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1118 SCOMM 33: WORKERS COMPENSATION, 1979-1982

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WORKERS' COMPENSATION PROBLEMS IN ALASKA

An Assessment Prepared for
The Alaska Legislative Affairs Agency

by

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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

CONTENTS

PAGE

Summary and Conclusions

Table of Contents

Acknowledgements

Chapter 1. Introduction 1

- A. General Background
- B. Paperwork Problems and Claimant Problems
- C. Premiums and Benefits: How Do the Two Relate?
- D. Experience of Other States

Chapter 2. Comp Protestors: Clear Signals of Distress 7

- A. Perspectives
 - 1. Anchorage, Nov. 7-8, 1979
 - 2. Fairbanks: Orientation for Victims of Industrial Accidents (OVIA)
- B. Narratives: Five Claimants Who Allege the System Is Failing Them
- Preface
 - 1. Patrick Jackson
 - 2. Cary R. Ortberg
 - 3. Lois Salisbury
 - 4. George Coon
 - 5. Lyle Heffner

Chapter 3. An Assessment of Agency Responses to Claimant Problems . . . 23

- A. Preface
- B. Workers' Compensation Division
- C. 1. Background
 - 2. Modernizing the Record-Keeping System
 - 3. Hearing Referees, Investigators
 - 4. Rewriting the Statute
 - 5. Explanatory Booklet
 - 6. Claimant Complaints
 - 7. Summary
- C. Division of Insurance

Chapter 4. A Brief Look at the Workers' Comp Rate-Setting Mechanism . . 42

Summary

Chapter 5. Conclusions 49

- A. Recommendations for Immediate Action
 - 1. Hearings concerning Workers' Compensation Division and Division of Insurance failure to uphold certain provisions of AS 23.30
 - a. Workers' Comp Division Failure to Enforce Statutes
 - b. Division of Insurance Failure to Enforce Statutes
 - 2. Special Review of Division and Board Actions
 - 3. Short Report to Keep Legislature Posted on Effects of Remedial Actions
 - 4. Explanatory Booklet

TABLE OF CONTENTS (continued)

Chapter 5. Conclusions

- B. Some Suggestions for Long-Term Consideration
 - 1. Structure, Staffing and Operating Procedures of the Workers' Comp Board
 - 2. Revision of Statute
 - 3. Interagency Interaction
 - 4. Need for Fiscal Information
 - 5. Proposals to Reduce Premium Rates for Small Employers
 - 6. Proposals for a State Fund
 - 7. Task Force

Appendices

Acknowledgment

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. Fineberg

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 38 million to 3107 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 a 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.

-6-

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 Allege 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

¹ The 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.

-11-

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 Hoonissen upheld the Board. "The sole issue presented by this appeal," Van Hoonissen wrote, "is whether there is any substantial evidence to support the decision of the Board." Van Hoonissen 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.

-14-

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 23, 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. 23, 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 supposed 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.

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. Lytle 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 pseudomasculine 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 Workmen's 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 23.30.110(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 165% 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	494,800	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.

Although the Commissioner claims repeated requests for new positions were denied, the same memorandum indicates that during the preceding three years the Commissioner requested a total of 4.5 positions and received 2.¹ The Division got the extra person requested in FY 79; in fact, that year the Commissioner got 97.8% of his workers' comp budget request — and the 2.2% cut was not made by the Legislature, but by the Governor. Last year it was the Governor — not the Legislature — that took a major chunk out of the Division's budget request increase; the Legislature's comparatively dainty bite was more than restored by a supplemental appropriation from the Governor.

To summarize, while it is true that the Legislature has not devoted much time to workers' comp since 1976, it is difficult to demonstrate the Legislative cuts in the Administration's budgets are the primary cause of today's problems. To the contrary, a careful comparison between the increasing caseload and Administration budget requests indicates a major cause of current comp problems may be that the Department of Labor failed to anticipate or take timely measures to cope with the situation as it developed. Although the Commissioner acknowledged a critical situation in November 1977, until this year there was little outward indication of concerted Department of Labor efforts to get the comp program back on the track.²

¹ Different Department of Labor recapitulations give slightly different figures for the increase in comp personnel since FY 75. When he referred to repeated requests for new positions, the Commissioner may have been thinking of requests for major increases in comp personnel that were turned down in FY 72 and FY 75; those requests were made by the preceding Commissioners under a different administration.

² Possible signs of this effort might include: proposals for sweeping changes; press releases about comp; letters to unions, civic and business groups calling attention to comp problems; requests for meetings with legislators, legislative aides, the Governor and/or executive aides to discuss comp; contact with comp protest organizers, or comp reform groups such as OVIA.

The remainder of this section will focus on the specific problems the Division faces and the manner in which the Division has responded to these problems. The gist of this assessment is that the proposal to add staff and computerize the record-keeping system is commendable and long overdue, but other measures to improve the comp system are also necessary. Because the Workers' Comp Division seems to be too swamped to generate the momentum to make the necessary changes, it is to be hoped that the Legislature will encourage the Department to take an aggressive role in promoting reform of the comp system.

(2) Modernizing the Record-Keeping System

A Dept. of Labor internal review of Workers' Comp Division operations concluded that

. . . so much time is devoted to finding a case to put the various elements together, no time is left to question injury and first payment reports that may be months late. . . . the staff is so busy manipulating paper, there is no time for enforcement efforts when very late reports are received.¹

The analysis of paper flow described a system incapable of processing reports in a timely manner. For example, Alaska statutes require the carrier to make first payment within 14 days of notification; the law adds a 20 per cent penalty payment for noncompliance.² A Division tally disclosed during 1978 that out of 3,889 first payments to cover wage loss, only 1,093 (28 per cent) were made within the 14-day period required by law. The remaining 72 per cent were almost evenly divided between the 15-to-28-day period and over 28 days.³

¹ Department of Labor, Internal Review Section, Workmen's Compensation Division: Analysis & Recommendations (Nov. 23, 1979), p. 6.

² AS 23.30.155(b): "The first installment of compensation becomes due on the 14th day after the employer has knowledge of the injury or death." AS 23.30.155(e): "If any installment of compensation payable without an award is not paid within 14 days after it becomes due, as provided in (b) of this section, there shall be added to the unpaid installment an amount equal to 20 per cent of it. . . ."

³ Dept. of Labor, "Report to the IALAC on Promptness," Exhibit K of Analysis & Recommendations (op. cit.).

In its current budget request document, the Division cites similar figures and says it hopes improvements in the record-keeping system will enable the Division to assess the penalty, thereby providing incentive for compliance with the law. (Keep in mind that the purpose of the payment is to replace wages the worker who is laid up suddenly loses.)

The internal review also reports:

Anytime compensation is stopped or suspended, carriers and self-insured employers are required by law (AS.23.30.155) to notify the Workmen's Compensation Board within 16 days. Failure to report within that time should result in an assessment of a \$100 civil penalty. Penalties are now being assessed whenever the Board is made aware compensation has stopped and no report is made, but only as a result of claimant complaints. Carriers reporting beyond the 16 day deadline are not routinely penalized under the current system.¹

The failure to enforce compliance of A.S. 23.30.155(c) twice affected the affairs of Cary Ortberg, whose case is described above (Chapter 2.B.2.). Many claimants allege that carriers cut off payments to starve the claimant into accepting a compromise and release settlement. One claimant — a man with an eighth grade education and a 25-30% disability rating due to a back injury — alleges in an affidavit that, "I did not feel that \$17,500.00 was enough compensation for my injury . . . but Alpac had stopped paying me any money a couple of weeks previously, and I needed to settle because I needed the money."²

At this time an individual may holler and get his temporary benefits reinstated, but the Division has no way of knowing whether this is an isolated incident, or whether the carrier is similarly squeezing other claimants who

¹ Dept. of Labor, Analysis and Recommendations (op. cit.), p. 9.

² Affidavit of Roy L. Kuhl, Dec. 5, 1978. One Fairbanks attorney says he has a file of several similar affidavits alleging the carrier cut temporary benefit payments to increase negotiating leverage on a permanent settlement. At present the Division's record-keeping system is incapable of keeping tabs on this practice. (Affidavit in appendices.)

lack the knowledge or the capability to fight back.

The Division's most widely publicized problem is the delay in issuing hearing decisions. Although required by law to issue a finding within 20 days,¹ the current time lapse between hearing and decisions is 97 days. The Division is proposing to establish a second and entirely separate computer system to help speed the decision process. This system — a smaller system similar to the one that indexes Alaska statutes — would list Board decisions by key words and subject matter, giving hearing officers ready access to precedent decisions. This information storage and retrieval system would save hearing officers time in researching decisions and would also improve the quality and consistency of those decisions, according to the proposal. Moreover, ready access to precedent decisions and the knowledge that the Board would rely on the precedent might dissuade attorneys from bringing some cases to the Board, further reducing the workload.²

Both proposals are worthy of legislative attention and support; they will improve the quality of claims service by both the carrier and the state.³ In fact, the idea is so good that one cannot help wondering why the Division did not make this recommendation long ago.⁴

(3) Hearing Referees, Investigators

The Department's internal review considered "work flow, Division objectives and problems of coordination;" however, the review paid little attention

¹ AS 23.30.110(c). In 1979 this violation triggered a civil suit against the state.

² Dept. of Law has manually indexed recent Board decisions. To get an idea of what an index of Board decisions is all about, the reader might track down that compendium through Assistant Attorney General Kathy Holkhorst.

³ To be consistent, if the Legislature authorizes the claims-processing system it must also authorize the Board decision index. See Chapter 5.

⁴ AFL-CIO lobbyist Dwayne Carlson has been promoting the idea for years; in the past, he says, he has not had any support from the Department of Labor.

to the operation of the Board. In view of the Board's delays in scheduling and in issuing decisions — apparent violations of AS 23.30.110(b) and (c) — and the Board's inability to investigate — apparent violations of AS 23.30.110(c) and AS 23.30.155(h). — it is surprising that the study did not look more closely at the manner in which the Board effects Division objectives.

In some states the Board retains a professional investigating staff. If the Board had its own capability of determining issues of fact — however minimal — the existence of this fact-finding capability might reduce the tendency to litigate a comp case "just for the hell of it." Another characteristic of other states the review did not consider was the utilization of referees to hear comp cases.¹ Under a referee system, the Board would hear only the cases in which one of the parties protested the hearing officer's decision. The internal review did recommend that the Division alter its organizational structure to isolate the adjudicators (hearing officers) from the personnel who process claims day-to-day. (This reorganization would not require legislative approval per se; however, the change would not be possible unless the Legislature appropriates the additional positions the Division is requesting.)

Another practice from other states the review did not consider is the possibility of making all Board members full-time employees with responsibility for writing decisions. One factor that contributes to the current backlog is that the appointed labor and management representatives serve on a per-diem basis and do not write decisions.

¹ Oregon's Division staff includes both referees and investigators. Although the Division is not considering these ideas formally at this time, the Deputy Director did indicate that he would like to see the Division consider revising the hearing process. At this time, however, all hearing officers are working on cases and have their hands full trying to close out the backlog while keeping up with current cases.

(4) Rewriting the Statute

Because the statute governing workers' comp has been amended piecemeal over the years, the Commissioner of Labor told critics of the comp system Oct. 5, "Alaska is in real need of a real rewrite."¹ Despite the Commissioner's belief that a complete rewrite of the law is necessary, this year the Division plans to introduce only a few minor changes the Director describes as "mostly house-keeping," and the Division has no plans to rewrite the statute at this time. It is not clear when the Commissioner concluded a rewrite was necessary, or what action he has taken in this regard. Meantime, the comp claimant who wants to learn the law must wade through a statute that begins with a 15 page index to key terms (which are undefined), followed by 103 pages of densely packed legal phrasing and 9 pages of Board rules. For some suggestions on changes in the law, see Chapter 5.

(5) Explanatory Booklet

OVIA has asked for a booklet explaining the law to the lay person. Several states publish a condensed manual in simple terms because they believe a major cause of much time-consuming and expensive litigation before the Board is friction that arises when the lay person does not understand what the law expects of him/her, the carrier or the state.² To date there is no indication the Division has explored this reasonable suggestion that might spare claimants a great deal of anguish and could save the state a great deal of money in the long run.³

¹ Dept. of Labor tape, Oct. 5, 1979

² See speech of Minn. comp task force chief Steve Keefe (App. .)

³ Division of Insurance has been no more responsive to this proposal. See Ch. 3 .

(6) Claimant Complaints

When the Commissioner finally met with comp protestors Oct. 5, he took the position that he could not get involved in the operation of the Board. "They make these decisions and then their decisions are appealable in court. . . . I can't get involved in them or try to influence them on their decisions," the Commissioner stated.¹ In fact, Alaska statute names the Commissioner as chair of the Board (and permits him to designate the task to a subordinate) and gives his Department clear authority to carry out the operations of the Board.²

The Commissioner expressed the idea that the Board often leans toward the claimant. Conceding that the panel is bound to miss a few cases in the other direction, he said there is nothing he can do about the situation since he cannot interfere with the Board. But it is not clear that the Commissioner described the situation accurately, and it is clear that there are a number of things he could do. For starters, he could ascertain whether he is correct that only a few cases are at issue, rather than the operating procedures of the carriers, the Division and the Board, as some protestors allege. This could be done by a survey of random cases, or of cases selected because they bear a striking resemblance to each other or fit alleged patterns.

One such pattern the Division has ignored concerns the use by Alaska carriers of certain San Francisco specialists to evaluate individuals with back complaints.³ At least three claimants of whom this writer has knowledge allege

¹ Dept. of Labor recording. Apart from the fact that the Commissioner has statutory responsibility for the Board, his statement is surprising because the comp protestors were not asking him to intervene in individual cases; they were asking for review of and changes in the system the Commissioner supervises.

² AS 23.30.005(b): "The commissioner shall act as chairman and executive officer of the board. . . ." AS 23.30.005(h): "The Department of Labor may make . . . rules . . . and regulations to carry out the provisions of this chapter. . . ."

³ See for example 1977 letter from claimant Heffner (Chapter 2.B.5.).

that Alpac sent them to San Francisco for examination by Dr. Willard F. Pennell, M.D.; all three say that after one interview/examination Dr. Pennell determined each to be a malingerer and sent the carrier a long report describing his findings in detail; all three say Dr. Pennell's opinion played a significant part in the carrier's refusal to make payments and the Board's eventual decision against them.¹

What makes this pattern interesting is that Dr. Pennell's firm is featured in a legal textbook that says the firm consistently provides insurance companies with testimony damaging to plaintiffs seeking insurance payments. The author of the text, Marvin E. Lewis, past president of the American Trial Lawyers Association, says he has been up against insurance companies that have retained Dr. Pennell's firm in at least half a dozen cases. Is there a pattern? "They always say my client is faking it; I always win," snaps the San Francisco attorney.²

In the textbook, attorney Lewis shows the student how to do it. In one of the cases involving Dr. Pennell's partner, the lawyer told the jury:³

. . . Dr. Knox Finley (Dr. Pennell's partner) comes from a defense mill. That's what his office is, has to be. . . nearly a hundred times he has testified on the stand like this . . . in injury cases and always for the City and always for . . . insurance companies. Besides that, he has been in every county of Northern California doing the same thing. . . Then his two partners were doing the same thing. Then they were not only having these cases, but there were other plaintiffs who were injured that never got to Court. . . and they were doing all this . . . as a business of testifying for insurance companies. . .

¹ The three claimants are Robert MacArmour, Diane Black and Alice Angel. Early in 1979 Alpac's director of workers' comp told this writer she thought Alpac had sent at least half a dozen claimants to Dr. Pennell; in addition, at least one other Alaska claimant was examined by Dr. Pennell for another Alaska carrier. Dr. Pennell reportedly visited Alaska once and toured the trans-Alaska pipeline on a business trip to meet with Alpac officials.

² The attorney-author, Marvin E. Lewis, made this statement in an interview with the writer. The text, by Lewis and Robert L. Sadoff, M.D., is Psychic Injuries (New York: Matthew Bender. Vol. 12, Courtroom Medicine. 1975; updated annually). Dr. Pennell, a licensed psychiatrist and neurologist, is in good standing with the San Francisco Medical Society.

³ Marvin E. Lewis in Lewis & Sadoff, Psychic Injuries, p. 380.

In view of the reputation of this firm, some claimants are surprised the Board has apparently relied heavily on Dr. Pennell's findings in some cases without exercising its authority to appoint an independent examiner. The Division contends it does not place undue emphasis on Dr. Pennell's testimony, but the Board decision against MacArmour noted the San Francisco specialist had found a "predisposed neurosis" and "conscious exaggeration of symptoms which seemed to change constantly." The Board continued:

These developed such a pattern that each new doctor he saw was put to the test of trying to sort out an objective symptom to go along with subjective symptoms. Because of the short periods of treatment, no one doctor ever sorted it out until the pattern was explained by Dr. Pennell.¹

In ruling against Diane Black twice, the Board cited Dr. Pennell both times. The second decision read in part:²

And after considering the medical evidence it (the Board) advised as follows:

We (the Board) believe, as stated in Dr. Pennell's report, that it is probable that some secondary gain or need for attention is motivating her to perpetuate her symptoms and that she will continue to seek treatment and take medication as long as it is provided. . . . Her claim for additional benefits should be denied and dismissed.

The Board considered all of the medical evidence and believed her disability was unrelated to the February, 1976 injury but rather, as stated by Dr. Pennell, to secondary gain and need for attention which was motivating her to perpetuate her symptoms.

We conclude that the Board did not make a mistake in determination of a fact in its November 1, 1977 decision.

Asked how many times the Board has encountered the testimony of Dr. Pennell, then-Director of Workers' Comp John Cook replied that he did not know. When

¹ For more on MacArmour's case, see articles by this writer in Alaska Advocate, Jan. 25 and Feb. 15, 1979, and Anchorage Daily News, April 30, 1979 (Appendix 9).

² In this passage from the Board's second decision against Black (May 24, 1978), the Board is quoting its earlier decision.

he was apprised of the allegations against Dr. Pennell, the Director said he could not assign staff to investigate because the Division was already overburdened. If the Division cannot respond to serious questions on major cases such as the use and influence of specialists such as Dr. Pennell, one wonders how well the Division investigates day-to-day controversies about other carrier practices — disputes in which the carrier repeatedly delays payment to chiropractors, allegations that certain doctors or lawyers are consistently hostile to claimants, charges that carriers stop temporary disability payments to increase leverage in negotiating a permanent settlement, etc.

(7) Summary

Although the Division's current proposal to add personnel and modernize its record-keeping system will reduce some problems, it will not deal with others. The budget request makes no reference to other necessary reforms such as:

- = major statutory revision;
- = explanatory booklet for claimants;
- = study to ascertain whether the Board should consider appointing its own case investigators, or whether a referee system should be adopted;
- = study of claimant complaints.

Specific reforms and aspects of the comp system the Legislature might consider overhauling are identified in Chapter 5.

C. Division of Insurance

Claimants who bring complaints about comp to the Division of Insurance are told as a matter of policy that benefit questions are not within that agency's jurisdiction. The only way the Division of Insurance can become involved in the delivery of comp services, explains Chief of Market Surveillance Don Koch, is if the claimants can document an unfair trade practice in accordance with AS 21.36.125. And that statute, as the Division interprets it, won't do the individual comp claimant much good. One hurdle to using the statute, says Koch, is that an unfair claim settlement practice must be treated in terms of resolved cases; you can't bring a trade practice violation charge, he says, until the case is closed. The second hurdle is that there are no guidelines to determine what constitutes an unfair claim settlement practice.¹

Despite the Division's oft-repeated assertion that it cannot become involved in comp claims, the workers' comp statute appears to give the Division of Insurance clear authority to become involved in comp claims problems.

AS 23.30.030(7) reads (emphasis added):

If the insurer fails or refuses to pay a final award or judgement (except during the pendency of an appeal) made against it, or its insured, or if it fails or refuses to comply with a provision of this chapter, the insurance commissioner shall revoke the approval of the policy form, and may not accept further proofs of insurance from it until it has paid the award or judgement or has complied with the violated provision of this chapter. . .

The Division's perception of unfair claim settlement practices does not prevent the Division from operating an Anchorage field office whose primary task

¹ For statement of the Division's interpretation of the law as it relates to workers' comp, see the Division's transcript of workers' comp rate hearing, Anchorage, Nov. 2, 1979.* Similar interpretation expressed to this writer in interviews in April and December 1979. Director of Insurance Kenneth Moore referred all substantive questions for this project to the Chief of Market Surveillance.

(* Claimant testimony portion appended to this report.)

is to respond to ~~consumer~~ complaints. If an employer is concerned about his workers' comp bill, the Anchorage office will look into the matter. But if an injured employee is concerned about his treatment, the Anchorage office will refer the individual to the Workers' Comp Division.

Last spring, when this writer asked the Anchorage office chief how many comp claimants bring problems to his office, he checked with his staff and reported back that his office routinely forwarded about three complaints a week to the Workers' Comp Division. He seemed somewhat surprised by the frequency of comp complaints and acknowledged that if comp were a field of insurance for which his office had responsibility, that rate of complaints would require attention. However, he explained, claimant comp problems are outside his jurisdiction.¹

In December Division officials said they had not instituted any procedures to keep tabs on the number of complaints shuffled over to the Workers' Comp Division; nor had efforts been made to learn what action, if any, the Workers' Comp Division takes on complaints about the insurance that accounts for almost one-fourth of the total insurance premium bill in Alaska.²

A widespread practice that clearly violates the comp statute, identified in the preceding section, is late payment of first benefits. According to the Workers' Compensation Division budget request, only 26 per cent of all comp claimants receive their first payment within 14 days of notifying their employer — illegal by AS 23.30.155(b).are the remaining 74 per cent. Advised of this statistic, the Division of Insurance Chief of Market Surveillance seemed surprised. If true,

¹ Interview in Anchorage, April 1979. See Anchorage Daily News, April 30, 1979.

² Interviews with Division personnel, December 1979.

he said, the practice might not be a trade practice violation. If the practice were that widespread, he explained, that could indicate the law — rather than the practice — ought to be changed.¹ One flaw in this flexible approach to enforcement is that the Workers' Comp Division does not agree (that agency says it wants to enforce the statute in question and hopes increased manpower and improved data-processing techniques will make this possible — see preceding section). Without going into the question of the extent to which an administrator should interpret a statute, this anecdote reinforces the general impression that impetus to resolve claimant problems is not coming from the Division of Insurance.

Although the Division puts out consumer information booklets on other types of insurance — auto and home-owners, for example — the agency has not done so for workers' comp. Again, Division officials say, delivery of services is the responsibility of the Workers' Comp Division.

Although the Division of Insurance is to be commended for listening to comp claimants at an informal meeting in Anchorage Nov. 7 and in the rate hearing Nov. 8, it must be noted that the officials apparently did little more than listen. Officials promised claimants at both meetings they would look into some of the complaints. As of Dec. 21, however, the only action that had been taken was to transcribe a tape-recording of the Nov. 8 hearing for forwarding to the Workers' Comp Division. Chief of Market Surveillance Koch did not attend the informal Nov. 7 meeting, and he says he never received a report on that meeting or a request to look into some of the problems with comp that were raised at that meeting (see chapter 2.A.1.).

¹ If being widespread makes a practice legitimate, then anything Alpac does would seem to be legitimate since that company writes 56 per cent of the comp premiums in Alaska.

This section can be summarized in one sentence: Although workers' comp is the largest insurance by premium dollar in Alaska and the Division of Insurance has a consumer complaint office and apparent statutory authority to involve itself in comp claim problems, claimants with comp problems get little help from the Division of Insurance. (The Division of Insurance spends much of its time on rate-setting matters for all kinds of insurance, including workers' comp; some aspects of the workers' comp rate-setting mechanism are considered in the next chapter.)

Chapter 4. A Brief Look at the Workers' Comp Rate-Setting Mechanism in Alaska

When legislators speak of comp rates, they usually refer to benefit rates for injured workers, which are set by the legislature; when employers talk about comp rates, they probably refer to the premium rates they pay, which are set by the insurance industry, subject to approval by the Division of Insurance.¹ The relationship between benefit rates and premium rates is not necessarily one-to-one.²

The premium an employer pays for workers' comp eventually finds its way into one of five categories:

- | | | |
|-----|---|---|
| 70% | { | (1) injured worker income maintenance; |
| | { | (2) injured worker medical expenses (including rehabilitation); |
| | { | (3) litigation costs; |
| 30% | { | (4) insurance company administrative costs; |
| | { | (5) insurance company profits. |

As a general rule of thumb, the insurance industry puts the break-even point for comp at 70 per cent; in other words, if the carrier pays out 70 per cent of the premium for items (1), (2) and (3), the carrier will break even.

After studying the subject for two years, the chair of the Minnesota Workers' Compensation Task Force offered this observation about comp rates:

¹ For background information on Alaska premium and benefit rate levels, see the following:

- Legislative Affairs Agency, Workers' Compensation Rates in Alaska
(A Study by Woodward and Fondiller Actuarial Consultants; Feb. 1977)
- Legislative Affairs Agency, Workers' Compensation (The Feasibility
of Establishing A State Fund; Feb. 1977)
- Division of Insurance, Hearings on Workers' Comp Rates, Ketchikan, Anchorage and Fairbanks, Nov. 1975 (2 vols.; on file with Division of Insurance)
- Division of Insurance, Alaska Workman's Compensation Insurance Rate Hearing, Anchorage, Nov. 8, 1979 (on file with Division of Insurance)
- Division of Insurance, Order 76-1 (Feb. 17, 1976)

² Due to the complexity of the insurance industry and the number of elements that are cranked into the rate base, there is bound to be some slack in the system.

One of my goals in Minnesota, when we started to study the insurance system was to satisfy myself whether there are excessive profits to insurance companies in the workers' compensation system in Minnesota. I spent a lot of time on that question and I came to three conclusions:

=First, the insurance companies sincerely believe they are losing money on workers' compensation insurance.

=Second, there are others who just as sincerely believe that they are getting rich.

=Third, and maybe most important of all, the Minnesota Commissioner of Insurance, whose responsibility it is to regulate workers' compensation rates in Minnesota does not know. In fact, there is evidence presented to him that points clearly in both directions.

In Minnesota, at least, the regulation of workers' compensation rates is hopelessly inadequate and frankly it's the Legislature's fault. . . . we haven't given him the staff. Workers' compensation rate requests are analyzed by part-timers loaned from other departments, people with experience in other areas of insurance, people whose primary responsibilities are regulation for solvency, not regulation of rates. But even if he had the staff, under the current system, at least in Minnesota, the Insurance Commissioner doesn't have enough information to be able to know whether he is promulgating a fair rate. . . .¹

A reasonable first step in dealing with Alaska workers' comp benefit and premium rates would be to ask the following questions:

- (1) What percentage of the workers' comp premium bill goes to claimant income maintenance?
- (2) What percentage goes to medical examinations, treatment and rehabilitation?
- (3) What percentage goes to attorneys and other costs associated with disputed cases?
- (4) What percentage goes to carriers for administrative costs?

¹ Remarks of Minnesota State Sen. Steve Keefe (chair, Minnesota workers' comp task force), Legis 50 Conference on Workers' Compensation, Portland, Ore. (June 14, 1979).

(5) What percentage goes to carriers as profit?¹

In Alaska, as in Minnesota, the information is not available to answer the basic question. The Division of Insurance requires exhaustive annual reports from all carriers and exercises its statutory authority on comp rate filings, but the columns of figures do not tell the lay person what percentage of the premium dollar goes into the five categories identified above.

The annual reports of the major carriers operating in Alaska do not answer the key questions because the figures from Alaska are lumped together with those of the other states in which the carrier operates. Another reason the annual reports leave questions unanswered is that the accounting process for insurance is rather complicated — the discrete elements of premium payments are rather intricately related.

Why so complicated? One reason is that the premium an employer buys on May 1 to cover accidents over the next 12 months will fall within two calendar years. During that period the carrier will be making some injury payments on the policy, but the carrier will also be making payments on injuries incurred on policies previously purchased. Moreover, some payments for injuries covered by the policy we began with will continue into the following policy year, and some injuries to be covered by that policy will not be identified as payable until some future date. The bookkeeping process to handle all this is bound to be tricky.

¹ Concerning profits on comp, the 1972 Report of National Commission on State Workmen's Compensation Laws made the general observation that "... statutory underwriting profits . . . averaged only about 1 per cent of premiums, and the rate of return on net worth for all private carriers is not out of line with the return in other industries." (Report, p. 113.) The profit margin written into Alaska premium costs is 2.5 per cent; it is important to note that this figure does not include investment income and therefore does not reflect the profitability of workers' comp. The significance of investment income will be treated in this chapter.

Keeping tabs on comp profits is not an academic matter; in Alaska comp carriers collect over \$100 million annually. Let's look briefly at what the carrier does with the investment income from that money. A 1977 study of Alaska comp rates by an actuarial firm concluded that under the rate-setting procedures used in Alaska "nearly all of the investment income is excluded from the rate making process."¹ According to the report, in 1974 Alaska comp carriers earned 32,257,000 in investments held to guarantee future comp payments. The underwriting operation for that year showed a net loss of 3669,000 for all carriers writing comp in Alaska, but the investment income enabled the carriers to pay expenses with \$1,588,000 left over (32,257,000 minus 669,000 = 31,588,000). According to the report, the insurance companies' return on capital — a standard measure of profitability — was a healthy 12.4 per cent.² However, because comp investment income was excluded from rate-making calculations, comp underwriting in Alaska for 1974 showed on the books as a net loss; since Alaska rates allow a 2.5% profit, the 1974 "loss" data enabled the carriers to push comp premium rates higher when rates were subsequently readjusted to reflect actual experience. This hidden profit factor is often overlooked by some policymakers who hold rising benefit payments solely responsible for pushing comp premium rates higher. It follows from this analysis that one item the reader might like to keep in mind as he/she considers comp premium rates is investment income.

¹ Legislative Affairs Agency, Workers' Compensation Rates in Alaska (A Study by Woodward and Fondiller Actuarial Consultants; Feb. 1977), p. VII-6. Other jurisdictions handle investment income differently. In some states carriers have been required to write premiums at a theoretical loss to balance the profit they will earn on investment income before they eventually pay out on claims.

² Woodward and Fondiller study, p. VII-20. In light of the quadrupling of comp premiums since 1974, it would be interesting to develop current figures on investment income.

In Alaska comp rates are determined in the following manner: The carriers report data to the National Council on Compensation Insurance (NCCI), a national group formed by the carriers to process comp data and set up rates; the data is verified and analyzed by the NCCI,¹ then rates are sent back to the Alaska Classification and Rate Committee,² an Alaska carriers' group that reviews the work of the NCCI. That committee makes the final filing with the Division of Insurance.³

As the Division of Insurance sees its task in this complicated situation, the agency is supposed to make sure the rates provide a fair return for the carrier at a fair price; to make sure the rates for comp premiums are properly distributed among some 650 various categories of work that are charged differentially, depending on the hazards of the work; and to make sure the carriers are adequately reserved (i.e., that the carrier will have the money to cover the losses that can be expected to occur).

Late in 1978 the Alaska Division of Insurance commissioned a thorough review of insurance industry reserving practices to cover long-term injury payments in workers' comp.⁴ The broad issue of profit from investment income was not the focus of this study. One purpose of the study was to make sure that when an insurance carrier purchased an annuity to cover a long-term payment, the carrier entered the actual purchase price into the rate base — not the amount the annuity actually paid out. The Division was concerned by indications that carriers might have been plugging in the higher pay-out amount into the rate base, even though the actual purchase price on the annuity was discounted; however, the study con-

¹ NCCI does not audit data carriers submit but does try to ascertain accuracy.

² The "C & R" acronym is used for this committee, as well as for Compromise and Release settlements discussed in Chapters 2 and 3. The fact that the same acronym is used indicates the lack of interaction between those who process the money and those who deliver the services for which that money was collected.

³ See Division of Insurance rate hearing transcript (op. cit.).

⁴ Millinan & Robertson Consulting Actuaries, Workers' Compensation Ratemaking Procedures (prepared for the State of Alaska Division of Insurance, Oct. 1, 1979). See also NCCI response and Millinan & Robertson reply, attached to report.

cluded that reserving was reported accurately, by and large. Although the study dealt with a portion of investment income from actual losses, much of the carriers' investment income comes from a category the report did not study — investments known as "incurred but not reserved" (IBNR), which are set aside on statistical probability that a loss will occur in the future even though there is no known loss for which that money is set aside at the time.

Early in 1979 the Division returned an industry rate filing to the NCCI for more information before approving it; the filing was eventually resubmitted and was the subject of the Nov. 8 rate hearing in Anchorage. The hearing was not required by law, according to the Division, but it was decided to hold a hearing because none had been held since 1975. In all, approximately 50 people came to the Anchorage hearing. The group appeared to be evenly divided between insurance industry people there to praise the rates and employers there to curse them; a handful of those present — three of whom eventually testified — were there to express criticism of comp services for injured workers.

Although the Division deserves credit for attempting to involve the public in the rate-making procedure, it should be noted that copies of the rate filing were not available for public analysis prior to the hearing (in fact, there was only one copy of the filing). A spokesman for a Fairbanks company who came to Anchorage for the hearing told the Division he was disappointed that copies of the filing were not distributed so that comp purchasers could comment intelligently on the rates they were being asked to pay. At the time the hearing was held, the Milliman and Robertson report on reserve reporting had not yet been made public.¹

¹ The Division was waiting for carrier responses to the Oct. 1 report before releasing both the report and the responses. The carriers waived a special hearing on the report itself in exchange for an extension on the normal response time; the Division acquiesced.

Summary: This brief look at the comp rate-setting mechanism attempts to cut through a complicated area to identify a few key questions policymakers might consider noteworthy. The questions on which this chapter focuses are:

1. Where do comp premiums actually go? How much of the premium dollar goes to claimant income maintenance, medical expenses and rehabilitation? How much to litigation? How much to carrier overhead and profits?

2. A key factor sometimes overlooked in analyzing the profitability of comp is investment income. How is investment income treated in the rate structure and how does this income affect the apparent unprofitability of comp?

Chapter 5. Conclusions

The information gathered in this study suggests that in addition to supporting Administration requests for personnel and equipment to handle the increased caseload in workers' comp,¹ the Legislature should (A.) take immediate measures to abate the crisis in claimant services during the 1980 session while (B.) laying the groundwork for thorough review and possible major overhaul of the Alaska workers' comp system.

A. Recommendations for Immediate Action

Immediate short-term measures that might be taken include:

1. Hearings concerning Workers' Compensation Division and Division of Insurance failure to uphold certain provisions of the workers' comp statute (AS 23.30).

Although cumbersome and in need of revision (see long-term proposals, Part B. of this chapter), the Alaska workers' comp statute contains provisions that would, if enforced, guarantee the claimant more timely and equitable resolution of comp problems such as those described in Chapter 2. However, the agencies charged with carrying out the intent of the workers' comp statute have not enforced or complied with certain provisions; this failure appears to have contributed to a situation in which statutory abuse is widespread, to the detriment of the claimant the statute was enacted to protect. (In reviewing this list of statutory violations the reader should bear in mind that the Administration may be proposing legislation to abate some of these problems; legislative proposals were not available in time for inclusion in this report.)

¹ For background on the Administration's budget request, see Chapter 3B. Proposal covers personnel and two computer systems for recording (1) routine paperwork and (2) decisions of the Workers' Comp Board on disputed cases. It strikes this writer that it would be inconsistent to approve the routine claims filing system (which would enable the Division to crack down on carriers for failure to comply with AS 23.30) without also approving the Board decision index and the additional hearing officers (enabling the Division to comply with its statutory responsibilities).

a. Workers' Comp Division Failure to Enforce Statutes

- (1) AS 23.30.110(c) and AS 23.30.155(h) both contemplate that the Workers' Comp Division shall investigate controverted claims, but the Division has no investigating staff or capability. In many cases the Board's investigation appears to be the hearing, at which the Board merely considers and attempts to adjudicate controverted cases on the basis of conflicting information presented. In some instances the Board's efficiency appears to be impaired by the lack of factual and technical information its own investigation (contemplated and/or required by statute) might have provided.
- (2) AS 23.30.155(c) requires a carrier who stops payment for any reason to notify the Board of this action. Information on compliance with and enforcement of this statute is not readily available, in part due to the abysmal nature of the Division's present record filing system. Carriers appear to be violating this statute in all resisted cases (cases in which the carrier declines to make payments but does not file a notice of controversion). The Director of Workers' Compensation believes the number of resisted cases equals the number of controverted cases; formal controversions have more than doubled since FY 75. It is not clear to this writer whether this violation: carries no penalty; carries an automatic 20 per cent penalty added to each improperly unpaid installment as per AS 23.30.155(e); or carries a \$100 civil penalty, as stated in the Department's internal review.¹ In view of the potential damage to claimants resulting from noncompliance, the Legislature may wish to determine (a) extent of violation, (b) which remedy is in force at this time, (c) how widely the sanction is applied and (d) whether both the sanction and the enforcement effort need to be strengthened.

¹ See Chapter 3.3.2. above for a description of the Division's operations; for potential impacts on the individual claimant, read case 2.3.2.

- (3) AS 23.30.155(b) requires employer to make first payment to cover wage loss within 14 days of notification of the injury; AS 23.30.155(e) imposes a 20 per cent penalty for noncompliance. The Division has documented widespread noncompliance; however, it appears that the Division has condoned this long-standing statutory violation by failure to assess the penalty.
- (4) AS 23.30.250 makes it a misdemeanor to wilfully make a false or misleading statement to obtain benefits. Although the Division and carriers say one of their headaches is identifying fraudulent claims and the Board has turned down claimants citing physicians' findings such as "conscious exaggeration," there is no apparent attempt to reduce this problem by apprising claimants of the statutory prohibition, or attempting to enforce that prohibition.
- (5) AS 23.30.110(c) requires the Board to issue findings within 20 days after a hearing is held, but for several years the average time lapse has been estimated at approximately 100 days. In view of the length of time it has taken the Administration to propose concerted efforts to resolve this illegal delay, the Legislature might wish to ascertain whether the current proposals to alleviate the problem are appropriate and sufficient.

(b) Division of Insurance Failure to Enforce Statutes

- (1) AS 23.30.030(7) says in part, "If the insurer fails . . . to comply with a provision of this chapter, the insurance commissioner shall revoke the approval of the policy form. . ." Despite this clear statement of statutory authority, the Division maintains it does not have authority to deal with comp settlement problems. Instead, the Division of Insurance routinely turns over three complaints a week to the Workers' Comp Division and apparently makes no effort to ascertain how that agency responds. (As well as being a violation of the comp statute, this position seems inconsistent with the Division of Insurance's role as protector of the public interest.)

2. Special Review of Division and Board Actions

Extensive case tracking through file reviews and interviews indicates the quality of claimant services deteriorated as the caseload grew in the wake of the pipeline. The state's paperwork problems dealing with comp may have been compounded by the fact that the carrier that writes more than half the comp premiums in Alaska grew even more rapidly than the comp industry as a whole during the same period; that company's personnel experienced the same kind of paperwork problems the state has been struggling with, compounding claimant problems. If this situation wrought a pattern of injustice upon a group of claimants, the normal process of judicial review may be an insufficient remedy. First of all, the aggrieved claimants will not receive redress in a timely manner. Second, because of the time and expense of pressing court appeals, it is probable that only a few claimants will make it through the judicial system, regardless of the merits of their cases — too few to establish a pattern to which the comp system can respond. For these reasons, this writer believes the Workers' Comp Division should be mandated to undertake a special review of comp cases to insure that the Board's practices in fact uphold the intent of the law. If this review finds that problems exist, the Board has statutory authority to reconsider cases at its own initiative. Because the Department has been resistant to the idea of investigating its own conduct, the Legislature might require this review.

3. Short Report to Keep Legislature Posted on Effects of Remedial Actions

In view of the routine but illegal delays in (a) first payments, (b) issuing Board decisions and (c) non-reporting of payment suspensions — practices that have existed for some time with the knowledge of the Workers' Comp Division — it might be appropriate to attach to remedial legislation a requirement that the Division report to the Legislature and others the compliance rate for items the Legislature deems significant.¹

¹ For Florida statute mandating a report on problem areas, see Appendices.

4. Explanatory Booklet

Other states have found that a booklet explaining in lay terms what the injured worker can and cannot expect from workers' comp appears to reduce misunderstandings that lead to contested cases. Since disputed cases prove time-consuming and costly to the individual and to the overburdened Workers' Comp Division,— and to the state, which loses the positive contribution to the work force the individual might have made — the expense of the booklet might be one of the best investments the Legislature could make. (Florida's booklet, which cost \$89,000 to print, is included in the appendices.)

Since the appropriate agencies do not seem willing to undertake this task on their own initiative, legislation mandating and financing such a publication is recommended.

B. Some Suggestions for Long-Term Consideration

Implementation of some or all of the preceding measures should help abate the immediate crisis in claimant services, but broad public policy questions concerning the workers' comp system remain; these considerations require legislative attention. Because workers' comp has been a subject of intense public controversy in several other states, it might be useful to consider the accomplishments and failures of other states in reviewing Alaska's workers' comp system.

1. Structure, Staffing and Operating Procedures of the Workers' Comp Board

Although the Legislature's addition of a new hearing officer and Board last year appears to be relieving the case overload somewhat, a new problem may be developing. Although a hearing officer can sit in hearings one day per week and write decisions for four days as a full-time employee, some board members apparently find it inconvenient to hear cases once a week since they are retained by the state on a per diem basis and already devote one week a month to the Board.

Possible long-term solution would be to make all Board members full-time employees. It is recommended that any solution to this problem be considered in conjunction with the possibility of staffing the Board with referees and/or investigators to make the hearing process more efficient. Oregon has full-time Board members who supervise referees and hear cases only if one party objects to the referee's judgement. Observation of other states' comp systems would be useful in evaluating this proposal.

2. Revision of Statute

To serve as an efficient framework for the activities of the Division and Board, the workers' comp statute (AS 23.30) needs a complete overhaul. The statute has been amended, as the Commissioner of Labor points out, in a piecemeal fashion on numerous occasions since its adoption in 1959. In redrafting the law the Legislature might address the following points:

= Some statutes begin with a preamble or statement of legislative intent. The Alaska comp statute opens abruptly by stating, "The Alaska Workmen's Compensation Board shall consist of five members. . . ." Although the mechanics of the Board are described, the law never states the reasons for creating the Board. Similarly, Article 2 deals with the duties of the employer but does not spell out the rationale for the institution of comp benefits.

= Perhaps the cumbersome structure of the present law is one reason state agencies have failed to enforce several passages. To figure out the time limit in which the Board must schedule hearings under AS 23.30.110(b) and (c), one has to slither through a verbal pathway whose blockages appear to require a plumbers' friend, or similar tool, to clear. (Translation: The law does not make it clear how quickly a hearing must be held.) Part of this confusion may be caused by the failure to spell out the difference between "hearing" and "investigation." Apparently AS 23.30.110(c) intends the two to be different, but the

phrasing of AS 23.30.155(h) appears to indicate that in some instances hearings and investigations are interchangeable. It would be useful to clear up this ambiguity.

3. Interagency Interaction

In some states the close relationship between on-the-job safety and workers' comp is recognized by the state's organizational set-up. In Oregon, for example, accident prevention (including occupational safety inspections) is a division of the workers' comp department. In Alaska a close working relationship between the Division of Occupational Safety and Health (DOSH) and Workers' Comp is not apparent: DOSH is based in Anchorage; Workers' Comp is headquartered in Juneau; although their tasks are complementary, personnel have little formal interaction. Interplay might be useful with regard to safety programs. Although there is an overlap in the mission of insurance company safety inspections and those of DOSH, the Workers' Comp Division deals primarily with claimant issues after the fact, giving little attention to the inspection programs that might have prevented the accident. It appears that the relative lack of interaction does not maximize the effectiveness of the two agencies. Similarly, as discussed above, legislation establishing closer interaction between the Division of Insurance and the Workers' Comp Division should also be considered.

4. Need for Fiscal Information

In view of the growth and importance of workers' comp, the dominance of one carrier and the breakdown in the service system that handles comp controversies, to effect policy changes constructively the Legislature might take

measures to determine how much of the premium dollar is spent on:

- = income maintenance payments;
- = medical payments (including rehabilitation);
- = litigation;
- = insurance company overhead;
- = insurance company profits

The question of investment income figures prominently in any such analysis.

As noted in Chapter 4, investment income is usually treated apart from the rate base and is thus a form of hidden profit. A corollary policy question is whether the state should play a role in determining where and how insurance company investments are placed.

5. Proposals to Reduce Premium Rates for Small Employers

Minnesota has tried two programs that might reduce comp premium rates for small employers. One program is a state reinsurance program which takes responsibility for all benefit payments over \$500,000, thus reducing the risk to the carrier that the carrier may have to pay a virtually unlimited amount on even a small policy. The other idea, which Minnesota borrowed from Florida, is a mechanism that allows small businesses to band together to purchase comp insurance. This gives the group the potential for purchasing a large joint policy at the lower rates a large company enjoys because it spreads its risk, because it can get the benefit of rating techniques that are not possible for small employers, such as retrospective ratings. The Legislature might wish to examine whether statutory changes would be necessary to effect these changes in comp insurance, and whether these and similar proposals might reduce costs to the employer without reducing benefits.¹

¹ See remarks of Minn. State Sen. Steve Keefe, included in appendices.

6. Proposals for a State Fund

A 1977 Legislative Affairs Agency study estimated a competitive state fund could be set up to write workers' comp insurance with a 32 million investment.¹ Even if the infant state carrier failed, the report argued, the state fund could be closed down in five years, leaving the state with new information on aspects of the insurance industry about which the state has too little knowledge, such as claims management and reserving practices.¹ A second 1977 Legislative Affairs Agency report recommended the formation of a competitive state fund.² On the plus side, the study said, a state fund: lowers premium costs to employers because state funds operate with significantly less overhead; increases availability of insurance because state funds normally accept any risk; increases retention of capital in-state since premium payments do not flow to an outside parent company; establishes a yardstick by which to assure the reasonableness of commercial rates; creates some new jobs. On the other side of the ledger, state funds seem socialistic; they are sometimes (but not always) poorly managed; private industry is doing the job. Continued business hostility toward rising premium rates and information gathered for this report pointing to a breakdown in the delivery of services are factors that tend to strengthen arguments for consideration of a state fund.

7. Task Force

In states where the comp system has been perceived as a subject of major political controversy (Minnesota, Oregon and Florida, for example) task forces have been organized to promulgate reform of the system. In Alaska the situation is somewhat different in two respects: First, workers' comp is not

¹ Legislative Affairs Agency, Workers' Compensation: The Feasibility of Establishing a State Fund (Feb. 1977).

² Legislative Affairs Agency, Workers' Compensation Rates in Alaska: A Study by Woodward and Fendiller Actuarial Consultants (Feb. 1977).

widely perceived as a top-priority political issue in Alaska. Consequently, the impetus for a task force is lacking. Second, in Alaska task force members would have to travel great distances, making meetings both expensive and difficult to arrange. For these reasons this writer believes inquiry into workers' comp problems may be more effectively handled through the existing legislative committee system than through creation of another camel. If legislative research is undertaken, care should be taken to insure that all groups concerned with workers' comp are involved in the process.

Appendices

List of Items in Appendices

1. Statements of Legislative Intent (from Washington and Oregon statutes)
2. Remarks of Minnesota State Sen. Steeve Keefe at Legis 50 Conference
3. Alaska Workers' Compensation Insurance Rate Hearing (Nov. 8, 1979 — abridged transcript)
4. Some documents supporting Case Narratives in Chapter 2.
5. Commissioner of Labor's Workers' Comp Budget submission to Budget Review Committee, Nov. 15, 1977
6. Affidavit of Roy L. Kuhl
7. Oregon Workers' Compensation Department Organization
8. Workers' Compensation Brochure Printed by Florida Division of Workers' Compensation
9. Newspaper articles on Alaska workers' compensation

THESE ITEMS ARE ON FILE AT HOUSE LABOR & MANAGEMENT COMMITTEE

WORKER'S COMPENSATION STUDY
COMMISSION

ORGANIZATIONAL MEETING

AUGUST 1, 1980

CO-CHAIRMEN

SEN. T. STIMSON
REP. B. ROGERS

- A. FUTURE MEETING DATES AND LOCATION.
- B. CONCERNS RELATING TO WORKER'S COMPENSATION BY EACH COMMISSION MEMBER.
- C. COMMENTS FROM THE GENERAL PUBLIC AND CONCERNED GROUPS.
- D. SCOPE AND DIRECTION OF THE COMMISSION.
- E. RECOMMENDATIONS/IDENTIFICATION OF RESOURCES AVAILABLE.
- F. ADJOURN.

MEMORANDUM

CAPITAL OF ALASKA

155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

TO: Attorney

DATE: January 16, 1980

FROM: Laura Davis
As t. Attorney

UP

FILE NO. State Agencies - Legislature
1980 Proposed Legislation
SUBJECT: Amendment to Alaska Workmen's
Compensation Act Revising Requirement
for Proof of Insurance by Persons Con-
tracting with the State or Political
Subdivisions of the State.

As it now reads, AS 23.30.045(d) requires the state or any political subdivision of the state to obtain proof of workmen's compensation insurance or self-insurance before contracting with any "person". Failure of the state or political subdivision to obtain such proof of insurance or self-insurance before contracting with any person subjects the state or political subdivision to liability for any workmen's compensation claim made by an injured employee of the contractor if the employee is unable to recover from the contractor because of its lack of financial assets.

The Alaska Workmen's Compensation Act requires every person who is an "employer" under the Act to obtain workmen's compensation insurance or to show proof to the board of its financial ability to pay directly any workmen's compensation claims. AS 23.30.075. The Act specifically provides that officers of corporations, municipal corporations and non-profit corporations are employees under the Act. AS 23.30.240. That section also provides that an executive officer of a corporation may waive coverage under the Act. The Alaska Workmen's Compensation Board will issue an executive officer waiver for particular persons upon request.

A problem arises when we choose to enter into a contract with a party who is not required by the Act to have workmen's compensation insurance. The Act currently requires us to obtain such proof of insurance from every "person," without regard to whether that person is required to have such insurance under the Act. Compliance with this requirement is impossible where the contractor has no employees (e.g., a consultant) and is thus unable to obtain either workmen's compensation insurance or a certificate of self-insurance from the board. The proposed legislation which is attached would amend §23.30.045(d) of the Act to require the state or political subdivisions of the state to obtain proof of insurance or self-insurance only when contracting with a party who is "an employer" under the Act. It would also modify the requirement of proof to include proof of a waiver of coverage under the Act issued by the board.

Memo to Attorney
January 16, 1980
Page Two

Under the current provisions of the Act, we cannot effectively protect ourselves from liability to the potential employees of persons with whom we contract unless we contract only with persons who are already "employers" under the Act. If we contract with a person who has no employees at the time of contract, but later hires employees, we are exposed to statutory liability for the workmen's compensation claims of those future employees, even though our contract provides that it shall be terminated immediately upon the hiring of employees without providing prior proof of workmen's compensation insurance. A contractual remedy against the contractor cannot be adequate because we are liable only when the contractor is financially unable to pay the workmen's compensation claim.

Under the Act as modified by the attached proposed legislation, we would be exposed to statutory liability only when we failed to obtain proof of insurance or self-insurance from a contractor who is required by the Act to maintain such insurance or self-insurance.

LLD:jg

1 IN THE LEGISLATURE OF THE STATE OF ALASKA
2 ELEVENTH LEGISLATURE - SECOND SESSION

3 A BILL

4 For an Act entitled: "An Act relating to workmen's compensation
5 to employees of an employer contracting
6 with the state or a political subdivision
7 of the state."

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

9 *Section 1. AS 23.30.045(d) is amended to read:

10 (d) No contract may be awarded by the state or a
11 home rule or other political subdivision of the state
12 to an employer unless the employer [PERSON] to whom the
13 contract is to be awarded has submitted to the contract-
14 ing agency one or more of the following: proof, furnished
15 by the insurance carrier, of current coverage by work-
16 men's compensation insurance from an insurance company
17 or association authorized to transact the business of
18 workmen's compensation insurance in this state or
19 proof, furnished by the board, of a current certificate
20 of self-insurance from the board, or proof, furnished
21 by the board, of a waiver of coverage under the Act
22 for certain employees. The employer [PERSON] to whom
23 the contract is awarded shall keep his workmen's compen-
24 sation insurance policy in effect during the life of
25 the contract with the state or political subdivision.
26 If the state or the political subdivision of the state
27 fails to obtain proof of coverage or self-insurance

1 or waiver of coverage or to protect itself under (e)
2 of this section, and an employee of the contractor is
3 injured during the term of the contract, the state or
4 political subdivision is liable for workmen's compensa-
5 tion to the employee if the employee is unable to
6 recover from the employer because of the employer's
7 lack of financial assets. The state or political
8 subdivision is not liable, however, to the employee for
9 workmen's compensation if the employee can recover from
10 the employer under (a) and (b) of this section.

SCOMM

33.22

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



Alaska State Legislature

House of Representatives

Official Business

House Labor & Management Committee

Vern Hurlbert, Chair

Pouch V
State Capitol
Juneau, Alaska 99811

Subcommittee on Workers' Compensation

Brian Rogers, Chair

2 P.M. February 13

Court Room A

Legislative Consultant

Richard A. Fineberg ✓

Department of Labor

Judy Dubois, Special Assistant
Jackie McClintock, Director, Workers' Comp. Division
Jim Souby, Director of Administrative Services

Division of Insurance

John George, Deputy Director
Don Koch, Market Surveillance Chief

Claimant Attorneys

Lance Parrish, Esq.

Additional Testimony

Richard Frangberg ~~Can't~~ (Again)

- Concur with giving more money
- don't know their own needs - playing catch-up ball

Simply giving \$ won't do it

Alpac made a deal w/ Alyeska for TAPS
& has been pressed to cut budget??

* Motion BR

New sec 2

The sum of \$211, ~~000~~⁷⁰⁰ to

Sec 3, sect 2 is capital approp
& does not lapse

Title & change to include capital

Passed by Unan Consent

* Motion BR

Report out Bill with
letter asking Finance to ~~make~~

Pamphlet if Proposal is in

Passed by Unan Consent

Can't ~~Parish~~ Can't

leg. wt ~~to~~ travel last year +
Missed round of hearings

[delay helps carriers & - Claimants settle ^{get} or UI

NO provision
in W.C. Act
for award
of interest.

Cannot get on docket 2-3 weeks
before hearing, then 90 days to decision
to make it work well

1) New hearing officers

2) Stricter enforcement of law
- Filing of Controversial Form

Do NOT Overhaul system

Fbb's
Office
does NOT
even
have a
"set of
larsons"

without delay - 1) ~~Prop~~ easier to get Att'y's
3) Delay makes Penalty moot

Ad Hoc Committee:

Once you dig into one side you must dig the other

- Might Add more Lay Board Members
- overworked - Need Pool to draw from
- Need Alternate members

Penalties are deducted as cost
- will be handled by regulation

This change is { 10.6% Pdas benefit to Dents
 3.3 total D3ab
 42.5 Demandant Portrol → 32.3 Major
 15.5 temporary total 10.2 Minor (74C 2820)
 23.1 Med Medical
 13 Revised - does impact Rates

Get info
 on
 US
 Rates

Wisconsin Pamphlet
 States: Rates are low because
 litigation is low.

Dubois & McKintok
 we'll take aggressive Pole Next year

Workers
 Comp
 would
 conform
 to other
 49 states

QBR Cost & Brochure?
 Div. Make Proposal ASAP

Lance Parrish, Esq. - Lawyer
 See letter from

do much W.C. Claims work
 750-1000 cases

1) No doubt that there's a problem
 - usually works well

6.
Don Rock Cont

(will look for Dr Pennell)
will look for time delay

QBR could that be moved up?

A.D.K. NO, probably not - I must do it

QBR with Funds could you contract?

A.J.G. Problem would be finding Contractor

↳ Back seat issue

As long as it is a case is a adjudication
with W.C. ~~was~~ Ins Div should not be
involved

Ad Hoc Group to Review

Should be legal + medical staff (not just)

Alpac 56% of BB

will change - comes from their
writing "wrap up" of pipeline covering
all workers

- Div of Ins will take closer look at wrap up
- Share concern of monopoly (New Management)

QBR Submit Estimates of Profit

A.D.K. ^{Don't} 30% of Premium for "Expenses"
Close to 20% of Premium to Benefits

Don Kuhl:

Do Support Supplemental App.

Many things w.c. will do impact Ins Rates

Problems in the system forcing things into courts w.c. is to prevent that.

Pg 39 reference to AS 2330.030 (7)

Div of Ins has Authority to intervene
we refer complaints to w.c. Board.

Have No role when board is working or
when Insurer does not pay within

Support Booklet (div w.c. should do)

Have Not enforced payment within 14 days
- because we don't know till too late
w.c.

Do have ~~rate~~ responsibility to enforce

^{BR} Q Have you ever been that

A NO

~~is~~ dismayed at size of problem

Div. Ins Has Power to examine ^{Co's} Expense

Beginning in July will initiate examinations
Mechanical issues & will be looking at
Claims primarily Controversial cases

Alpay Indust Indem Finewer's Home in
Employment of Worker Prof'd in CWPOL Service

67

65

McClinton

Q. How many Penalties were Assessed?
BR

A. McClinton Don't Know

Sec. 155 Employer Has 14
155(e) 14 more Days From due date
till Penalty assessed.

Q. Confuse on W.C. Statesman From Wis
BR W.C. Rates lower Employee Files
Nothing at All. How?

A. Would like to see info.

Q. Div. Ins has examines From Wis.

John George : "no Demand From Wis.
Will get Info From Wis."

John George Div Insurance Dpty Dir

Don Koch Chief of Market Surveillance

Support Funding For W.C. request.

Dissagree with in Report (or need exp.)

4

2 W.C. Hearing Officer II's
Will Free 2 JII's to do Full time Hearings
Will reduce hearings to board
Will Speed process

Capital Improvement Computer System
Q (Rogers) if computer were included in
this could you use more
Management Information System

Jim Souby - M.I.S. Proposal

yes, current system antiquated
Washington State Has very efficient system
- Will soon have more refined budget request
with more info

Will Have definite answers by March 14th
if it were included in this Supplemental perhaps
we could get it moving sooner

2 components

Legislative Digest

less expensive 30k +

would be built into STAIRS

could start ASAP

Prompting System

Info Handling System

BR Committee could put 211k into
Supplemental HB 670

Q In-House Review less than 1/2 pd on time
BR which were penalized.

A only those that went to Hearing don't know
McKinnon

2/14

3

Fineberg Con't
Ad Hoc Panel:

Review cases in depth with
their own investigators (the Board has none)
AS 23.30.130. Board may change its own findings
- Board swamped with Backlog
Cannot catch up at this point

check

Booklet: (Copy will be sent)

Outline to Claimants - What to expect
- Law over 100 pages

Example: Lawyers are paid by Comp - pg 45

Summary: Long Range Problem

check
figures

Need vehicle to Address long term
one car or holds over 1/2 market

Judy Dubois - D.O.L. Special Asst
Introduces Jackie McKintish Dir. W.A. Div.
FY 81 Budget, Capital Budget, SUPP Approp &
HB 705 Farm Plan to much improve service

Q. (Hurlbert) is 54k Adequate?

A. (Dubois) This won't solve all the problems

This could get the people on board by April 1st

Plan: 3 Additional Hearing officers

All decisions current by 1/1/81
with Supplemental & Budget this can be done
→ Totally devoted to Hearing process

2/14 House Labor & Management Workers Comp Hearing 2

→ Dr. Richard Fineberg - Consultant
prepared report for H. Com

Summary: Assigned to take quick look
at W.C. Problems

Conclusions:

4 Operational Areas for Leg.

will Hear
From Dept.

1) immediate support for Administration proposals
for supplemental funding. - Also long term

~~2) ~~MSB support long term~~~~

2) Special Ad-Hoc Panel be setup
to review claimants problems caught
in the backlog

3) Booklet for workers explaining to claimants
Rights & Problems

4) Long-Range Study of W.C.

- 1) Board System - structural changes
- 2) Industry Structure (Atac) - Delivery
- 3) Rate Structure, billing - investment income

Sources of Claimant Complaints:

Div of Insurance

OUIA

Div of Ins. Public Hearings

House Enforcin Committee Hearings

1 House Labor & Management

HJR 58 Extended Benefits

Judy Dubois

AK has been triggered onto the
Extended Benefits Program

(one of 2-3 states)

Fed law should be changed to
Pay extended benefits to claimers

Rogers moves out Reg

No objection
