems in Alaska, I am

Sincerely,



Richard A. Fineberg
Box 81835 - College Sta.
Fairbanks, AK 99708
(tel) 479-5363

WORKERS' COMPENSATION PROBLEMS IN ALASKA

An Assessment Prepared for
The Alaska Legislative Affairs Agency

by

Richard A. Fineberg

Preliminary Draft

January 21, 1980

Summary and Conclusions

Summary

Sharp criticism of the workers' compensation system comes from diverse quarters. From one side, employers feel they pay too much to insure their employees against accidents; from the other side, some claimants feel their insurance carriers have short-changed them and the state has not been responsive to their situation. This report attempts to identify major problem areas and potential courses of action.

Due to a records system a Department of Labor in-house management review reveals to be chaotic and cumbersome, it is not possible to present a precise statistical assessment of claimant complaints. However, the wide range of sources, the wealth of detail and the similar thrust of testimony presented in Chapter 2 makes it difficult to subscribe to the notion, expressed by some defenders of the comp system, that the comp protest comes from a few malcontents who happened to get the wrong end of the stick.

State agency handling of workers' comp is reviewed and found to be lackluster.

With regard to premium rates, this study asks for more precise data on the uses carriers make of the comp premiums they collect. This analysis also suggests there may be ways to cut premium costs without reducing benefits.

Conclusions

Information gathered during interviews and research under this contract strongly supports the Administration's request for capital and operating budget increases to expand and modernize the state's claim monitoring operations.¹ The information presented here equally strongly suggests that additional and immediate legislative attention to workers' comp is needed.

¹ Due to budget and timing constraints of this contract, this study did not consider other specific proposals before the 1980 Legislature relating to workers' comp.

Conclusions (continued)

The following measures are recommended as necessary short-term steps to improve the workers' comp program:

= Hearings to determine the reasons the Workers' Comp Division and the Division of Insurance have routinely failed to enforce various statutes relating to workers' comp, including statutes requiring: (1) prompt carrier payment of claims; (2) prompt carrier notification to the Workers' Comp Board if carrier stops payment for any reason; and (3) Board decisions to be issued within 20 days of hearing.

= Special review of specific comp complaints to ascertain whether Alaska carriers, the Division and the Board carry out their tasks in a manner consistent with the goals of the comp system. (Workers' comp was established to give the job injury victim the assistance s/he requires to resume a constructive existence; the program was established on the premises that the modern worker faces worksite risks, and that the right to sue for damages after an injury occurs does not provide adequate redress. Interviews and file reviews conducted over the past twelve months — first for newspaper articles and later for this project — convince the writer that the protestors have a case.)

= Legislation to provide specific follow-up information on progress in reducing delays in first payments and hearing decisions.

= Legislation mandating publication of a booklet to explain to the claimant what s/he can and cannot expect from workers' comp, thereby reducing misunderstandings and contested cases before they become part of the backlog in the workers' comp hearing schedule.

Conclusions (continued)

In addition to the preceding immediate measures, this report identifies areas that the Legislature might address once the brushfires are out. Since other states have already experienced major comp crises, it is suggested that the Legislature consider the actions of other states that have overhauled their comp systems. Subjects the Legislature might address include:

- = feasibility of establishing a referee system and an investigating unit within the Workers' Comp Division;

- = the need for meaningful and precise information on how carriers spend comp premium dollars;

- = the need for a complete rewrite of AS 23.30, including a statement of legislative intent;

- = the need for closer interaction among the Workers' Comp Division, the Division of Insurance and the Division of Occupational Safety and Health;

- = programs that might reduce the premium rates of small employers, such as a reinsurance plan and a group insurance plan;

- = the possibility of establishing a competitive state fund.

WORKERS' COMPENSATION PROBLEMS IN ALASKA

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Acknowledgement

The willingness of the people in the Division of Insurance and the Workers' Compensation Division to explain their operating procedures and to provide information made an otherwise wearisome task a pleasure. If the openness and courtesy I experienced in both state agencies is an indication of desire to find solutions to the workers' comp problems that confront Alaska, then we are on the right track.

The customary disclaimer is of course in force: Responsibility for the contents of this report is my own.

Richard A. Pineberg

January 20, 1980

A Note on Terminology

Except when quoting a document, the term workers' compensation on workers' comp is used instead of the gender-specific workmen's compensation. Following this guideline (and dispensing with -ensation), the agency whose official title is Workmen's Compensation Division is usually identified as Workers' Comp Division; likewise the Workers' Comp Board.

Chapter 1. Introduction

A. General Background

In the decade between 1968 and 1977 workers' compensation premium and benefit payments in Alaska increased from approximately \$8 million to \$107 million. Comp insurance made up 10 per cent of the total Alaska insurance business in 1968, compared to 24 per cent a decade later, according to Division of Insurance statistics.¹

Although the growth of the Alaska workers' comp bill is noteworthy, economic expansion is not the purpose of the comp system. Simply put, workers' comp exists to provide prompt wage replacement and medical benefits to victims of work-related accidents.² The legal premise that led all states to establish workers' compensation systems early in this century is a trade-off: the worker gives up his/her common law right to sue his/her employer for damages resulting from an job-related injury in exchange for guaranteed accident benefits.³

In addition to prompt wage replacement and medical coverage, the U.S. Chamber of Commerce's Analysis of Workers' Compensation Laws lists five other objectives that underlie workers' comp statutes:

= To provide a single remedy and reduce court delays, costs and work loads arising out of personal injury litigation;

¹ Insurance Report, 1977-78 (State of Alaska, Dept. of Commerce and Economic Development, Division of Insurance; 39th/40th Annual Report, no date) and other Division of Insurance reports.

² The Alaska Workmen's Compensation Act (AS 23.30) does not provide a precise definition or statement of purpose. The statement of intent from the Washington state comp law and the Oregon comp statute preamble are included in Appendix 1.

³ Legislative Affairs Agency, Division of Research, Workers' Compensation: The Feasibility of Establishing a State Fund (Juneau, 1977), pp. 1-10. (In recent years rehabilitation has been added to wage replacement and medical payments in many states.)

- = to relieve public and private charities of financial drains incident to uncompensated industrial accidents;
- = to eliminate payment of fees to lawyers and witnesses as well as time-consuming trials and appeals;
- = to encourage maximum employer interest in safety and rehabilitation through appropriate experience-rating mechanisms; and
- = to promote frank study of causes of accidents, reducing preventable accidents and human suffering.¹

Despite the tremendous increase in the dollar-value of the comp program and a similar increase in claims, the administrative structure with which the state oversees the workers' comp program has remained essentially unchanged since statehood. In 1975 the legislature increased benefits, then readjusted those benefits in the following two sessions. In 1979, faced with a backlog of comp hearings acknowledged by the Workers' Comp Division as a crisis, the division added a new hearing officer in Anchorage and two new Board members in Fairbanks in anticipation of adding a new hearing officer in that city. During the past two sessions workers' comp has received scant legislative attention.²

The major institutional forces directly concerned with workers' comp in Alaska are: employers, who seek to cut rising costs of this compulsory program; insurance companies that write the policies and pay injured workers on behalf of their employers; the Workers' Comp Division (Dept. of Labor), which administers the program through the quasi-judicial Workmen's Compensation Board; the

¹ Chamber of Commerce of the United States, Analysis of Workers' Compensation Laws: 1979 Edition (Washington, D.C., 1979), p. 3.

² For a discussion of the development of workers' comp in Alaska, see Legislative Affairs Agency, Workers' Compensation (op. cit.), pp. 10-17. For an interpretative analysis of recent developments, see Chapters 2 and 3 below.

Division of Insurance (Dept. of Commerce and Economic Development), which regulates all insurance companies operating in Alaska; physicians and other specialists who treat injured workers (claimants); attorneys who represent carriers or claimants; unions; the legislature, which frames the statutes under which the carriers, the board and the agencies operate; and claimants, some of whom contend all the institutions listed above are failing them.

B. Paperwork Problems and Claimant Problems

The last three goals of the workers' comp system listed by the U.S. Chamber of Commerce (to eliminate legal fees and litigation; to encourage safety and to promote frank study of causes of accidents) appear to have nothing whatsoever to do with the mountains of paperwork that flow through the Alaska comp system. As to the first three goals (income maintenance and medical coverage; prompt, single-remedy delivery of services; relief of public and private charities), the disparity between the purpose and the practice of workers' comp is so great that in 1978 some claimants began demonstrating outside state buildings, writing letters to reporters, editors, legislators and administrators to complain in anguished terms about their plight. The comp protestors claim to represent many more claimants who have been further victimized by the failure of the comp system they thought was supposed to help them.

Although comp protestors have not been able to document their charges in quantifiable terms, this study finds the following indications that the comp system fails to deliver efficiently the services the program was established to provide: (1) the wide range of vehement protestors from various parts of the state and the duplication of protest items; (2) the lack of response from administrative and elected officials; (3) the long-standing failure of state agencies to insure that statutory requirements are met; and (4) the increase in disputed comp cases. (See chapters 2, 3.)

C. Premiums and Benefits: How Do the Two Relate?

Testimony at a Division of Insurance comp rate hearing in Anchorage Nov. 8 indicates employer dissatisfaction with comp rates. It is often said that comp premium rates and comp benefits have a direct correlation, but other factors also play a significant role in comp premiums. For example, the recent rise in comp premium rates is usually blamed on the benefit increases legislated in 1975, but changes in procedures carriers use to calculate rates accounted for approximately 25 per cent of the premium increase.¹

Other states have found it is possible to reduce premium rates without reducing benefits. For example, comp rates were significantly higher in Minnesota than in neighboring Wisconsin, even though there were no obvious differences between the two states in kinds of industry or accident rates. What accounted for the difference in premium rates, the Minnesota workers' comp task force discovered, was that Wisconsin had far less comp litigation and therefore consumed much less time and money in legal fees than did Minnesota. Legal fees paid by the carrier are fed back into the comp rate as a cost of the policy. According to the Minnesota task force, Wisconsin effected this relative savings because the state of Wisconsin took an activist posture at early stages, contacting workers and publishing a booklet to advise claimants of their rights. These measures, Wisconsin found, reduced contested cases and kept comp premium rates down.²

¹ Legislative Affairs Agency, Workers' Compensation (op. cit.), p. 16.

² Steve Keefe, speech to Legis 50 Conference on Workers' Comp, Portland, Ore., June 14, 1979. (See Appendix 2. Minnesota State Senator Keefe served as majority whip of the State House, chair of the Subcommittee on Labor and chair of the Minnesota workers' comp task force.)

The relationship between premiums and benefits in Alaska is not evident in the data insurance carriers are required to file with the Division of Insurance. Although carriers file voluminous reports, the major carriers lump their Alaska comp business figures with those of their comp figures from other states. A second difficulty in acquiring this information is that the carriers are not required to provide a breakdown of comp premiums by income maintenance payments, medical benefits, litigation costs, administrative overhead and profits.

Although the insurance industry frequently asserts comp is not a lucrative line of insurance, here again the data compiled by the state neither proves nor disproves the point. Regarding the profitability of comp, it is interesting to note that Alaska Pacific Assurance Co. (Alpac) writes 56 per cent of the comp business in Alaska and its share of the market has grown faster than the rapidly increasing dollar value of comp insurance.¹ Unfortunately, figures indicating how much money Alpac makes writing workers' comp policies cannot be ascertained from Division of Insurance records.

D. Experience of Other States

A survey of 54 states and territories indicates that Alaska is one of 34 states and territories that handles workers' comp through private insurance and self-insurance; eight use a state fund and self-insurance; the remaining 12 states and territories use all three comp mechanisms -- self-insurance, private carriers and state funds.²

¹ Division of Insurance reports.

² Legislative Affairs Agency, Workers' Compensation, (op. cit.), p. 5.

Since 1975 workers' comp has become a top-priority political issue in many states. Four states referenced in this study are Florida (which completely revised its workers' comp law in 1979), Oregon (where a task force made preliminary recommendations early in 1979 and was to make its final report by the end of the year), Washington (where the legislature has been investigating and revamping its self-insurance program) and Minnesota (where a task force has studied the issue and the legislature has enacted many of the recommendations).¹

¹ Cursory contact with other states indicates their experiences may be of use to the legislature in analyzing and revising the Alaska workers' comp system. As Florida's workers' compensation bureau chief commented after listening to a brief review of the problems facing Alaska's comp program, "It sounds as if we've already been through the crisis in Florida you are about to experience in Alaska." (Telephone conversation, Nov. 26, 1979.)

Chapter 2. Comp Protestors: Clear Signals of Distress

A. Perspectives

1. Anchorage, November 7-8, 1979

"Everybody thinks they're faking. Sure, there are some fakes, but let me tell you something: It's hell to lay home and suffer, and there is nothing like getting up in the morning to go to work. There is nothing like feeling good and working."

The short, white-haired man who spoke at an informal public meeting held by the Division of Insurance in Anchorage November 7¹ did not give his name. He said his comp claim was proceeding smoothly at this point and he did not want to rock the boat. He said he was speaking because he had seen a lot of other claimants in doctors' waiting rooms, hospitals and various insurance offices, and he had spent long painful hours at home; what he had learned from his own experience, and from other comp claimants, convinced him that, "There is something wrong here, mighty wrong."

"This man in front of me and this man here I know," he continued. He described them as upstanding people who had suffered on-the-job injuries, only to be further aggravated by the medical and workers' comp systems to which they had turned for assistance. He rambled on a while longer, then caught himself, stopped and sat down. "I'm sorry I got so steamed up," he said, "but people's lives are being ruined."

¹ Author's notes. Since this was an informal meeting, the Division of Insurance did not record it. For an interpretation of the Division of Insurance's response to comp claimants, see Chapter 3C.

A younger man, unacquainted with the white-haired speaker, chimed in: "It's not fair to our families the way they prolong everything." A middle-aged woman who had her own comp problems added an amen: "You can starve to death."

Similar views were aired the following day at a formal hearing on workers' comp rates. At the hearing one claimant told the Division of Insurance:¹

. . . . the carrier is ALPAC Insurance, whatever the name of it is there they have flagrantly from what we can see have been breaking the law. They are not doing what the state law says that they are supposed to be doing They just flat ignore what the board says They are not paying my doctor bills my lawyer told me that they don't go along with chiropractic help. State law says that chiropractic doctors can operate and help people in this state. It says it in the book and I would like to know why that the insurance carriers can say that they just aren't going to pay these doctors. . . . they just keep dragging these things out and dragging them out and the last time I talked to my doctor, I don't know where he gets his information but the impression I got from him is that he has heard something and that he felt and he told me to get rid of my lawyer because he felt that there had been a deal made between my lawyer and the insurance lawyer. Now, I can't prove this. The only thing I know is the statement has been made that they say they are not going to pay my doctor bills. I can't pay them. . . . My doctor is getting a little concerned and if I can't continue to see him, I am going to be in one heck of a fix. . . . it is just such a runaround, it takes a long time to get any help whatsoever and from what I have seen . . . you are going to lose your home, you are going to lose everything you have got before you can even get any help from anybody. And that is not right. Why should a person have to go clear to the bottom of the barrel?

2. Fairbanks: Orientation for Victims of Industrial Accidents (OVIA)

Judy Lambeth of Fairbanks has some workers' comp stories to tell. She has never been a comp claimant, but for four months during 1979 she worked as secretary for the Organization for Victims of Industrial Accidents (OVIA), a Fairbanks group that attempted a community outreach project on CETA funding.

¹ Condensed from Division of Insurance transcript. For interpretation of the agency's response to grievances expressed at the hearing Nov. 8, see Chapter 3C.

-9-

"I've seen people lose their house and car," the OVIA secretary said. "It just makes you feel terrible.

Lambeth and OVIA coordinator Charles MacMillan report that the new Fairbanks organization was hampered by lack of direction from its board, lack of staffing and lack of funding.¹ Nevertheless, they said, OVIA counselled about 30 persons with comp problems before a cutback in CETA funding closed the office Nov. 30. MacMillan and Lambeth say the organization could have been of service to many more comp claimants if OVIA's funding were continued. "We've had many other people tell us they wish we had been there when they were hurt, and some who came in told us of friends who had been hurt and have gone to the Lower 48," Lambeth said. "And we were gathering more people all the time when we closed down."

Asked about malingerers, MacMillan (whose observations are based on 17 years of professional nursing) said he felt one of the persons he counselled was exaggerating and he was dubious about a second claimant because "that fellow was just too active."

"Even if 50 per cent were faking -- and I don't believe the figure is anywhere near that high -- what about the other 50 per cent?" MacMillan asked. "That's still an awful lot of people who are getting a very bad deal." Lambeth concurred.²

¹ Lack of direction: OVIA founder and comp claimant Robert MacArmour (see Chapter 3A) was in therapy in Anchorage and the remaining board members did not play an active role. Lack of staffing: Due to her own injury and personal problems, the claimant MacArmour had hoped would run the program was not available. The program's first coordinator resigned after three weeks. MacMillan, who moved up from a staff position, was unable to fill the position he vacated when he became coordinator. Lack of funding: Lambeth and MacMillan began working July 26 but did not get paid until Oct. 6. Overhead payments were similarly delayed. To keep the office open, MacMillan worked out an unusual arrangement with the landlord: the staff person-turned coordinator took over building janitorial duties in lieu of rent.

² Lambeth's perception is noteworthy because she came into the job without prior knowledge about comp. She qualified for CETA because her husband (a builder) had been unemployed for some time. After she went to work he also found a job, and this enabled her to stick with OVIA for 72 days without a paycheck. She says she stayed because she became convinced the comp system was either unable or unwilling to help many claimants with legitimate problems.

B. Narratives

Five Claimants Who Alleged the System Is Failing Them

Preface

The following case narratives are taken from the accounts of five individuals who have contacted public officials and/or reporters to complain about problems they have encountered with the comp system. None of the five were involved in the Anchorage Division of Insurance meeting or hearing, nor were they among the people OVIA counselled; these cases comprise a third and separate bloc of comp claimants who say the system has denied them assistance they believe the law is supposed to guarantee them as victims of on-the-job accidents. Records cited were provided by the individual or obtained from comp files in Juneau, Anchorage or Fairbanks. Author's supplementary comments follow each example.¹

1. Patrick Jackson

March 1977: Jackson was working as a surveyor in a pipeline camp, where his duties included "... bending, kneeling, climbing over objects in sub-zero weather and riding in a crowded vehicle along the pipeline. He could not recall a specific trauma to his leg, but upon going to the camp medic and being flown to Fairbanks, he was found to have a tender, swollen left knee."

May 1977: Released for work in late May and continued to work until laid off June 21, 1977; unemployed until July 11, 1978.

July 1978: "The applicant testified that for a couple of weeks prior to his return to work in July 1978 he had been having slight cramps in his left leg and that the cramps had been getting worse. He said he was able to work six days

¹The reader who scans these five cases will get some idea of the difficulty of evaluating comp claims, as well as a range of claimant complaints. cursory examination of the records available indicates none of the complaints should be discounted without further investigation. Author has met none of the claimants in this group but has had phone contact with one.

before the problem with his leg got so bad that he had to quit work and return to Fairbanks for medical care."

July 17, 1978: Diagnosed as having acute thrombophlebitis; July 26, 1978, operation performed.

August 1978: Jackson's carrier (Alpac) declined to cover his expenses on the grounds that the problem was not related to his pipeline work, but to a problem he had had 14 years prior. Jackson was out of work, out of insurance and his knee was not getting any better. He contacted an attorney.

September 1978: A second operation in Fairbanks was unsuccessful.

December 1978: At the comp hearing in December 1978, Alpac based its case on the expert testimony of an orthopedic surgeon who advised Alpac: "It is my opinion that the condition simply spontaneously developed during the course of the patient's employment and has no causal relationship to his employment. Likewise, I can find no compelling evidence that the patient's work did not affect his problem. . . ."

Another equally credentialled medical expert testified, on the other hand, that reasonable medical probability indicated the thrombophlebitis was a direct result of Jackson's job-related 1977 problem.

At this point Jackson's Fairbanks physicians thought he should go to Seattle for special treatment, but Jackson was broke and his carrier was refusing to cover further medical expenses. According to sources familiar with the case, hospital aides considered taking up a collection to send Jackson to Seattle and his lawyer also considered giving Jackson the money to cover the treatment he required.

January 1979: In an unusually rapid decision, the Workers' Comp Board found Jackson's physician more compelling and ordered Alpac to pay comp for the 20 weeks between July and December 1978. By that time Jackson had somehow scraped together the money to go to Seattle. Alpac decided to go to court to overturn the Board's decision.

June 1979: Superior Court Judge GERAL Van Hoomissen upheld the Board. "The sole issue presented by this appeal," Van Hoomissen wrote, "is whether there is any substantial evidence to support the decision of the Board." Van Hoomissen simply cited the testimony of Jackson's physicians.

July 1979: Alpac decided to make one last pitch (still in process) to the Supreme Court.

Comment: Jackson is still in Seattle under outpatient therapy and could not be contacted in time to corroborate some details of this account. Due to the cumbersome and archaic nature of the Workers' Comp Division's records, information to verify some aspects of this narrative was not readily available, either. Nevertheless, the Board and Court decisions clearly indicate that Alpac's action in this case stands in direct contradiction to the company's stated position that when there is any doubt, the company sides with the claimant.¹

2. Cary R. Ortberg

Ortberg was working for U V Industries (Alaska Gold Co., a self-insured carrier) when he injured his back in 1975. He was advised in Nome to seek treatment elsewhere because the Nome hospital was not equipped to handle his back problem.

¹ In January 1979 Alpac's director of workers' comp told the author, "I personally would rather pay a claim that was doubtful . . . than to take the chance I had denied benefits to a man unjustly." Similar statements were made on at least two other occasions by the comp director, and by then vice-president Gay Dwyre.

August 1976: For the second time in a month, Ortberg wrote the Workers' Comp Division to say,

I left Nome to see a surgeon as advised. . . . I payed the expense to come to California, and now that I am here where they do have equipment to fix my back I cannot get anything done, by reason known only by Alaska Gold Co. I am unable to work, my family is on welfare, and I am very disturbed over this whole matter.

December 1976: Ortberg returned to Alaska at his own expense for a Board hearing on the matter. Early in 1977, Ortberg was sentenced to prison in California. According to his account, during the 1976 period in which the company refused to cover him under workers' comp he stole and slaughtered a cow to feed his family.

April 1977: The Board ruled in favor of Ortberg, then in prison. The April 4, 1977 decision said:

We believe he could have obtained adequate medical treatment in Alaska but went to California where he could be with relatives and expenses were expected to be less. Applicant said he still has his home in Nome and expects to return and resume working there if possible. . . . Applicant should be examined by an orthopedic The cost is to be paid by the employer. The employer shall also pay temporary total disability for the period May 25, 1976 . . . until applicant is no longer disabled or has reached maximum improvement. . . .

September 1977: Even before the Board's April 1977 decision, a new problem was developing. Sept. 17 Ortberg contacted Workers' Comp again to report that, "I have received compensation for May to Dec. 1976 but have not received as much as a letter in the past 9 months. My family is in need, and it would be greatly appreciated if some kind of regular income could be arranged." After contacting U-V's attorney, the Workers' Comp Division informed Ortberg that the attorney

was under the impression that payment was being made regularly and was surprised that it was not. He will contact UV Industries and have it resume payment. It should bring the back payments up to date and continue to make regular payment. . . . This was the order of the Board.

May 1978: Despite the assurances of the company attorney and the Board, Ortberg's family did not receive the promised payments. The company maintained it had stopped payment because Ortberg had refused to submit to x-rays and AS 23.30.095(e) stipulates that if an employee refuses to submit to an examination, his rights to compensation shall be suspended until the refusal ceases. Ortberg maintains he was willing to see a doctor at all times, but that he would have been in physical danger from other inmates had he submitted to the x-ray in question.

In upholding the company's right to refuse payments, the Division also cited California prison authorities' assertion that Ortberg's "records fail to show compliance" with exercises recommended for his back. Ortberg replied that he had in fact been exercising, that he didn't know that he had been accused of failure to exercise; he enclosed signatures of five other inmates to attest to his claim that he had been exercising.¹ At this point the Division staunchly upheld the claimant's right to due process by advising him of his right to take his case to the Board once again.

¹ Ortberg's own assessment of the situation is worth quoting. In a May 28, 1978 letter from prison, Ortberg responded to the Division by writing:

Dear Mr. John Cook:

My wife has brought your letter to me today, it is my regret that this burden keeps falling back on myself. Dec. 8, 1976 I borrowed the money to fly to Fairbanks for the hearing, when I was asked what did I want, I stated I only wanted my back fixed and my family cared for until I was able to do so. The Board said "it will be done." I didn't ask for any other reimbursement or compensation. I don't wish to burden you with all my personal problems, but I think there must be a need to point a few things out to you. I am in prison of my own judgement by getting involved in killing a cow to feed my family; if all had been right as agreed by UV, I would have either been fixed or receiving compensation, as not to be faced with making a wrong discussion. I have spent many years of hard work, study and schooling to learn my trade, I'm yet young with many working years ahead of me. . . . I still have three children to support. . . . As for the allegations (I refused to submit to x-rays and declined to exercise as prescribed). . . I don't feel I should have to go into a bunch of constitutional safeguards for you surely know more about that than I. I didn't know that I was going to be in need to give evidence of following the Williams flexion exercises, but I have asked five of the 120 who live in the same dorm if they would give their signature. . . if more are needed or certification, please let me know. . . . As not submitting to a full exam-

Nov. 28, 1979: Back in Nome again, Ortberg went before the Board again. He had to fly to Fairbanks at his own expense for the proceedings. Although a decision has not been issued, hearing notes indicate that since more medical information is needed to determine the extent of his permanent partial disability, another hearing will have to be set.

Comment: The ironic possibility that a man might have gone to jail for stealing a cow because the comp system failed to provide benefits supposedly guaranteed by law may not lend itself to legislative redress, but another aspect of Ortberg's case may: The apparent failure to enforce AS 23.30.155(c), which requires that "upon suspension of payment for any cause, the employer shall immediately notify the board," figures into Ortberg's case at two different times. Had the company complied with that provision in August 1976, and had the Division responded in a timely manner (either by requiring interim payments or making the decision the Board finally reached eight months later) Ortberg might not have been in the position in which he made what he calls "a wrong decision" to feed his family. When the company violated the same statute a second time, the Division jumped the claimant for his alleged statutory violation but apparently ignored the company's. Again the problem would have been much simpler to resolve had the Division been staffed and equipped to insure that the company complied with 155(c).

ination. . . . I have seen many doctors. . . . I haven't refused an examination by any doctor I did sign a refusal for a prison inmate to perform x-rays on me. . . . I have done some shameful things in my lifetime, but none as disgraceful as having to show to you my sorrowful heart and privations, please forgive me. I am to be released July 4th, tell me Mr. Cook, what am I subpost to do?

In a follow-up letter June 12, 1978, Ortberg wrote:
I do not believe Alaska workmen's compensation act at AS 23.30.095(e) [cited by Cook in his letter] to violate my constitutional safeguards, nor do I believe it to have been written that I should have to submit myself to dangers. . . . I do believe the stopping of compensation with out first providing some kind of proceeding and representation, is in violation of my Constitutional rights and in favoritism to the Employer. I wish for this matter to be dealt with as fairly and as soon as possible.

3. Lois Salisbury

Claimant says she has filed a malpractice suit against Alaska doctors based on a comp claim resulting from a 1976 back injury. In a May 1979 letter to a legislator she alleges

. . . the Alaska Workmen's Compensation Board knows . . . and has documentation in the form of X-rays, bone scan and testimony, that I was treated and released by my Alaskan doctors for psychosomatic back problems and psychomatic malingering when, in fact my back was fractured and I had a ruptured disc in my neck. I now have advancing spinal arthritis, due to both the injury and the very lengthy delay in treatment. Most unfortunately this delay was caused by the interference of the Workmen's Compensation Board and Alaska Pacific refusing to pay treating doctors outside of Alaska and ignoring their diagnoses in favor of the doctors they "knew " in Alaska.

Comment: Medical records in Salisbury's file in Juneau appear to support her allegation of misdiagnosis. The claimant accepted a \$4000 compromise and release settlement in June 1978. The author has received no response as of this date to a letter requesting a copy of the malpractice complaint Salisbury says she filed in California.

The manner in which carriers negotiate compromise and release settlements may be of some interest. Because of the complexity of the factors affecting each individual case it was not possible to document a pattern to compromise and release settlements, but some comp critics maintain carriers will remove a claimant from temporary disability payments in order to encourage the claimant to accept carrier terms in a compromise and release settlement.

See Appendix 6

4. George Coon

George Coon's right leg was crushed in a truck accident on the Sterling Highway. The trucker's narrative follows:¹

Here is what I myself have encountered with workmans compensation insurance after a job related accident of June 9, 1976.

In this accident . . . the right tibia — lower section — below my knee was crushed and held only by a piece of skin.

This lower section was reattached during surgery, but after two years of infection and numerous set backs, my leg was amputated on March 3, 1978.

Here are a few of the runarounds I went through. First off Workmans Compensation Insurance cut me off of disability payments shortly before my amputation. They were reissued after hassling with their adjustor.

Due to the long duration of infection in my blood stream, I started having heart problems which were diagnosed as congestive heart failure. . . . I went to Workman's Compensation Insurance . . . asking them to pay for these now accumulated hospital and Dr. bills, since my leg was the cause of my heart problem.

They're adjustor would not recognize the two being related and refused to pay the bills.

I then contacted an attorney to have him get Workman's Compensation Insurance to pay for these bills, that I was having to pay, cause I knew my leg had caused this. . .

At this time I had letters from three Drs. all which stated my infected leg was definitely the cause of my heart trouble.

All these letters and reports, I personally hand carried to the attorney. After several months and numerous phone calls to his office, he turned my case over to another attorney in his firm.

We had a few meetings in which I told him to put me before the board to get them to make Workmans Compensation Insurance to not only pick up the . . . Dr. & hospital bills, but I felt I was now intitled to a disability rating on my heart. He stated, he would only be able to get them to pick up the bills.

I have since learned Workmans Comp under rated me on my disability checks, and I am still waiting to go before the board.

I'd like to mention I also belong to not only Teamsters, but 302 (operating engineers) as well. Whom neither dished out a dime on this accident.

It's ashame that people have to lose not only their jobs but nearly everything they've worked for and paid into these Unions to receive so little support when they are laid up.

I never received the benefit money from either Union, due to loss of limb, because the Dr's tried to save it, and I did not lose it at the time of the accident.

¹ Letter to author; emphasis added. At author's request on short notice Mr. Coon provided documents on current Board proceedings, as well as medical evaluations that appear to corroborate the direct relationship between his accident-caused leg problems and his subsequent heart condition.

I've since received a letter from 302 stating I have lost all benefits because I have been unable to fill the required hours. Therefore I have lost all that I have paid into retirement. . . .

At a Board hearing last July, the carrier (Alpac) agreed to pay some of Coon's outstanding medical bills. It is not clear why the carrier was resisting the medical payments at that time.

According to Coon, lawyers have been of little help. He says that "the only reason I know what I'm entitled to is I sat down and read that law with a fifth grade education." Despite the fact that Coon has permanent disability ratings from two doctors of 50% and totally disabled, at the hearing last July Coon's present attorney waived Coon's disability claims.

Coon says this action was taken without his consent and he has demanded another hearing on past and future permanent disability issues. He says he would like to fire his attorney because he believes the attorney failed to familiarize himself with the case adequately, or to represent him properly. However, he says, he cannot do so because the hearing is coming up shortly and he does not think he could find another lawyer on short notice.

Comment: Whatever else the documents of this case might reveal on close investigation, the statements and records provided by Mr. Coon indicate a striking discrepancy between Alpac officials' sentiments ("I personally would rather pay a claim that was doubtful . . . than to take the chance I had denied benefits to the man unjustly" is one such typical statement) and the company's actions in some cases.

5. Lyle Heffner

Injured when a truck hit him at a pipeline camp in 1976, Heffner was denied comp benefits by the carrier (Alpac). In 1977 the Board heard his case and ruled against Heffner, finding that:

Considering the evidence in its entirety, we are unable to find the applicant is disabled. Given the minor trauma involved and no objective medical findings, we do not, quite frankly, believe applicant. . . .

The psychiatrist who examined Heffner for the carrier determined that "this man's secret ambition in life is to retire comfortably, early."

Heffner has taken the decision to court. According to his brief, in reaching its conclusion the Board declined to consider the conflicting testimony of a psychiatric social worker with 25 years of counselling experience. The testimony the Board rejected (by sustaining carrier's objection) explained Heffner's psychological make-up in a manner that would appear to contradict the psychiatrist and to validate Heffner's claim.

Was the Board correct in excluding that testimony? One of the few regulations governing the Board's procedure is 8 AAC 45.120(c), which provides in part:

The hearing need not be conducted according to technical rules rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.

Documents on file with the Workers' Comp Division indicate Heffner claims he was not able to afford a psychiatrist to review the carrier-paid psychiatric evaluation. The Board has statutory authority to appoint examiners but declined to do so. Heffner's court brief contends:

Having argument identifying the alleged psychiatric basis of the claim, some evidence supporting that claim, and knowledge that the appellant was financially unable to secure a psychiatric evaluation, the Board neglected its duty and committed error in failing to order a psychiatric examination and to state the reasons for the denial. . . .

AS 23.30.110(c) says in part: "The board shall make the investigation which it considers necessary in respect of the claim. . . ." AS 23.30.155(h) says in part:

(h) The board may upon its own initiative at any time . . . and shall in a case where right to compensation is controverted. . . make the investigations, cause the medical examinations to be made, or hold the hearings, and take the further action which it considers will properly protect the rights of all parties.

Early in 1979 Heffner landed a clerical job. At that point he was able to front the money for a psychiatric evaluation. The findings supported the psychologist's testimony the Board had declined to consider. The psychiatrist's report says in part:

To summarize, my reasons for not believing he is malingering are:

(1) He did not make an anxiety-free adjustment to his physical injury as most people do who are malingering. . . .

(2) His being activity oriented, this created a problem of adjustment to the injury. As a matter of fact, it made his adjustment . . . unsatisfactory to him.

(3) We have a better explanation for his disability than the malingering theory -- mainly that it was psychologically determined.

(4) His history is in no way inconsistent with the formulation. As a matter of fact, he reacted to the injury just as one expected he would

(6) He is not sophisticated enough to fabricate the clinical data which reveal the psychological problem.

(7) Given the material it had, the board made a correct determination. It is not clear why the real story didn't come out. The reason may have been that Mr. Heffner was not psychologically minded enough to help much before his therapy experience and only with learning how to express himself did it become possible to get the story. Another is that he superficially presents himself with a macho pseudomale smart-guy attitude which in this situation would make people suspicious.

Heffner has made several attempts to alert officials outside the Workers' Comp Division of the problems he has encountered. In April 1977, for example, he sent the following letter to Gov. Hammond:

Dear Sir:

I was injured in February of 1976 . . . on the Trans-Alaska Pipeline for Fluor Inc. at Pump Station #10. I was employed as an Operating Engineer Apprentice.

In February of 1977 Alaska Pacific Assurance Company, the Insurance Carrier for the State Workmans Compensation sent me to San Francisco to be examined by a doctor there that they were familiar with. In short, his findings have been interpreted by the carrier in such a manner that all benefits have been suspended. Not only the weekly check for my survival but also medical benefits. This interpretation is in direct conflict with those findings of . . . (the doctor who) has been treating me. . . .

Fortunately I have some savings to live on before being given an opportunity to appear before a board in June of this year, unfortunately, I do not have the money to continue medical treatments and buy medication. But, in my 15 years as a resident of this state I could not ever imagine a state agency being as disorganized as to allow this to happen to the residents it is intended to serve. I am informed this practice of sending persons to Doctors outside the state by the insurance Company is a ploy to increase hardships caused by these injuries and help quicken settlements.

Sir, I have invested two years in training, examining and competing to enter into the Operating Engineer Apprentice Program in Alaska and I am not interested in a quick settlement but in recovering from my injury, returning to work and becoming productive once again. I ask you how can this be accomplished if I am denied the medical treatment by the physicians who are trying with me to accomplish this.

I just pray that you were not aware of the workings of the system. I seem to find myself under for if you are I can only condemn you as well as I hope I have condemned those people who have brought this grief upon me.

Sincerely,

Lyle Heffner

Routing slips attached to this letter indicate that it was passed to the Director of Workers' Comp with the request to "please draft a response for the Commissioner's signature. Thank you!"

Comment: Without attempting to adjudicate this case, several points about the comp system's operation are demonstrated by this narrative:

(1) The Board does not have the staff to conduct investigations contemplated in AS 23.30.10(c) and AS 23.30.155(h) and sometimes declines to appoint an independent medical evaluator to resolve controversies.

(2) Heffner is one of several comp claimants who maintains he has been unfairly treated by carrier-paid physicians in the Lower 48. Although there is some evidence to back up this charge in other cases with other physicians (see Alaska Advocate, Jan. 25, 1979 and Anchorage Daily News, April 30, 1979, included as Appendix 9.), neither the Division nor the Board have attempted to ascertain the extent of this problem (see Chapter 3A below).

(3) To this point, the comp system as a whole -- carrier, Board, Division and various elected officials -- do not appear to have responded in a positive manner to this citizen's complaint.

Chapter 3. An Assessment of Agency Responses to Claimant Problems

A. Preface

This chapter focuses on the response to claims problems by the two agencies that administer the workers' compensation program for the state — the Department of Labor's Workers' Compensation Division and the Department of Commerce and Economic Development's Division of Insurance. This current status report is designed to give the reader a sense of (1) the scope of current claimant problems, (2) how those problems developed and (3) the manner in which the responsible agencies have responded.

In the preceding chapter we looked at a number of claimant complaints about the comp system; now we approach the problem from the agency side. Three things strike the casual observer of the workers' comp system: (1) Statistics and surveys are lacking that would delineate the significance of the problems described in Chapter 2 above. To be sure, we will find statistics on some aspects of the problem, but a word of caution is in order: these figures do not touch all the salient aspects of the problems claimants face.¹ (2) The individuals administering the comp program in both agencies appear to be overloaded. "My desk looks like the Bermuda Triangle," one person muttered as he rooted around in an attempt to locate the document he needed to answer a question. And finally (3) there is little interaction between the two agencies that deal with workers' comp.

¹ From a paper-processing point of view, the Workers' Comp Division has developed indicators of the crisis in comp administration. But paper processing is only one aspect of claimant problems. To take a naive and far-fetched example: the Division could have resolved all five cases covered in the preceding chapter's narratives quite quickly with an arbitrary ruling that each was fraudulent. It would have taken very little time to run them through the hurdles, write quick decisions—and the paperwork problems would go away. But what about the claimants? They would no longer have a 100-day delay to complain about, but they would still face many of the same difficulties coping with their wage loss, injuries, rehabilitation and adjustment.

B. Workers' Compensation Division

(1) Background

In its budget request for FY 81 the Division acknowledges a serious problem in workers' comp administration due to an increasing caseload over the last five years. The Division requests new positions, as well as capital appropriations to modernize its antiquated and cumbersome record-keeping system. The author believes the request, though several years late in coming, is legitimate: the comp caseload has increased dramatically and the recordkeeping system has long been inadequate.¹

For background purposes, let's take a look at the workload increase the Workers' Comp Division faces. The Division estimates it handles 15,000 to 20,000 individual comp claims per year. Disputed cases probably total 15 to 20 per cent of that figure.² The Division's figures on formally disputed cases in Table I. will be followed by a brief explanation of the categories.

TABLE I.

HEARING LOAD OF WORKERS' COMPENSATION BOARD

	<u>FY 75</u>	<u>FY 76</u>	<u>FY 77</u>	<u>FY 78</u>	<u>FY 79</u>	<u>% Net Increase</u>
1. Controverted cases	615	1296	1630	1630	1462	237%
2. C & R's approved by order	150	178	266	635	997	664%
3. Cases set for hearing	504	426	781	930	903	184%
4. Decisions and orders	176	170	251	379	326	185%
Staff person-years	8	8	11.75	12.5	13.5	169%

(Source: Workers' Comp Division)

¹ Some details from the proposal will be covered in this chapter. See 3.B.(2).

² Estimates based on discussions with Division personnel.

Controverted cases are those in which the carrier has said, "we won't pay any more," the claimant has objected and nobody wants to back down. The controversion rate is paralleled by a set of cases Division personnel describe as "carrier resisted." In these cases the carrier is doing the same thing without filing a formal notice of controversion.¹ Based on her experience as a claims officer, Workers' Comp Director Jacquelyn McClintock believes there are as many resisted cases as there are controversions. Resisted cases do not appear in Table I. — the Division has no tally on them — but the resisted case, like the controverted one, requires the time of the hearing officers to talk to claimants, make phone calls to carriers, locate the files (often a time-consuming task), write letters or do whatever it takes to get shut of the resisted case in order to get back to other cases that require attention.

The second category, compromise and release (C & R) settlements, includes controverted cases in which the two parties work out an agreement before the Board works one out for them. Since the Board must approve all C & R's, the hearing officer may be involved twice — in the negotiating process, and in reviewing the final agreement before signing it.

Cases set for hearing often get delayed, or the two parties may work out a C & R settlement before the case can go to the Board. These factors — plus the backlog in decisions — account for the difference between the third and fourth categories.

Nobody seems to have a clear handle on precisely which factors account for the workload increase, or to what extent each factor is responsible. Population growth, coupled with the benefit increase of 1975 (which looks

¹ I am indebted to Workers' Comp Division personnel for graciously taking time to clarify these terms for me; responsibility for errors is my own.

increasingly juicy during the post-pipeline period of high unemployment), may be contributing factors; part of the increase may be caused by decline in the quality of claimant services. For analytical purposes the central points to bear in mind are: (1) that the workload has increased (by 237% between FY 75 and FY 79, if you count controversions, or 185% if you count Board decisions); and (2) the Division does not have a clear handle on the reasons for the increases.

With the increase in caseload in mind, let's take a look at the manner in which the Division budget has increased during the same period.

TABLE II.
COMPARISON OF BUDGET REQUESTS AND LEGISLATIVE APPROPRIATIONS,
FY 76-80

State Fiscal Year	Department Request	Administration Request	Legislative Appropriation
FY 76	\$297,500	\$297,500	\$269,300
FY 77	431,000	408,500	397,600
FY 78	448,700	444,400	395,700
FY 79	434,800	485,600	485,600
FY 80	724,500	606,300	582,100 ^a

(Sources: FY 76-79 from Dept. of Labor summary, Free Conference Committee Reports; FY 80 from Free Conference Committee Report)

^a FY 80 figure does not include an \$83,000 supplemental appropriation by Governor

In a meeting with comp protestors in Fairbanks Oct. 5, the Commissioner of Labor blamed the problems of the Workers' Comp Division on lack of attention and lack of funding by the Legislature. The Commissioner stated, "The Legislature . . . refused to look at workers' comp . . . and that's our problem."¹

¹ Dept. of Labor recording. Other statements by the Commissioner include: "We haven't been able to get the Legislature's attention," and, "And that's been the problem with workmen's comp: the funds haven't kept up with the workload." Meeting was arranged by the Governor's office after protestors who had previously demonstrated at state buildings in Anchorage and Fairbanks requested a meeting with the Governor.

There is a kernel of truth to the Commissioner's contention: the Legislature has not paid sufficient attention to workers' comp in recent years and funding has not kept pace with the workload. But careful review of the budget information presented here does not substantiate the Commissioner's argument that legislative inattention and budget-cutting are the primary causes of the current problems. The figures in Tables I. and II. indicate that the Department's failure to request adequate funding in a timely manner and the Governor's budget cuts are both more significant factors than Legislative action. Over the five year period between FY 76 and FY 80, the Governor dropped the Commissioner's requests by 6.4 per cent; by comparison, the difference between the Governor's request and legislative appropriation for the same period was 5.2 per cent. For the five years in question the total Legislative cut — \$112,000 — would have funded one position at \$22,500 per year. In view of the marked increase in the Board's workload, it does not seem likely that the addition of one staff person would have solved the problem. (In fact, to tackle the problem this year the Department's in-house review recommended a 7-person staff increase plus a much-needed and long-overdue capital budget appropriation to computerize the records system.)

The Commissioner notes that the Senate Finance Committee took action on the Department budget last year without requesting the Commissioner's appearance, and that the Legislature has paid little attention to workers' comp since the benefits were raised and adjusted in 1975 and 1976. The Commissioner also cites his Nov. 16, 1977 Workmen's Compensation Budget memorandum to the Governor's Budget Review Committee, in which he said:

Current staff levels are not and will not be adequate to carry out the Legislative intent of the Workmen's Compensation Program. Repeatedly requests for new positions have been denied. At this time it is critical to provide this program with the necessary staffing; service to the public is continually eroding and cannot be considered 'adequate' at this time. . . . While I am very much aware of the available anticipated revenues for FY 79 and the subsequent budget constraints, the budgetary approval for this position is the department's number one priority.