SCOMM

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1 through 8

RECOMMENDATION 1a

Under this proposal certificates of self insurance will be controlled by the Department of Insurance rather than the board. The reason for this is that the board has done nothing to monitor self insurance programs.

During our discussions neither the board nor the Department of Insurance wanted the responsibility but all agreed that the Department of Insurance was better equipped if only slightly.

There are still areas to be discussed during the next meeting. Mandatory standards can be developed and the Department of Insurance is working on these for our consideration. I gave the Department copies of the Oregon, Washington and Idaho Self-Insurance Plans for their review. They are interested in my idea of a $100,000.00 bond minimum plus some increases each time the exposure outstanding has increased. They agree that using the bonding mechanism will help them monitor the problem accounts.

In my opinion this is a good move. Presently, nothing is being done to monitor self-insurance plans and after a certificate is issued no follow-up takes place. This is a step forward and if we can put in stringent bonding requirements we'll have a much better situation than we presently have.

DRAFT

JAN 16 1981 Sofo ✓✓

1 * Sec. ___. AS 23.30.005(k) is repealed.

2 * Sec. ___. AS 23.30.045(d) is amended to read:

3 (d) No contract may be awarded by the state or a home rule or
4 other political subdivision of the state unless the person to whom the
5 contract is to be awarded has submitted to the contracting agency
6 proof, furnished by the insurance carrier, of current coverage by
7 workers' compensation insurance from an insurance company or associa-
8 tion authorized to transact the business of workers' compensation
9 insurance in this state or proof, furnished by the director of insurance
10 [BOARD], of a current certificate of self-insurance from the director of
11 insurance [BOARD]. The person to whom the contract is awarded shall
12 keep his workers' compensation insurance policy in effect during the
13 life of the contract with the state or political subdivision. If the
14 state or the political subdivision of the state fails to obtain proof
15 of coverage or self-insurance or to protect itself under (e) of this
16 section, and an employee of the contractor is injured during the term
17 of the contract, the state or the political subdivision is liable for
18 workers' compensation to the employee if the employee is unable to
19 recover from the employer because of the employer's lack of financial
20 assets. The state or the political subdivision is not liable, however,
21 to the employee for workers' compensation if the employee can recover
22 from the employer under (a) and (b) of this section.

23 * Sec. ___. AS 23.30.045(e) is amended to read:

24 (e) When a contracting agency of the state or a political subdi-
25 vision receives notice that the workers' compensation insurance policy
26 of an employer to whom the agency has awarded a contract has been
27 cancelled due to nonpayment of a premium, without being replaced by a
28 comparable policy, the agency may either terminate the contract with
29 the employer or continue the premium payments on his behalf in order to

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keep the policy in force during the life of the agency's contract. If the agency chooses to keep the policy in force, it may deduct its payments from the contract price or bring an action against the employer to recover the amount of the payments. When the contracting agency receives notice that the director of insurance [BOARD] has revoked a certificate of self-insurance held by a person to whom a contract has been awarded, the agency may terminate the contract. This subsection does not limit the causes of action or remedies which the state or political subdivision may have against the employer.

* Sec. ___. AS 23.30.075(a) is amended to read:

(a) An employer under this chapter, unless exempted, shall either [,] insure and keep insured for his liability under this chapter in an insurance company or association duly authorized to transact the business of workers' compensation insurance in this state, or shall furnish the director of insurance [BOARD] satisfactory proof of his financial ability to pay directly the compensation provided for. If an employer elects to pay directly, the director of insurance [BOARD] may, in his [ITS] discretion, require the deposit of an acceptable security, indemnity or bond to secure the payment of compensation liabilities as they are incurred.

* Sec. ___. AS 23.30.085(a) is amended to read:

(a) An employer subject to this chapter, unless exempted, shall initially file evidence of his compliance with the insurance provisions of this chapter with the board, in the form prescribed by it. The employer shall also give evidence of compliance within 10 days after the termination of his insurance by expiration or cancellation. These requirements do not apply to an employer who has certification from the director of insurance [BOARD] of his financial ability to pay compensation directly without insurance.

1 * Sec. ___. AS 23.30.075(a) is amended to read:
2 (a) An employer under this chapter, unless exempted, shall either,
3 insure and keep insured for his liability under this chapter in an
4 insurance company or association duly authorized to transact the busi-
5 ness of workmen's compensation insurance in this state, or shall furnish
6 the board satisfactory proof of his financial ability to pay directly
7 the compensation provided for. If an employer elects to pay directly,
8 the board may, in its discretion, require the deposit of an acceptable
9 security, indemnity or bond to secure the payment of compensation
10 liabilities as they are incurred and the director of insurance may, in
11 his discretion, require proof of excess insurance.
12 * Sec. ___. AS 23.30.090 is amended to read:
13 Sec. 23.30.090. SELF-INSURANCE CERTIFICATES. If an employer has
14 complied with the provisions of this chapter relating to self-
15 insurance, the director of insurance [BOARD] shall issue him a certifi-
16 cate which shall remain in force for a period fixed by the director of
17 insurance [BOARD]. The director of insurance [BOARD] may, upon at
18 least 10 days' notice and a hearing, revoke a self-insurance certificate
19 upon satisfactory proof that an employer is no longer entitled to it.
20 After revocation the director of insurance [BOARD] may grant a new
21 certificate to an employer, upon his petition and satisfactory proof of
22 his financial ability as provided in this chapter. The director of in-
23 surance shall notify the contracting agency of the state or of a politi-
24 cal subdivision of the state when it revokes the self-insurance certi-
25 ficate of an employer holding a contract with the state or a political
26 subdivision of the state. An employer authorized as a self-insurer
27 shall provide claims facilities through its own staffed adjusting
28 facilities located within the state, or independent, licensed, resident
29 adjustors with power to effect settlement within the state.

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1 * Sec. ___. AS 23.30.265(19) is amended to read:

2 (19) "self-insurer" means an employer who, instead of insur-
3 ing his liability under this chapter as it provides, elects to pay
4 directly the compensation provided for, and who has furnished to the
5 director of insurance [BOARD] satisfactory proof of his financial
6 ability to make the direct payments and has been issued a self-insur-
7 ance certificate;

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RECOMMENDATION 1b

GROUP SELF-INSURANCE/FICTITIOUS GROUPING:

Presently the Workers' Compensation Board has already allowed one fictitious grouping plan for the Rural Electric Associations of Alaska. Alaska brokers seem to have no difficulty convincing the board that their proposal makes sense. The Department of Insurance on the the other hand is quite concerned about proposals of this nature and under their control they would be much stricter with their application. I get the impression that the Department of Insurance feels that this is an unnecessary step since self-insurance or reciprocal plans are available.

The AGC has already looked into this type proposal but so far hasn't felt it advisable to proceed. Others are also looking.

This is still an agenda item and none of us are convinced that we have covered all the loop holes. Even with joint and several liability this particular plan seems to be a problem.

In my opinion we should support some legislation in this area since to do nothing is to allow the Workers' Compensation Board to proceed with no standards. Interjecting high bonding requirements may in itself restrict this market plan. This particular scheme seems to be particularly popular with brokerage firms who are trying to get control of groups of business.

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NOTE: one plan already approved for SEA. workers by the W/C Board. AGC considering this also

* Sec. ___. AS 21 is amended by adding a new chapter to read:

CHAPTER 50. WORKERS' COMPENSATION GROUP SELF-INSURANCE.

Sec. 21.50.010. GROUP SELF-INSURANCE. Two or more employers in the same industry may form a group to provide the members of the group with workers' compensation insurance coverage required under AS 23.30.

Sec. 21.50.020. SELF-INSURANCE FUND. (a) A workers' compensation self-insurance group formed under this chapter shall establish a self-insurance fund with an initial balance to be determined by the director.

(b) The self-insurance fund shall be administered by a board of trustees selected by the members of the self-insurance group. The trustees shall adopt bylaws for the administration of the self-insurance fund consistent with this chapter.

(c) The annual gross premiums of [adjusted as needed] the self-insurance fund shall not be less than $250,000. ~~The premiums shall be computed by using the appropriate manual rate for each payroll code classification multiplied by an experience modification factor.~~

Sec. 21.50.030. APPLICATION. The trustees of a group self-insurance plan shall submit the following to the director:

(1) a copy of the bylaws of the self-insurance group;

(2) the names and addresses of the members of the board of trustees of the self-insurance group;

(3) proof of the existence of an initial balance in the self-insurance fund as required by AS 21.50.020(a);

(4) the name of each member of the self-insurance group;

(5) current financial statements of the members of the self-insurance group showing:

(A) combined net assets of all members of at least $1,000,000; and

(B) working capital sufficient to establish the finan-

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cial strength and liquidity of each member;

(6) a list of the estimated annual standard premium for each member of the group and a total for the group;

(7) proof of payment by each member of the group of at least 25 percent of the estimated annual standard premium into a designated depository;

(8) proof of excess insurance for the group by an authorized carrier in an amount determined by the director;

(9) an indemnity agreement jointly and severally binding the self-insurance group and each of its members to comply with the provisions of the Alaska Workers' Compensation Act (AS 23.30);

(10) a list of all projected annual administrative expenses of the self-insurance fund and a calculation showing the percentage of the annual standard premium expected to be used for those expenses;

(11) proof that the members of the self-insurance group have ample facilities and competent personnel to service the group self-insurance plan or a copy of a signed service agreement with an approved service company to provide those services;

XXX(12) proof of surety or fidelity bonds which the director may require; and

(13) any further evidence which the director may require to establish the ability of the self-insurance group to meet its obligations under the Alaska Workers' Compensation Act (AS 23.30).

Sec. 21.50.040. SELF-INSURANCE CERTIFICATE. (a) The director shall issue a self-insurance certificate under AS 23.30.090(b) to each member of a self-insurance group which has submitted an application under AS 21.50.040 which has been approved by the director. The self-insurance certificate shall expire one year from the date it was issued.

(b) An application for renewal of a self-insurance certificate

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1 shall be submitted to the director by the self-insurance group at least
2 30 days before the expiration of a self-insurance certificate.
3 * Sec. ___. AS 23.30.090 is amended by adding a new subsection to read:
4 (b) The director of insurance shall issue a self-insurance certi-
5 ficate to a member of an approved self-insurance group under AS 21.50.

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RECOMMENDATION #2

This simply removes the present controls for fictituous grouping and is geared towards the smaller account. Under Recommendation #1b larger employers could group and form self-insurance plans. Under this approach smaller insureds could combine to take advantage of larger premium discounts and retrospective rating plans that individually may not be available to them.

In my opinion this proposal would be disruptive in the market place and have no longterm lasting value. Althought some brokers and companies may work up schemes to isolate certain types of business under this concept, there doesn't seem to be any true expense savings nor any improvement in loss ratios that would sustain the plan over a long period of time. Like any group approach it is only as good as the average results. Realistically better than average members would be better on their own. It maybe that the members that join this type of association would be those that are trying to avoid the ssigned Risk Pool.

By its very nature, I have difficulty seeing how it can be anything but discrimnatory in its rating characteristics.

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1 * Sec. ___. AS 21.36.190(d) is amended to read:
2 (d) This section does not apply to workers' compensation insur-
3 ance when issued to an association of employers in the same rating
4 classification [FORMED FOR PURPOSES OTHER THAN THE PURCHASE OF INSUR-
5 ANCE] and which as a group
6 (1) has a constitution and bylaws;
7 (2) incorporates a safety program;
8 [(3) AS A GROUP HAS PREFERRED CHARACTERISTICS OVER SIMILAR
9 RISKS WRITTEN ON AN INDIVIDUAL BASIS;] and
10 (4) has filed and received approval from the director for
11 the rating program to be applied to the group.
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RECOMMENDATION #3

This proposal is to allow deductibles. As a matter of fact the Department of Insurance is allowing them now in spite of the objection of the National Council.

Two other states have deductible plans under the National Council control and some logical arguements can be made that deductibles do get employers more interested in safety.

In my opinion we can live with this plan as long as we continue to require the carrier to make all payments and then seek reimbursement from the employer. Getting reimbursement on a small insured is very difficult and quite costly. Although I don't see Industrial participating to any great degree, we can live with the competition if necessary.

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* Sec. ____. AS 21.39.070 is amended by adding a new subsection to read:

(c) Notwithstanding (a) of this section, a filing by an insurer of an independent deductible or loss reimbursement plan is not considered a deviation under this section.

* Sec. ___. AS 23.30.025(b) is amended to read:

(b) All policies of insurance companies insuring the payment of compensation under this chapter are conclusively presumed to cover all the employees and the entire compensation liability of the insured employer employed at or in connection with the business of the employer carried on, maintained, or operated at the location or locations set out [FORTH] in that [SUCH] policy or agreement. A provision in a policy attempting to limit or modify the liability of the company issuing it is wholly void except as provided in (c) of this section.

* Sec. ___. AS 23.30.025 is amended by adding a new subsection to read:

(c) An insurer may issue a policy of insurance insuring the payment of compensation under this chapter which provides for a deductible amount to be paid by the employer. A policy with a deductible provision must be approved by the director of insurance and must provide that the deductible amount be paid by the insurer to the employee on behalf of the employer. After payment of the deductible by the insurer, the insurer may recover the deductible amount from the employer. The failure of an employer to reimburse an insurer for the deductible amount does not relieve the insurer from any other obligation it may have under the policy of insurance. An insurer is not required to apply for a deviation under AS 21.39.070 in order to issue a policy under this subsection. This subsection does not apply to a policy of excess insurance purchased by a self-insurer.

RECOMMENDATION #4

This is the proposal for the Oregon rating approach in which the National Council calculates statistics based on loss data only. The carriers add expenses, profits and other items to come up with their own composite rate.

I have made my opinion perfectly clear that I am opposed to this approach and I have gone into great detail pointing out how this in reality will hurt the small employer since all rate cutting schemes will be designed for the medium to larger account.

Hopefully I can get this particular proposal separated from the rest since at least in my opinion it is controversial. If it is separated, there is a good chance that the employer lobby group will use this amendment as a vehicle to tack on their reduced benefits proposals. If that happens it will be a struggle between management and labor for the vote and if labor wins this proposal will go down with it.

12-0110 - #4
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1 * Sec. ___. AS 21.39.040(d) is amended to read:

2 (d) Subject to the exceptions [EXCEPTION] specified in (e) of
3 this section and AS 21.39.045, each filing shall be on file for a
4 waiting period of 15 days before it becomes effective, which period may
5 be extended by the director for an additional period not to exceed 15
6 days if he gives written notice within the waiting period to the insurer
7 or rating organization which made the filing stating that he needs
8 additional time for the consideration of the filing. Upon written
9 application by the insurer or rating organization, the director may
10 authorize a filing which he has reviewed to become effective before the
11 expiration of the waiting period. A filing shall be considered to meet
12 the requirements of this chapter unless disapproved by the director
13 within the waiting period.

14 * Sec. ___. AS 21.39 is amended by adding a new section to read:

15 Sec. 21.39.045. WORKERS' COMPENSATION RATE FILINGS. (a) A
16 filing of workers' compensation rates by a rating organization shall be
17 limited to provisions for claim payment and may not include allowances
18 for expenses, taxes, or profit, except as necessary for full rate
19 development for an assigned risk pool under AS 21.39.155. The rating
20 organization shall also file with the director the workers' compensa-
21 tion policy forms to be used by its members.

22 (b) If each rate in a schedule of workers' compensation rates for
23 a specific classification of risks filed by an insurer is not lower
24 than the rate for each respective classification filed by a rating
25 organization in accordance with (a) of this section and approved by the
26 director, the schedule of rates filed by the insurer is effective
27 immediately and the waiting period in AS 21.39.040(d) is not required.

28 (c) Notwithstanding (b) of this section, the director may require
29 an insurer to comply with the waiting period in AS 21.39.040(d) for

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1 a rate filing or part of a rate filing if he determines that the rate
2 filing or part of the rate filing is excessive, inadequate, or unfairly
3 discriminatory.
4 * Sec. ___. AS 21.39.070 is amended by adding a new subsection to read:
5 (c) Notwithstanding (a) of this section, a filing of workers'
6 compensation rates under AS 21.39.045(b) is not a deviation under this
7 section.
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RECOMMENDATION #5

This would require Insurance Companies to report investment income for workers' compensation for Alaska. By unanimous vote it was rejected in spite of the pleas of the staff.

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1 * Sec. ___. AS 21.09.200 is amended by adding a new subsection to read:
2 (e) Each foreign and domestic insurance carrier writing workers'
3 compensation insurance coverage in the state shall include with its
4 annual statement a report of income derived from the investment or
5 deposit of insurance premiums and all forms of assets invested and held
6 to cover reserves for workers' compensation liabilities resulting from
7 its workers' compensation business in the state.

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RECOMMENDATION 6a - 6b

Both of these proposals tied into the open rating scheme. The idea was to not have responsible carriers pick-up the expenses for those less desirable writers of workers' compensation. The liability for a defaulting carrier would fall with the state under one plan and split fifty-fifty between the state and private carriers under the other.

Although I am amused by the idea, in reality I can see nothing but litigation problems. In discussing this matter with the Department of Insurance, I have to support their contention that it is not workable.

This proposal assumes that we are talking a workers' compensation carrier writing no other business and limiting its activities to Alaska. In reality we are also concerned about carriers who write many lines of business in many states.

How could the courts determine that a deviated rate approval in Alaska were solely responsible for a company's demise. In reality it would be a combination of problems and not simply the fact that they had a deviated rate in Alaska. Additionally, the wording is very poor and actually accomplishs nothing.

Both these proposals were unanimously thrown out.

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1 * Sec. ___. AS 21.80 is amended by adding a new section to read:
2 Sec. 21.80.105. WORKERS' COMPENSATION. A claim under a policy of
3 workers' compensation insurance which is based on rates effective under
4 AS 21.39.045 and which would be a covered claim under this chapter but
5 for the exclusion in AS 21.80.180(4) shall be paid from the general
6 fund.
7 * Sec. ___. AS 21.80.180(4) is amended to read:
8 (4) "covered claim" means an unpaid claim, including one of
9 unearned premiums, which arises out of and is within the coverage and
10 not in excess of the applicable limits of an insurance policy to which
11 this chapter applies issued by an insurer, if the insurer becomes an
12 insolvent insurer after August 6, 1970, and (A) the claimant or insured
13 is a resident of this state at the time of the insured event; or (B)
14 the property from which the claim arises is permanently located in this
15 state; "covered claim" does not include any amount due a reinsurer,
16 insurer, insurance pool, or underwriting association, as subrogation
17 recoveries or otherwise and does not include any amount due under a
18 policy of workers' compensation insurance based on rates effective
19 under AS 21.39.045;
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1 * Sec. ___. AS 21.80 is amended by adding a new section to read:
2 Sec. 21.80.105. WORKERS' COMPENSATION. The uncovered portion of
3 a claim under a policy of workers' compensation insurance based on
4 rates effective under AS 21.39.045(b) which is excluded by AS 21.80.-
5 180(4) shall be paid from the general fund.
6 * Sec. ___. AS 21.80.180(4) is amended to read:
7 (4) "covered claim" means an unpaid claim, including one of
8 unearned premiums, which arises out of and is within the coverage and
9 not in excess of the applicable limits of an insurance policy to which
10 this chapter applies issued by an insurer, if the insurer becomes an
11 insolvent insurer after August 6, 1970, and (A) the claimant or insured
12 is a resident of this state at the time of the insured event; or (B)
13 the property from which the claim arises is permanently located in this
14 state; "covered claim" does not include any amount due a reinsurer,
15 insurer, insurance pool, or underwriting association, as subrogation
16 recoveries or otherwise but only includes 50 percent of any amount due
17 under a policy of workers' compensation insurance based on rates effec-
18 tive under AS 21.39.045(b);

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RECOMMENDATION #7

This would make the state or a political subdivision liable for workers' compensations to an employee if the employee is unable to recover from the employer.

At the present time there really is no protection for someone injured where workers' compensation isn't provided. In other states this is handled by a state fund or some other funding mechanism. This is simply an attempt to make sure that those that work for state or home rule entities have this additional protection.

There doesn't seem to be any basic problem problem with this approach, although it doesn't help those that don't work for state agencies.

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* Sec. ___. AS 23.30.045(d) is amended to read:

(d) No contract may be awarded by the state or a home rule or other political subdivision of the state to an employer under this chapter unless the employer [PERSON] to whom the contract is to be awarded has submitted to the contracting agency proof, furnished by the insurance carrier, of current coverage by workers' compensation insurance from an insurance company or association authorized to transact the business of workers' compensation insurance in this state or proof, furnished by the board, of a current certificate of self-insurance from the board. The employer [PERSON] to whom the contract is awarded shall keep his workers' compensation insurance policy in effect during the life of the contract with the state or political subdivision. If the state or the political subdivision of the state fails to obtain proof of coverage or self-insurance or to protect itself under (e) of this section, and an employee of the contractor is injured during the term of the contract, the state or the political subdivision is liable for workers' compensation to the employee if the employee is unable to recover from the employer because of the employer's lack of financial assets. The state or the political subdivision is not liable, however, to the employee for workers' compensation if the employee can recover from the employer under (a) and (b) of this section.

RECOMMENDATION #8

This is a tightening up of the law concerning failure to provide insurance when necessary. It ties in with Recommendation #7 and adds several penalties of at least $1,000.00 and additionally, we will add wording that states that a contractor can't work for the state for a one year period if he hasn't carried coverage as outlined by the amendment.

In my opinion this is a good proposal.

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1 * Sec. ___. AS 23.30.080 is amended by adding a new subsection to read:
2 (d) If an employer fails to insure or provide security as required
3 by AS 23.30.075, the board may issue a stop order prohibiting the use
4 of employee labor by the employer until the employer insures or provides
5 security as required by AS 23.30.075. If an employer fails to comply
6 with a stop order issued under this section, the board shall assess a
7 civil penalty of at least___ but not more than ___.
8 $1000
9 and no contracts with the State for 1 year.
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LA-L 20A

DATE January 16, 1981

MEMORANDUM

INDUSTRIAL INDEMNITY

FROM (NAME & OFFICE)

Kevin J. McCarthy

COPIES

Robert Gowdy
Robert Whitehead
George Scarpato
James Cunningham
Thomas O'Keefe
Glenn Thomas

SUBJECT

Competitive Rating Paper

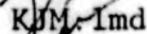
TO (NAME & OFFICE)

Sterling L. Hilen

Attached for your review is a revised version of a paper on the competitive rating issue. Working with George Scarpato, we plan on developing not only a paper which can be used with legislators and businessmen, but also an article which can be submitted to trade journals and an outline for speeches which can be presented to business groups and legislative groups.

I would appreciate a very critical analysis of the attached paper with special attention to statements contained in it of a technical nature. I want to make sure that everything we say is absolutely correct and we are not subjected to criticism for any possibly misleading statements.

Your prompt attention to this request would be appreciated.



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attach.

WORKERS' COMPENSATION RATES

Bureau Rates v. Individual Rates

There is currently a great debate in the United States over the manner in which workers' compensation insurance rates should be set. On one side are those who feel the insurance rates should be based on total industry experience as reported to a rating bureau, with the rates approved by each state's insurance commissioner. The other group feels rates should be set by each individual company, based primarily on its own experience, without specific approval by a state insurance commissioner.

Traditionally, every state has required bureau rates with prior approval by the insurance commissioner for workers' compensation. In recent years, a great many states have rescinded the requirement of prior approval in most insurance lines (auto, homeowners, etc.) and the issue has now arisen whether the requirement of prior approval should also be rescinded for workers' compensation.

Industrial Indemnity believes all parties involved in workers' compensation (workers, employers, insurers and regulators) are better served by maintenance of the present system of bureau rates with prior approval by an insurance commissioner.

Competition

The major argument of proponents of individual rates is competition. "If every insurer sets its own rates, there will

be competition in the marketplace and a greater responsiveness to changing conditions," say the proponents.

This position falsely presupposes a lack of competition under prior approval. Workers' compensation insurers would all charge the same amount to an insured under prior approval; however, at the end of a policy period, the insured would be eligible for a "dividend" based upon the insured's own experience and safety record. The effect of this "dividend" (which is often a large percent of premium) is competition. An employer can compare insurers' records of paying dividends and choose the most competitive insurer on this basis. Although prior approval does not allow front-end competition, the system is most certainly competitive in the real sense of the word. In addition to the competition which results from "dividends", employers find workers' compensation insurers competitive through retrospective rating plans, cash-flow plans, claims handling capabilities and safety services.

Safety

The prior approval method of workers' compensation pricing emphasizes and rewards safety. This emphasis is heightened through the provision of safety services by insurers. Opponents of prior approval say safety would not be de-emphasized under a front-end pricing scheme but such a position is based on faith rather than objectivity. Although safety and safety services are critical regardless of the pricing mechanism, it is logical

to assume (and verifiable) employers and employees are more safety-conscious when there is a known financial benefit for such an attitude. Elimination of prior approval would destroy an important safety incentive and likely lead to the down-grading of safety services by insurers in an effort to hold down short term expenses. Neither of these effects is beneficial to employers or employees.

Cost and Availability

We at Industrial feel individual rates would be bad for both large and small employers. For large employers, individual rates would mean the full charge would be calculated at the beginning of the policy period. This would inevitably force carriers to add an "insurance charge" to their quotes to account for contingencies and possible catastrophies. This means higher cost to the employer. Under prior approval, adjustments are made at the end of the policy period when the loss data is known, thus reducing the need for an "insurance charge".

For smaller employers, loss ratios usually run much higher than larger employers. Further, many costs are substantially similar to large risks. Simply stated, the smaller the employer, the greater the loss risk to the insurer. This tends to make small employers less appealing to insurers. Under the current prior approval rating system, however, there is sufficient competition to allow availability of coverage at reasonable cost

to small employers.

Under an individual rating system, there will not be available to many small employers insurers willing to take small risks. This could lead to serious availability problems for small employers. Even assuming availability, there will likely be significant price increases for small employers under an individual rating system.

Market Disruption

Little thought is given by the proponents of individual rates to the market disruption which would likely result from a major switch in the rating/pricing mechanism. The current system of prior approval, utilized since the inception of workers' compensation insurance in this country, has provided an environment whereby insurers have been able to offer businessmen a regularly available, affordable insurance product. This is a very critical advantage of bureau rates and prior approval.

Of the major "long-tail" insurance lines in this country -- medical and legal malpractice, products liability, workers' compensation -- only workers' compensation has avoided serious cost and availability problems in the last decade. During this period, comp has seen an astounding increase in benefits and coverage. The stability of this market rests on the reliability

of the data-gathering of rating bureaus and the consistency of the prior approval method of ratemaking. As an example of this point, U.S. Longshoreman & Harborworkers' coverage in California has uncontrolled rates. In recent years, there has been a serious and disruptive cost and availability problem in this line. Texas, on the other hand, has controlled rates for USL & H and has not experienced the problems of California. Yet, both states operate under the same law, are subject to the same administration of the law, and the same benefit levels. Why does Texas avoid the cost and availability problems plaguing California? The answer lies in controlled, stable rates.

Conclusion

Prior approval has been an integral concept in states' workers' compensation systems since their introduction at the turn of the century. One of the original purposes of prior approval was to maintain a solvent insurance mechanism to pay claims. Today, although insurance solvency itself is not a major concern, there are still many reasons for the maintenance of the prior approval system:

a) Prior approval offers a unique inducement for safety unmatched by an individual rating system;

b) competition is maintained in the system through the use of dividends, safety services, rehabilitation and effective claims handling;

c) the prior approval system has proven its ability to provide affordable insurance to small employers on a consistent basis

d) the classification system under prior approval allows insurers to charge objectively based rates custom-tailored to each employer's work-force risk.

Individual rating is an unproven idea which poses significant risks to both employers and employees. Prior approval is a proven concept which has, for over 70 years, provided all segments of the workers' compensation community a stable, moderately-priced insurance product.

9 through 19

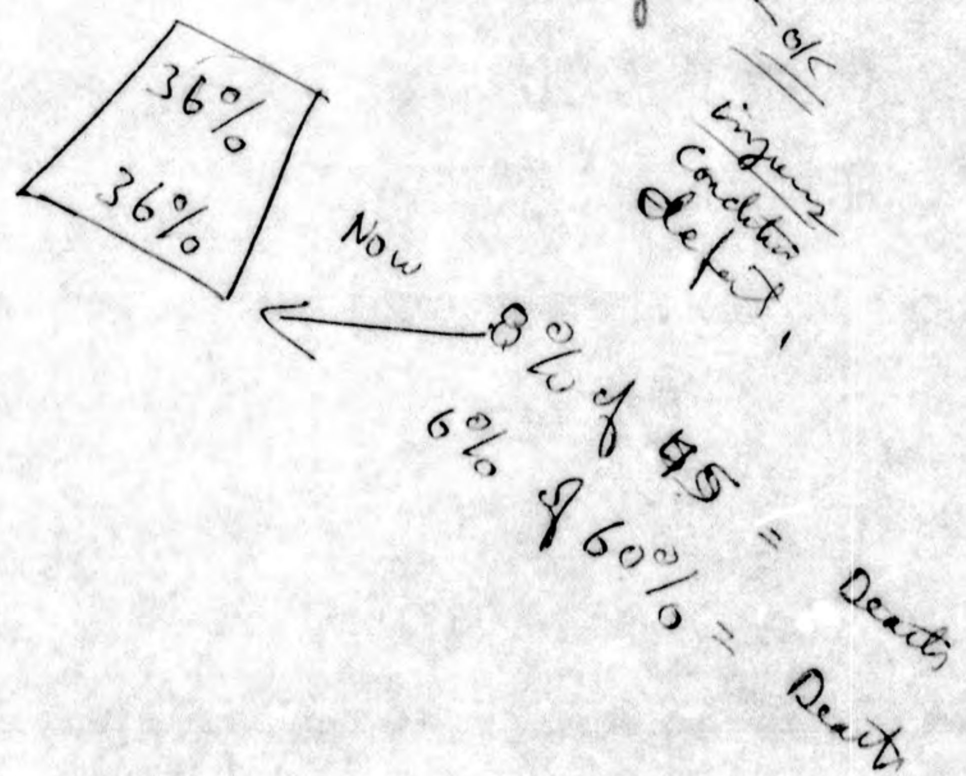
RECOMMENDATION #9

This is meant to be clean-up language concerning time payment requirements. The Workers' Compensation Board tells me that they actually administered the plan according to the wording that is to be included in this recommendation. They consider this clean-up language and only gets the law to be compatible with what they are in fact doing.

I runs time on claim from medicine vs TTD died.

II what is latent injury! isn't it latent condition

III $100 Fine ok - day th } $25 00 a days



12-0110
Amend #9
Sofo

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* Sec. ___. AS 23.30.105(a) is amended to read:

(a) The right to benefits [COMPENSATION FOR DISABILITY] under this chapter is barred unless a claim for them [IT] is filed within two years after the employee has knowledge of the nature of his disability and its relation to his employment and after disablement. The [HOWEVER, THE MAXIMUM TIME FOR FILING THE CLAIM IN ANY EVENT OTHER THAN ARISING OUT OF AN OCCUPATIONAL DISEASE SHALL BE FOUR YEARS FROM THE DATE OF INJURY, AND THE] right to benefits [COMPENSATION] for death is barred unless a claim for benefits [THEREFORE] is filed within one year after the death. If [, EXCEPT THAT IF] payment of benefits [COMPENSATION] has been made without an award on account of the injury or death, a claim may be filed within two years after the date of the last payment. It is additionally provided that, in the case of a latent injury [DEFECTS PERTINENT TO AND CAUSING COMPENSABLE DISABILITY], the injured employee has full right to claim as shall be determined by the board, time limitations notwithstanding.

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RECOMMENDATION 10

This can be considered a paperwork endorsement sponsored by the Workers' Compensation Board so that they have statistics available for their new computer. They feel that they need a great deal more information concerning controverted claims, timely reporting of first benefits, continued benefits, and better monitoring tools to see how each claimant is being treated by the carriers.

The Board will be providing numerous forms that carriers and self-insured have to fill out dealing with various aspects of claims handling.

Much of this spun off a Study Commission investigation into controverted claims. When the Study Commission looked for controverted claims it found that the Board's information was too incomplete to complete the study. With this in mind the Board feels they need more information to do their job.

As usual, there are fines and penalties involved. It is hard to measure exactly what additional expenses this will have on the carriers.

One concern to ALPAC was the area of cashier's checks or checks drawn on a local bank. They use an out-of-state bank and in many cases it takes several days or weeks to clear payments. On a personal basis Industrial uses a local bank and this is not

a problem although it could be in the future if we decide to change our strategies. This particular proposal will be discussed more at the next meeting and we will be attempting to liberalize Provision (M) so that all we have to do is make sure that checks are cashed promptly by the banks.

I will have to rely on our local Claims staff and the Home Office Claims Staff to help me through this amendment and if anyone has concerns over M and N please give me input.

I Drop the 25.00

II Problem on line 25/26 Page 3 when TTD is running out we don't have time to recover overpayments if we wait for the Board to approve!

III Page 4 - "O" if at all why not at closing. - See Oscar report. We now send [illegible] we could
A) cost of Time
B) adjustors - without be able to handle claim for the last week of each month they will be pulled off these files for the reports.

① Hearings filed with no final Reports

② get copies of all [illegible]

JAN 16 1981

1 * Sec. ___. AS 23.30.155 is amended to read:

2 Sec. 23.30.155. PAYMENT OF COMPENSATION. (a) Compensation
3 under this chapter shall be paid periodically, promptly, and directly
4 to the person entitled to it, without an award, except where liability
5 to pay compensation is controverted by the employer. An employer con-
6 troverts a claim if the liability to pay benefits is denied or con-
7 tested and notice is filed, on a form prescribed by the board, stating
8 (1) that the right of the employee to benefits is contro-
9 verted;
10 (2) the name of the employee;
11 (3) the name of the employer;
12 (4) the date of the alleged injury or death; and
13 (5) ~~the~~ grounds upon which the right to benefits is contro-
14 verted. *the type of Benefits + all*

15 (b) The first installment of compensation becomes due on the 14th
16 day after the employer has knowledge of the injury or death. On this
17 date all compensation then due shall be paid. Subsequent compensation
18 shall be paid in installments, every 14 days [SEMIMONTHLY], except
19 where the board determines that payment in installments should be made
20 monthly or at some other period.

21 (c) Upon making the first payment, and upon an increase, reduc-
22 tion, termination, suspension, resumption or a change in rate or type
23 of compensation paid [OF PAYMENT FOR ANY CAUSE], the employer shall
24 [IMMEDIATELY] notify the board within 14 days, on [IN ACCORDANCE WITH]
25 a form prescribed by the board, that payment of compensation has begun
26 or has been increased, reduced, terminated, resumed, changed, or sus-
27 pended, as the case may be. If the employer fails to notify the board
28 within 14 days, the board shall assess against the employer a civil
29 penalty of $100 ~~plus $25 for each day~~ in excess of 14 days that the

O/C *O/C* *O/C* *dump the CSB Reg. day*

no latitude for -1- Companies $100 + $100 a day

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1 employer fails to give notice. Total penalties under this section may
2 not exceed $2,500 for each failure to file a required report.
3 (d) If the employer controverts the right to benefits, [COMPEN-
4 SATION] he shall file with the board on or before the 14th day after he
5 has knowledge of the alleged injury or death or a claim for benefits, a
6 notice of controversion on [, IN ACCORDANCE WITH] a form prescribed by
7 the board [, STATING THAT THE RIGHT TO COMPENSATION IS CONTROVERTED,
8 THE NAME OF THE CLAIMANT, THE NAME OF THE EMPLOYER, THE DATE OF THE
9 ALLEGED INJURY OR DEATH, AND THE GROUNDS UPON WHICH THE RIGHT TO COM-
10 PENSATION IS CONTROVERTED].
11 (e) If any installment of compensation payable without an award
12 is not paid within 14 days after it becomes due, as provided in (b) of
13 this section, there shall be added to the unpaid installment an amount
14 equal to 20 percent of it, which shall be paid at the same time as, and
15 in addition to, the installment, unless notice is filed under (d) of
16 this section or unless the nonpayment is excused by the board after a
17 showing by the employer that owing to conditions over which he had no
18 control the installment could not be paid within the period prescribed
19 for the payment.
20 (f) If compensation payable under the terms of an award is not
21 paid within 14 days after it becomes due, there shall be added to that
22 [SUCH] unpaid compensation an amount equal to 20 percent of it, which
23 shall be paid at the same time as, but in addition to, the compen-
24 sation, unless review of the compensation order making the award is had
25 as provided in AS 23.30.125 and an interlocutory injunction staying
26 payments is allowed by the court.
27 [(g) WITHIN 16 DAYS AFTER FINAL PAYMENT OF COMPENSATION HAS BEEN
28 MADE, THE EMPLOYER SHALL SEND TO THE BOARD A NOTICE IN ACCORDANCE WITH
29 A FORM PRESCRIBED BY THE BOARD STATING THE FACT THAT FINAL PAYMENT HAS

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1 BEEN MADE, THE TOTAL AMOUNT OF COMPENSATION PAID, THE NAME OF THE
2 EMPLOYEE AND OF ANY OTHER PERSON TO WHOM COMPENSATION HAS BEEN PAID,
3 THE DATE OF THE INJURY OR DEATH, AND THE DATE TO WHICH WHICH COMPENSA-
4 TION HAS BEEN PAID. IF THE EMPLOYER FAILS TO SO NOTIFY THE BOARD WITHIN
5 THIS TIME, THE BOARD SHALL ASSESS AGAINST THE EMPLOYER A CIVIL PENALTY
6 IN THE AMOUNT OF $100.]

7 (h) The board may upon its own initiative at any time in a case
8 in which payments are being made with or without an award, [AND SHALL
9 IN A CASE] where right to benefits [COMPENSATION] is controverted, or
10 where payments of compensation have been increased, reduced, termin-
11 ated, changed, [STOPPED] or suspended, upon receipt of notice from a
12 person entitled to benefits [COMPENSATION], or from the employer, that
13 the right to benefits [COMPENSATION] is controverted, or that payments
14 of compensation have been increased, reduced, terminated, changed,
15 [STOPPED] or suspended, make the investigations, cause the medical
16 examinations to be made, or hold the hearings, and take the further
17 action which it considers will properly protect the rights of all
18 parties.

19 (i) When the board considers it advisable it may require an
20 employer to make a deposit with the Department of Revenue to secure the
21 prompt and convenient payment of the benefits [COMPENSATION], and pay-
22 ments from the deposit upon an award shall be made upon order of the
23 board.

24 (j) If an employer has made advance payments or overpayments of
25 compensation, he is entitled to be reimbursed, after approval by the
26 board, out of any unpaid installment or installments of compensation
27 due.

28 (k) An injured employee or in case of death his dependents or
29 personal representative, shall give receipts for payment of benefits

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1 [COMPENSATION] to the employer paying it and the employer shall produce
2 them for inspection by the board, whenever required.
3 (l) repealed
4 (m) Compensation owed to an injured employee who is in the state
5 shall be paid by cashier's check or by a check drawn on a bank autho-
6 rized to do business and located in the state.
7 (n) Whenever the board determines that it is in the interest of
8 justice, the liability of the employer for all compensation, or any
9 part of it as determined by the board, may be discharged by the pay-
10 ment of a lump sum.
11 (o) An employer shall file a quarterly report on a form pre-
12 scribed by the board, showing the total amount of all benefits, legal
13 fees, and penalties paid during the quarter including the name of each
14 claimant, the date of injury, and the claim number.
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RECOMMENDATION 11

concerns Board approval of compromise and release. In fact, the Board does what they are proposing in this regulation so I see no reason to fight the issue. There should be no changes in the administration of the law tith this proposal.

C+R's will be overturned more often ⇒

Increase the Tail on W/C - more open longer.

Will push lump sum on those that don't need it.

12-0110
Amend #11
Sofo

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C&R

* Sec. ___. AS 23.30.210(b) is amended to read:

(b) At any time after death, or after 30 days subsequent to the date of injury, the employer and the employee or the beneficiary or beneficiaries, as the case may be, have the right to reach an agreement in regard to a claim for injury or death under this chapter [HEREUNDER] in accordance with the applicable schedule [HEREOF], but a memorandum of the agreement in a form prescribed by the board shall be filed with the board. Otherwise, the agreement is void for any purpose. If approved by the board, the agreement is enforceable the same as an order or award of the board and discharges the liability of the employer for the benefits [COMPENSATION] notwithstanding the provisions of [AS 23.30.130,] AS 23.30.160 [,] and AS 23.30.245(b) [AS 23.30.245]. The agreement shall be approved by the board only when the terms conform to the provisions of this chapter and, if it involves or is likely to involve permanent disability, the board may require an impartial medical examination and a hearing in order to determine whether or not to approve the agreement. The board may approve lump-sum settlements when it appears to be to the best interest of the employee or beneficiary or beneficiaries.

Board is doing this anyway - no real change to us!

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Yes

RECOMMENDATION 12a - 12b - 20

This changes the death benefit from $1,000 to $2,500. The only discussion or problem concerns transporting the body of the deceased back to place of hire within the State. Union contracts cover this issue and they don't want to lose their rights because of this Recommendation. This may get reworked but it doesn't present any difficulty to us.

OK - 12A -

NO - 12B - What is reasonable.

12-0110
Amend #12(a)
Sofo

JAN 16 1981

1 * Sec. ___. AS 23.30.215(a)(1) is amended to read:
2 (1) reasonable and necessary funeral expenses not exceeding
3 $2,500 [$1,000];
4 * Sec. ___. AS 23.30.265 is amended by adding a new paragraph to read:
5 (28) "funeral expenses" include the cost of transportation of
6 the body of the deceased employee.
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LA-L 20A

12-0110
Amend #12(b)
Sofo

JAN 16 1981

1 * Sec. ___. AS 23.30.215(a)(1) is amended to read:
2 Director (1) reasonable and necessary funeral expenses determined by
3 the ~~Board~~ [NOT EXCEEDING $1,000];
4 * Sec. ___. AS 23.30.265 is amended by adding a new paragraph to read:
5 (28) "funeral expenses" include the cost of transportation of
6 the body of the deceased employee.
7 to point of hire
8 within the state
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LA-L 20A

RECOMMENDATION 13

191

This is considered somewhat of a cleaning up of the language of the Act where it isn't consistent at the present time. Additionally, it deals with the sometimes controversial issue of expenses for rehabilitated employees.

In practice, some carriers feel that they should be able to pay reduced benefits during rehabilitation periods but the Board has always forced them to pay full benefits. This Recommendation helps clarify the point that full benefits are to be paid. In reality, these amendments only support what the Board is already dictating.

Tom Bachaler: attorney in Juneau.

195 medical expense [illegible] —
2
Keep this Section in so we have a limitation on maintenance Treatment.
medical Treatment goes on — chiropractic care is real problem
Pg 3 - Why AS 23.30.191 is out

~~NCCI has proved it.~~
AIA supported

12-0110
#13
Sofo

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1 * Sec. ___. AS 23.30.095(a) is amended to read:

2 (a) The employer shall furnish medical, surgical, and other
3 attendance or treatment, nurse and hospital service, medicine, crutches,
4 and apparatus for the period which the nature of the injury or the
5 process of recovery requires [, NOT EXCEEDING TWO YEARS FROM AND AFTER
6 THE DATE OF INJURY TO THE EMPLOYEE. HOWEVER, IF THE CONDITION REQUIRING
7 THE TREATMENT, APPARATUS, OR MEDICINE IS A LATENT ONE, THE TWO-YEAR
8 PERIOD RUNS FROM THE TIME THE EMPLOYEE HAS KNOWLEDGE OF THE NATURE OF
9 HIS DISABILITY AND ITS RELATIONSHIP TO HIS EMPLOYMENT AND AFTER-
10 DISABLEMENT. IT SHALL BE ADDITIONALLY PROVIDED THAT, IF CONTINUED
11 TREATMENT OR CARE OR BOTH BEYOND THE TWO-YEAR PERIOD IS INDICATED, THE
12 INJURED EMPLOYEE HAS THE RIGHT OF REVIEW BY THE BOARD. THE BOARD MAY
13 AUTHORIZE CONTINUED TREATMENT OR CARE OR BOTH AS THE PROCESS OF RECOVERY
14 MAY REQUIRE]. When medical care is required, the injured employee may
15 designate a licensed physician inside the state to render the care
16 except in cases where, in the judgment of the board, care or treatment
17 or both can best be administered by the selection of another licensed
18 physician. Upon procuring the services of a licensed physician, the
19 injured employee shall give proper notification of his selection to the
20 employer within a reasonable time after first being treated. [IF FOR
21 ANY REASON DURING THE PERIOD WHEN MEDICAL CARE IS REQUIRED THE EMPLOYEE
22 WISHES TO CHANGE TO ANOTHER PHYSICIAN, HE MAY DO SO IN ACCORDANCE WITH
23 RULES PRESCRIBED BY THE BOARD.]

24 * Sec. ___. AS 23.30.095(c) is amended to read:

25 (c) No claim for medical or surgical treatment is valid and
26 enforceable as against the employer unless, within 20 [TWENTY] days
27 following each visit for [THE FIRST] treatment, the physician giving
28 the treatment or the employee receiving it furnishes to the employer
29 and the board notice of the injury and treatment, preferably on a form

LA-L 20A

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1 prescribed by the board. The board shall [MAY], however, excuse the
2 failure to furnish notice within 20 days when it finds it to be in the
3 interest of justice to do so, and it may, upon application by a party
4 in interest, make an award for the reasonable value of the medical or
5 surgical treatment so obtained by the employee.
6 * Sec. ___. AS 23.30.095(e) is amended to read:
7 (e) The employee shall, after an injury, at reasonable times
8 during the continuance of his disability if requested by his employer
9 or, when ordered by the board, submit himself to an examination by a
10 physician or surgeon authorized to practice medicine under the laws of
11 the state in which the employee may be found, furnished and paid for by
12 the employer. [THE EMPLOYEE HAS THE RIGHT TO HAVE A PHYSICIAN, PAID
13 FOR BY THE EMPLOYER, PRESENT AT THE EXAMINATION OR EXAMINATIONS.] No
14 fact relative to the injury or claim communicated to or otherwise
15 learned by a physician or surgeon who may have attended or examined the
16 employee, or who may have been present at an examination is privileged,
17 either in the hearings provided for in this chapter or an action to
18 recover damages against an employer who is subject to the compensation
19 provisions of this chapter. If an employee refuses to submit himself
20 to any examination provided for in this section [HEREIN], his rights to
21 compensation shall be suspended until the obstruction or refusal ceases,
22 and his compensation during the period of suspension may, in the dis-
23 cretion of the board or the court determining an action brought for the
24 recovery of damages under this chapter [HEREUNDER], be forfeited. The
25 board in any case of death may require an autopsy at the expense of the
26 party requesting the autopsy. No autopsy may be held without notice
27 first being given to the widow or widower or next of kin if they reside
28 in the state or their whereabouts can be reasonably ascertained, of the
29 time and place of the autopsy and reasonable time and opportunity given

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the widow or widower or next of kin to have a representative present to witness the autopsy. If no adequate notice is given, the findings from the autopsy may be suppressed on motion made to the board or to the superior court, as the case may be.

* Sec. ___. AS 23.30.110(c) is amended to read:

(c) The board shall make the investigation which it considers necessary in respect of the claim, and upon application of an interested party shall order a hearing on it. If a hearing on a claim is ordered, the board shall give the claimant and other interested parties at least 20 [10] days' notice of the hearing, served personally upon the claimant and other interested parties or sent by registered mail, and shall, within 30 [20] days after the hearing is held [HAD], by order, reject the claim or make an award in respect to it. [IF NO HEARING IS ORDERED WITHIN 20 DAYS AFTER NOTICE IS GIVEN AS PROVIDED IN (b) OF THIS SECTION, THE BOARD SHALL BY ORDER REJECT THE CLAIM OR MAKE AN AWARD IN RESPECT TO IT.] only payable when there is no TTD or TPD.

* Sec. ___. AS 23.30.191 is repealed and reenacted to read:

Sec. 23.30.191. EXPENSES FOR REHABILITATING INJURED EMPLOYEES. An employee, who, as a result of injury, is or may be expected to be totally or partially incapacitated for his normal occupation and who, under the direction of the Department of Labor, is being rehabilitated to engage in a remunerative occupation, may receive compensation necessary for his rehabilitation of not less than 50 percent and not more than 66-2/3 percent of his average weekly wage.

* Sec. ___. AS 23.30.095(g), 23.30.125(b), 23.30.155(g), 23.30.175(d), (e), and (f) are repealed.

LA-L 20A

AMENDMENT 14

This increases the penalty for misrepresentation and tries to put some teeth into fraudulent claims. It attempts to move forward in the prosecution of fraudulent claims.

In my opinion it is nice to have in the law but I don't feel much prosecution will take place.

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1 * Sec.____. AS 23.30.250 is amended to read:

2 Sec. 23.30.250. PENALTY FOR MISREPRESENTATION. A person who wil-
3 fully makes a false or misleading statement or representation for the
4 purpose of obtaining a benefit or payment under this chapter is guilty
5 of theft as defined in AS 11.46.100(3) and is punishable as provided in
6 AS 11.46.120 - 11.46.150 [A MISDEMEANOR, AND UPON CONVICTION IS PUNISH-
7 ABLE BY A FINE OF NOT MORE THAN $1,000, OR BY IMPRISONMENT FOR NOT MORE
8 THAN ONE YEAR, OR BY BOTH].
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RECOMMENDATION 15

This recommendation puts into the Workers' Compensation Law provisions for handling unfair employment practices. In reality, we are guided by these principals now.

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12-0110
#15
Sofo -

*Sec. ___. AS 18.80.220(a)(4) is amended to read:

(4) an employer, labor organization or employment agency to discharge, expel or otherwise discriminate against a person because he has

(A) opposed any practices forbidden under AS 18.80.-200 - 18.80.280; [OR BECAUSE HE HAS]

(B) filed a complaint, testified or assisted in a proceeding under this chapter; or

(C) filed a claim for workers' compensation benefits under AS 23.30;

* Sec. ___. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.263. UNLAWFUL EMPLOYMENT PRACTICE. It is unlawful for an employer to discharge or otherwise discriminate against an employee because he has filed a claim for workers' compensation benefits under this chapter.

> Employers will have a problem >

LA-L 20A

RECOMMENDATION 16

The first part of this recommendation increases the staffing of the Board so that claims can be handled more promptly. This should be no problem and should help us.

The problem area with this recommendation is the funding of the Second Injury. We now pay 8% of certain disabilities at the time we close the claim. It is simple and takes place at one time during the life of the policy. Under the new proposal we would be paying 6% on many types of disabilities and we will be looking at this payment on more claims.

There are three approaches being considered for the carrier and self-insured payment of the Second Injury. The first approach is that of Brian Rogers who wants the 6% paid on reserved amount at the time the injury is set up. He feels that by requiring a 6% cash payment at that time the carriers will tend to lower their reserves to the benefit of employers. The Board takes the position that they want quarterly reporting and we pay 6% on the amount spent per claim payable quarterly. In my opinion this could be a bookkeeping nightmare and it will be subject to more discussions between now and the next meeting. My approach, and not well received, would be that we continue to make payments at the termination of a claim as we are presently doing. The Board doesn't feel they will get adequate funds in a timely basis to meet their obligation if my approach is adopted. In short, we are at a stalemate and we will have to find a compromise. I will be looking to our claims staff locally and at the Home Office for

help on this one. Additionally, other carriers are reviewing this matter to give me their input.

(1) 70% are T.T.D. only so paying at close isn't a delay. Do a survey of claims closed & get time interval & see if it produces enough $ to float the system needs.

when they close or

(2) ann date of accident -

I start funding by State.

Teach Jerry.

GG - get attorney General's Cost out of System

12-0110
#16
Sofo ✓

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1 * Sec. ___. AS 23.30.005(a) is amended to read:
2 OK (a) The Alaska Workers' Compensation Board shall consist of nine
3 [SEVEN] members, including a southern panel of three members sitting
4 for the first judicial district, a northern panel of three members
5 sitting for the second and fourth judicial districts, [AND] a south-
6 central panel of three members sitting for the third judicial district,
7 and one panel of three members which may sit in any judicial district.
8 Each panel shall include the commissioner of labor or his designated
9 representative, a representative of industry and a representative of
10 labor. The latter two members of each panel shall be appointed by the
11 governor. All panel members are subject to confirmation by a majority
12 of the members of the legislature in joint session.
13 * Sec. ___. AS 23.30.040 is repealed and reenacted to read:
14 OK Sec. 23.30.040. SECOND INJURY FUND. (a) There is created a
15 second injury fund, administered by the commissioner of labor. Money
16 in the second injury fund may only be paid for the benefit of those
17 persons entitled to payment of benefits from the second injury fund
18 under this chapter. Payments from the second injury fund must be made
19 by the commissioner of labor in accordance with the orders and awards
20 of the board.
21 (b) If an employee suffers a compensable injury which results in
22 temporary total disability, temporary partial disability, permanent
23 partial disability, or permanent total disability, the employer or
24 insurance carrier shall pay quarterly into the second injury fund a sum
25 equal to six percent of the compensation to which the employee is
26 entitled for temporary total disability, temporary partial disability,
27 permanent partial disability, permanent total disability, or for re-
28 habilitation under AS 23.30.191.
29 (c) If an employee suffers a compensable injury which results in

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death and the employee is not survived by a widow, widower, child, or dependent relative eligible to receive death benefits under AS 23.-30.215, the employer or insurance carrier shall pay $10,000 to the second injury fund.

(d) The board ~~may~~ shall refund a payment made into the second injury fund if the employer or insurance carrier shows that it made the payment by mistake or inadvertence, or if it shows there existed at the time of the death of the employee a beneficiary entitled to benefits under AS 23.30.215.

(e) The board may direct and provide the vocational retraining and vocational rehabilitation of a permanently disabled person whose condition is a result of an injury compensable under this chapter by making cooperative arrangements with insurance carriers, private organizations and institutions, or state or federal agencies. The person being retrained or rehabilitated is entitled to receive compensation from the second injury fund for maintenance during the period of retraining and rehabilitation in the sum which the board considers necessary, not to exceed $200 a month. The total expenditures for maintenance, retraining, rehabilitation, and necessary transportation may not exceed $10,000 for one person.

(f) All amounts collected as civil penalties under this chapter must be paid into the second injury fund.

(g) The attorney general may investigate claims and hire expert witnesses necessary to prevent fraudulent or excessive claims for money in the second injury fund and, subject to an appropriation for this purpose, may be reimbursed from the second injury fund for the cost of investigating claims and defending against those claims.

(h) Administration expenses of the state under this section and AS 23.30.205 must be paid from an appropriation from the second injury

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1 fund.

2 (i) The provisions of (b) and (c) of this section are waived in a
3 calendar quarter when the unencumbered balance in the second injury
4 fund the first day of that quarter is $600,000 or more.

5 * Sec. ___. AS 23.30.045(c) is amended to read:

6 (c) For a person eligible for vocational rehabilitation service
7 under AS 23.15.080 [AND] who is placed with an employer for service
8 [WITHOUT WAGES] at the request of the office of vocational rehabilita-
9 tion to give him on the job training, work readiness, [OR] work therapy
10 experience [,] or work sampling, the liability set out in (a) of this
11 section applies to the state rather than to the employer.

12 * Sec. ___. The amount of a payment to the second injury fund and the
13 conditions under which a payment is required of an employer or insurance
14 carrier must be in accordance with the version of AS 23.30.040(b) in effect
15 on the date that the injury to the employee occurred.

16 * Sec. ___. Section 1 of this Act takes effect immediately in accordance
17 with AS 01.10.070(c).

18 * Sec. ___. Sections 2 - 4 of this Act take effect July 1, 1981.

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BRIEFING PAPER: PROPOSED CHANGES IN THE FUNDING OF THE SECOND INJURY FUND (AS 23.30.040)

TABLE

I. Current Situation

A. Unless funding is provided from an outside source, the fund is expected to be unable to meet its obligations in 1981.

B. Fund disbursements are expected to exceed receipts throughout the projection period (to 1991).

C. Contributions to the fund equal eight percent of the amount of compensation paid for permanent partial disability (plus $10,000 for each death with no surviving beneficiary).

II. Original Proposal

A. Increase contribution base to include rehabilitation payments and payments for temporary total, temporary partial, and permanent total disability.

B. Decrease the contribution rate to six percent.

C. Eliminate contributions in years which the fund balance exceeds $600,000.

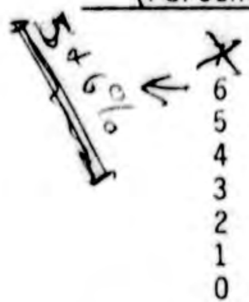
III. Problems with Original Proposal

A. Overfunding of disbursements is the probable outcome. (However, the rate must be set high enough to avoid solvency problems and it is highly unlikely that fixed contributions would allow receipts and disbursements to balance in a changing environment. Therefore, a "high" rate is the only acceptable fixed rate policy.)

B. Estimated yearly disbursements exceed $600,000. Elimination of contributions in years with initial reserves of $600,000 would produce an insolvent fund. Therefore, even "fixed-rate overfunding" is an unacceptable option unless the ceiling reserve balance is set at an amount in excess of a full year's disbursements. (See graph in Section IV-B for an example.)

IV. An Alternative: Produce the Amount Needed

A. Replacing the "too much or nothing" method with a flexible schedule would allow the contribution rate to adjust to the level of disbursements. An easy method of adjustment is to make the rate dependent on the level of reserves relative to expected outlays. The method ensures fund solvency without building massive reserves. The table below is an example of this flexible funding method.



Contribution Rate (Percent)	Reserves as a Percent of Outlays: At Least (Percent)	But Less Than (Percent)
~~[illegible]~~	-	~~25~~
6	[illegible]	50
5	50	75
4	75	100
3	100	125
2	125	150
1	150	175
0	175	-

Problem

B. The tables below project activity under both alternatives. Note that total compensation and Second Injury Fund disbursements are the same in both tables; only the method of rate determination is different. Fund balances are graphed below each table.

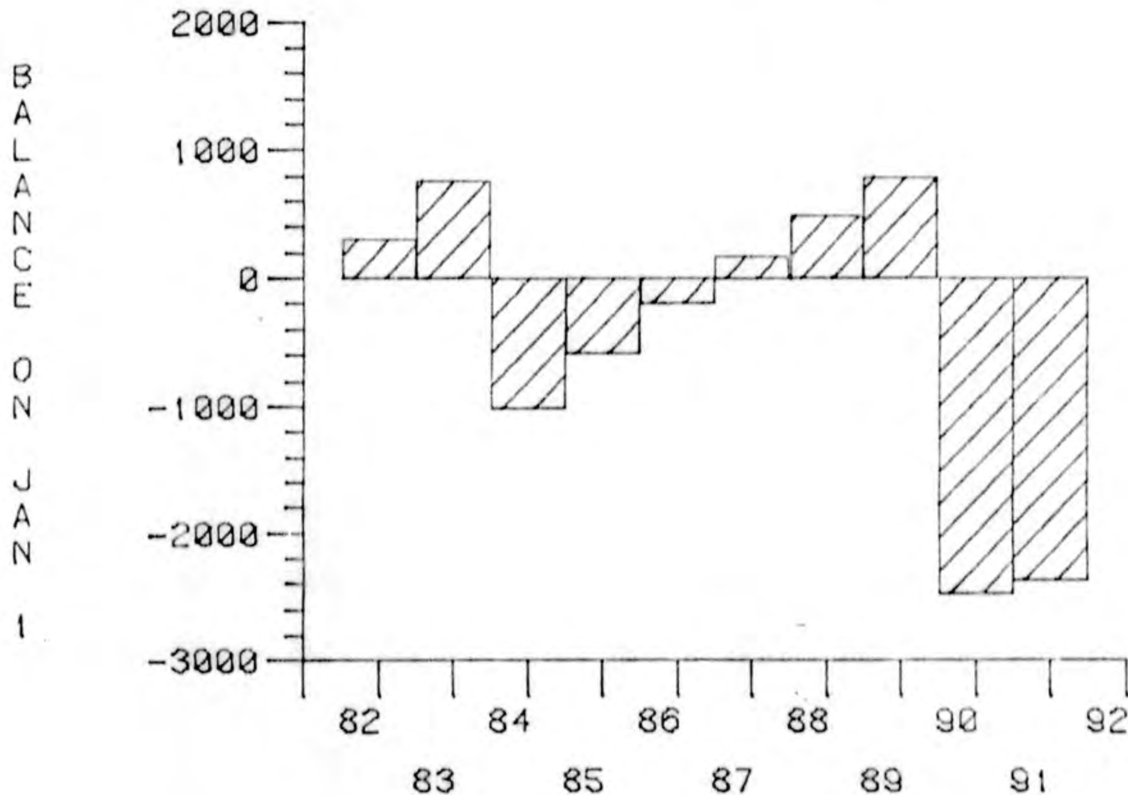
Eight Percent Rate with $600,000 Reserve Ceiling (in $1000)

Year	Fund Balance	Rate	Paid Losses	Fund Receipts	Fund Disburse-ments	Surplus (Deficit)	Fund Balance	Balance ÷ Disburse-ments (percent)
81	$ 0	.06	$ 31150	$ 934*	$ 630*	$ 304	$ 304	34
82	304	.06	33642	2018	1564	454	759	48
83	759	-	36333		1737	(1737)	-1015	-
84	-1015	.06	39240	2354	1929	424	- 590	-
85	- 590	.06	42379	2542	2144	398	- 192	-
86	- 192	.06	45769	2746	2383	362	169	7
87	169	.06	49431	2965	2648	317	487	18
88	487	.06	53385	3203	2942	261	748	25
89	784	-	57656		3268	(3268)	-2484	-
90	-2484	.06	62268	3736	3631	104	-2379	-
91	-2379	.06	67250	4035	4034	1	-2378	-

* half year in 1981

JAN 1 BALANCE UNDER FIXED 6% RATE PROPOSAL

8% GROWTH IN PAID LOSSES, 11% GROWTH IN FUND OUTLAYS



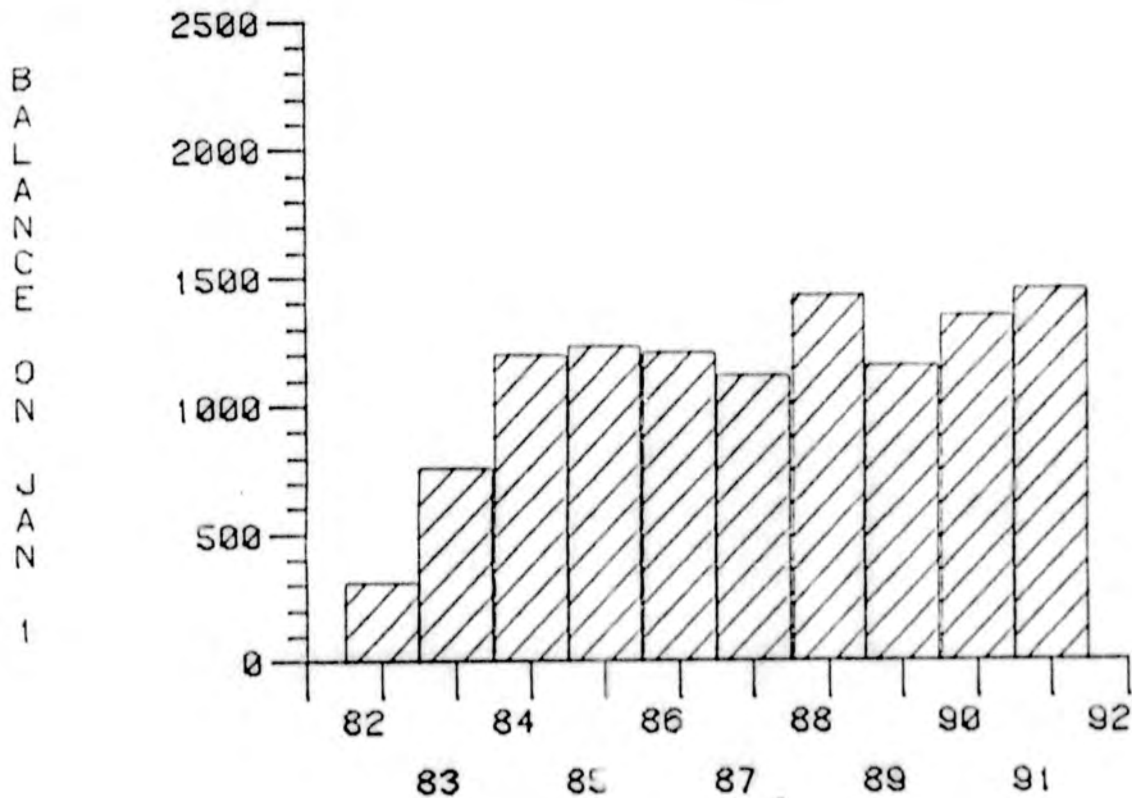
Flexible Rate Schedule (in $1000)

Year	Fund Balance	Rate	Paid Losses	Fund Receipts	Fund Disburse-ments	Surplus (Deficit)	Fund Balance	Balance ÷ Disburse-ments (percent)
81	$ 0	.06	$ 31150	$ 934 *	$ 630 *	$ 304	$ 304	24
82	304	.06	33642	2018	1564	454	759	48
83	759	.06	36333	2180	1737	442	1201	69
84	1201	.05	39240	1962	1929	32	1234	63
85	1234	.05	42379	2118	2144	(25)	1208	56
86	1208	.05	45769	2288	2383	(95)	1113	46
87	1113	.06	49431	2965	2648	317	1431	54
88	1431	.05	53335	2669	2942	(272)	1158	39
89	1158	.06	57656	3459	3268	190	1349	41
90	1349	.06	62268	3736	3631	104	1453	40
91	1453	.06	67250	4035	4034	1	1454	36

* half year in 1981

JAN 1 BALANCE UNDER FLEX RATE PROPOSAL

8% GROWTH IN PAID LOSSES, 11% GROWTH IN FUND DIST.



(paid losses) grows at eight percent per year while outlays grow at 11.1 percent per year. The purpose of the above "worst case" scenario is to demonstrate that the schedule can support an extreme level of outlays. The table below is a more likely scenario; fund disbursements and regular compensation grow at the same (11.1%) rate.

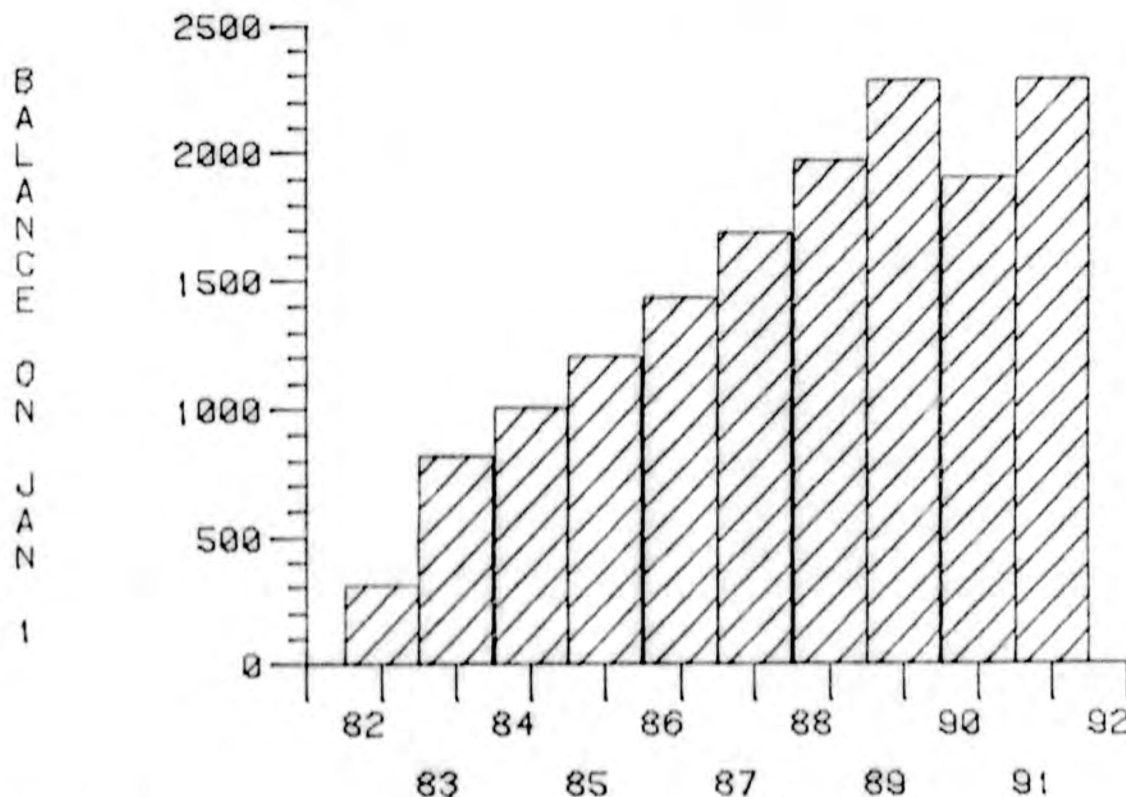
Flexible Rate Schedule (in $1000)

Year	Fund Balance	Rate	Paid Losses	Fund Receipts	Fund Disburse-ments	Surplus (Deficit)	Fund Balance	Balance ÷ Disbuse-ments (percent)
81	$ 0	.06	$ 31150	$ 934*	$ 630*	$ 304	$ 304	24
82	304	.06	34607	2076	1564	512	816	52
83	816	.05	38449	1922	1737	185	1002	57
84	1002	.05	42717	2135	1929	206	1208	62
85	1208	.05	47459	2372	2144	228	1436	67
86	1436	.05	52726	2636	2383	252	1689	70
87	1689	.05	58579	2928	2648	280	1970	74
88	1970	.05	65081	3254	2942	311	2282	77
89	2282	.04	72305	2892	3268	(376)	1905	58
90	1905	.05	80331	4016	3631	385	2290	63
91	2290	.05	89248	4462	4034	427	2718	67

* half year in 1981

JAN 1 BALANCE UNDER FLEX RATE PROPOSAL

11% GROWTH IN PAID LOSSES AND FUND OUTLAYS



V. Conclusions

A flexible schedule provides a better balance between receipts and outlays, protects fund solvency, eliminates the need for massive reserve balances, and should need no further legislative adjustments.

VI. Technical Notes

A. Expected Rate Requirements

An eight percent rate paid on approximately 30 percent of total compensation now funds approximately half of expected outlays. Source: P.H., Second Injury Fund estimates.

$$.08 \times .3 \text{ Comp} = .5 \text{ Outlays}$$

Then full funding would require a 16 percent contribution rate

$$.16 \times .3 \text{ Comp} = \text{Outlays}$$

Expanding the contribution base to all claims would require a rate of 5.3 percent.

$$.053 \times \text{Comp} = \text{Outlays}$$

B. Schedule Design

A rate of 5.3 percent should produce approximate balance between receipts and outlays. Therefore, a rate of 5.3 percent should be placed (on the schedule) opposite the desired level of reserves. In the schedule in Section IV-A, a rate of 5 percent corresponds to reserves of 50 to 75 percent of outlays.

C. Activity Projections

Lack of data precludes use of scientific estimating procedures. The estimates in this paper are rough and no claims as to their accuracy can be made. However, for the purpose of comparing alternative funding mechanisms, any set of reasonable projections would produce similar results; that is, the graphs in Section IV would have similar shapes but would not be in the same positions.

JAN 16 1981

#16

alternative Plan for Funding Second Injury.

DRAFT DRAFT DRAFT

WORKERS' COMPENSATION DIVISION
DEPARTMENT OF LABOR

A BILL

For an Act entitled: "An Act relating to the second injury fund established under the Alaska Workers' Compensation Act; and providing for an effective date."

*Sec. 1. AS 23.30.040 is repealed and re-enacted to read:

Sec. 23.30.040. SECOND INJURY FUND. (a) There is created a second injury fund, administered by the commissioner of labor. Money in the second injury fund may only be paid for the benefit of those persons entitled to payment of benefits from the second injury fund under this chapter. Payments from the second injury fund must be made by the commissioner of labor in accordance with the orders and awards of the board.

(b) If an employee suffers a compensable injury which results in temporary total disability, temporary partial disability, permanent partial disability, or permanent total disability, the employer or insurance carrier shall make a contribution to the second injury fund. The contribution amount will be the product of the compensation to which the employee is entitled for temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, or for rehabilitation under AS 23.30.191 and the applicable contribution rate set forth in column A of the table in this subsection. By December 15 of each year the Commissioner shall determine and make available to

the public the applicable contribution rate for the following calendar year, according to Column B, the Reserve Rate as set forth in this subsection:

Column A Second Injury Fund Contribution Rate (Percent)	Column B Reserve Rate At Least (Percent)	But Less Than (Percent)
7	-	25
6	25	50
5	50	75
4	75	100
3	100	125
2	125	150
1	150	175
0	175	-

(c) Notwithstanding the provisions of AS 23.30.040(b) the contribution rate shall be 6% beginning July 1, 1981 through calendar year 1982 ending December 31, 1982.

(d) If an employee suffers a compensable injury which results in death and the employee is not survived by a widow, widower, child or dependent relative eligible to receive death benefits under AS 23.30.215, the employer or insurance carrier shall pay $10,000 to the second injury fund.

(e) The board may refund a payment made into the second injury fund if the employer or insurance carrier shows that it made the payment by mistake or inadvertence, or if it shows there existed at the time of the death of the employee a beneficiary entitled to benefits under AS 23.30.215.

(f) The board may direct and provide the vocational retraining and vocational rehabilitation of a permanently disabled person whose condition is a result of an injury compensable under this chapter by making cooperative arrangements with insurance carriers, private organizations and institutions, or state or federal agencies. The person being retrained or rehabilitated is entitled to receive compensation from

1 the second injury fund for maintenance during the period of
2 retraining and rehabilitation in the sum which the board con-
3 siders necessary, not to exceed $200 a month. The total ex-
4 penditures for maintenance, retraining, rehabilitation, and
5 necessary transportation may not exceed $10,000 for one person.
6 (g) All amounts collected as civil penalties under
7 this chapter must be paid into the second injury fund.
8 (h) The attorney general may investigate claims and
9 hire expert witnesses necessary to prevent fraudulent or exces-
10 sive claims for money in the second injury fund and, subject
11 to an appropriation for this purpose, may be reimbursed from
12 the second injury fund for the cost of investigating claims
13 and defending against those claims.
14 (i) Administrative expenses of the state under this
15 section and AS 23.30.205 must be paid from an appropriation
16 from the second injury fund.
17 *Sec. 2. AS 23.30.045(c) is amended to read:
18 (c) For a person eligible for vocational rehabili-
19 tation service under AS 23.15.080 [AND] who is placed with an
20 employer for service [WITHOUT WAGES] at the request of the
21 office of vocational rehabilitation to give him on the job
22 training, work readiness, [OR] work therapy experience, or
23 work sampling, the liability set out in (a) of this section
24 applies to the state rather than to the employer.
25 *Sec. 3. The amount of a payment to the second injury fund and
26 the conditions under which a payment is required of an employer
27 or insurance carrier must be in accordance with the version of
28 AS 23.30.040(b) in effect on the date that the injury to the
29 employee occurred.
30 *Sec. 4. AS 23.30.265 is amended to read:
31 (28) "reserve rate" means the unencumbered fund balance
32

on October 31 of each year as a percent of fund disbursements during the 12 month period ending on June 30 of the same calendar year.

*Sec. 5. Sections 1 - 4 of this Act take effect on July 1, 1981.

RECOMMENDATION 17

This Recommendation has to do with reducing benefits when an employee leaves Alaska. At the present time there is a class action lawsuit concerning this matter and frankly there are some real loopholes in the present system.

This Recommendation got much discussion and in short here is the problem: There is no consistency among the various States as to how to calculate the average State wage. Some States simply report the average State wage as determined under the Unemployment Insurance Reporting Form, others do not report or calculate this at all and others calculate their average State wage based on formulas dictated by their legislation. When neither the Unemployment Insurance Report calculation is used or an arbitrary State approach, then Alaska uses the average State wage as calculated by the Department of Labor for the U.S. L & H Act. Since there is no consistency there is a discrimination. If an injured employee moves to New York or California they are subject to a drastic reduction in benefits simply because these two States don't use the same method of calculating their average State wage.

To solve the problem, it appears that we should uniformly use the Unemployment Insurance provision uniformly. I am enclosing Example A and Example B to show you the problem. Under Example A, the average State wage for Alaska is $429, while under Example B it is $393. Going through the calculations

under these two examples you can see a wide difference in the payments for those who move out of State.

Under Section C of this Recommendation, the recipient leaving Alaska has his wages adjusted annually as this publication is produced. It is my understanding that we presently pay one fixed amount and do not adjust it. In short, it appears to provide an accelerated payment program in some cases and in others it might actually reduce the benefits further. From a rating standpoint it seems that we have to have consistency and whatever is used should be consistent throughout the life of the claimant.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LABOR

BOX 1149
JUNEAU, ALASKA 99811

DATE: January 1, 1981

Ph: (907) 465-2790

TO: Insurance Carriers, Adjusters, Self-Insured Employers, & Interested Parties

FROM: Director, Workers' Compensation Division

The following are average weekly wages for states and other U.S. jurisdictions, to be used in calculating rates to be paid benefit recipients as provided by amendment to AS 23.30.175 of the Alaska Workers' Compensation Act, effective September 22, 1976. The ratios are decimal figures (e.g., .517). The applicant's weekly rate is multiplied by the ratio. [See § .175(e).]

Where no average weekly wage is computed and published by a state agency responsible for administering the workers' compensation law of a particular state, the figure used is that published for purposes of the Longshoremen's and Harbor Workers' Compensation Act as revised October 1, 1980, $228.00. (Florida's is coincidently the same.) All figures are rounded to the nearest even dollar.

The effective date of this information is January 1, 1981. The Alaska average weekly wage to be used effective January 1, 1981 is $429.

		Ratio
Alabama	$ 222	.517
Arizona	228	.531
Arkansas	228	.531
California	228	.531
Colorado	306	.713
Connecticut	285	.664
Delaware	263	.613
District of Columbia	228	.531
Florida	228	.531
Georgia	228	.531
Guam	228	.531
Hawaii	235	.547
Idaho	220	.512
Illinois	269	.627
Indiana	210	.489
Iowa	230	.536
Kansas	226	.526
Kentucky	223	.519
Louisiana	244	.568
Maine	199	.463
Maryland	248	.578
Massachusetts	245	.571
Michigan	313	.729
Minnesota	243	.566
Mississippi	228	.531
Missouri	228	.531
Montana	219	.510

		Ratio
Nebraska	$ 228	.531
Nevada	245	.571
New Hampshire	213	.496
New Jersey	265	.617
New Mexico	222	.517
New York	228	.531
North Carolina	210	.489
North Dakota	212	.494
Ohio	275	.641
Oklahoma	212	.494
Oregon	261	.608
Pennsylvania	262	.610
Puerto Rico	228	.531
Rhode Island	217	.505
South Carolina	216	.503
South Dakota	191	.445
Tennessee	228	.531
Texas	266	.620
Utah	230	.536
Vermont	207	.482
Virgin Islands	178	.414
Virginia	213	.496
Washington	273	.636
West Virginia	262	.610
Wisconsin	373	.869
Wyoming	326	.759

 JLM:PRT:lb

	79 w/c	Red. Rat	80 w/c	80 R..	79-80 Chg.	80 U.I. wage			
NY	198.00	0.50	213.00	0.55	1.08	273.76	0.67	1.33	1.22
CA	198.00	0.50	213.00	0.55	1.08	265.11	0.65	1.28	1.18
IN	198.00	0.50	213.00	0.55	1.08	257.22	0.63	1.25	1.15
TX	198.00	0.50	213.00	0.55	1.08	248.70	0.61	1.20	1.11
HI	200.00	0.51	200.00	0.51	1.01	228.96	0.56	1.10	1.0[illegible]
ID	193.00	0.49	193.00	0.49	1.01	220.46	0.54	1.09	1.0[illegible]
MO	198.00	0.50	213.00	0.55	1.08	238.85	0.58	1.16	1.07
VA	187.00	0.48	199.00	0.51	1.07	222.33	0.54	1.14	1.06
AZ	198.00	0.50	213.00	0.55	1.08	236.64	0.58	1.15	1.06
WV	224.00	0.57	237.00	0.61	1.07	263.00	0.64	1.13	1.06
MT	188.00	0.48	198.00	0.51	1.06	219.12	0.53	1.12	1.05
NM	186.00	0.47	201.00	0.52	1.09	221.51	0.54	1.14	1.05
OK	198.00	0.50	212.00	0.54	1.08	233.01	0.57	1.13	1.05
MI	255.00	0.65	275.00	0.71	1.09	302.20	0.74	1.14	1.05
KS	194.00	0.49	206.00	0.53	1.07	226.22	0.55	1.12	1.04
WA	234.00	0.60	249.00	0.64	1.07	272.88	0.67	1.12	1.04
UT	210.00	0.53	210.00	0.54	1.01	230.02	0.56	1.05	1.04
NH	180.00	0.46	195.00	0.50	1.09	213.40	0.52	1.14	1.04
LA	211.00	0.54	224.00	0.57	1.07	244.88	0.60	1.11	1.04
IA	199.00	0.51	211.00	0.54	1.07	230.12	0.56	1.11	1.04
ND	180.00	0.46	195.00	0.50	1.09	212.38	0.52	1.13	1.04
AL	192.00	0.49	204.00	0.52	1.07	222.08	0.54	1.11	1.04
SD	164.00	0.42	175.00	0.45	1.08	190.50	0.46	1.11	1.04
RE	199.00	0.51	199.00	0.51	1.01	216.49	0.53	1.04	1.03
VT	191.00	0.49	191.00	0.49	1.01	207.37	0.51	1.04	1.03
ME	174.00	0.44	184.00	0.47	1.07	199.30	0.49	1.10	1.03
NJ	234.00	0.60	246.00	0.63	1.06	265.35	0.65	1.09	1.0[illegible]
NC	178.00	0.45	194.00	0.50	1.10	209.00	0.51	1.13	1.02
MN	209.00	0.53	226.00	0.58	1.09	243.19	0.59	1.12	1.02
KY	201.00	0.51	218.00	0.56	1.09	233.26	0.57	1.11	1.0[illegible]
DE	232.00	0.59	247.00	0.63	1.07	263.00	0.64	1.09	1.0[illegible]
NV	212.00	0.54	229.00	0.59	1.09	243.32	0.59	1.10	1.01
MA	198.00	0.50	227.00	0.58	1.16	241.04	0.59	1.17	1.01
*** WY	~~233.00~~	0.59	251.00	0.64	1.09	264.88	0.65	1.09	1.00
AK	393.00	1.00	390.00	1.00	1.00	410.02	1.00	1.00	1.00
IL	247.00	0.63	257.00	0.66	1.05	269.21	0.66	1.04	1.00
SC	278.00	0.71	197.00	0.51	0.71	206.00	0.50	0.71	0.9[illegible]
GA	198.00	0.50	213.00	0.55	1.08	221.65	0.54	1.07	0.99
OR	224.00	0.57	242.00	0.62	1.09	251.33	0.61	1.08	0.9[illegible]
PA	213.00	0.54	242.00	0.62	1.14	251.22	0.61	1.13	0.99
FL	217.00	0.55	211.00	0.54	0.98	218.05	0.53	0.96	0.98
OH	216.00	0.55	258.00	0.66	1.20	266.54	0.65	1.18	0.9[illegible]
TN	198.00	0.50	213.00	0.55	1.08	216.75	0.53	1.05	0.97
NB	198.00	0.50	213.00	0.55	1.08	215.59	0.53	1.04	0.96
CT	240.00	0.61	261.00	0.67	1.10	259.83	0.63	1.04	0.9[illegible]
MD	219.00	0.56	241.00	0.62	1.11	234.23	0.57	1.03	0.92
AR	198.00	0.50	213.00	0.55	1.08	202.57	0.49	0.98	0.90
MS	198.00	0.50	213.00	0.55	1.08	196.06	0.48	0.95	0.8[illegible]
CO	217.00	0.55	278.00	0.71	1.29	244.18	0.60	1.08	0.84
WI	327.00	0.83	350.00	0.90	1.08	242.37	0.59	0.71	0.6[illegible]

12-0110
Amend #17
Sofo

JAN 10 1981

* Sec. . AS 23.30.175(b) is repealed and reenacted to read:

(b) After June 30 and before December 1 of each year, the commissioner shall adopt and publish the average weekly wage for the preceding calendar year as computed by the United States Secretary of Labor for the purposes of unemployment insurance. In determining the rate of compensation the commissioner shall use the average weekly wage figure for each jurisdiction, including Alaska, for which the Secretary of Labor computes an average weekly wage. These figures are the applicable average weekly wages for those jurisdictions for the following calendar year. The average weekly wage for Alaska is the amount determined by dividing (1) the total wages paid by all employers subject to contributions under the Alaska Employment Security Act by (2) the average monthly employment reported by those employers for the same period and dividing the result by 52.

* Sec. AS 23.30.175(c) is repealed and reenacted to read:

(c) The following rules apply to recipients who do not reside in Alaska:

(1) The weekly rate of compensation shall be calculated using the recipient's average weekly wage times the ratio of the average weekly wage of the jurisdiction in which the recipient resides to the average weekly wage of Alaska. The rate is based on the average weekly wages in effect when the recipient leaves Alaska and shall be adjusted annually upon publication of the average weekly wages for all jurisdictions. [Problem]

(2) The calculation required by this subsection does not apply if

(A) the average weekly wage of the recipient and the resulting compensation rate is determined under AS 23.30.220(2) by use of wages earned in jurisdictions other than Alaska; or

LA-L 20A

JAN 16 1981

1 (B) the absence of the recipient is for medical or
2 rehabilitation services not reasonably available in Alaska.
3 (3) Application of this subsection may not result in a
4 reduction of the weekly compensation rate to less than $65 a week
5 except as provided in AS 23.30.175(a).
6 * Sec. . AS 23.30.175(d), (e) and (f) are repealed.
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RECOMMENDATION 18

Under this Recommendation the Board would be able to dictate a lump sum payment at its discretion and not that of the employer or the employee. This one bothers me and it will be discussed more at our next meeting.

no

Same as #10

I. Start with a "presumption" against lump sum payment.

II.

JAN 16 1981

12-110-#18
Sofo

* Sec. ___. AS 23.30.190(20) is amended to read:

(20) in all other cases in this class of disability the compensation is 66-2/3 percent of the difference between his average weekly wages and his wage-earning capacity after the injury in the same employment or otherwise, payable during the continuance of the partial disability, but subject to reconsideration of the degree of the impairment by the board on its own motion or upon application of a party in interest. [WHENEVER THE BOARD DETERMINES THAT IT IS IN THE INTEREST OF JUSTICE, THE LIABILITY OF THE EMPLOYER FOR COMPENSATION, OR ANY PART OF IT AS DETERMINED BY THE BOARD, MAY BE DISCHARGED BY THE PAYMENT OF A LUMP SUM;]

RECOMMENDATION 19

This is simply an attempt to clean up the language of the present law concerning value of room and board, etc. The Board reports that this is the way they are interpreting the law at the present time so they consider this clean-up language.

If they pay Taxes on it O/Kay.

12-0110 - #19
Sofo ✓

JAN 16 1981

1 * Sec. ___. AS 23.30.265(20) is amended to read:
2 (20) "wages" means the money rate at which the service ren-
3 dered is recompensed [UNDER THE CONTRACT OF HIRING IN FORCE AT THE TIME
4 OF THE INJURY,] and includes the reasonable value to the employee of
5 board, rent, housing, lodging, or similar advantage received from the
6 employer, and gratuities received in the course of employment from
7 others than the employer;
8 * Sec. ___. AS 23.30.265 is amended by adding a new paragraph to read:
9 (28) "benefits" means compensation and medical and other
10 related benefits.
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LA-L 20A

#4

DATE

December 30, 1980

MEMORANDUM

INDUSTRIAL INDEMNITY

FROM (NAME & OFFICE)

J. E. Cunningham

COPY TO: Kevin McCarthy, Ken Mitchell

COPIES:

S. V. Sparks
W. A. Watson
J. E. Webster

SUBJECT

"FILE AND USE"

TO (NAME & OFFICE)

R. H. Whitehead

Robert, here is my own list of pros and cons on "File and Use" for workers' compensation. I'm sure there are more.

I have put this together from the comments of politicians, regulators and insurance people. These are the issues that I think will come up in hearings on this subject in 1981 in Oregon.

I would appreciate any feedback or even better, some discussion.

JEC/raa

Attachments

JAN 05 1981

Exhibit A

File and Use

PRO

1. Increases competition.

2. Much more saleable product.

    a. No risk by the insured since rate is fixed. Bad loss ratio will increase rate.

    b. Reduction up front which is important in these times of high interest rates.

    c. Both producer and insured understand an up front as opposed to a retro approach. There are no confusing formulas or jargon.

3. Eliminates the weak carriers or ones that just write a small amount of the product in the state. Will attract stronger carriers.

4. Could broaden market since pricing can be raised over what was set rate as well as lower it.

5. Because of simplicity more producers will seek to write such coverage.

6. Oregon law allows deviation across the board now and competition is using aggressively.

7. Will eliminate the old two way/three way arguments.

8. Problem of insolvency does not pose a threat today as it did in the days when a retrospective system was organized. This refl[illegible] today's conditions, and a guarantee fund.

9. Will continue to preserve the rating integrity since National Council will be preserved.

10. An insured who practices good safety will get an up front payback for their efforts rather than a considerable and hard to estimate return much later.

11. Major writers of this coverage such as Aetna L&C and Hartford have promoted open rating. Hartford is gearing up to expand in Oregon under "File and Use."

12. NAIC is aggressively recommending "File and Use" and the individual commissioners will recommend it to enough legislators to make this a substantial force. As a national change, the national rating will be able to effectively handle.

13. The pricing of the individual risk will reflect the insured's effort and be more effective than an experience modification.

File and Use (Cont.)

14. Total federal government push has been for deregulation. Railroads, airlines and truck lines will be followed by workers' compensation insurance.

15. Since dividends will be eliminated, private carriers will capture more of the market share from SAIF.

Exhibit B

File and Use

CON

1. Decreases the competition because some carriers will not have the rating base to enter such a market.

2. Insolvency funds are still made up of pledges from part of the workers' compensation rater and such funds are not intended to allow carriers to take undue risks at the expense of the industry and employers and injured employees.

3. The state funds do not contribute to insolvency funds, but by their favored position could cause competition that could bankrupt companies and impact these funds.

4. Rating integrity will not be perserved since no incentives will remain in the rating system to encourage it.

5. Returns from safety efforts should come from the effort and actual results achieved not on what happened in the past. There is minimal incentive of payment precedes the loss prevention activity.

6. Open rating will force selectivity and state funds who take all comers will have to turn away risks creating a flow to an assigned risk.

7. This open rating approach could be a key tool to move a very large part of the market back to SAIF since open rating concentrates on the going in price rather than the services required for a successful program.

8. Workers' compensation has in most recent years been experiencing unfavorable results. Increases payroll base have not kept pace with medical expansion and inflation.

9. In this type of chaos caused by lack of pricing expertise, a state fund determined to hold the large majority of business. A general desire to acquire investment dollars there will be developed an unprofitable and damaging situation for several years.

10. The current system has larger risks subsidizing the expenses of the system. Open rating allowing competitive expense filings will increase the expense load on and thus workers' compensation costs on smaller risks (up to 80 percent of the units in the state).

11. Such proposals do not take into consideration the rating of assigned risk plans.

12. Such a move does not increase competition more than it is now.

DATE: December 15, 1980

MEMORANDUM

INDUSTRIAL INDEMNITY

FROM (NAME & OFFICE): L. B. Dropkin

COPIES: D. H. McComber, R. A. Puccinelli, Sterling L. Hilen, Robert Whitehead, Stanley Sparks

SUBJECT: COMPETITIVE RATING - NAIC B-3 COMPETITION SUBCOMMITTEE

TO (NAME & OFFICE): Kevin J. McCarthy

In accordance with your December 11th memo, I have noted a few points in re the captioned subject. Our position paper on Competitive Rating is also, of course, a good place to start.

1. Premise that competition does not exist is false.

2. Premise that innovation does not occur under the present system is false. Retro rating and participating policies for Stock companies are two examples. Cash flow plans are a current example.

3. Particular importance of financial stability and integrity of WC carrier arising out of fact that WC policy is not an indemnification contract; the liability for benefits is the carrier's, not the employers'. Who is going to make sure that full recognition has been given to the long-tailed nature of WC (reserve adequacy, loss development, IBNR etc)? - inadequately staffed ins. depts? companies without actuaries?

4. There is a false assumption that the aggregate price for WC would be lower under the proposal. Under present system large employers essentially pay their own way; small insureds are subsidized by the larger ones. So, while some larger insureds might pay less, the small insureds - who constitute the overwhelming majority - would pay more (if they could find somebody who would want to write them).

   The aggregate price level could be lower for only one of two reasons: Either the price level is inadequate - in which case there is a piper to be paid; or there were excessive profits being made in WC - but this can be shown to not be the case.

   Indeed it can even [illegible] argued that the aggregate price level would be higher. [illegible]f there is uncertainty as to the true cost, there has to be a risk factor (contingency loading) - and the greater the uncertainty, the greater the charge has to be.

5. It is a contradiction on its face to, on the one hand, agree that it is desirable to maintain the integrity of the data base and, on the other hand, to prohibit mandatory membership in a rating organization and to permit various classification systems and rules.

5X088 R3 (7/77)

6. The "greater predictability and stability" of WC is a direct result of the present system.

7. There is a great deal of sheer nonsense in the report. Examples:

   .."If scientific ratemaking worked, there would be no discounts or dividend plans".

   .."There is nothing to prevent the continued use of experience rating under competitive rating".

   .. With mandatory adherence, it is not possible to modify classification definitions or the number of classes.

   .."If workers' compensation is so unique that prior approval is essential, then perhaps insurers writing workers' compensation should not be permitted to engage in other lines".

LBD:bh

OREGON PROPOSED FILE & USE BILL

The following is an analysis of the Commentary on a Draft of a Workers' Compensation Open Rating Modified File and Use Bill.

1. The current workers' compensation rating organization would change to an advisory organization limited to supplying ratemaking recommendations on losses only. Each insurer would add its own allowances for expenses, taxes, profits and contingencies.

   The bill does not require the NCCI to become an advisory organization. It does not prohibit rating organizations for workers' comp, and in fact removes some of the Commissioner's obligations to investigate and evaluate workers' comp filings made by a rating organization. The bill only requires that private insurers belong to an advisory organization with which they file statistics.

2. Insurers would be allowed to "file and use" rates not less than the claim cost provisions recommended by the advisory organization without prior approval of the commissioner.

   Only "premium rates" are subject to file and use, yet rates cannot be considered separately from the rating plans that modify them. Also, the bill removes provisions designed to prevent abuses of the current deviation process. Presently, a deviation must be justified anew each year; and it must remain in effect for six months, to prevent "one day" deviations for a specific risk. The bill removes these provisions.

3. All other components of an insurer's rating plans and systems - such as premium discounts, retrospective rating, and experience rating - would require companies to develop their own rating plans and systems and submit for commissioner's approval. All recommendations of the advisory organization would need prior approval.

   A rating organization, and probably an advisory organization, could still file rating plans and systems. All such filings, whether made by an insurer or an organization, would require prior approval. The problem is, how do you distinguish a rate from the rating plans and systems which specify how it is applied?

4. The Classification and Rating Committee of the National Council on Compensation Insurance and all the quasi-regulatory functions of the Northwest Compensation Rating Bureau would be preserved.

> Wrong. The C&R and Northwest Comp Bureau would no longer have a standard manual or classification system to enforce. Each carrier could make its own rules. Also, since each insurer would be making its own rates, ORS 737.505 (2) would require each insurer to provide a hearing mechanism.

Section 1 of the proposed bill amends the statistical record-keeping requirements of ORS 737.265 to allow workers' compensation insurers to satisfy the requirements by reporting their data to an advisory organization according to statistical plans given prior approval of the commissioner. The section of statute currently requires insurers to either maintain their own data or to report it to a rating organization.

If the industry is to be served by an advisory organization, then this method of compliance must be allowed. The first section of the bill goes further to add a new paragraph to 737.256 mandating data reporting to the advisory organization so that the completeness of the insured data base is retained.

> The bill does not require insurers to use the advisory organization's stat plan; they can file their own. And ORS 737.225 (1) would appear to obligate the Commissioner to approve such an alternate stat plan for any insurer using a substantially different rating plan or system.
>
> Also, even if SAIF were a member of the advisory organization, it would not be required to report any data.
>
> With open rating, usable aggregate premium data, which is essential to the ratemaking process, would be impossible to obtain. Incidentally, the new paragraph in 737.256 does not specify that only workers' comp statistics should be reported.

ORS 737.265 (2) is the statute which currently requires all insurers to adhere to the rates, rating plans and systems, and policy forms of the rating organization with some deviation of classification premium rates permitted. Section 2 of the proposed bill almost entirely abolishes this requirement, leaving only mandatory adherence to policy forms of the advisory organization. Since insurers are required by ORS 737.205 to either file their own rates or else authorize a rating organization to do the filing for them, this section would leave workers' compensation insurers in a position of having to make their own rate filings since advisory organizations, by definition of ORS 737.012 do not perform that function. Hence, this section of the proposed bill promotes

open competition for workers' compensation rating.

> As pointed out above, the bill nowhere prohibits rating organizations for workers' comp. However, it does remove the protections built into the current deviation process.
>
> The standard retro endorsement specifies the formula to be used. Is this a rating plan or a policy form?

All workers' compensation filings are now subject to prior approval by t[illegible] commissioner according to the process described in ORS 737.320. Section 3 of the proposed bill would amend this section of statute to mandate the commissioner to evaluate filings of an advisory organization. Furthermore, a new subsection would be added which waives the prior approval requirement for premium rates subject to a simple test: they must be not less than provisions for claim payment recommended by an advisory organization. Such advisory recommentations, often called "pure premiums", would remain subject to prior approval by the commissioner. The language of the effective clause in this new subsection is the same as the "file and use" provision of ORS 737.205.

> This section actually removes some of the commissioner's mandate to evaluate filings of a rating organization. Also, the "file and use" language would in many cases apply to only part of a filing. For example, the new rates might be "file and use", but the experience rating values based on those same rates would be subject to prior approval. No responsible carrier would want to implement one without the other; so the whole would be held up for prior approval. Also, the commissioner can only approve or disapprove an entire filing. If parts are "file and use", what happens if he disapproves the prior approval parts?
>
> The "simple test" is not simple, if the carrier is using a modified classification system. Also, if there is more than one advisory organization, whose pure premiums are used in the test. Or what if the advisory organization chooses not to recommend any pure premiums?

Section 3 of the proposed bill envisions insurers being able to adopt approved claim cost recommendations from an advisory organization, add their own provisions for taxes and expenses, and file their own rates. Such a process would be free of the regulatory restraint of prior approval. An insurer could even project claim costs lower than the approved recommendations and still not face prior approval if its expense allowances exceed the difference.

The chief benefit of this is to take the political heat off the commissioner fo. approving rate increases. an insurer could even triple its rates "and still not face prior approval".

The remaining components of workers' compensation rating systems, which modify the rates for each individual employer, are of technically sophisticated design. Since the industry has followed rating organization constructions with little exception since workers' compensation laws were enacted early in this century, not many insurers would have the resources necessary to properly design well-balanced rating plans. Hence, it is recommended that the restraint of prior approval be retained for these aspects of rating. With the abolition of mandatory adherence in Section 2 of the bill, responsible insurers would be able to develop innovative rating systems. Alternative ways of classifying employers would also be allowed; however, the test in Section 3 for rates to be not lower than recommended "pure premiums" and the statistical reporting requirement of Section 1 both would require an alternative classification scheme to be readily convertible to the system recommended by the advisory organization.

Rates cannot be separated from rating plans and systems. Experience rating plan values are calculated from the rates and from data in the rate filing. Premium discount is an integral part of the expense loading, as is illustrated by the recent revised expense program filed in Oregon.

Alternate classification systems would not have to be "readily convertible". The test in Section 3 is immaterial if the insurer is willing to ask for prior approval. As pointed out in the discussion of Section 1, an insurer can also file its own stat plan.

Section 4 of the proposed bill gathers advisory organizations into the filing disapproval process described in ORS 737.336.

Section 5 would require advisory organizations to supply insured employers with rating information at reasonable cost and to provide a hearing remedy for aggrieved persons. ORS 757.505 currently requires these services of rating organizations and independent-filing insurers only. This section is intended to preserve the Oregon Classification and Rating Committee of the National Council on Compensation Insurance which now hears appeals from aggrieved employers. The requirement would extend to advisory organizations generally.

This section would not fulfill its stated intention to preserve the Oregon C&R; see the discussion of point 4 of the introduction.

Section 6 adds a subsection to ORS 737.510 restricting rate-making recommendations of a workers' compensation advisory organization to provisions for claim payment only. Advisory organizations would not be able to recommend systems of expense allocation or provisions for taxes, profits, or contingencies. The new subsection would further require that such "pure premium" recommendations plus all rating plans and rating systems of the advisory organization be filed with the commissioner and be subject to the review process of ORS 737.320. Otherwise, advisory organizations generally are not required to make filings.

> This section is very unclear as to what types of rating plans and rating systems can be filed. Further, as pointed out above, these cannot be considered separately from rates.
>
> Also, this section would have no effect on the activities of a rating organization.

Section 7 amends ORS 737.560 (2) to require private workers' compensation insurers to be members of an advisory organization rather than of a rating organization. The option of membership for the State Accident Insurance Fund is a separate issue not being addressed by this bill and is left unchanged.

> Multiple advisory organizations would be possible.

Section 8 would appropriate funds for the administration of this new rating law by the Insurance Division in addition to the current level of expenditure. This amount contemplates addition of one associate actuary with the credential of being either an Associate or a Fellow of the Casualty Actuarial Society. All current and proposed expenditures for administration of the rating law with respect to workers' compensation is reimbursed to the General Fund by the Workers' Compensation Department administrative fund according to ORS 737.320 (4).

> A qualified actuary would be essential to the administration of this law. It is by no means certain that the Department could hire such an actuary, particularly for the amount requested.

SUMMARY

This proposed bill would promote competition in workers' compensation insurance by repealing the mandatory adherence to rates, rating plans and rating systems of a rating organization and waiving prior approval requirements for classification premium rates not lower than approved recommended provisions for claim payment.

> This proposed bill would promote price competition, probably at the expense of service competition

(claims handling, loss control, rehabilitation). This would help only the employer, only in the short run, at the expense of the employees.

Workers' compensation insurers would be required to be members of and report statistics to an advisory organization rather than a rating organization. Rates, rating plans and rating systems recommended by the advisory organization must have prior approval of the Insurance Commissioner. Ratemaking recommendations, the actual numerical values to be used in rating plans, would be limited to provisions for claim payment only. Insurers would have to add their own provisions for profit, taxes, and expenses incurred and make their own rate filings. So long as those rates are not lower than the claim provisions recommended by the advisory organization, insurers may file them with the Insurance Division and begin using them without prior approval.

Rates cannot be considered separately from the rating plans and systems that specify how to use them

The statutes which now call upon the National Council as a rating organization to establish an Oregon Classification and Rating Committee and maintaining the quasi-regulatory functions of the Northwest Compensation Rating Bureau would apply to an advisory organization. By requiring insurers to report loss statistics to an advisory organization, the statewide insured-employers data base would be preserved.

The bill does not accomplish either of these purposes.

Beyond classification premium rates, the remaining components of workers' compensation rating systems are of technically sophisticated design. Few insurers are accustomed to properly designing well-balanced rating plans of their own. The restraint of prior approval would be retained for these aspects of rating.

Faced with a multitude of filings from different insurers, is the Insurance Department capable of deciding which rating plans are "well balanced" and "properly" designed? Would Oregon employees benefit by being guinea pigs for every experimental rating system?

Further Considerations

1. Assessments and Premium taxes, for insurers and self-insurers, are currently based on premium at bureau rates. Under open competition, what rates would be used?

2. The commissioner is still required to "investigate and evaluate" all comp filings, whether they are prior approval or file and use.

(See Final Report, pages 3-4)

LC 786-H
09/08/80 (44) (36)

Oregon

A BILL FOR AN ACT

2 Relating to

3 Be It Enacted by the People of the State of Oregon:

4 FILE AND USE INSURANCE RATES

5 Section 27. ORS 737.205 is amended to read:

6 737.205. (1) Every insurer shall file with the commissioner
7 copies of the rates, rating plans and rating systems used by it.
8 Except as provided in ORS 737.320 (2), each filing shall become
9 effective immediately on the date specified therein but not earlier
10 than the date such filing is received by the commissioner. This
11 subsection does not apply to inland marine risks which by general
12 custom of the business are not written according to manual rates or
13 rating plans.

14 (2) An insurer may satisfy its obligation to make such filings
15 by becoming a member of or a subscriber to a licensed rating
16 organization which makes such filings, and by authorizing the
17 commissioner to accept such filings on its behalf. Such insurer may
18 so adopt the filings of a rating organization on part of the classes
19 of risks insured by it and may make its own filings as to other
20 classes which shall be uniform throughout the insurer's territorial
21 classification. This subsection does not apply to workers'
22 compensation insurance filings except to the extent that the rating
23 organization filings of rating plans or systems under ORS 737.320
24 are complete and usable by an insurer without the addition of
25 allowances for expenses, taxes or profit.

26 (3) A filing shall be open to public inspection immediately upon
27 submission to the commissioner.

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Section 2. ORS 737.225 is amended to read:

737.225. (1) Every insurer, rating organization or advisory organization shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys or inspections made or used by it.

(2) The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the rates, rating plans, rating systems or underwriting rules of such organization.

(3) Such records shall be available to the commissioner for examination and inspection at any time in order to determine whether the filings made pursuant to ORS 737.205 comply with this chapter.

(4) Each insurer shall maintain statistics under statistical plans compatible with the rating plans used. An insurer may report its statistics through a recognized agency or advisory organization, except that workers' compensation insurance statistics shall be reported to the workers' compensation rating organization of which the insurer is a member. The commissioner shall prescribe by rule the statistical plan for workers' compensation insurance.

29

Section 3. ORS 737.265 is amended to read:

737.265. (1) Members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules or policy or bond forms of such organizations, either consistently or intermittently, but, except as provided in ORS 737.275, 737.312,

LC 786-H 09/08/80 (44)

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737.365, 737.390, 737.526 and subsection (2) of this section, shall
not agree with each other or rating organizations or others to
3 adhere thereto. The fact that two or more authorized insurers,
4 whether or not members or subscribers of a rating or advisory
5 organization, use, either consistently or intermittently, the rates
6 or rating systems made or adopted by a rating organization, or the
7 underwriting rules or policy or bond forms prepared by a rating or
8 advisory organization, shall not be sufficient in itself to support
9 a finding that an agreement to so adhere exists, and may be used
10 only for the purpose of supplementing or explaining any competent
11 evidence of the existence of any such agreement.
12 (2) All insurers required by ORS 737.560 (2) to be members of a
13 workers' compensation rating organization shall adhere to the
14 [rates, rating systems and] policy forms [of] filed by the rating
15 organization[, except that such an insurer may file with the
16 commissioner a percentage decrease or increase to be applied to any
17 classification rate filed by the rating organization. Any such
18 deviation shall be subject to the requirements of ORS 737.320 and
19 shall be effective for a maximum of one year. Such a deviation may
20 be terminated earlier with the approval of the commissioner, but not
21 before the deviation has been in effect for six months].

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