

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

1127 SCOMM 33: WORKERS COMPENSATION, 1979-1982 117

defendant doctors file reports with the carrier downgrading the client's complaints with astonishing consistency.

Alpac's Dwyre told the Advocate, "Diana was covered

under workmen's comp for as long as...[Alpac felt necessary] to put her back to preinjury status.

"If we cannot put her back to preinjury status or if they end

up with permanent impairment," the Alpac executive continued, "...then we have got to sit down and say we can really go no further. And that was the point we finally reached."

Although comp law says that if there is permanent damage the carrier must make a permanent settlement with the claimant, in this case Alpac never did so.

Alpac held that more than \$15,000 in direct payments and \$6,000 in medical expenses during the temporary disability period was sufficient compensation for Black's injury. The Workmen's Compensation Board agreed.

110 days later, still no answer

The workmen's comp waiting game...

Fairbanks

Blond, wiry, slightly balding at 39, Robert MacArmour limps over to his chair, eases himself down and removes the walking cane from his right wrist. He begins his story slowly, almost haltingly, as if he does not know how to describe for strangers the bleak, troubled world he entered unexpectedly in May, 1977 when the truck in which he was riding overturned on the North Slope haul road.

MacArmour, a compressor operator, was on his way down the pipeline to a new work site when the truck careened off a curve on the steep Atigun Pass south descent, plunged over an embankment and rolled. The pipeline worker was bounced around, thrown out of the cab and knocked unconscious.

Since that time MacArmour says he has had back problems, but he has received little solace from the workmen's compensation system, whose stated purpose is to cover lost income, medical expenses and rehabilitation for injured workers.

MacArmour was removed from the workmen's comp rolls by the insurance carrier, Alaska Pacific Assurance Co. (Alpac) during the summer of 1977 after three doctors cleared him to return to work.

MacArmour, who says he is in frequent pain and constant debt, appealed his case to the state-run Workmen's Compensation Board. His case was heard last Oct. 2.

State law required the three-person comp board to issue its findings within 20 days after a claimant's case is heard, but the board is swamped with a backlog of pipeline cases. As of this writing—nearly four months after the hearing—MacArmour is still waiting for his decision.

"They keep saying the decision is coming: is it coming by donkey?" Luz Arrango, MacArmour's girlfriend, asks from the kitchen of their sparse, low-income apartment. Luz is anxious to know for two reasons.

First, they both feel he needs an operation they cannot afford. "He's getting worse," she says.

Second, they are in a tough financial position. Luz works at a jewelry store to support herself, MacArmour and two young children. The bills—including over \$4,000 in medical expenses Alpac won't pay—keep piling up.

The strain of waiting compounds the problems. Even if the decision is in MacArmour's favor, says Luz, "There's no way that's going to pay for what we've gone through."

MacArmour's mental health has been questioned by several physicians who have seen him. "I was neurotic at one point," he admits, "but my views have changed...I'm calmer now."

MacArmour says he wants "all the facts out in the open." To explain accurately how the case developed, he asks Luz to get "the box."

She disappears down the apartment hallway and returns a few minutes later, dragging a large cardboard box. The box is filled with records, loosely indexed in chronological order and interspersed with MacArmour's handwritten, narrative additions.

The records show that MacArmour spent eight days in the hospital after the accident and came out with tissue damage but no apparent fractures. He says he was worried about his back, but he wanted to go back to work as soon as he knew there was nothing wrong.

Doctors warned he might experience intermittent pain, but they cleared him to return to work.

"I've always shunned people who complain of back problems," he says. "I told the doctors I was always ready to take anything on...I was playing it tough."

[continued on page 7]



Alaska Advocate
Jan. 25, 1979 (sidebar)

(photo by Richard Friedberg)

Robert MacArmour, who claims disabilities from an accident covered by Workmen's Compensation, is supported in his allegations by Luz Arrango, pictured here with children.

Waiting...

[continued from page 4]

Cleared by physicians to go back to work—he says at his own request and urges—Alpac dropped MacArmour from the workmen's comp rolls during the summer of 1977. He did try to work in September, 1977—and quickly wound up back in the hospital.

Since that time, MacArmour has been enmeshed in a bureaucratic struggle to get his bills paid—and to get the medical attention he feels he needs to end his pain and get back on his feet.

MacArmour thinks he made things tougher for himself by trying to go back to work. An attorney familiar with workmen's comp procedures agrees.

Once doctors said MacArmour could go back to work, the lawyer says, it is understandable that a carrier would challenge all subsequent claims before paying them.

What is not so easy to understand is the time it has taken the board to consider the case and let MacArmour know what he can expect.

The case is complicated by conflicting medical testimony. Dr. Willard F. Pennell, M.D. (the same San Francisco specialist who advised Alpac to cut off Diana Black's workmen's comp—see accompanying story) examined MacArmour a year

ago and felt MacArmour was faking his symptoms.

"The patient," Dr. Pennell advised Alpac, "overreacts to areas that are said to be painful and attempts to voluntarily inhibit muscle action but then goes through with it. He alleges bizarre sensory abnormalities which make no anatomical sense. I felt these were clearly conscious misrepresentations on his part.

Dr. Pennell concluded: "In my experience patients who perform in the manner that his man did during the neurological examination do so for purposes of litigation and it would not surprise me that such is the case with Mr. MacArthur (sic.) I do not believe that he is in need of any psychiatric treatment and I can find nothing to indicate that he is any way disabled from performing his pre-accident occupation if motivated to do so."

A prior and equally lengthy medical report from a Los Angeles specialist, Dr. Michael Roback, M.D., expresses a different opinion. According to Dr. Roback "The patient's condition with reference to the neck, low back and left arm are the result of a single accident suffered on 5/10/77...the patient has not received the full benefit of medical care and requires further evaluation and treatment."

After Dr. Pennell's report to Alpac, MacArmour—at his attorney's advice and at his

own expense—returned to Dr. Roback for another examination.

This time the Los Angeles orthopedic specialist was more emphatic: "Because of the injuries from the work accident," Dr. Roback wrote, "the patient is totally and permanently disabled for all employment and incapable of competing in the open labor market for employment."

Is MacArmour faking it? Luz does not think so. A Fairbanks psychiatrist, she recalls, once told her that MacArmour's problems were psychological.

Luz speaks simply and softly: "I said I believe Robert, because I've been close to him and I've seen his pain."

Epilogue:

I.

In an interview last week, before she left for a San Diego meeting with executives from other subsidiaries of Alpac's parent company, Insurance Company of North America, Alpac vice president Gay Dwyre described some of the problems faced by the injured family man:

"When a man...is severely injured...(sometimes) he becomes dependent upon the family for taking care of him when they never have before...it is one of the most terrible things that can happen to a human being...all of a sudden they are by themselves, not able to leave the house, and it does things...to their mind, and to their family...It can destroy not only him, but the entire family."

Dwyre said she was speaking in general terms and was not familiar with MacArmour's case.

II.

Friday morning, 9 a.m. A solitary figure emerges in the gray Fairbanks dawn. He leans on a cane—not bent forward with age, for he is 39, but to one side. He walks with a stiff, short-stepped gait.

At a drop of three or four inches in the snowpacked walk, he pauses quickly in the cold to give full weight to the cane. Reaching his car, he eases himself in, starts it, then returns to the apartment, head down.

A short time later, a 4-year-old in a red snowsuit comes out, followed by a woman carrying a baby. The man with the cane comes last, his free hand holding the sundries bag for the babysitter and the woman's purse.

After Robert MacArmour drops Luz and the kids, he heads downtown to the adult education center, where he recently began taking a basic math class three mornings a week. The pain, he says, is a problem, but the class is something he has always wanted to do.

His math has always been poor, he says, and if he can improve enough he would like to study economics.

Shortly after noon, the man with the cane returns to the apartment. He checks the mailbox: No word from the Workmen's Compensation Board.

It is the 110th day since his hearing.

Changes coming for workmen's comp

No decision yet in the case of Robert MacArmour, the Fairbanks man who is waiting to hear whether the Workmen's Compensation Board will require his employer's workmen's comp carriers to pay medical expenses and benefits for back problems MacArmour claims stems from a wreck on the pipeline haul road in 1977.

The three-person, state-administered Workmen's Compensation Board, which oversees the privately funded and operated comp system, heard MacArmour's appeal last Oct. 2. Although state law requires the board to issue a decision in 20 days, the board is overloaded (Advocate, Jan. 25.)

While MacArmour's waiting period stretched toward four months, all three branches of state government were considering other aspects of the workmen's comp program. This action on diverse fronts underscored the complexity of the insurance program designed to guarantee injured workers prompt coverage for losses incurred due to on-the-job accidents and included the following:

- the State Supreme Court was deliberating arguments some observers believe could reduce greatly an injured worker's right to sue a negligent party;

- Sen. Bill Ray (D-Juneau) introduced a bill that would extend comp coverage to volunteer police officers;

- state administrators were prying money out of state-administered insurance industry account to cover payments for a program known as the Second Injury Fund.

The Supreme Court's problem, posed in three cases involving Alyeska Pipeline Service Co. and heard earlier this month, is to decide whether the fact that Alyeska paid workmen's comp for its contractors on the pipeline project entitles Alyeska to immunity against liability suits by workers injured on the project. Some observers say the high court's decision will have implications far beyond the pipeline.

Generally, if you're injured due to somebody else's negligence, you have the right to sue the negligent party. But if you're a worker injured on the job, you can't sue your fellow workers or your employer.

Instead, you get workmen's comp, which entitles you to salary compensation, medical expenses and rehabilitation (if you need it). If the system works properly, you are covered promptly—no legal hassles, no delays—by your employer's comp carrier.

In exchange for this guarantee, you give up the potentially lucrative payoff a suit for negligence might yield. A successful negligence suit can result in a cash judgement for pain and suffering; under workmen's comp there is no provision for pain and suffering.

What if you are employed by a subcontractor who is working in turn for another contractor? If you—the subcontractor's employee—are injured due to the negligence of the contractor, is workmen's comp your only remedy, or can you sue the contractor? This is the essence of the question the Court is considering.

Since pipeline workers' checks and supervision came from contractors—not from Alyeska directly—lawyers for several injured pipeline workers have argued that Alyeska, as the party that set up the job, should be liable for negligence. Alyeska counters that when the pipeline consortium picked up the tab for workmen's comp, Alyeska also picked up the employer's immunity to liability suits.

Alyeska also argues that the pipeline consortium did not have any responsibility for day-to-day safety and therefore should not be held negligent for pipeline accidents.

Legal logic and legal precedents exist to support the positions both Alyeska and the challenging workers have taken. Alaska's workmen's comp statute does not provide a clear answer, and different district court judges in the state have come up with different decisions.

One of the cases was brought by Kelly Everette, who lost a leg when a piece of pipe slid down a hill, crushing the pipeline worker between two sections of pipe. The other case was brought by Howard Vicini, who was injured when food on a freezer room shelf in a pipeline camp fell on him.

Both men have been covered by workmen's compensation obtained by Alyeska on behalf of its contractors but feel they are also entitled to sue Alyeska for negligent damages.

The Supreme Court's ruling—expected later this spring—will set a precedent for contractor liability in similar situations.

Sen. Ray's bill—introduced at the start of the legislative session—would entitle volunteer policemen on local police forces to workmen's comp benefits. At the present time volunteer firemen are covered by workmen's comp, but their police counterparts are not.

The Governor's staff is reviewing a request for a \$275,000

supplemental appropriation for the Second Injury Fund, according to Paul House, who manages that fund for the state. The Second Injury Fund is funded by comp carriers to pay for rehabilitation, as well as long-term comp benefits for injuries caused by a prior disability.

House said that the supplement to last year's \$722,000 Second Injury Fund appropriation will come from an account set up with the state but funded by the comp carriers. "The greater portion" of the supplement, he said, will go to Alaska Pacific Assurance Co. (Alpac.)

Alpac's portion of the supplement has already been paid to claimants, according to Alpac worker's compensation director Barbara Grissom.

Asked why Alpac has a large portion coming, House explained: One requirement for tapping the Second Injury Fund is a written record of the previous injury. Alpac insured the pipeline project, and Alyeska conducted pre-hire physical examinations. This practice, House said, gave Alyeska and Alpac a better written record of previous disabilities than many employers. Consequently, Alpac has a larger-than-average share of comp payments covered by the Second Injury Fund.

—Richard A. Fineberg

He waited 120 days to hear

Workmen's Comp says 'no' to Fbks. claimant

by Richard A. Fineberg

Fairbanks

The Alaska Workmen's Compensation Board has denied Robert MacArmour's appeal for workmen's compensation benefits.

MacArmour says he wants an operation to correct a painful back condition stemming from a wreck on the pipeline haul road in May 1977. While deep in debt for medical expenses incurred since the accident, MacArmour and his family waited 120 days for the overworked board's unfavorable decision (*Advocate*, Jan. 25, 1979).

The board ruling, issued Jan. 30, says MacArmour is a put-on and rejects his claim that pipeline insurance carrier Alaska Pacific Assurance Co. (Alpac) should cover his expenses. MacArmour, who says he's fighting mad, plans to appeal the decision to court.

The four-page decision by the board contains several apparent errors of fact and relies heavily on the medical opinion of a San Francisco specialist whose practices—along with those of his partner—have been questioned by other Alaska workers and attorneys in California.

MacArmour is one of an unknown number of pipeline



Robert MacArmour

workers injured on the job who subsequently had problems with Alpac. A loosely organized group calling itself Action for Victims of Industrial Accidents (AVIA) claims 50 members, many of whom allege similar problems with Alpac, the insurance firm that bustled its way to the top of the Alaska insurance world during the oil pipeline boom.

MacArmour, who was thrown from a truck and knocked unconscious when the brakes failed on a steep grade, spent eight days in the hospital and received worker's compensation for two months, at which point physicians released him to return

to work. He complained of back pains, but tried to work again that fall; medical records indicate he quickly landed back in a hospital bed.

Since then MacArmour has spent much of his time bouncing from doctor to doctor and fighting bureaucracies from his Fairbanks apartment. He appealed his case to the Workmen's Compensation Board, which heard the matter Oct. 2. Although state law requires the board to issue decisions within 20 days, it was 120 days before the board announced a verdict.

"The Board does not question...that the applicant was initially injured and that he had pain," says the board decision. "However, the pain he has today is not real, at least to the extent he testifies. The question essentially is whether the alleged pain is a psychological overlay caused by the accident or is a put-on in order to gain compensation."

Citing findings by San Francisco specialist Willard F. Pennell, M.D., the board concludes, "Any psychological overlay pre-existed the May 10, 1977 incident. Applicant's complaints are based on a conscious attempt to get additional workmen's compensation benefits."

Pennell, a San Francisco neurologist and psychiatrist who

examined MacArmour for Alpac during an afternoon last year, told Alpac MacArmour's behavior was bizarre and studded with "conscious misrepresentations."

"In my experience," the physician noted, "patients who perform in the manner that this man did during the neurological examination do so for purposes of litigation and it would not surprise me that such is the case with Mr. MacArthur (sic)."

In the final two pages of his evaluation, Pennell identifies MacArmour incorrectly and concludes, "Thank you for asking me to evaluate Mr. MacArthur for you." The doctor's 12-page, single-spaced letter to Alpac is dated Jan. 20, 1978—the same day he examined MacArmour.

In the board's view, Dr. Pennell found a "predisposed neurosis" and "conscious exaggeration of symptoms which seem to change constantly."

According to the board, "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."

Reconstructing MacArmour's medical history to support its decision, however, the board overlooked or misstated several facts. Among them:

• MacArmour's attempt to return to work is described by the board as follows: "On September 8, 1977, applicant returned to work only to quit again after a few days." Pipeline medical records show MacArmour was sent back to Fairbanks by the

medic at Five-Mile Camp on Sept. 19, 1977. Hospital and clinic records—as well as unpaid bills—show MacArmour was in the hospital for the next two weeks.

• "Dr. Lindig's report of March 17, 1970, released him for work and stated: 'Emotionally unstable for weeks,'" the board wrote. On the form cited, the physician did check a box releasing MacArmour for work, but the physician's handwritten interview note read, "Emotionally unsuitable for work"—not "emotionally unstable for weeks," as the board said in its decision.

• The decision also says, "Dr. Perry Mead on September 12, 1978 reported: 'I doubt that his injury caused his psychiatric disorder.'" In fact, the statement was made by Fairbanks psychiatrist Dr. Irving Rothrock—not Mead.

• "The reports of Dr. Pennell were compared to those of Dr. (Michael) Roback," the board said, noting that Dr. Pennell is a neurologist and psychiatrist while Dr. Roback is an orthopedic surgeon. The board does not indicate that Pennell saw MacArmour once, and the orthopedic surgeon saw him twice—before and after the Pennell interview. Neither of Roback's post-interview conclusions is mentioned by the board.

After their first appointment, Roback said, "The patient has not received the full benefit of medical care and requires further evaluation and treatment." After a second examination, Roback said, "The patient is totally and permanently disabled for all employment and in-

[continued on next page]

Workman

[continued from preceding page] capable of competing in the open labor market for employment."

To pick and choose among conflicting medical opinions is a part of the task of the Workmen's Compensation Board. In view of Pennell's reported penchant for siding with insurance carriers against claimants, MacArmour and other claimants find it surprising that the board—supposedly the claimant's friend—relies so heavily on Pennell.

Diane Black of Fairbanks, one of the founders of AVIA, says she was shipped off to Pennell, similarly branded an exaggerator with pre-existing psychological disorders, and cut off from worker compensation

by Alpac and the board. An Anchorage claimant not connected with AVIA wrote the Advocate to relate a similar experience with Pennell and Alpac. (The claimant asked not to be identified.)

In an interview with the Advocate, San Francisco attorney Marvin E. Lewis, past president of the American Trial Lawyers' Association and author of a legal text on courtroom medicine, said he has faced Pennell's partner in "seven or eight major cases...They always say my client is faking it; I always win."

But attorneys like Lewis are hard to come by. At this point MacArmour's legal case looks like a long shot at best. One Fairbanks lawyer said the case probably will have to go to the Supreme Court, and that

takes a lot of money.

Money is something of which MacArmour has little. His girl friend, Luz Arrango, currently supports him and two children. They worry that the family does not have enough money to make it through the month.

Their car is about to be repossessed; there are several thousand dollars in back medical bills hanging over their heads, they say.

Luz Arrango's dark eyes flash as she contemplates the bleak future, and the fact that the board, relying on the questioned expertise of a specialist hired by the insurance industry, kept them waiting four months before proclaiming that MacArmour is a put-on who is not entitled to the help that could put him back on his feet.

Anchorage Daily News

NO. 101

68 PAGES

ANCHORAGE, ALASKA, SATURDAY, APRIL 28, 1979

(Page 1)

Workmen's comp: high cost of pain

By R.A. FINEBERG
(First of a series)

When you think of insurance, you probably think of the skyrocketing cost of automobile coverage, or that life insurance policy with its provisions you and the insurance agent barely understand. But Alaskans pay more workmen's compensation than any other kind of insurance.

Alaska's compensation program, in fact, pays the highest benefits in the nation to injured workers. But the program is troubled. The ailments afflicting the comp system are many:

- High comp premiums which Alaska employers are required by law to pay may be forcing some businessmen to close their shops because they are eating up profits.

- The state bureaucracy designed to deal with comp problems is virtually paralyzed by its workload. While law requires the Workmen's Compensation Board to settle disputes between an injured worker and the insurance company within 20 days, the decision of a typical case now takes more than three months.

- Many injured workers claim they have been unable to get fair compensation for their injuries, or a fair hearing from the overloaded bureaucracy.

- Other workers reportedly fake injuries to collect lucrative benefits they don't deserve. By doing so, they bilk the insurance company and drive skyrocketing comp premiums still higher.

- Arcane rate-setting procedures and cumbersome bookkeeping practices make it difficult to determine what kind of profits insurance companies reap from workmen's comp. In this clouded situation, many industry observers assert comp is very unprofitable, but the insurance company that handles more compensation insurance in Alaska than all other companies combined appears to be prospering from its rapidly growing business.

The focal point of these diverse problems is a system that was established in the early 20th Century to provide workers injured on the job with insurance to provide income during recovery pay for medical expenses and rehabilita-

tion. Employers are required by law to purchase workmen's comp insurance for all employees' the worker in turn gives up his right to sue an employer or fellow employee for negligence.

In 1968 compensation premiums in Alaska totaled about \$8.5 million, about 11 percent of all insurance premiums written in the state. By 1977, the bill for workmen's compensation had jumped to more than \$107 million, nearly 24 percent of the state's total insurance premium.

Before comp rates began rising, workers' comp premiums typically cost an employer about 40 cents per \$100 of payroll. With increasing benefits and medical costs, today the same employer may be paying \$5 to \$10 in comp for every \$100 of payroll.

Benefit boosts mandated by the state legislature in 1975 were a major source of the jump in comp costs. The legislative action, reflecting the findings of a nationwide presidential study on workers' comp, coincided with the pipeline

See Back Page. COMPENSATION

boom's increase in the average Alaska wage on which those benefits are calculated. This combination of factors sent comp benefits skyward, and premium increases followed.

The compensation system was designed to work promptly, with a minimum of red tape. For many claimants, that's the way it works. For those who get cross-wise with the system, however, it can become a nightmare of bureaucracy, delays and hassles whose only remedy is costly and time-consuming legal action.

A claimant who has a dispute with his insurer may take his grievance to the state Dept. of Labor's Workmen's Compensation Division. A state-run, three-person board rules on cases in which claimant and carrier cannot agree.

The board's task is an unenviable one. Insurance companies and claimants both go doctor shopping and come to the hearing with the most persuasive experts money can buy. To make its decision, the board must cut its way through legal flak, medical jargon and mountains of paperwork.

The board also is swamped with a backlog of cases stemming from the trans-Alaska pipeline boom. Although the Board is required by statute to issue a decision within 20 days, claimants typically wait three to four months for the over-worked board to hand down its decision.

Numbers tell the story of the board's overload. Six hundred and fifteen comp cases were contested in 1975; three years later the number had risen to 1630 — an increase of 265 percent.

Formal decisions issued by the board after hearings increased from 176 in fiscal 1975 to 430 in fiscal 1978. During the same period, the number of compromise settlements (agreed to by claimant and carrier and approved by the board) rose from 150 to 584.

Workmen's Compensation Division director John Cook acknowledges that his agency is swamped. A proposal to add personnel to the comp board to handle the increased work load has been bandied about in Juneau with no legislative action to date.

Alaska benefits — presently at a maximum of \$654.30 per week, the level set by the legislature — are higher than any other state in the nation. One federal program, the Federal Employees Compensation Act, sets a higher level (\$678.25), according to a trade publication, "Analysis of Workmen's Compensation laws."

Last year, when Alaska paid \$607 per week, Iowa was paying injured workers a maximum salary substitute of \$247.48 to rank second. Only a few other states paid over \$200.

Industry sources frequently comment that Alaska's high comp benefits may be worth faking injuries for — at least until the next pipeline comes along. The extent of the fraud in the state has not been ascertained.

"There is no doubt whatsoever that a huge change in costs — both insurance and average weekly payments — has been noticed," says Richard Jones of Sohio Petroleum Company's employee relations. And, Jones says, "we've noticed that the percentage of applicants having their claims accepted has gone up. I can't even remember when one was declined."

Ron Krueger, personnel officer for the Alaska Railroad, cites similar discontent with the federal law, estimating that compensation costs have tripled since 1974. The railroad now pays about \$1 million in doctor bills and compensation, he says.

"I'm sure that the accident rate has not tripled," he says. "Costs are rising out of proportion to injuries."

Former state insurance chief Richard Block says he finds it difficult to believe a system that is paying claimants \$70 million a year in benefits is treating many workers unfairly.

Not so, says Diane Black of Fairbanks. Injured on a pipeline job in 1976 (she was a cook at Toolik Camp and hurt her back while moving furniture), Black says she and other workers who feel they have been unfairly treated have formed an organization — Action for Victims of Industrial Accidents (AVIA) — to reform the comp system. To date, however, their organization has failed to convince either the government or the insurance industry that there is a widespread or serious problem.

Claimants who are denied benefits often find themselves in pain and in poverty, says AVIA organizer Black. "We have a hard time making ends meet, let alone launching a protest," she states.

Black says she has 15 signed statements and knows of at least 30 more injured workers who feel they got short shrift from the comp system. Many of the cases involve one carrier, Alaska Pacific Assurance Co. (Alpac).

Possibly, Black says, that's because Alpac is the largest comp carrier in the state. Sparked by a contract with Alyeska Pipeline Service Co. that comprised 44 percent of Alpac's business in 1976, according to data on file with the Division of Insurance, Alpac's growth has outpaced all other carriers in the state.

In 1977 Alpac wrote \$60,675,000 worth of comp premiums — six times more than any other carrier operating in Alaska and 56 percent of the state total. By comparison, in 1975 Alpac's \$17.4 million was nearly three times that of its main competitor and 40 percent of the state's total.

In contrast to AVIA's gloomy view of Alpac, a Division of Insurance examiner who audited Alpac's

records between September 1977 and January 1978 reported that he "got the general impression that the treatment of...claimants...was exemplary." The examiner also characterized the company's rehabilitation program as "excellent." A market conduct exam, which would have directed more attention to the manner in which Alpac handles individual claims, was scheduled by the division but was never conducted.

The Division of Insurance has a consumer complaint section to handle problems individuals encounter with insurance companies. But his agency usually sends comp claimant problems to the overloaded Workmen's Compensation Division in the Labor Department. According to Insurance Division investigator Bob Blakeney of Anchorage, his office refers about three calls a week to the Workmen's Compensation Division.

If it is difficult to get a handle on claimant problems, it is even harder to get a clear picture of the economics of comp insurance. "Very unprofitable," says an industry source, pulling out a recent compilation in an insurance newsletter. The unaudited, nationwide data indicates the comp premium-to-payout ratio is one of the worst in the industry and just about at the break-even point.

The purported unprofitability of comp doesn't seem to bother Alpac. Largely on the strength of its Alaska comp writings, this insurance company has grown from five employees in 1968 to 296 today. In recent years the company has opened offices in Fairbanks and Valdez, built a handsome new headquarters in Anchorage and branched out to Montana, Idaho, Washington, Oregon and California.

Records filed in Juneau with that Division do not provide a clear answer to the question, is comp a lemon or a money-maker for insurance companies? Part of the problem is that the state's leading carriers — Alpac, Industrial Indemnity and Providence of Wash-

ington — along with their filials in Alaska together with their filials from other states, making it all but impossible to develop a true picture of the profitability of writing comp insurance in Alaska.

Division of Insurance personnel who readily admit they would like to have more information about the way Alaska's comp carriers figure their rates out and are trying to get that information.

Financial studies are being conducted, and the division has scheduled a public hearing in Anchorage May 15 to discuss workers' comp rate-making issues.

Next: who pays the bill for workmen's comp? (The Fund for Investigative Journalism provided some of the funding for the research for this series).

Anchorage Daily News
April 29, 1979
(cont.)

Former Insurance Division director stumps for study of workers' comp

By R.A. FINEBERG
Daily News correspondent

Since stepping down as director of the state's Insurance Division last December, Richard L. Block has been dividing his time between revamping the Alyeska Pipeline Service Co.'s insurance department and drumming up support from businessmen for a thorough investigation of the worker's compensation system.

Noting that the Director of Insurance is the public's protector and advocate on insurance matters, some observers question the propriety of the worker's comp reform campaign Block proposed shortly after leaving public office.

The question the critics ask: If reforms in the cumbersome workers' comp system are needed (few deny this proposition) could Block have done more about this problem while he was the state's top insurance official?

Block maintains his present consultant activities are "not a conflict at all" with his past duties. "The work I'm doing as a risk management consultant," he says, "is advising buyers of insurance on how to more effectively utilize the insurance mechanism." Essentially, he continues, that is "the same thing I did as Director."

Although the state's conflict of interest statute seeks "to discourage public officials from acting upon a private business interest in the performance of a public duty," the statute applies only to conduct while in office. No law prohibits a public official from going through the so-called "revolving door" between public and private office.

Block's abrupt transition from public servant to would-be business advocate is no more precipitous than his entry into public service. When Block became the state's Director of Insurance Oct. 1, 1975, he resigned from the Board of Directors of Alaska Pacific Assurance Co. (Alpac), the company that dominates the workers' comp field in Alaska.

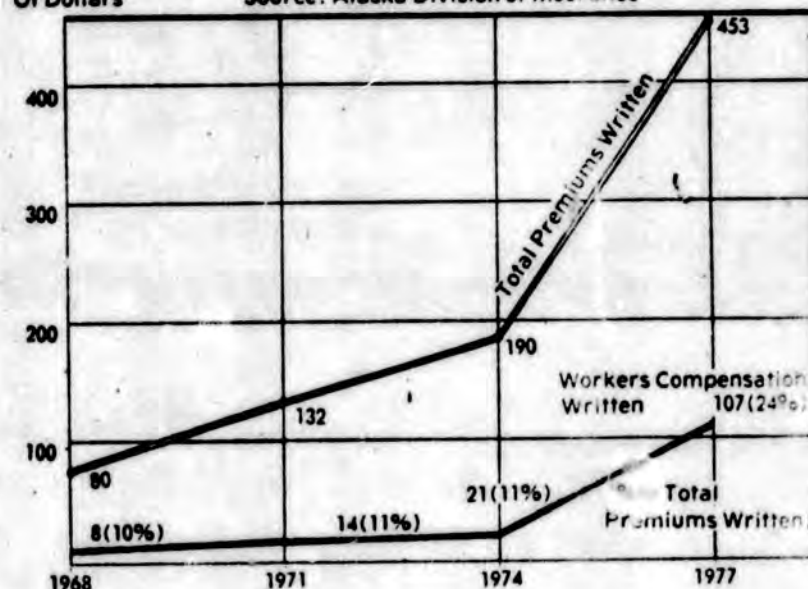
Generally regarded as one of the most knowledgeable persons about insurance in the state, Block wins high marks from his former subordinates at the Division of Insurance — and from many others — for fairness and intelligence.

But some critics say Block reflected the insurance industry position — rather than the consumer's — on many matters. "I don't necessarily fault that the guy that runs it (the Insurance Division) is out of the industry — he has to have some knowledge, says AFL-CIO spokesman Dwayne Carlson in Juneau. "But it just never turns out right...I don't know of any time an industry request has been rejected," Carlson says.

Deputy director John George, who served under Block, thinks the criticism is unfounded. Anybody who serves as long as Block did in a controversial position, George maintains, is bound to draw somebody's criticism from time to time.

Asked to evaluate his tour as Director of Insurance, Block replies, "We had to make some tough decisions...but they were decisions that were long overdue...What I really did was motivate people there to understand what

Millions Of Dollars INSURANCE PREMIUMS WRITTEN — ALASKA
Source: Alaska Division of Insurance



Graph traces the growth of the Alaska insurance business since 1968 (top line) and the growth of worker's comp costs. In 1968, worker's comp premiums made up approximately 10 per cent of the total insurance market in Alaska; by 1977 comp premiums accounted for 24 percent of all insurance premiums written and weighed in as the largest insurance line in the state by dollar value.

a regulatory agency was supposed to do and show them how to do it. Now they're out there doing it."

Block's successor at the Division of Insurance, Kenneth Moore, says he found a "clean desk" when he took over Feb. 26. The former director, Moore says, left no specific recommendations no lists of immediate or potential problem areas.

Before Moore arrived from New Mexico to start his new job, however, Block had circulated a proposal to Alaska businessmen calling for a thorough review of workers' compensation. The study Block is proposing points toward major legislative reform, as well as changes for both the state Labor Department's Division of Workmen's Compensation and the Commerce Department agency Block headed for over three years.

(continued)



Richard Block



Kenneth Moore

Block's "Proposal to the Alaska Coalition of Employers for the Identification and elimination of the causes of High Cost of Workmens' Compensation Insurance to Alaskan Employers" is dated Jan. 18, 1979; his last day as Director of Insurance was Dec. 22, 1978.

Even before the proposal was circulated, Alyeska Pipeline Service Co. had hired Block on a consulting basis to manage temporarily and overhaul the pipeline company's insurance program.

Two oil companies owning a major share of the Alyeska pipeline, Exxon and Sohio, are among the companies sponsoring Block's research proposal, which describes the following probably goals:

- "A legislative package which must be carried to Juneau and advocated;"
- "Change in administrative procedures at the Division of Workmens' Compensations;"
- Change of direction by the courts;
- "Change in the (workers' comp premium) rating structure which must be developed and implemented through the Division of Insurance;"
- "Changes in the health care delivery system."

Block's seven-page research proposal traces the recent history of workers' compensation in Alaska, pointing out that the state legislature boosted comp benefits in 1975 to reflect the high wages of the pipeline boom. (This action was taken five months before Block left private industry to become Director of Insurance in October, 1975.)

Increased premiums necessary to pay for the benefit hike resulted in criticism from employers, who must pay for worker's comp insurance for their employees. In public office Block sought to cut back benefit increases, thereby reducing premium rates.

Before coming to Alaska, Block served as general counsel for Pacific Employers Insurance Co. Like Alpac, Pacific Employers is a wholly-owned subsidiary of the nationwide conglomerate Insurance Co. of North America (INA).

When INA purchased Alpac in 1971, Block helped the parent company with legal technicalities. Block later served a brief stint as Alpac's assistant secretary and spent three years on the Alpac Board of Directors, a position he resigned to become Alaska's Director of Insurance in 1975.

Although he maintains there is no conflict between his present consulting activities and his recently-held public position, Block does agree that he is "more valuable to the people I'm working for...I certainly know a lot more for having worked in the division."

A bill proposed by the state ombudsman last year would prohibit former public officials from being paid to represent any person or business on matters the former official handled in public office for 12 months after leaving office. The bill has yet to receive legislative committee action, however, and the revolving door through which Block entered and left public office is entirely legal.

Some doctors rough on comp claims

By R.A. FINEBERG

(Second of a series)

When Robert MacArmour, a Fairbanks pipeline worker injured in a truck accident in the Brooks Range in May 1977, pressed his claim for workers' compensation benefits, Alaska Pacific Assurance Co. (Alpac) sent him to a San Francisco specialist for examination.

The physician, Dr. Willard F. Pennell, spent three hours with MacArmour, then wrote a 12-page, single-spaced report to Alpac.

The neurologist-psychiatrist told the insurance company, MacArmour most likely was faking his back problems.

Alpac denied MacArmour further benefits. Citing Dr. Pennell's opinion, the state Workmen's Compensation Board upheld the insurance company, concluding MacArmour's complaints were "based on a conscious attempt to get additional workmen's compensation benefits."

Today MacArmour is still seek-

ing medical treatment while he looks for a lawyer to help him tackle Alpac and the compensation board.

MacArmour says he knew early in his interview with Dr. Pennell that the physician was going to side with the insurance company.

Diane Black, another Fairbanks worker who says she too has a back problem, tells an almost identical story about Dr. Pennell and Alpac.

An Anchorage woman, who asked that her name be withheld, claims Alpac sent her to Dr. Pennell and that the San Francisco specialist stripped her of "almost everything but my driver's license."

None of the three Alaska worker's comp claimants knew each other when Alpac sent them to San Francisco. Until recently they had never heard of a lawyer named Marvin E. Lewis.

Lewis says he could have warned them about Dr. Pennell. A San Francisco attorney and past president of the American Trial Lawyers Association, Lewis has

been in court with Dr. Pennell and his partner, Dr. Knox Finley, for more than two decades.

"They always say my client is faking it; I always win," the lawyer snaps, noting that he has won at least half a dozen major injury suits for clients against whom Dr. Finley has testified.

Lewis is the author of a legal text, "The Psychic Injury." In that volume he describes in detail several of the cases in which he has faced Dr. Pennell's partner. Those comments, he says, are equally applicable to the work of Dr. Pennell.

In one case quoted in the textbook, Lewis pointed out that Dr. Finley had appeared in nearly 100 cases in San Francisco as an expert witness, then asked the doctor to name a single case in which the physician had testified that there is a link between the accident in question and the psychological damage for which the plaintiff seeks damages.

The physician was unable to

name a case in which he sided with the plaintiff.

Lewis concluded one successful prosecution with this statement to the jury:

"Dr. Knox Finley comes from a defense mill. That's what his office is...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...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...they were doing all this...as a business, a business of testifying for insurance companies..."

Dr. Pennell declines to discuss lawyer Lewis' criticisms of himself and his partners. What about the complaints of MacArmour, Black and other Alaskans? Professional ethics, Dr. Pennell replies, prohibit him from discussing individual cases.

See Back Page, WORKMEN'S

Continued

Why does Alpac use Dr. Pennell? According to Alpac comp director Barbara Grissom, Dr. Pennell is one of the few West Coast physicians licensed in both psychiatry and neurology. Grissom describes Dr. Pennell as "a very competent man" who does not always render a finding that results in denial of benefits to the claimant.

Under comp law, Alpac vice president Gay Dwyre points out, both the insurance carrier and the claimant have the right to call in one independent consultant.

Grissom says Alpac has used Dr. Pennell in five or six cases she can think of. Other Alaska comp carriers have also used Dr. Pennell on occasion.

How many Alaska comp claimants have been sent to Dr. Pennell? How often has the Workmen's Compensation Board decided controversial cases on the basis of this physician's testimony?

Director of Workmen's Compensation John Cook says he cannot answer the question. To gather this kind of data would require going through mountains of paperwork associated with thousands of comp cases on file in Juneau.

Cook says his staff is already overworked and he cannot assign anybody to this task. Despite the fact that Dr. Pennell's opinion was cited at length as the basis for the board's rejection of both Black and MacArmour's appeals for continued compensation, Cook denies that the board is unduly influenced by any one physician in a given case.

Dwayne Carlson, AFL-CIO lobbyist in Juneau, says he has been proposing that the workers' comp and other State Labor Department files should be computerized so that safety and medical trends can be pinpointed and dealt with promptly. Carlson recalls he had to gather

statistics manually to present testimony for workers' comp hearings in 1975. He would have to do the same today, he adds.

Injured Fairbanks workers who have banded together to call attention to their problems want the same information. The group, Action For Victims of Industrial Accidents (AVIA), has gathered names of several dozen allegedly injured workers who claim the comp system has failed them. However, AVIA lacks comprehensive statistics that might underpin the complaints.

(continued)

Workmen's comp doctors criticized

AVIA's prime mover is Diane Black, 34, who injured her back working at a pipeline camp in 1976. She walks with the aid of a cane and requires pills and treatments for pain she says resulted from the accident, which occurred when she was moving furniture at Toslik camp.

After paying \$24,000 in compensation and \$6,000 in medical expenses, Alpac cut Black off in 1977. The Workmen's Compensation Board twice upheld the insurance company. Said the board: "We 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."

The board quoted Dr. Pennell, who advised the insurance company that "Mrs. Black may have sustained a mild low back sprain at the time she lifted the bed at work (in 1976) but certainly that injury could not have produced symptoms of any great duration, and I firmly believe that she recovered from those symptoms."

Black, who is writing her own court brief challenging Alpac and the state board, contends Dr. Pennell and the board ignored and misstated key facts about her case. She feels she needs back surgery to correct the problem stemming from her injury.

Insurance industry sources say back injuries are among the most difficult for physicians — and the workmen's compensation board — to evaluate.

A back injury is also at issue in the case of pipeline compressor operator MacArmour. He was thrown from the passenger seat of a truck when it careened out of control and plunged off a steep bank at the Atigun Pass haul road crossing. The truck rolled several times. MacArmour was accompa-

nying the "pigs" that were used to clean the inside of the pipeline to the next job site on May 9, 1977.

The accident knocked him senseless, injuring his back. He was airlifted to Fairbanks for medical treatment.

According to the medical records, MacArmour was released from the Fairbanks hospital after eight days, then spent several months going from doctor to doctor. In September of 1977, he tried to go back to work as a compressor operator, but quickly landed back in the hospital, complaining of intense back pain.

Cut off from compensation benefits in July, 1977, MacArmour brought his case to the Workmen's Compensation Board for a hearing on Oct. 2, 1978.

In its Jan. 30, 1979 decision, the board sided with Alpac and Dr. Pennell. In doing so, the board rejected the finding of California orthopedist Michael Roback, who examined MacArmour twice and concluded MacArmour had not received "the full benefit of medical care" and was "totally and permanently disable" as a result of the haul road accident.

Although the law requires the board to issue an opinion in 20 days, MacArmour had to wait four months for a decision. The delay in MacArmour's case was typical.

The question the board pondered for four months was whether MacArmour's alleged back pain was caused by a genuine physical problem, by a psychological problem, or whether the symptoms were faked. The board, quoting at length from Dr. Pennell's critical evaluation, dismissed MacArmour's case with the judgment: "Applicant's complaints are based on a conscious attempt to get additional workmen's compensation benefits."

MacArmour says he plans to appeal the board's decision in court, but first he has to find a lawyer, to take the case. Several

lawyers said they are reluctant to take MacArmour's case because it promises to be time-consuming and expensive to research and prosecute.

While MacArmour casts about for an attorney, he must also decide what to do about resolving his pain — and several thousand dollars in medical bills that have accumulated since the 1977 accident.

Although Black, MacArmour and other comp claimants with alleged grievances have demonstrated in front of the state building in Fairbanks, besieged the Ombudsman and the Governor's office with complaints and contacted the Workmen's Compensation Division's Fairbanks representative on numerous occasions, they have received a less than heartwarming response from state officials.

Workmen's Comp Director Cook says he hasn't investigated the group's complaints because they haven't addressed specific inquiries to him. Disputed cases requiring the board's attention have jumped from 615 in fiscal 1975 to 1630 in two years later, and Cook acknowledges that the division is hard pressed to handle all the paperwork.

The State Commerce Department's Division of Insurance has a consumer complaint section, but that agency has been of little use to comp claimants like MacArmour. Bob Blakeney, complaint investigator, says his office usually forwards comp claimants to the Workmen's Compensation Board because that institution is set up to deal with claimant-carrier problems.

How do the comp claimants fare with the board? "We don't know," Blakeney replies. His agency and the Workmen's Compensation Board are within different departments, and bureaucrats are normally reluctant to step on toes by crossing departmental lines.

Asked how many comp complaints his office directs to the Workmen's Compensation Division, Blakeney checks with two staff members and comes back with an answer: about three a week. He seems somewhat surprised. "I think three a week is a lot of calls," Blakeney says, "and if we had three a week on a standard line (of insurance) we would really feel like we had a tremendous problem."

Former Director of Insurance Richard L. Block, who is serving as a consultant to private business and who plans to conduct a research program aimed at lowering workers' comp rates, says he finds it difficult to believe that a system that is shelling out \$70 million a year in comp benefits is treating many workers unfairly.

"Even assuming the company wanted to put the squeeze on workers," Block says, "you've got the Board watching out." The insurance carrier is penalized if it is wrong in denying benefits, Block adds, and the carrier also has to pay the claimant's attorney fees.

Block's view is very much at odds with the impressions of seven comp claimants who met one evening last month at an Anchorage restaurant to discuss their comp problems. Truck drivers, ironworkers and laborers, they all told similar stories. None were associated with the Fairbanks-based AVIA.

Some were cut off without notice; others had to fight for months to win benefits the comp system purports to deliver promptly to injured workers.

One claimant, who felt he had received a raw deal from doctors and insurance companies alike, commented, "I had a brother who was a surgeon and I believe in doctors, but when you find people

(continued)

like this you can't trust, it turns you around."

The workers compared problems, exchanged bits of information and leafed through the 110-page reprint of the law governing worker's comp, searching for passages that pertained to their individual cases. "The insurance company never informed me at all that there was a book," one said.

Most agreed a concise and clearly written guide to key portions of the comp law would be a great help to the injured worker, who sometimes knows little about the intricacies of law. Although one of the duties of the Director of Insurance is to "inform the public of matters concerning the...coverage, benefits and rights of insurance," former Insurance Director Block thinks that that if such a booklet were necessary, the Division of Workmen's Compensation ought to put it out.

Hovering over claimants at odds with the system is a stigma: they are regarded by many as fakers or malingerers. Nobody knows just how many comp frauds there are, but the problem is a serious one.

Several claims adjusters recall that during the heyday of pipeline construction they could tell when a contractor was about to finish a portion of work and lay people off; a few days before the job finished, a rash of workers employed by that contractor would show up at the worker's comp office with alleged back injuries. The situation today, most observers agree, is even worse.

The fact that some workers find Alaska's lucrative comp benefits worth faking for (the comp system paid \$70 million in benefits to Alaska claimants in 1977) is of little comfort to Luz Arrango. The Fairbanks woman, who lives with Robert MacArmour, has been supporting herself, MacArmour and two children since MacArmour was injured in 1977.

Luz does not believe the doctors who have labeled MacArmour a fake. "I have seen his pain," she says.

There have been nights, she recalls, when MacArmour has moaned in anguish in his sleep, twisting and grimacing in obvious pain. Yet she would ask the next morning how he fared during the night, and he'd reply, "not badly."

"Why should Robert and the children pay for other people's frauds?" Luz wants to know.

When Alpac sent MacArmour to Dr. Pennell, the company issued a plane ticket and \$60 in expense money. MacArmour received the Alpac check and ticket less than 48 hours before he was scheduled to

depart. The expense money was inadequate. He spent part of the day before he left trying to secure enough money to cover taxis to and from the San Francisco airport, a hotel room, meals and miscellaneous expenses. By calling the Workmen's Compensation Division and Alpac he finally got an additional \$40.

His expense records show he needed it all.

(Tomorrow: The high cost of workers' compensation — how the rates are set and reviewed. The Fund for Investigative Journalism provided some of the funding for the research for this series).

Anchorage Daily News
May 2, 1979
(Page 1; part 3 of series)

Compensation rates may artificially boost costs

By R. A. FINEBERG
Daily News correspondent

(Last of a series)

Variations in the way Alaska insurance companies report data to the national workmen's compensation rate-making organization may be artificially boosting the price Alaska employers pay for workers' comp insurance, The Daily News has learned.

This possibility has led the state Division of Insurance to hire accounting specialists to examine the complicated comp rate-setting procedure. The report, by the California-based firm of Milliman and Robertson, is due by June 30, according to state insurance director Kenneth Moore.

Informed sources say the investigation was triggered when the Division of Insurance learned Alaska Pacific Assurance Co. (Alpac), the state's largest workers' comp insurance carrier, may not list its reserves — the amount the company sets aside for anticipated payments — in the same way other major carriers operating in Alaska list theirs.

But an Alpac official said Monday the company does not list its reserves in a different manner.

Don Koch, the state's insurance market surveillance chief, said one area of confusion is the manner in which Alpac reports annuity payments to the National Council on Compensation Insurance, the industry's rate-setting organization.

Alpac buys annuities (simply guarantees to make regular payments) to cover long-term payments to disabled comp claimants or to survivors of persons killed in job-related accidents.

Alpac, or any other insurance company, may — for example — buy an annuity that pays \$1.5 million over a 30-year period for less than \$500,000.

Insurance division officials are concerned that a company may record the money set aside for anticipated pay-outs — the \$1.5 million figure — with the National Council for rate-making purposes even though the company later pays the lower figure.

And it may be that the lower
See Back Page, RATES

Rates

Continued

May 2, 1979
(part 3; continued)

figure is the appropriate one to use in calculating the costs that go into the rates a carrier charges for workmens' compensation, Koch said. If some carriers report the \$1.5 million pay-out price rather than the \$500,000 purchase price, the practice would tend to raise comp rates, Koch said.

But Alpac says the purchase price is what it reports to the National Council.

"What we paid for the annuity is what we report," Alpac vice president Gay Dwyre said Monday.

Koch said, "We're under the impression it's the other way around. However, we have not confirmed that as yet...it is one of the things Milliman and Robertson will look at."

At this time, Koch said, other major carriers are advising the National Council of the actual amount they pay for long-term securities, while Alpac appears to be listing the amount the security, once purchased, ultimately pays out.

Koch emphasized that the division is not prepared at this time to fault any carrier. There is legitimate confusion, he said, about which figure to use.

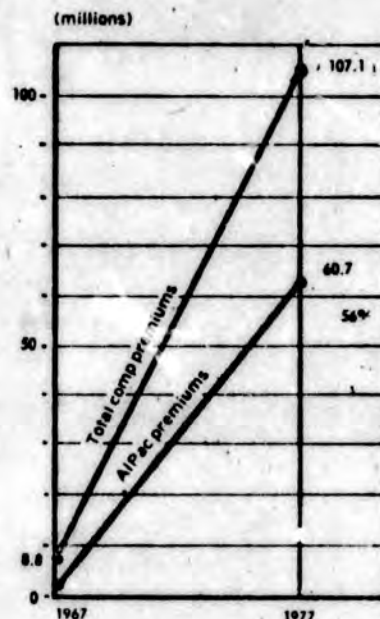
Whether the higher figure or the lower one is used, he said, all companies should use the same system.

"Somebody is not doing it the way it should be done," he said. "We're going to...get it fixed."

The extent to which different reporting methods may inflate Alaska comp rates cannot be determined from records filed with the Division of Insurance in Juneau.

That is one of the reasons the Division of Insurance hired Milliman and Robertson to examine the data submitted to the National Council. The data submitted to the National Council by carriers, Koch said, is generally accepted by the Council without auditing.

Workers' comp premiums written in Alaska



Only a small percentage of comp cases require large, long-term payments according to Richard L. Block, former state Director of Insurance now in charge of Alyeska Pipeline Service Co.'s risk management program. The pipeline carrier had "15,000 to 20,000" comp cases during construction of which less than 800 are still open. But those 800 cases Block says, "represent more in dollars than all we've ever paid out."

Koch said the Milliman and Robertson exam is looking at a wide range of rate-setting practices. However, he said, it was the Division's concern that some of Alpac's figures "may not reflect actual experience" that prompted the study.

The possible discrepancy in reporting methods was uncovered in 1977 when the Division of Insurance met with Alpac employees to lay the groundwork for a routine financial examination of Alpac. That

audit of Alpac, completed in January 1978, criticized the company for sloppy record-keeping and questioned the firm's reserving practices.

Alpac did not contest the audit.

Among the 1978 state audit's findings:

- The accounting firm of Peat, Marwick, Mitchell & Co., which conducted part of the examination for the state, found several weaknesses in Alpac's system of internal accounting. "Because of the overall importance of data processing to the company's system of internal control," the auditing firm advised the state, "we recommend that continued improvements...be given high priority." Alpac instituted the changes recommended.

- The audit revealed a backlog of approximately \$619,000 in rejected claimchecks — checks branch offices requested for claimants that were cancelled by Alpac's central office for various reasons. Some, several months old, had yet to be returned to the originating office.

- Alpac's year-end report for 1976 showed an overall reserve deficiency of \$2,095,419. However, a study of closed claims made by the state auditors showed that for the next nine months Alpac had a surplus on closed claims of \$1,468,922. State financial examiner Don DeMuth finds the contrast in these figures "hard to believe."

Ordinarily, DeMuth said, he would expect a correlation between the two studies. In this case, however, one set of figures appeared to indicate significant under-reserving, while the other set indicated over-reserving.

Nothing that may be a legitimate and logical explanation for this contrast, DeMuth said he would like to know more about Alpac's reserve reporting techniques.

◀ Noting that there may be a le
(correction appeared 5/3/79)

(continued)

Anchorage Daily News
May 2, 1979
(Part 3; continued)

"Normally an insurance regulatory body would not be concerned if a company was over-reserved," the 1978 audit stated, "...but since Alaska Pacific Assurance Co. writes approximately one-half the workers' compensation business in the state, the Division of Insurance...is concerned with the potential effect that conservative loss reserving has on rate-making statistics. The division expects to make a market conduct examination of Alaska Pacific Assurance Co. in the near future which will include a review of the rate-making process and rate-making data base."

The market conduct study was never made market surveillance chief Koch said, because there were too many other projects that required the division's attention. Consequently, Koch advised then-director Richard L. Block, Koch would not be able to conduct the market study. Block, Koch recalls, was not happy about it.

Questions raised in the process of laying the ground work for the routine Alpac audit, however,

tipped the state examiners to the possibility that discrepancies existed between the company's actual losses and the losses reported to the National Council. It was that information, division personnel said, that prompted the present study by Milliman and Robertson.

While questioning Alpac's paperwork procedures, the 1978 state audit praised the company's handling of claimants. "While the financial examiner did not make a specific review...(of claim settlement practices)," the report said, inspection of claim files for reserves gave "the general impression that treatment of...claimants was exemplary." Alpac's rehabilitation program was characterized as "excellent."

Alpac's claim handling has been criticized by some claimants who feel the company has unjustly denied them injury benefits. In Fairbanks a disgruntled group of injured workers has formed a group known as Action for Victims of Industrial Accidents. Group spokesman Diane Black has signed statements from at least 15 workers in the Fairbanks area, many of whom felt they got a raw deal from Alpac.

Industry-wide figures show that workers' comp carriers pay about as much for losses and expenses as they collect in premiums, leaving little apparent margin for profit. But these figures do not take into account the income the insurance company generates by investing large sums of money that will not have to be paid out in losses until a future date.

That an insurance company can make money while writing policies at an apparent loss is shown by figures on file with the Division of Insurance for Alpac. From 1973 thru 1976 Alpac recorded an underwriting loss of nearly one million dollars. During the same period, however, the company showed an after-tax profit of \$2,328,120.

According to state figures in

1977 Alpac, a wholly-owned subsidiary of the national giant Insurance Co. of North America, wrote \$88,675,000 of workers' comp premiums in Alaska. That's more than all other comp carriers in the state combined.

Alpac is headquartered in Anchorage with about 120 employees here. In Fairbanks, Juneau and Ketchikan offices, the company has another 22 employees, and about another 100 employees in five other western states.

Workers' comp benefits have been a subject of controversy in Alaska since 1975, when the legislature, in keeping with the findings of a Presidential commission, increased the benefit payments for on-the-job injuries. As benefits were increased to reflect pipeline wages, insurance carriers increased premiums to offset benefit payouts.

Criticism from businessmen, who must purchase the mandatory insurance from private carriers, resulted in a slight reduction in benefits — and premiums — in subsequent years, but Alaska's benefits are still the highest in the nation.

During the past decade the state has witnessed a dramatic jump in total comp premium payments, from approximately \$8 million in 1968 to \$107 million in 1977. During the same period Alpac's has emerged as the dominant comp carrier and the largest insurance company in the state.

The Division of Insurance has not yet completed its annual report for 1978, but informed sources told The Daily News they expect the total pay-out in comp premiums to drop slightly, while Alpac will retain its dominant position, recording more comp premiums than all other carriers in the state combined.

(The Fund for Investigative Journalism helped pay for some of the research for this series.)

a-8**Anchorage Daily News****Friday, May 4, 1979**

Anchorage Daily News

Winner, 1976 Pulitzer Prize Gold Medal for Public Service

Katherine Fanning
Editor and Publisher

Stan Abbott
Executive Editor



Gerald E. Grilly
General Manager

Clay Haswell
Managing Editor

Lawrence Fanning, Editor and Publisher, 1967 to 1971

Alaska's Only Morning Newspaper • Founded in 1946 by Norman C. Brown

Changes needed for workers' comp

A wide-ranging examination of Workmen's Compensation in Alaska carried in The Daily News this week suggests a number of subjects that need close attention to ensure that the program really benefits those it is designed to help. The list of unanswered questions raised about the system demands a careful study be initiated to determine the facts and figures upon which policy makers may judge the program.

Without question, claimants have sometimes been caught in a classic bureaucratic squeeze; overlapping and sometimes conflicting jurisdictions of the Department of Labor's Workmen's Compensation Division and the Insurance Division in the Department of Revenue serve to undermine the comprehensive handling these important claims should receive. Upon checking, an official in the Revenue division office acknowledged a sizeable number of complaints involving workers' comp, but also told the complaint office hadn't identified the subject as an area needing attention.

It is also troubling to note that a number of claimants — nobody knows just how many — have apparently been denied claims on the strength of medical testimony from a California physician well known for his consistent findings in favor of insurance companies. In cases examined in our reports, those claimants couldn't convince any applicable state agency to investigate the circumstances.

Have legitimate claimants been denied help from the system designed to aid them? The state has a responsibility to find out, and, if the answer is yes, changes ought to be made now.

The Division of Insurance also ought to examine the method by which rates are established for workers' compensation policies. Those rates are now filed by the Northwestern Compensation Rating Bureau, an affiliate of the National Council on Compensation Insurance — an insurance industry organization. Those rates, fixed on the basis of unaudited data, have tremendous impact on Alaska employers who foot the bill, and the state should have greater certainty about their validity.

It is certain that a number of Alaska workers believe they have been wronged by the current system. It is not enough to answer, as did former Insurance Director Richard Block, that since lots of claims have been paid the system must be working.



Anchorage Daily News/Rob Stapleton

Diane Black, injured in 1976 while working on the trans-Alaska pipeline, took part in a protest Tuesday at the MacKay Building in Anchorage.

Anchorage Daily News

July 4, 1979

(Page C-1)

Injured workers protest workmen's comp policies

By BRIAN A. HUNTLEY

Daily News reporter

A group of injured workers picketed the MacKay building in Anchorage Tuesday, protesting what they called unfair treatment by state workmen's compensation officials.

The protest led to an afternoon meeting with Lt. Gov. Terry Miller. Miller said the talks with the protesters "were productive" and pledged to inform Gov. Hammond of the group's grievances and schedule a meeting with Labor Commissioner Ed Orbeck.

But not all the picketers were satisfied with the afternoon session.

Diane Black, injured in 1976 while working on the oil pipeline, said "We have heard the promises before, and I guess we'll have to wait and see what happens. But if we don't get action, we will continue the (picket) lines and hunger strikes."

Black said many injured workers were afraid to come forward to protest poor treatment by the

Workmen's Compensation Board and insurance companies.

"I guess when we get desperate enough, we have to come forward — we can't get help from Social Security, welfare, or the state vocational rehab (rehabilitation) — it's just a disgrace."

She added workers often cannot afford to fight long legal battles with insurance companies, and after financially draining litigation, the injured worker may be forced to accept a small settlement.

"If you're destitute, you just can't fight any more — you just desperately take whatever you can get, but it may not be fair," Black said.

Robert D. Mill, a Palmer resident injured while working on the pipeline, said he objected to the state's reliance on testimony by insurance company doctors. "Some of the doctors just haven't accurately reviewed our cases. We may have been treated by our own doctors for months, but the insurance doctor may only look at us for 15 minutes — and that will determine our payments for the rest of our lives," Mill added.

Complaints, case backlogs surround workmen's comp rate hearing

By RICHARD A. FINEBERG

Daily News correspondent

Rates which employers must pay to insure workers against on-the-job injuries will be the primary focus of a hearing Thursday in Anchorage, but other aspects of the workmen's compensation program may be considered, according to Kenneth Moore, director of the state's Division of Insurance, who will chair the session.

An issue that could come up at Thursday's hearing is the way the insurance industry and state authorities handle workmen's comp cases. Some workers seeking benefits say they have been disabled by on-the-job accidents but have been denied benefits by insurance companies who run the complicated workmen's comp program under supervision by two state agencies and a review board.

One of the agencies is Moore's Division of Insurance, a branch of the Department of Commerce and Economic Development that licenses and insures all insurance companies operating in Alaska. The other is the Department of Labor's Workmen's Compensation Division, which provides staff and administrative support for the Workmen's Compensation Board, a three-person panel that handles disputes between injured workers and insurance carriers.

The proposed comp rate change on the docket Thursday would result in a relatively small increase in overall comp rates — perhaps one or two percent, according to

sources familiar with the filing by the insurance industry's National Council on Compensation Insurance (NCCI). While premium rates for some categories of workers, such as contract construction employees, would jump considerably under the NCCI proposal, other categories would drop.

The NCCI first submitted proposed changes in the comp premium structure earlier this year, but the Division of Insurance sent the proposal back to the NCCI for more supporting information, according to Division of Insurance sources. Comp rates reflect accident and benefit payment data submitted to the NCCI by carriers operating in Alaska without audit.

Last spring, concern about the NCCI's unaudited rate-setting procedures prompted the Division of Insurance to commission a special review of the NCCI data by a California specialist. The division has received that report, but the contents will not be made public until the industry has had a chance to review the findings, according to a Division of Insurance source.

The source described the findings as "very, very favorable to the companies ... it found substantially less (problems) than we thought it was going to find." The report will not be part of Thursday's hearing, the source said, but the study might be released later in the month if the companies do not challenge the findings.

While Moore takes testimony in Anchorage on comp rates — and other issues, as time permits — a new director of the Labor Depart-

ment's Workmen's Compensation Division moves to Juneau. Jacquelyn McClintock, former comp hearing officer in Fairbanks, steps into the director's slot that Labor Commissioner Ed Orbeck says gave retiring director John Cook ulcers. After 16 years with the state Cook left the job last month for medical reasons, according to Orbeck.

Orbeck and McClintock faced a court challenge Oct. 5 in Fairbanks from seven comp claimants who sued the state after waiting several months for decisions on their cases by the overworked Workmen's Compensation Board. The state officials also met with a second group of disgruntled comp claimants.

Under state law, the board is supposed to rule on comp disputes within 20 days after a hearing, but the average case takes 96 days, according to Labor Department statistics.

"There is no way we can comply with the law as it is written," Orbeck said after the court session. There are just too many disputed cases and too few board members and staff aides to handle the increase in disputes between claimants and carriers in the wake of the pipeline boom, the commissioner said.

The Workmen's Compensation Board consists of three persons, two community members appointed by the governor and one representative of the Commissioner of Labor. In the past, Workmen's Compensation Division hearing officers based in Fairbanks and Anchorage have worked with one governor-appointed panel, holding

hearings in both cities. A second Workmen's Compensation Board, working with another hearing officer, handled the Southeast Alaska panhandle.

This spring, in response to the growing backlog of comp cases, the legislature added a new board for Fairbanks and Anchorage and created positions for a new hearing officer for each city. The beefed-up Anchorage board is hearing more cases and producing faster decisions, according to Chancy Croft, an Anchorage attorney and former legislator who frequently handles comp cases.

The Fairbanks slot has yet to be filled. New director McClintock, who inherited a backlog of cases when she became a hearing officer in Fairbanks last November, says she frequently worked nights and week-ends but still faced a stack of long-delayed decisions when Orbeck promoted her last month.

Two former pipeline workers who claim they represent hundreds of others who have been short-changed by the cumbersome comp system met with McClintock and Orbeck in Fairbanks last month to discuss reform of the program. The workers, Robert Mill and Robert MacArmour, were not parties to the court challenge, but both said their personal lives had been disrupted by long delays in the board hearing process.

MacArmour said that for a broke and injured worker whose carrier denies him benefits, the months of waiting for a decision from the state can be "devastating." MacArmour asked Orbeck to

(continued)

promises to try to secure additional funds to speed the decision process. Orbeck did not make any promises, but he did say he wanted to help comp claimants get quicker decisions.

Mill asked Orbeck to set up a special committee to review the work of the Workmen's Compensation Board on long-term, disabling injuries. Orbeck said he could not interfere with the board's operation.

MacArmour also asked the state to put out a manual that would help the injured worker understand the complicated state law that governs workmen's comp. Orbeck said a complete rewrite of the law was needed.

Orbeck seemed surprised when Mill said he felt insurance carriers were abusing the law and that the state was not responding to the problem. Several times during the meeting Orbeck told the angry protesters that prior to this meeting they had never requested a meeting with the commissioner.

"I carried a banner," MacArmour responded, referring to 1978 and 1979 demonstrations at state offices in Anchorage and Fairbanks.

Mill said he picketed, too. Mill also travelled to Juneau to discuss his problems with the Workmen's Compensation Division staff.

Both MacArmour and Mill were injured in truck accidents during pipeline construction. They both receive treatment from an Anchorage chiropractor.

It is not known whether critics of the comp system such as Mill and MacArmour will bring their grievances to the Division of Insurance Thursday, but Moore has left the door open. Although the hearing is about the rate change, the advance notice says, "as time permits, the Division will also hear testimony concerning other workmen's compensation insurance issues."

In the past the Division of Insurance has confined its interest in workmen's comp to rate-setting matters, leaving the problem of delivery of services to its sister agency in the Labor Department.

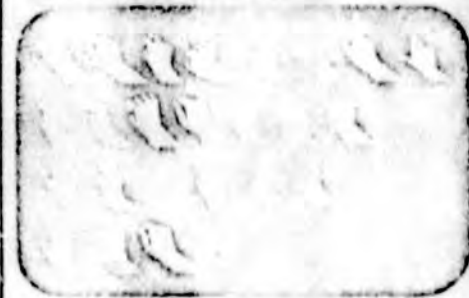
Thursday's hearing will be held from 9 a.m. to 4:30 p.m. at the Municipal Assembly Room, 3500 E. Tudor Road. In addition, Moore and other staff members will host an informal meeting Wednesday night to talk with the public about any insurance-related problems. That meeting will be held at 7 p.m. Wednesday at the Pioneer School, at Third Avenue and Eagle Street.

Anchorage Daily News
Nov. 7, 1979
(continued)



Hurt workers hit delays

Page C-1



orage Daily News

ANCHORAGE, ALASKA, FRIDAY, NOVEMBER 9, 1979



Anchorage Daily News/Marc Olson

Nyle Hill, who says his insurance company won't pay his doctor bills, despite an order by the Workmen's Compensation Board, listens to testimony by another angry claimant during hearings Thursday.



Anchorage Daily News/Marc Olson

Robert D. Mill, a former truck driver, told state Insurance Division officials who held hearings on workmen's compensation that insurance carriers stall payments on permanent disabling injuries.

Hurt workers hit compensation delays

Hurt workers hit compensation delays

By **RICHARD FINEBERG**
Daily News correspondent

Henrietta Nugen left Thursday's workmen's compensation rate hearing smiling. Everybody else who came to learn about the intricate and mysterious process by which the insurance industry sets the rates which employers must pay for their comp premiums left looking unhappy, and a small group of people who claim the comp system gives them a run-around looked like they had just left a wake.

Nugen, who works for the Studio Club rehabilitation center, said she did not want to see higher workmen's comp premium rates. State Division of Insurance Market Surveillance Chief Don Koch thumbed through his new listing of comp rates and told her that institutions such as the rehabilitation center can expect a 19 percent decrease if the division approves the new rates, which are expected to go into effect Jan. 1.

The total comp bill Alaska employers shell out — \$102 million last year — will increase by 1.8 percent under the new rates, according to Hank Edmiston, Denver-based vice president of the National Council on

Compensation Insurance (NCCI).

Although the overall increase is slight, some comp rates will go up considerably and others, like Studio Club's, will go down. Across the board, contractor will see a 10.7 percent increase, manufacturing will go up 0.6 percent and all other categories will average a 4.2 percent drop, according to the filing proposed by the Alaska Classification and Rate Committee, an insurance company group that retains the NCCI.

About 20 people — employers concerned about their comp rates and individuals concerned about whether that insurance covers them when they are hurt on the job — attended the hearing at the Anchorage Assembly building.

The industry group also presented testimony on a proposed change in rates for small policies. Under this proposal, the current \$15 charge for handling small comp policies will go to \$35 in 1980 and \$60 in 1981. Edmiston said the increase in premiums for the small policy holder would be offset by across-the-board decrease in comp rates, leaving the industry with no additional revenues.

"It's just a redistribution of the total comp bill," one insurance industry official explained.

An audit of the information submitted by Alaska comp carriers to the NCCI by a California specialist "gives us some confidence (in the NCCI)...that we didn't have a year ago," according to state Market Surveillance Chief Koch. However, the report, which the Insurance Division received Oct. 1, will not be released until Dec. 4, Koch said.

The Alaska business people with gripes included veterinarians, who say they have shelled out \$182,000 in comp premiums over the past five years to insure employees who have run up a total of less than \$4,000 in comp claims. The problem, Koch said, is that the vets are lumped in with animal control personnel, who deal with stray and wild animals and have a higher accident rate.

"It took us five years to find that out, and we didn't get much help from your division or our insurance agents," commented veterinarian Pam Tuomi.

Bill Martin, controller with Sourdough Express in Fairbanks, said he was disappointed copies of the bulky and complicated rate filing were not available in advance, or at the hearing, so that people could

comment intelligently.

A different kind of comp problem was described by Robert Mill, Don McGuffin and Nile Hill, workers who claim they were injured on the job and unjustly denied benefits by the comp system. "It's just been a run-around, backwards and forward," said McGuffin, whose comp case has been bouncing between the state Workmen's Compensation Board and the courts for two years.

"If in fact the insurance carriers under Alaska statutes are not upholding their end of the bargain," Mill asked, "who do we appeal to?" Last month Mill and other comp claimants went to Fairbanks to meet with Labor Commissioner Ed Orbeck.

State Director of Insurance Kenneth Moore, who presided over the hearing and an informal meeting at Pioneer School Wednesday night, said his office would look into the specific problems presented by comp claimants at both meetings. Additionally, he said, his division will make a transcript to the Labor Department, which administers the day-to-day operation of the Workmen's Compensation Board.

Anchorage Daily News

Friday, November 9, 1979

c-1

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

CONFERENCE OF INSURANCE LEGISLATORS

Proceedings of the Twelfth Annual Meeting

*As a legislator interested in
W/C & economic
pages 157 on - you
may want to join this
group.*


KENNETH C. MOORE
Director
Division of Insurance

STATE OF ALASKA
Department of Commerce
& Economic Development

Pouch D
Juneau, Alaska 99811
Phone: (907) 465-2515

PUBLISHED BY NATIONAL INSURANCE LAW SERVICE

National Insurance Law Service is a company engaged in the publishing of loose-leaf volumes of the Insurance Codes, Related Laws to Insurance Codes and Regulations of the Insurance Departments for all fifty states, District of Columbia and Puerto Rico.

NATIONAL INSURANCE LAW SERVICE
20675 BAHAMA STREET
CHATSWORTH, CALIFORNIA 91311
(213) 998-8830

CONFERENCE OF INSURANCE LEGISLATORS

PROCEEDINGS OF THE TWELFTH ANNUAL MEETING



NATIONAL INSURANCE LAW SERVICE
20675 BAHAMA STREET
CHATSWORTH, CALIFORNIA 91311

Conference of Insurance Legislators

Proceedings of the Twelfth Annual Meeting

Copyright © 1981 by NILS Publishing Company

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage or retrieval system, without permission in writing from NILS Publishing Company, the publisher.

Printed in the United States of America.

International Standard Book Number: 0-89246-016-4

Library of Congress Catalog Number: 79-91867 X

Preface

The Conference of Insurance Legislators was formed in 1969 by a group of legislators from across the nation. Each member of COIL has the responsibility of originating and promoting legislation regulating the insurance industry in his or her state.

COIL holds meetings and seminars several times each year. National Insurance Law Service, publishers of Insurance Codes, Regulations, and Related Laws to the Insurance Codes for each state, intends to publish the proceedings of major public meetings and seminars of the Conference of Insurance Legislators. We anticipate that this new series of publications will be a useful and informative service for the insurance industry.

Editorial Staff
NATIONAL INSURANCE LAW SERVICE

February 1981

CONTENTS

Thursday, November 20, 1980	Page
CALL TO ORDER AND WELCOME	
Senator J. R. Murphy, Nebraska, COIL President	1
WELCOME	
Representative Bob Davis, Texas	2
PRESIDENT'S REPORT	
Senator J. R. Murphy	4
WELCOME	
Bernardo Eureste, Mayor Pro Tem, City of San Antonio	6
COIL-NAIC LIAISON COMMITTEE REPORT	
Wesley J. Kinder, Insurance Commissioner, California	7
AN OVERVIEW OF INSURANCE ISSUES	
Richard E. Stewart, Chubb & Son Inc.	9
OPEN COMPETITION	
Senator John R. Dunne, New York, COIL Second Vice President, Moderator	18
Robert C. Witt, Ph.D., University of Texas at Austin	22
Senator Truman E. Wilson, Missouri, COIL Executive Committee Chairman, Moderator	35
Frank X. Bruton, Aetna Life & Casualty Company	35

CONTENTS

Thursday, November 20, 1980	Page
Philip R. O'Connor, Ph.D., Director of Insurance, Illinois	43
George K. Bernstein, Washington Consultant	49
PRESENTATION TO OUTGOING PRESIDENT MURPHY	
Senator Ed Berrong, Oklahoma	59
INTRODUCTION	
Representative Bob Davis, Texas	60
FEDERAL LEGISLATION — THE NEXT FOUR YEARS	
Hon. William P. Clements, Jr., Governor, State of Texas	61

CONTENTS

Friday, November 21, 1980	Page
CALL TO ORDER	
Senator J. R. Murphy, Nebraska, COIL President	73
ARSON FOR PROFIT AND THE NATIONAL LEGISLATIVE CONFERENCE	
Kenneth Nails, National Alliance of American Insurers	74
Senator Charles L. Butts, Ohio, National Legislative Committee on Arson ..	75
PRODUCT LIABILITY AND THE NEW RISK RETENTION ACT	
Senator Thomas M. Crowley, Moderator	94
H. Stephen Halloway, U.S. Senate Committee on Commerce	94
James H. Mack, National Machine Builders Tool Assn.	100
Donald L. Jordan, National Association of Insurance Brokers	106
THE IMPACT OF THE ELECTION ON BUSINESS AND INSURANCE	
Richard M. Scammon, Elections Research Center	120

CONTENTS

Saturday, November 22, 1980	Page
CALL TO ORDER	
Senator J. R. Murphy, Nebraska, COIL President	135
REMARKS OF PRESIDENT-ELECT	
Senator Thomas M. Crowley, Vermont	135
FEDERAL ANTI-TRUST INITIATIVES	
U.S. Senator Howard M. Metzenbaum, Ohio	136
WORKERS' COMPENSATION — STATE AND FEDERAL INITIATIVES	
William H. Huff, III, Employers Insurance of Texas	157
John H. Lewis, Attorney, Florida	160
Senator William M. Murphy, Jr., Delaware	163
William G. Campbell, Attorney, Delaware	164

PROCEEDINGS

(Thursday, November 20, 1960
Morning Session)

COIL President J. R. Murphy: Ladies and gentlemen, I would like to officially open this Twelfth Annual Meeting of the Conference of Insurance Legislators.

The invocation this morning will be delivered by The Reverend Bernard Popp, who is rector and pastor of San Fernando Cathedral in San Antonio. Please stand and after the invocation please remain standing for the Pledge of Allegiance.

Reverend Monsignor Bernard F. Popp: Heavenly Father, we place ourselves in Your Presence at this moment here in San Antonio, a special place in Your great world. We, the members of this Conference of Insurance Legislators, are aware of Your Presence and hence we ask You to bless us. We have as our objective the good of our fellow man, his security, his surety, and his safety.

We are tools in Your hands, the Provident God who is security itself and surety itself and safety itself. May we share in Your Presence. May we reflect Your patience, and may we be worthy of Your patronage.

Bless this assembly so that our reflections may be wholesome, our decisions truthful, and our resolutions honest. May we experience Your joy and happiness in our hearts as we find meaning in these days of sharing ourselves with each other and may that meaning be reflected in our concern for one another.

May your stay in San Antonio be delightful. May your visit be enjoyable, and may these impressions be with you always, we ask this in God's Name. Amen.

(Here followed the Pledge of Allegiance, led by COIL first vice president, Senator Thomas M. Crowley.)

President Murphy: Father, thank you very much for the invocation. I felt in it a little challenge, and that is good, and I hope we respond to it.

It is quite appropriate to have Representative Robert Davis deliver our welcome. In presenting him, I would like

tional disease claims. This would apparently be accomplished by way of federal standards, which would abolish existing safeguards of state laws, would extend the statute of limitations to accommodate latent diseases, and would require the acceptance by the states of disability and causal relation standards established at the federal level. The second alternative, which is the one I think you will see activated this year, suggests that the federal government enact categorical programs, similar to the black lung program, to accommodate specific diseases such as asbestosis. The cost of these programs would be levied directly on the affected industries. The third alternative recommended an increase in, or extra benefits extended through the Social Security system.

I would point out that if the allegations contained in the Department of Labor report are anywhere near correct as to the size of the working population affected by occupational disease, the cost of bringing those cases into the compensation system would be astronomical.

The National Council of Compensation Insurance has made some analyses and projects an eightfold increase in total workers' compensation costs, based upon these allegations. What is particularly troublesome is that changes in state laws to accommodate these claims would have both prospective and retroactive implications. In other words, it is conceivable that a large body of retired individuals will suddenly be eligible for extensive workers' compensation benefits. The application of federal standards to implement the first option would not be gradual.

There has been some industry support, and that is I think the only way any sort of categorical or any other kind of program will pass the Congress, in the area of the second option of instituting categorical programs. The asbestos manufacturers, for example, are supporting legislation establishing a federal asbestos program to be financed by asbestos manufacturers — as well as the tobacco industry, since smoking is said to precipitate asbestos in asbestos-exposed employees. In fact, I read that the chance of an asbestos worker who also smokes getting lung cancer increases ninety-five times over that of an individual who works with asbestos and doesn't smoke.

In the area of occupational disease, I feel it is going to be necessary for the insurance industry to rebuff these federal allegations. The statistical rationale used by the Department of Labor is weak and it bases its allegations on studies and surveys that are admittedly flawed. But the allegation that 100 or 200,000 people die each year as a result of occupational disease exposure is beginning to acquire a life of its own. The industry will need to come up with better reasoning than it has been able to so far to convince legislators and others that there is no serious occupational disease problem related to the workers' compensation system. To that end the Alliance of American Insurers and the AIA are now in the process of conducting a resolved occupational disease claims survey. The survey is being conducted in Texas, New Jersey, Michigan, Pennsylvania, Kentucky, Colorado, and Oregon. We hope it will provide the data to better respond to the Department of Labor's and other studies alleging substantial shortcomings with the state system of handling occupational disease claims.

I would also say in closing that if you create a system, as has been done to deal with black lung, that allows a recovery without medical evidence that the disease actually existed or was caused by employment, no workers' compensation system or government, short of one with its own printing presses, can support it. If you don't require medical evidence of disease or proof that it necessarily arose out of the work environment, you no longer have a workers' compensation program, you have a welfare program.

With that, I would say that I believe that state initiatives are necessary in the area. If a program fails in one state it is not as catastrophic as a program mandated in all fifty states that fails.

Thank you very much.

(Applause)

President Murphy: Ladies and gentlemen, it is a pleasure to present to you Mr. John H. Lewis. His entire practice is limited to the area of workers' compensation. He has worked in Florida with the legislature and with the governor quite closely in the development of legislation regarding workers' compensation. Mr. Lewis is chairman of the Workers' Com-

pensation Council and is a native of Coconut Grove, Florida. Mr. Lewis.

(Applause)

Mr. John H. Lewis: I am supposed to talk about the history of workers' compensation "reform," and I use the term advisedly. Most of the action on the state level came about, beginning in the mid-70s, reportedly as a result of the report of the National Commission on State Workers' Compensation Laws, which for better or for worse did set some objectives for states to try to meet within the workers' compensation program. Unfortunately, most efforts at state reform were limited to increasing benefits. That was the main thrust of virtually every effort on the state level for several years.

The states learned, to their regret, that the report they were following in many instances didn't stipulate merely to increase benefits. In fact, that report warned in some sections that were not well read that if in fact you do not do things with other aspects of your law with respect to the distribution of the permanent disability benefit and the administration of the law, increasing benefits could have a horrendous impact on the compensation program. As the benefit levels increased and as rates doubled and tripled and quadrupled, a realization came about that that was in effect what had happened.

What is going on now is somewhat different. I come from Florida, where we have worked quite extensively with our reform effort over a period of two years. And while most of you have heard about Florida in terms of wage loss as the big answer to everybody's problems, that is not really the Florida experience that you ought to be paying attention to. Although I heartily endorse wage loss and feel that it is the answer to many problems within the system, the Florida experience goes far beyond that aspect of workers' compensation. Florida took the time, which virtually no state had taken until then, to look at its workers' compensation program and analyze where the benefit dollars were going, determine how the administration of the program was impacting on the system, and review litigation and attorney involvement in the system. And it took the time to sit back and make some decisions as to how it wanted the system to operate.

Once those decisions were made by the legislature, it was easy to evaluate how the system was actually operating and see that it was not doing what we expected.

The next step, although politically not terribly simple, was structurally simple. We put together a program to do what Florida wanted to do. The state wanted to spend its money on people who had real economic loss. It wanted to accomplish this in an administrative fashion as best as possible, and it wanted to minimize litigation and in turn minimize the role of attorneys in the operation of the system. A program was put together that way, it was enacted into law, it is in effect right now, and it is doing so far exactly what the state, through its elected officials, wanted.

There are many reform efforts now going on in the various states. Unfortunately some of those efforts still retain the old characteristics state legislation. They put together a lot of people who have an interest in not changing the system, let them tell the legislature there is nothing that can be done or tell them that existing programs are working fine, to leave everything as it is or perhaps enact just a piece of legislative patchwork here or there. Thus, you have instant legislative workers' compensation reform.

The Delaware experience is interesting. Delaware is going in the direction that Florida went and it is going in the same manner. The initial attempt made in the last legislative session was viewed by some as abortive but, no, it wasn't, it was part of the process. The bill did not pass the first time around, but it most likely, it is hoped, will next year, the first time around being the educational process.

If any legislature wishes to impact on workers' compensation, if it feels workers' compensation is not doing what it is supposed to or is doing it too expensively or in an inappropriate manner, you can't just walk in and take a meat axe to the system. Nobody knows enough about how the system is operating in each state to make the determinations necessary to "reform" the system. Any legislature that wants to talk about serious change in workers' compensation has to be willing to devote at least a year's worth of effort to looking at the system, determining what it is presently doing, making some philosophical decisions as to what it ought to do, getting public support through an education process, and fighting

back some of the interest groups — and perhaps we are all involved in various interest groups here that would in some respect oppose changes in workers' compensation. But those are the things that have to be accomplished if workers' compensation is going to be changed in any manner other than the haphazard manner that brought about the problems we have now.

Two people sitting here right now, Fred Martin and Senator Anderson from Florida, took part in that process. They can tell you, I think without a doubt, that education — education of the legislature and education of the general public — is essential to any workers' compensation reform effort.

As I said, we have problems in making those changes because too many of us have vested interests in the system. It is tough as an attorney making several hundred thousand dollars a year from workers' compensation to say the system ought to be changed. It is tough as a carrier that may be totally free of administrative regulation, that holds onto money for six months when it should have been paid out, to say we ought to change the system and have the money get to the claimant a lot quicker.

There are many vested interests but in fact there are only two that ought to be initially concerned, the employer and the employee. Those are the two that really have the most concern about workers' compensation. There are not too many employer and employee representatives here today but we have to give them the lead in making some of the decisions. The rest of us are sort of peripheral, some more peripheral than others, but our interests ought not to control the system and its structure and its development. We have to set aside some of our baser considerations, primarily the immediate dollar, and work with the legislature, providing information, providing education, and providing assistance. Without that process we will be back year after year after year, trying to cure the problems of last year's set of amendments.

There is not much else I can say because the details are not necessary and obviously the time is short, but if I can leave one message with you, it is this, that workers' compensation change, workers' compensation improvement from any-

body's standpoint, requires a dedicated effort, a dedicated learning process and a dedicated public relations process. If people don't understand what the system is about, if they don't understand what it is capable of doing, you will never get the kind of support that you need legislatively to accomplish the necessary changes.

Thank you.

(Applause)

President Murphy: Thank you very much, Mr. Lewis.

Our final speaker on the subject has been on our executive board for a number of years. He serves presently in the Delaware legislature and he is chairman of the banking and insurance committee of that state. He has been in the Senate since 1973. He resides in Dover and his particular interests have been medical malpractice and workers' compensation. He will introduce to you some of his ideas and will be accompanied by his staff member, William Campbell.

(Applause)

Senator William M. Murphy, Jr.: Thank you, Senator.

I am going to start out by just making a few comments to my fellow legislators as to some of the problems that you will run into when you finally get around to making an effort on revising your workers' compensation laws. First, I want to caution you that one of the first things you must do is find out exactly where you stand, whether you have a problem with your workers' compensation, which you probably do, and get all the information that is necessary, as John Lewis suggested before.

We did a two-year study involving two different citizens committees. The first was a rather large committee, consisting of twenty-two people — that is large for Delaware — that was not funded and was not staffed. All that came out of it were some legislative recommendations from one of the subcommittees. The subsequent year we created another committee that was both funded and staffed and we got all the information that was possible within a period of about six to eight months. We did not get all we needed because we could not get certain information from the various rating bureaus,

and couldn't even get information from our own industrial accident board. This is part of the process you must go through prior to any type of introduction or any educational process.

I would like to caution you that there are going to be a number of groups that are going to oppose everything you try, all the way from the plaintiff attorneys to the doctors that are working in the system. You must educate the press and cooperate with them 100 percent, otherwise you will be criticized for trying to make such a tremendous change in the law. One of the techniques going to be used against you and against the argument of changing the current system is the "big lie"—you are trying to take away benefits from the injured worker, you are going to be coddling the seriously injured worker who probably could go back to work but will claim that he or she cannot. The trial lawyers are going to fight you because they will claim you are going to change their pay system.

Most of these things that I have said here have been said previously, and from here I am going to turn it over to Bill Campbell, our staff member and one of the people who helped draft the legislation.

Mr. William G. Campbell: My function here is to try to briefly outline the major ingredients in a reform effort. I couldn't agree with and emphasize more the points that have been made by John and the Senator, and that is that you have got to diagnose your own state system carefully, and you have got to collect and collate the data that is available before you try any reform effort. If there is any message coming through from the reform efforts around the country, it is that. The needs are different in every state, you have got to know what is there.

One of the major areas, just briefly, that you have got to cover in any reform effort is your delivery system. Are you going to have a one-way system, straight monopolistic state fund, a two-way system, or three-way system, i.e., with self-insurance, with carriers, and with group self-insurance? You have got to look at those items. There are still a half dozen or so states with monopolistic state funds. The rest have mixtures of those systems. There are efforts going in a couple of

those monopolistic state funds now to allow competition, and that seems to be a possible trend.

Exclusive remedy is a very important area you are going to have to address in any reform. There have been cases coming down in California, Massachusetts, and Louisiana, all very recently, all seriously questioning the previous dogma that your exclusive remedy was compensation, and now we are finding that wives and children, are able to sue where the worker can't. We are finding that co-workers can be sued and indirectly sue the employer, and that is something you are going to have to address.

The administration in the system is a key element you also have to look at, again on your local basis. Consider your payment system. Do you go to a direct payment system, which a large majority of the states have now, that requires your carrier or self-insurer or whatever to pay within X days or deny within a slightly longer period, usually fourteen to twenty-one days, or do you go with an agreement system, which was the old system and which a number of states still have. There, everything has to go before the board, the obvious backup in the agreement system; you can see where the problems are in that.

Think about the mechanics of the administration. You have to look very hard at whether you add in something like the deputy commissioner-coordinator type of position, which they did in Florida and which we picked up in the Delaware bill. A representative, almost an ombudsman, the way we picked it up, for the worker, trying to get the worker represented and get him through the system quickly before there are any problems and before there is a need for litigation to get into the system.

You have got to look at whether you stay with a board or not. Historically we have had industrial accident boards in most of the states. Many states are moving toward arbitrators, hearing officers, and maybe an appeal level.

What is the hearing structure? Do you allow for emergency hearings? Do you allow rights for immediate payment on an emergency hearing while a case is being appealed? Again, if you are going to try to make your system efficient, you have to look at all those things.

Do you mandate reviews after six months, nine months, twelve months, a process where you must have a review of all permanent totals, all people not back to work, all people not back on the same job, et cetera, as is being suggested in some of the reforms?

A major area you also have to look at, which pervades all this, is litigation reduction. That has been alluded to various times in our discussions here and earlier. You have to look at the return to the non-adversary system, which is more and more prevalent. Dr. Larson stresses it very hard in his comments as do most of the commentators on compensation. The idea is that this was a no-fault system and we are trying to get back to a no-fault system. If you are going to do that, you have to look at what you are going to do. Are you going to make claims only fileable when they are mature, i.e., when you have been denied a benefit? Are you going to eliminate the shotgun claims used in most states now, where the day that somebody gets hurt, you file for every right you have in the book? What are you going to do with attorneys' fees? Are you going to put limitations on them? Who is going to pay them? Is the employer going to pay them or is the employee going to pay them out of his share? Are you going to pay only on the difference between the last offer and the award that is made? There are a number of different elements there that have to be looked at.

Are you going to use coordinators or somebody to try to represent the worker and get them through the system without getting litigation in it?

Look closely at occupational disease. If there is anything the federal end will really be looking hard at, it is occupational disease. If you don't get your act together and pass appropriate legislation in the states, we have to all assume that the federal government will come in and there will be some type of federal occupational disease relief. That is a complex issue. What can you do in the states? You can look at special requirements, special incidences before you can accept occupational disease as a solid claim. There are eight or ten different word combinations the states have come up with to qualify occupational disease, and there are new ones being tried, but that is something you are going to have to address in the bill.

Then, there is coordination of benefits. This is a new title for an old concept. You have got a lot of benefits out there. If the idea, the intent of the workers' compensation law is to get the person paid approximately what they were netting before the injury, which is supposedly the concept of it, then you have got to look at what happens when you allow them to get unemployment compensation, automobile no-fault wage loss replacement, or employer salary continuation plans. If the man is making two or three times what he was before, you have to wonder if that isn't a disincentive.

The tough part of coordination of benefits, however, is your Social Security offset. A number of states have passed reverse Social Security offsets, whereby if you do it correctly the federal government, through the Social Security disability payment on permanent disabilities, will pay a significant chunk of the dollars that are otherwise due from the state. It sounds wonderful. However, I caution you to look very hard at it. If everybody starts relying on a federal Social Security system that is not perhaps bankrupt but awful close, when you start putting in the billions of dollars that would be going out in permanent disabilities for some of the big states that are not doing it yet — it is mostly the smaller ones, as far as dollars go — you have got to wonder what effect that is going to have in the offset.

In Delaware, we reached the classic compromise. We did not go with the reverse offset but we did provide an escalation, which is one of the other areas you have to cover. In the inflationary times we are in, it is awful tough not to permit an escalation for a worker who is injured at thirty years old, and knowing that he or she may have forty or fifty years to go, and it is a real problem. On the other side of the coin, escalation is devastating, as some of you have found out. The cost on it just gets astronomical. As a compromise, we are escalating those payments that do not qualify for the federal Social Security disability payments on the permanent totals. That is a significant chunk but it is only 7 to 10 percent, somewhere around there, instead of the whole group. They are still getting escalation, escalation with a cap, but it is still escalation, and it is a partial compromise and a small step forward in that difficult area.

As to medical, you have got a million things to look at there. It is an important cost area. You have free choice

versus employer selection. The majority of the states have an employer selection where the employer selects the doctor. It doesn't sound important, but it can be awfully important. Free choice is the minority view, but if you have free choice it is hard to take away; but it is a factor in getting the employee back to work. A panel system is the other option there, plus one that we called in the Delaware bill an impartial medical opinion. You stay with a free choice system but you allow some independent doctor selected through an employee-employer negotiation system to make a binding arbitrator-type opinion.

That same type of approach can be used for some of your other problems such as unnecessary treatment, which is becoming a serious problem in terms of its cost factors. You need some kind of system to be cranked in there. It can be peer review, it can be fee schedules and all that enters into the cost, or it can be something like the impartial medical opinion, but you have got to face all those areas in medical.

Rehabilitation and reemployment is another consideration that has worked into the law. You will find general consensus until you get down to the details. Everybody says rehabilitation is wonderful and it should be done immediately. I think everybody agrees on that but once you get into details it is awful tough, but somehow you have got to find a way. There are a number of options out there to mandate rehabilitation early in the game, at least as soon as the employee is not going to be able to go back to the same job or the same employer with the same job. Other ways to trigger rehabilitation involve taking into account the number of days in hospital or the number of days off the job. You can pick a number of options but you want to trigger rehabilitation as soon as possible. And you don't want the bureaucratic monster that has been created in some places where they have gone with this overkill rehabilitation system.

Reemployment is a new consideration. They provide for it in Florida. It is being looked at in other areas. It is an extremely difficult concept but it is a very important one because reemployment is really what the issue is all about, what rehabilitation is about as well, and it is one you have got to address.

Other factors to consider include group self-insurance. About twenty states now allow group self-insurance specifically. A number of others allow it because there is nothing in the books on it. It is a way small employers can get together. It has a lot of pros and cons but it is something you have got to look at.

Uninsured employer funds is an issue that is just sort of picking up. Over a dozen states have it one way or another now and a number of them do it through their second injury funds. You need somehow to look at those people out there who are not covered, not just because they are excluded as farm workers or domestics or one of the nineteen essential recommendations, but the ones who would be covered but their employer isn't. One way to do this is through the uninsured employer fund. It is a cost factor, though.

You have got to look at the nineteen essentials, as mentioned, and see whether you want them, but don't take them as dogma. You have got to look at funding also. A very important aspect is that you have to get adequate dollars to your industrial accident board. Our board, when we started two years ago, didn't even have a calculator in the place, and they were computing these things. I mean it is just unbelievable some of the things you will find.

You have got to get computerization in there. You have got to get modern management techniques, and that is a large part of the problem. It isn't as easy as it sounds. We were able in about four months to get a total computer program put in, which I think surprised everybody, but we did it by bringing in a consultant who is an expert on it, knew what he was doing, and we had tremendous support through Senator Murphy and others to get the money in that year's budget and get it moving. That is an area you have got to look at very hard, revolving funds with the administrative assessments that are already being put in so much of the country anyway, being put in there to fund it. It is something you can't ignore.

We are going to try to put a more detailed version of this together which we will get the staff to get to you, to give you

some detail on these points, but at least those are the major points that we discovered.

Thank you.

(Applause)

President Murphy: I do want to thank you gentlemen.

(Whereupon the third general session of the conference was adjourned.)

Kathryn G. Chamberlin,
Reporter.