

SCOMM

33:11

Daniel Middaugh
SRA 4042
Anchorage, AK. 99502

Representative Vern Hurlbert, Chairman
House Labor and Commerce Committee
Alaska State House
Pouch V
Juneau, AK. 99811

Senator Bob Mulcahy, Chairman
Senate Labor and Commerce Committee
Alaska State Senate
Pouch V
Juneau, AK. 99811

Gentlemen:

I would like to address the issues, or questions, that are involved with House Bill 159. As it stands, I support most of the provisions of HB 159 with the exception of the section concerning deregulation.

Deregulation of the Workers' Compensation Act would be an error. Those who cry for deregulation as a means to lower costs fail to take into account the work history of Alaska. According to the Fineberg report the absence of competition in the Alaska workers' compensation field stands in marked contrast to most of the contiguous states. Since no barriers to entry exist, the lack of competition must be due to factors inherent in Alaska. Some of these factors are: small number of employers, high cost of doing business, the harsh climate, and the high risk of insuring the people working in the construction and oil development industries. It only stands to reason that if three companies now do most of the business, deregulation isn't going to magically bring a flood of new insurance companies to create the competition necessary to lower prices. Alaska is an oil and construction state; the insurance for these high risk jobs must be higher than insurance for office type work. With these things in mind, I don't feel that these proposed new insurance carriers, if they came to be, would be able to lower insurance rates enough to be of any great help. Gentlemen, I pose that if I were to enter the compensation insurance business tomorrow, the first thing I would do is check on the current rates and set mine very, very close to that norm! I don't feel that deregulation is the only answer. In fact I don't feel deregulation is any answer at all. In effect, to go through with deregulation would not lower the cost at all, but might put the unfortunate injured in the position of not being able to collect. Deregulation will make it possible for insolvent fly-by-night insurance companies to write insurance policies for a while and then leave with the profits!

The Alaska Workers' Compensation Study Commission, Senator Terry Stimson and Representative Brian Rogers, co-chairmen worked very hard to try to find answers to this and other questions about workers' compensation, but they found more questions than answers in the time allotted for the study. I say this because I have been following the study commission's work and I have heard the questions, but I have not yet seen a final report. The answer must be that the commission is going to follow through with the study and get answers to the many, many questions. I, for one, hope so. This issue is extremely complicated and needs more study of the same

calibre. In all fairness to the committee members who have devoted their time and energy, and the people who stand to gain from proper study and answers, the Commission should be refunded to finish the job it has started.

In regards to many of the other questions:

Are the insurance companies over-reserving? A hard look at reserve monitoring seems to make more sense than deregulation; to trim the excess from the reserving seems likely to bring a reduction in premiums, if I understand what I read in Fineberg's report.

Do the facts show the companies are losing money? Nonprofitability has been argued to show why new companies are not flocking to the state. As yet I have seen no hard data to back up or disprove this theory.

How does Workers' Comp deal with job-related disease? From all the information I have seen, job-related disease has been pushed aside by the comp board, while they have relied on doctors reports that are incomplete or inaccurate. This was due to the fact that the men in question were unable to afford the transportation and medical costs to go to known experts.

How does the Division of Rehabilitation handle the compensation case? From my own experience, the Rehabilitation office seems to be out of touch with the division of Workers' Comp. I have been trying to get a plan written for retraining for over nine months and have just now received the primary testing. From talking with my counselor this seems to be the rule rather than the exception.

How can we be sure the permanently-injured worker gets an honest settlement? From my own research I've found that a person who is given a permanent disability rating is pushed aside with a settlement of one year's wages or less. In the event of permanent total disability by job related disease, according to the Barth study, on a national level only one-eighth of the person's income is replaced.

Are the benefits being paid at an unreasonable level? According to an article in the Anchorage Daily News, October 4, 1980, Jack Thompson was quoted as saying, "One of the main problems is the excessive level of benefits." I find this statement refuted by Robert Williams' staff report to the study commission, which shows that the benefits have not even kept pace with inflation.

How does the injured worker find out his rights and limitations? While attending a Study Commission session, I was told that a booklet explaining the rights and limitations of the injured worker was being printed. I have not seen the booklet, and I hope the ball hasn't been dropped on this important project.

Finally, is the system working in the best interests of the people it was originally set up for? Workers' Compensation, like all programs of its magnitude, has problems. Many of these problems can be ironed out if proper time and effort is given to the study. I feel very strongly that deregulation will be the beginning of a serious problem for the people who are depending on the compensation system to aid them when they are injured on the job. Compensation Insurance is a stop-gap measure; it was never intended to replace the total loss of the injured worker's income. It could become a farce if the insurance companies are not required to hold to the present regulations. Presently deregulation as a proposed plan is only a "hope", and a very poor one. It is a change in public policy which would have a major impact on the working people of Alaska. Before such a policy is adopted, the state should seriously review all possible

options. Remember, you are working with human beings, not simply a set of facts and figures.

Sincerely,

Daniel M. Midaugh

Dan Midaugh

CC: T. Stimson
B. Rogers

WCC

333 Dunbar Avenue
Fairbanks, Alaska 99701
April 21, 1981.

Mrs. Jacquelyn L. McClintock, Director
Workers' Compensation Division
State of Alaska, Department of Labor
Box 1149
Juneau, Alaska 99811

Re: James A. McCarthy vs. Bayless and Roberts, Inc.
D/A 6-14-79 Case No. 79-06-0636

I received your letter of April 15. According to your letter you do not have all the letters and information from the doctors in Seattle in regard to the diagnosis and proposed treatment for the relief of the pain in my right arm. Why are these kept from you by Marilyn Murphy? I asked for a full investigation by the Insurance Commissioner but thus far he has not seemed interested in my case. It is plain to see that the Industrial Indemnity Company is acting in bad faith.

On April 14, 1981 I called and talked with Marilyn Murphy of Industrial Indemnity asking her to have me examined by one of their best nerve specialist. She refused, saying they were going to stand on Dr. Lindig's opinion. He is an Orthopedic Doctor and refuses to accept the findings of Dr. Silverman, Dr. Mulder and Dr. Petersen. I sent Dr. Silverman's report to you. Have you taken it to a specialist to let him explain it to you? The doctors today are too busy to take the time to educate lay people at the insurance companies on how to read these reports. These doctors made these reports and they explain clearly about my condition.

Dr. Lindig is in a very bad spot. He must defend to the end his opinion even if it means that I lose the use of my arm completely. He made a wrong diagnosis and could be sued for malpractice. He has told me that he was informed I was going to sue him for malpractice. I told him I was only interested in saving the use of my arm. He very sternly said he was right in his opinion and would not accept the opinion of the doctors in Seattle. He called them amateurs and said he was protecting me from them.

My arm is shrinking and has been for nearly two years now. He is giving me an okay to go back to work on a trial basis. To show you how much he cares about my arm, here is what happened. I took a driver to Seattle in March to bring a truck to Fairbanks, I was able to drive about two (2) hours a day only. I told him I was going to try working because there was no other way to do what I have to do. If I can survive for 4 or 5 weeks in order to raise the money, then I'll go to Seattle to have the operation to save the use of my arm.

I will no longer return to Dr. Ed. Lindig. The medical treatment I need is not to be found in Alaska that I am aware of; therefore, my doctors of record from now on will be Dr. Gordon Mulder and Dr. Keith Petersen in Seattle, Washington. Any correspondence should now be directed to them. If you or Marilyn Murphy can find proper treatment for me in Alaska, I ask that you show me where in the next 30 days; or accept the fact that it is not available and pay the bills.

Mrs. Jacquelyn L. McClintock
April 21, 1981
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The insurance company sent me to see Dr. Selgato, a neurologist here in Fairbanks. He said he could find nothing wrong. After the examinations in Seattle, I can see how old fashioned his methods are. He is truly an amateur in the method he used on me.

I do not have any time left to save my arm without permanent damage. The same complaint I had when I first injured my arm, I have today only it is more painful and with less strength in it now. It is unbelievable to me that after my last two times to see Dr. Lindig that he would even consider letting me try to work again without first receiving the treatment that I need. He gave me Dalmane, a sleeping pill, because my arm hurts so bad I have trouble sleeping--then he says I can go back to work on a trial basis. Dr. Ed. Lindig is not a nerve specialist and therefore, did not recognize the symptoms I kept complaining about.

Let's not confuse the issue, we are talking about an arm problem, not a neck problem as Marilyn Murphy keeps saying. The root cause of the arm problem all this time has been pinched nerves in the spine. It seems strange to me that after I go to a lot of expense and trouble and time to find out what is really wrong with my arm, the insurance company controverts the claim. I said from the very first that it was a nerve problem because my arm ached like a toothache.

I will be leaving this week for Seattle to make arrangements for the repeat workup on my arm so there will be no mistake and every detail will be established as to the condition and treatment necessary to correct it.

Since the Insurance Commissioner seemingly doesn't want to investigate this very serious matter, it leaves me no choice but to hire an attorney to investigate and take all necessary action he deems appropriate. There are now 4 doctors that agree on both the condition of my arm and the treatment necessary to correct it. There is only one doctor, that is Dr. Ed. Lindig, that has a different opinion and after all he has treated me for over a year and the arm is worse now than when he started treatment. If that doesn't tell you something is wrong, then I don't know what will. I realize the blame here lies mostly on Dr. Lindig's contrary opinion and not accepting the reports from Dr. Silverman that I personally handed him.

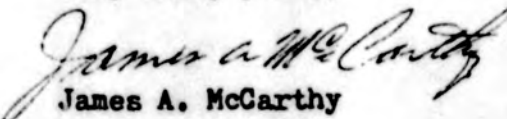
We need a system that is more responsive to a patient's needs. At this time, there is no way to get help in settling the problem without waiting weeks or months for a Board Hearing. In the meantime, the patient suffers. We need a clinic or board with at least two doctors--one that specializes in the area of the patient's problem and a second doctor to help evaluate the patient's general health. The doctors could explain to 1 or 2 other lay members the medical terms and give an opinion to get things moving in the right direction again.

Mrs. Jacquelyn L. McClintock
April 21, 1981
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I am enclosing two charts that show what is happening to the nerves in my arm and a chart showing what nerves control what parts of the arm, etc. I will explain my symptoms on the nerve chart, and you can make your own judgment.

Copies of this letter are being sent to all persons listed below. My attorney, Mr. Robert Blackford will file the necessary papers.

Very truly yours,


James A. McCarthy

Enclosures:

- 1 chart of spine
- 2 charts of nerve system
- 1 statement unpaid of Dr. Mulder showing that Marilyn Murphy of Industrial Indemnity paid for a report but refused to pay for his services.

cc: Senator Parr
Senator Fahrenkamp
Senator Bennett
Representative Bettisworth
Representative Randolph
Representative Smith
Representative Rogers
Representative Brown
Representative Fanning
Robert C. Blackford, Esq.
Industrial Indemnity Insurance
Kenneth C. Moore, Director, Dept. of Commerce & Economic Dev.
Gov. Jay Hammond

SYMPTOMS PAIN TO WRIST WEARNESS IN HAND. PAIN AND ACHEING TO AND IN ELBOW. PAIN ACROSS TOP OF SHOULDER. PAIN IN BACK UNDER RIGHT SHOULDER SINCE THE TIME OF THE ACCIDENT HAVE ALSO HAD A PROBLEM WITH MY VOICE. SOUNDS AT TIMES AS IF I HAVE A COLD. OTHER TIMES IT IS

CLEAR,

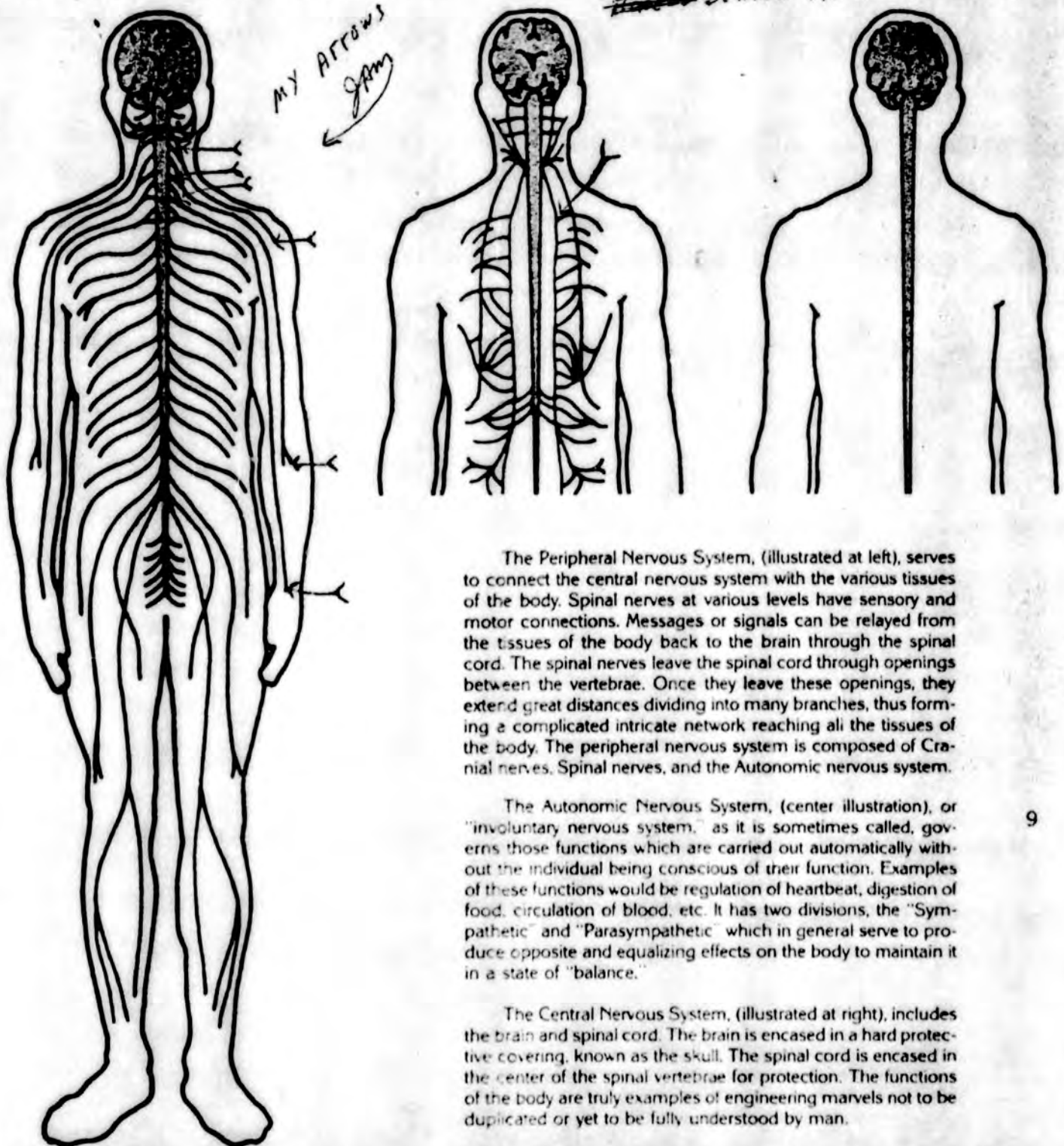
Facts About the Nervous System⁴

NOTE *JAM*

These three illustrations show the different parts of the total nervous system. They are shown in the three main divisions, on the basis of anatomy and specific functions. One must remember, however, that although the breakdown is used for illustration purposes, each

segment of the nervous system is interdependent and interrelated. The body is so wonderfully complex that one part often affects another part seemingly distant, remote, and unrelated.

HAVE ALSO HAD PROBLEM WITH ~~THE~~ BOWELS SINCE ACCIDENT.



The Peripheral Nervous System, (illustrated at left), serves to connect the central nervous system with the various tissues of the body. Spinal nerves at various levels have sensory and motor connections. Messages or signals can be relayed from the tissues of the body back to the brain through the spinal cord. The spinal nerves leave the spinal cord through openings between the vertebrae. Once they leave these openings, they extend great distances dividing into many branches, thus forming a complicated intricate network reaching all the tissues of the body. The peripheral nervous system is composed of Cranial nerves, Spinal nerves, and the Autonomic nervous system.

The Autonomic Nervous System, (center illustration), or "involuntary nervous system," as it is sometimes called, governs those functions which are carried out automatically without the individual being conscious of their function. Examples of these functions would be regulation of heartbeat, digestion of food, circulation of blood, etc. It has two divisions, the "Sympathetic" and "Parasympathetic" which in general serve to produce opposite and equalizing effects on the body to maintain it in a state of "balance."

The Central Nervous System, (illustrated at right), includes the brain and spinal cord. The brain is encased in a hard protective covering, known as the skull. The spinal cord is encased in the center of the spinal vertebrae for protection. The functions of the body are truly examples of engineering marvels not to be duplicated or yet to be fully understood by man.

CHART OF EFFECTS OF SPINAL MISALIGNMENTS

"The nervous system controls and coordinates all organs and structures of the human body." (Gray's Anatomy, 29th Ed., page 4). Misalignments of spinal vertebrae and discs may cause irritation to the nervous system and affect the structures, organs, and functions which may result in the conditions shown below.

Vertebrae	Areas	Effects
1C	Blood supply to the head, pituitary gland, scalp, bones of the face, brain, inner and middle ear, sympathetic nervous system.	Headaches, nervousness, insomnia, head colds, high blood pressure, migraine headaches, nervous breakdowns, amnesia, chronic tiredness, dizziness.
2C	Eyes, optic nerves, auditory nerves, sinuses, mastoid bones, tongue, forehead.	Sinus trouble, allergies, crossed eyes, deafness, eye troubles, earache, fainting spells, certain cases of blindness.
3C	Cheeks, outer ear, face bones, teeth, trifacial nerve.	Neuralgia, neuritis, acne or pimples, eczema.
4C	Nose, lips, mouth, eustachian tube.	Hay fever, catarrh, hearing loss, adenoids.
5C	Vocal cords, neck glands, pharynx.	Laryngitis, hoarseness, throat conditions such as sore throat or quinsy.
6C	Neck muscles, shoulders, tonsils.	Stiff neck, pain in upper arm, tonsillitis, whooping cough, croup.
7C	Thyroid gland, bursae in the shoulders, elbows.	Bursitis, colds, thyroid conditions.
1T	Arms from the elbows down, including hands, wrists, and fingers, esophagus and trachea.	Asthma, cough, difficult breathing, shortness of breath, pain in lower arms and hands.
2T	Heart, including its valves and covering, coronary arteries.	Functional heart conditions and certain chest conditions.
3T	Lungs, bronchial tubes, pleura, chest, breast.	Bronchitis, pleurisy, pneumonia, congestion, influenza.
4T	Gall bladder, common duct.	Gall bladder conditions, jaundice, shingles.
5T	Liver, solar plexus, blood.	Liver conditions; fevers, low blood pressure, anemia, poor circulation, arthritis.
6T	Stomach.	Stomach troubles, including nervous stomach; indigestion, heartburn, dyspepsia.
7T	Pancreas, duodenum.	Ulcers, gastritis.
8T	Spleen.	Lowered resistance.
9T	Adrenal and supra-renal glands.	Allergies, hives.
10T	Kidneys.	Kidney troubles, hardening of the arteries, chronic tiredness, nephritis, pyelitis.
11T	Kidneys, ureters.	Skin conditions such as acne, pimples, eczema, or boils.
12T	Small intestines, lymph circulation.	Rheumatism, gas pains, certain types of sterility.
1L	Large intestines, inguinal rings.	Constipation, colitis, dysentery, diarrhea, some ruptures or hernias.
2L	Appendix, abdomen, upper leg.	Cramps, difficult breathing, acidosis, varicose veins.
3L	Sex organs, uterus, bladder, knees.	Bladder troubles, menstrual troubles such as painful or irregular periods, miscarriages, bed wetting, impotency, change of life symptoms, many knee pains.
4L	Prostate gland, muscles of the lower back, sciatic nerve.	Sciatica; lumbago; difficult, painful, or too frequent urination; backaches.
5L	Lower legs, ankles, feet.	Poor circulation in the legs, swollen ankles, weak ankles and arches, cold feet, weakness in the legs, leg cramps.
SACRUM	Hip bones, buttocks.	Sacro-iliac conditions, spinal curvatures.
COCCYX	Rectum, anus.	Hemorrhoids (piles), pruritis (itching), pain at end of spine on sitting.

For further explanation of the conditions shown above, and information about those not shown, ask your Doctor of Chiropractic.

Vertebral Subluxation

The photograph below shows a segment of a spinal column with a vertebral subluxation (bone out of place) and a pinched nerve and degenerated disc.

Subluxated Vertebra
(Bone out of place) ◇

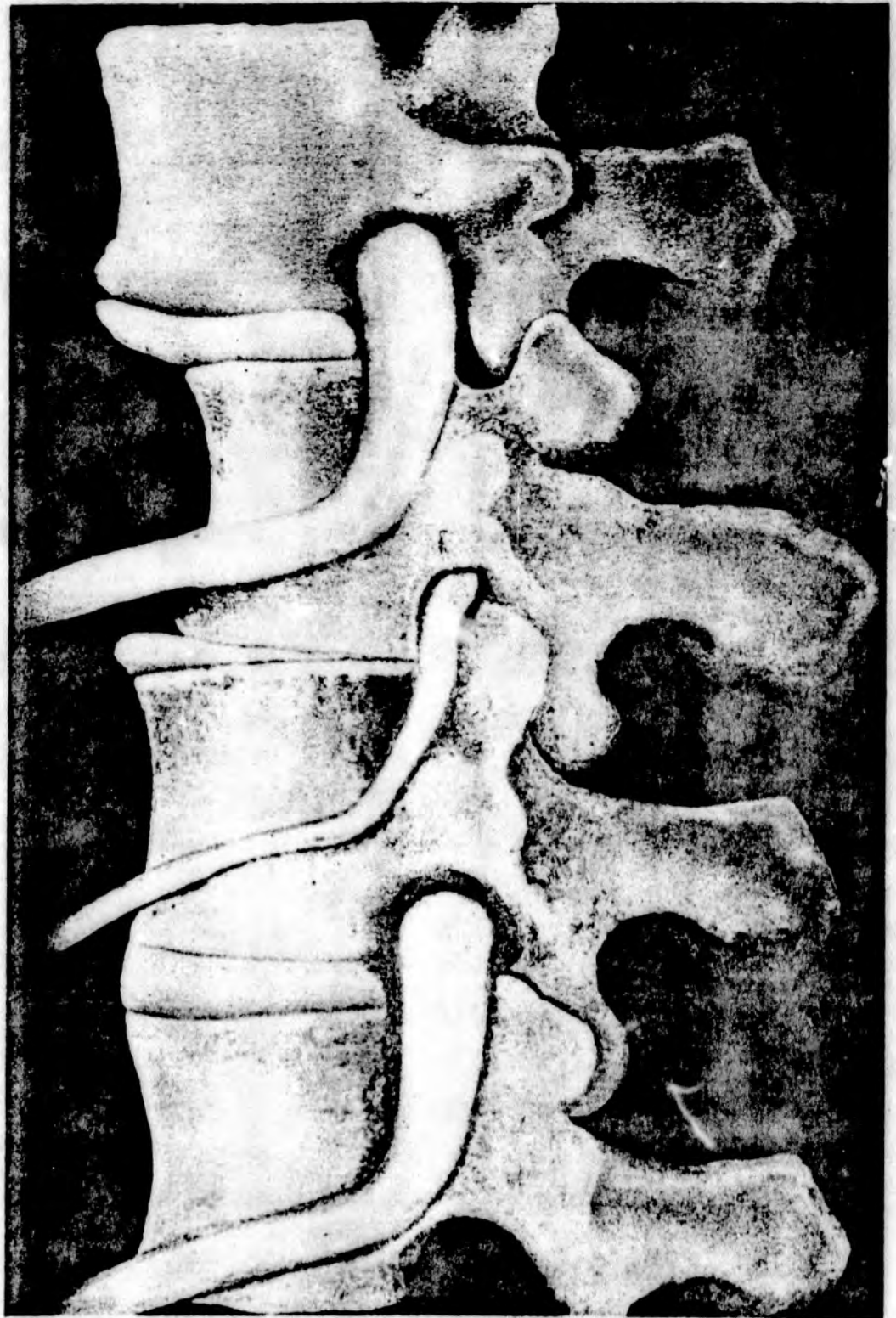
Normal Spinal Nerve ◇

Slipped Spinal Disc
Also is compressed and wedged ◇

Normal Aligned Vertebra ◇

Pinched Spinal Nerve ◇

Normal Spinal Disc ◇



A subluxation and resulting pinched nerve, such as shown above, has been proven to interfere with nerve transmission to various organs and tissues of the body, and may be the cause of many health problems.

WORKER'S
COMP.

March 27, 1981

Rep. Brian Rogers
Alaska State House
Pouch V
Juneau, Alaska 99811

P. 100

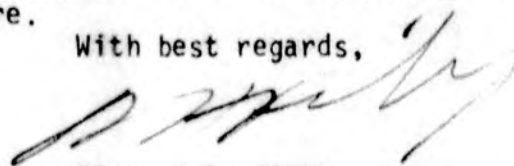
Dear Brian:

After listening to Jack Thompson, I very much appreciated the succinct and straight-forward manner in which you traced the background to HB 159 for John Hilliard. However, I found several points to tangle with (see enclosed letter to Hurlbert).

I share your frustration with this extremely complex issue. After mentioning my opposition to open rating, you commented to Hilliard that you were disheartened that HB 159 might fail "due to people who don't see that compromise is necessary." If you are referring to me, I think you should remember (1) that I represent no interest group and (2) that I was retained to assess the effects of proposed legislative reform. In this capacity I have nothing to compromise -- and nothing to be uncompromising about. Rather, I have a responsibility to make available to policy makers the facts and information I have gathered. I have attempted to do this in a clear and forthright manner.

Speaking of compromise, your fight for home energy audit funds demonstrates that you recognize fundamental issues on which compromise is not possible: my congratulations on a battle well fought. Also I'm enjoying your sense of humor on other issues. Hang in there.

With best regards,



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

March 27, 1981

Rep. Vern Hurlbert, Chair
Labor & Commerce Committee
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Rep. Hurlbert:

Having spent a good deal of time preparing materials for the Legislature on workers' compensation, I would very much like to be kept apprised of the progress of HR 159 and other bills relating to this extremely complex issue.

In my letter of Feb. 26, in which I outlined my concerns about competitive rating and suggested a possible alternative, I failed to alert you to an important point (in my estimation) that should be considered if HB 159 is going forward: anti-trust statutes. The Alaska Workers' Compensation Study Commission's staff report recommending open rating made extensive reference to the interplay between State and Federal anti-trust laws regarding workers' comp. However, HB 159 does not, as far as I can tell, address this issue. I note that the Minnesota Study Commission (to whose excellent work I referred in my letter and testimony), in recommending open rating also recommended that Minnesota State anti-trust laws be extended to cover the vacuum in workers' comp. Did the Alaska Study Commission consider or make recommendations as to whether Alaska anti-trust statutes either could or should be extended to cover workers' comp? I took the liberty of discussing this matter with a member of the attorney general's staff; that attorney said the potential problems could be a litigative nightmare. I've not researched this area, but I believe it is one that your committee should address.

Recently I've heard two arguments by proponents of open rating that deserve consideration in terms of data.

1. "I would point out that the company that came in and took the largest part of the (comp business) did so after the NCCI became mandatory."

-- Rep. Rogers to Fairbanks radio station, 3/23/81

This is simply not the case. According to the Division of Insurance annual reports, Alaska's comp business and Alpac grew in the following manner:

<u>Year</u>	<u>Alpac Earned Premium (WC)</u>	<u>State Total WC Earned Premium</u>	<u>Alpac %</u>
1970	\$2,212,000	\$12,473,000	17.7%
1973	\$5,116,000	\$16,262,000	31.4%
1976	\$32,873,000	\$73,117,000	45.0%
1979	\$30,192,000	\$73,162,000	41.2%

You will note that Alpac's share of the market increased between 1970 and 1976 (the year Mr. Block's Order #76-1 made the NCCI the state's licensed rating bureau) by nearly 5% per year. Since that time Alpac's share of the market under mandatory filings has decreased.

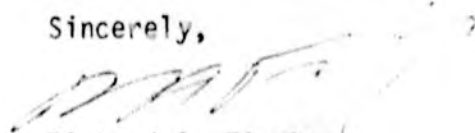
Fineberg / Hurlbert
March 27, 1981
Page Two

2. Rep. Rogers also made a point he has made several times before: that a Fairbanks broker believes 25% of the 1976 increase in comp premiums was due to the NCCI. As you probably know, I am no fan of the NCCI. However, I have not been able to substantiate the Fairbanks broker's statement. Nor have I been able to find numbers that point in that direction in the Study Commission's records.

Other than Mr. Don Koch's remark that "we respect Dr. Fineberg's work but . . . (we're closer to it than he is and) we think we're right," has there been any substantive response to the points I raised in my Jan. 23 report on competitive rate-making?

Again, for the record, I oppose HB 159 because it is my belief that the potential harm resulting from the proposed Sec. 6 (AS 21.39.045) far outweighs the good of the other provisions in the bill. However, I would like to make it clear that the other provisions are, in my estimation, constructive.

Sincerely,



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

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
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ORIGINAL.

Workers Comp

Ph: 465-2790

April 15, 1981

James A. McCarthy
333 Dunbar Avenue
Fairbanks, Alaska 99701

Dear Mr. McCarthy:

Re: James A. McCarthy vs. Bayless and Roberts, Inc.
D/A 6/14/79 Case No. 79-06-0636

Your letter of March 19, 1981 to the Division of Insurance has been forwarded to this office for response.

As you are now no doubt aware, Industrial Indemnity controverted your claim for continuing benefits on March 6, 1981, on the basis that your current disability is not related to the injury of June 14, 1979. If you disagree with the determination made by Industrial Indemnity and feel your continuing problems are directly related to the injury sustained with Bayless and Roberts, you should file for a hearing before the Alaska Workers' Compensation Board where the rights and responsibilities of all parties will be heard and a final decision made.

It is noted from the file that you engaged the services of Attorney Robert C. Blackford in October 1979, when previously requesting a Board hearing, and that he has been copied on correspondence from both you and Industrial Indemnity to the present date. Since Mr. Blackford recently requested another copy of your file he may be in the process of filing for a Board hearing on your behalf. In the event he will not be representing you, however, an Application for Adjustment of Claim and a Statement of Readiness to Proceed is enclosed that should be completed and returned to this office so that a hearing may be scheduled. If you are represented by legal counsel, the application and statement should be filed through your attorney.

James A. McCarthy
April 15, 1981
Page -2-

In reviewing the medical records on file, it would appear that we are missing some of the medical reports and opinions you have referred to in your letter. Specifically, we note that although Dr. Lindig mentions in his reports that you would be obtaining another medical opinion in Seattle, there is no medical report on file indicating that he either sent you to Seattle or referred you to another physician. Further we have no medical reports on file from Drs. Petersen, Silverman, or Mulder, the physicians you referenced in your letter. Therefore, we are unable from our file to determine the type of treatment obtained in Seattle or whether that treatment was available locally or within the state. In our letter to you of December 15, 1980, you were advised that if your in-state physician directly and specifically referred you to an out-of-state facility as part of your treatment or if the treatment required by the nature of your injury was not available in the state, the carrier would most likely be responsible for the travel costs. If you elected on your own to seek medical treatment in Seattle and the same type of treatment was available in Alaska, then the carrier is usually required to pay any medical costs that are directly related to the injury, but are not responsible for the travel expenses.

According to a March 27, 1981 report sent to Industrial Indemnity from Collins, Weed and Associates, copies of which were also forwarded to this office and Attorney Blackford, Virginia Collins has been involved in the vocational rehabilitation aspects of your claim. In the report, Ms. Collins stated that she had discussed your neck problems with Dr. Lindig on February 10 and March 27, 1981, and was advised by Dr. Lindig that it was his firm belief that your symptoms relative to the cervical spine were not related to the industrial accident involving the right arm. Certainly, a medical opinion expressed by Ms. Collins would not override the medical opinion of your treating physician. However, it would appear in this instance that Ms. Collins did not express her own opinion, but advised the carrier of your treating physician's opinion based on her conversations with him. If her statements do not agree with your understanding of the opinion given you by Dr. Lindig, you should request written clarification from him. Should the matter go to hearing, either you or the carrier may request both the testimony of Dr. Lindig and Virginia Collins be included in the record.

It is noted from Dr. Lindig's last report of April 6, 1981, that you have been released for a trial at work. We wish you the best in this effort and hope that your trial at truck driving will be successful.

If you have any questions or require further assistance in proceeding with your claim, please contact me or call Sylvia Hodges in our Fairbanks office at 456-1509.

James A. McCarty
April 15, 1981
Page -3-

In order to supplement our records, Industrial Indemnity and Attorney Blackford are requested to forward all copies of medical reports from Drs. Petersen, Silverman or Mulder to this office.

Very truly yours,

Jacquelyn L. McClintock, Director
Workers' Compensation Division

JLM/njs

Enclosure: Application for Adjustment of Claim
Statement of Readiness to Proceed

cc: Industrial Indemnity Insurance
P. O. Box 307
Anchorage, Alaska 99501

Robert C. Blackford, Esq.
205 B Street
Fairbanks, Alaska 99701

Honorable Brian D. Rogers
Alaska State House of Representatives
Pouch Y
State Capital Building
Juneau, Alaska 99801

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WORKERS COMPENSATION STUDY COMMISSION

Meeting of April 22, 1981 AGENDA

Wednesday, April 22

1:00 p.m. Senate Finance Committee Room

- Discussion of commission's proposed legislation (SB-179/HB-159)

5:00 p.m.

- self-insurance provisions
- lump sum payments
- "benefits" vs. "compensation" cleanup language
- same-day bank drafts
- attorney fees
- other provisions
- Public comments on commission legislation
- Discussion of continuation of commission
- Discussion of progress of legislation this year

7:00 p.m. Senate Finance Committee Room

- Work session

9:00 p.m.

- amendments to HB-159/SB-179
- budget suggestions
- resolution continuing commission

Thursday, April 23

8:00 a.m. (if needed) House Labor & Commerce Committee Room

- Continuation of previous agenda items

1:30 p.m. JOINT MEETING OF HOUSE AND SENATE LABOR AND COMMERCE COMMITTEES

Butrovich Room

STATE OF ALASKA

DEPARTMENT OF LABOR

JAY S. HAMMOND, GOVERNOR

camp.

BOX 1149
JUNEAU, ALASKA 99811
PHONE:

Ph: 465-2790

May 6, 1981

James A. McCarthy
333 Dunbar Avenue
Fairbanks, Alaska 99701

Dear Mr. McCarthy:

Re: James A. McCarthy vs. Bayless and Roberts, Inc.
D/A 6/14/79 Case No. 79-06-0636

This is in response to your letter of April 21, received in our office on April 27, 1981.

Regarding the filing of current medical reports from your treating physicians in Seattle, it is your responsibility to insure that such reports are filed with both this office and Industrial Indemnity Company. Under the provisions of AS 23.30.095 of the Alaska Workers' Compensation Act, an injured worker has the right to choose his treating physician and is, therefore, responsible to make sure his physicians file reports for all treatment rendered. In fact, under AS 23.30.095(c) the physician is required to send notice within 20 days of first treatment to the Board and the employer/carrier, preferably on forms prescribed by the Board. Enclosed is a supply of those forms, which instruct the physician to file reports with the Board and the insurance carrier, that I suggest you personally give your treating physician(s).

There is nothing in our file to indicate that Industrial Indemnity has acted in bad faith or that an investigation should be conducted by the "Insurance Commissioner". The employer/carrier has the right to controvert a claim under the provisions of AS 23.30.155, and you have the right to bring your case before the Board to have the dispute resolved. If, at the hearing, you are able to substantiate your allegation that Industrial Indemnity has acted in bad faith, the Board has the authority to refer your case to the Division of Insurance for investigation.

James A. McCarthy
May 6, 1981
Page -2-

In regard to Dr. Silverman's report, the only document we have received with Dr. Silverman's name on it is the enclosed "neuromuscular electrodiagnosis" report dated November 24, 1980. Neither the Board nor the division have medical specialists on staff to interpret such reports, and it is highly unlikely that any other specialist would be willing to interpret another specialist's findings. Any interpretation of Dr. Silverman's report should come from Dr. Silverman, and his report should include how your condition is related to the injury of June 14, 1977, which this report fails to do.

Concerning any malpractice suit against Dr. Lindig for a "wrong diagnosis," that is a matter, of course, between you and Dr. Lindig. It was my understanding from the statements you made in your letter to the Division of Insurance dated March 19, 1981, that Dr. Lindig sent you to Seattle for an opinion and concurred that your present condition was related to the injury. This, apparently, is no longer the case.

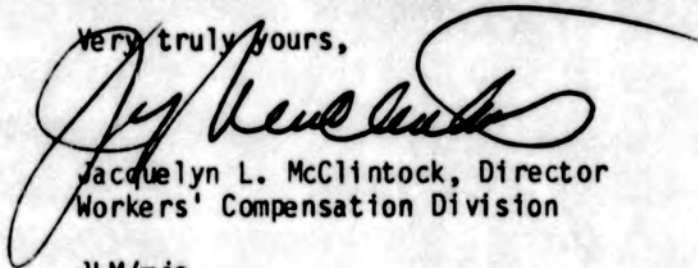
From your recent letter, it appears that you are continuing treatment with Drs. Mulder and Petersen in Seattle. I renew my request to you, your attorney Robert Blackford and Industrial Indemnity to immediately forward all copies of medical reports from Drs. Mulder, Petersen and Silverman to this office in order to supplement the Board's records. Until such time as those reports are filed, the Board will be unable to decide your case at hearing. As far as finding "proper treatment" for you in Alaska or order payment for your "bills", I am neither in a position to recommend a particular physician nor do I have the authority to order the carrier to pay your bills. Both you and Industrial Indemnity Company have a right to have all disputed issues heard and decided by the Board.

In regard to obtaining the services of an attorney because the "Insurance Commissioner doesn't want to investigate", your file indicates that you retained Mr. Blackford's services in 1979. There is no requirement that you employ the services of an attorney to represent you at a Board hearing, however, it is usually recommended since the defendant is usually represented by legal counsel. If the Board finds in your favor and you prevail in your claim, your attorney's fees and costs will be ordered to be paid by the defendant.

James A. McCarthy
May 6, 1981
Page -3-

Currently, our Fairbanks Board office is able to schedule a hearing within 30 to 45 days from final notice that the party is ready to proceed. To date, we have not received any filings from your attorney requesting a hearing. As soon as such a request is filed, the Board will schedule your hearing as expeditiously as possible, however, please keep in mind that the Board is required to give the opposing party 20 days notice of hearing under the Alaska Administrative Code.

Very truly yours,



Jacquelyn L. McClintock, Director
Workers' Compensation Division

JLM/mjs

cc: Senator Parr
Senator Fahrenkamp
Senator Bennett
Alaska State Senate
Pouch V, State Capitol Building
Juneau, Alaska 99811

Representative Bettisworth
Representative Randolph
Representative Smith
Representative Rogers
Representative Brown
Representative Fanning
Alaska State House of Representatives
Pouch V, State Capitol Building
Juneau, Alaska 99811

Governor Jay Hammond

Kenneth C. Moore, Director
Division of Insurance

Industrial Indemnity Company
P. O. Box 307
Anchorage, Alaska 99510

Robert C. Blackford, Esq.

April 15, 1981

James A. McCarthy
333 Dunbar Avenue
Fairbanks, Alaska 99701

Dear Mr. McCarthy:

Re: James A. McCarthy vs. Bayless and Roberts, Inc.
D/A 6/14/79 Case No. 79-06-0636

Your letter of March 19, 1981 to the Division of Insurance has been forwarded to this office for response.

As you are now no doubt aware, Industrial Indemnity controverted your claim for continuing benefits on March 6, 1981, on the basis that your current disability is not related to the injury of June 14, 1979. If you disagree with the determination made by Industrial Indemnity and feel your continuing problems are directly related to the injury sustained with Bayless and Roberts, you should file for a hearing before the Alaska Workers' Compensation Board where the rights and responsibilities of all parties will be heard and a final decision made.

It is noted from the file that you engaged the services of Attorney Robert C. Blackford in October 1979, when previously requesting a Board hearing, and that he has been copied on correspondence from both you and Industrial Indemnity to the present date. Since Mr. Blackford recently requested another copy of your file he may be in the process of filing for a Board hearing on your behalf. In the event he will not be representing you, however, an Application for Adjustment of Claim and a Statement of Readiness to Proceed is enclosed that should be completed and returned to this office so that a hearing may be scheduled. If you are represented by legal counsel, the application and statement should be filed through your attorney.

James A. McCarthy
April 15, 1981
Page -2-

In reviewing the medical records on file, it would appear that we are missing some of the medical reports and opinions you have referred to in your letter. Specifically, we note that although Dr. Lindig mentions in his reports that you would be obtaining another medical opinion in Seattle, there is no medical report on file indicating that he either sent you to Seattle or referred you to another physician. Further we have no medical reports on file from Drs.' Petersen, Silverman, or Mulder, the physicians you referenced in your letter. Therefore, we are unable from our file to determine the type of treatment obtained in Seattle or whether that treatment was available locally or within the state. In our letter to you of December 15, 1980, you were advised that if your in-state physician directly and specifically referred you to an out-of-state facility as part of your treatment or if the treatment required by the nature of your injury was not available in the state, the carrier would most likely be responsible for the travel costs. If you elected on your own to seek medical treatment in Seattle and the same type of treatment was available in Alaska, then the carrier is usually required to pay any medical costs that are directly related to the injury, but are not responsible for the travel expenses.

According to a March 27, 1981 report sent to Industrial Indemnity from Collins, Weed and Associates, copies of which were also forwarded to this office and Attorney Blackford, Virginia Collins has been involved in the vocational rehabilitation aspects of your claim. In the report, Ms. Collins stated that she had discussed your neck problems with Dr. Lindig on February 10 and March 27, 1981, and was advised by Dr. Lindig that it was his firm belief that your symptoms relative to the cervical spine were not related to the industrial accident involving the right arm. Certainly, a medical opinion expressed by Ms. Collins would not override the medical opinion of your treating physician. However, it would appear in this instance that Ms. Collins did not express her own opinion, but advised the carrier of your treating physician's opinion based on her conversations with him. If her statements do not agree with your understanding of the opinion given you by Dr. Lindig, you should request written clarification from him. Should the matter go to hearing, either you or the carrier may request both the testimony of Dr. Lindig and Virginia Collins be included in the record.

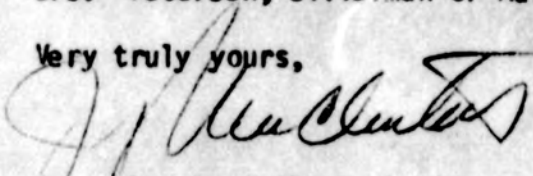
It is noted from Dr. Lindig's last report of April 6, 1981, that you have been released for a trial at work. We wish you the best in this effort and hope that your trial at truck driving will be successful.

If you have any questions or require further assistance in proceeding with your claim, please contact me or call Sylvia Hodges in our Fairbanks office at 456-1509.

James A. McCarthy
April 15, 1981
Page -3-

In order to supplement our records, Industrial Indemnity and Attorney Blackford are requested to forward all copies of medical reports from Drs. Petersen, Silverman or Mulder to this office.

Very truly yours,



Jacquelyn L. McClintock, Director
Workers' Compensation Division

JLM/mjs

Enclosure: Application for Adjustment of Claim
Statement of Readiness to Proceed

cc: Industrial Indemnity Insurance
P. O. Box 307
Anchorage, Alaska 99501

Robert C. Blackford, Esq.
205 B Street
Fairbanks, Alaska 99701

Honorable Brian D. Rogers
Alaska State House of Representatives
Pouch V
State Capital Building
Juneau, Alaska 99811

Ph: 465-2790

December 15, 1980

James A. McCarthy
333 Dunbar Street
Fairbanks, AK 99701

Dear Mr. McCarthy:

Re: James A. McCarthy vs. Bayless and Roberts, Inc.
D/A: 6/14/79 Case No. 79-06-0636

Dear Mr. McCarthy:

Thank you for your letter of November 10 which we received on November 13, 1980. Due to the press of business we were unable to answer until this date. We regret the delay. The check tendered to you by Industrial Indemnity is not a settlement. It is the voluntary payment of compensation for scheduled injury (arm) under the Alaska Workers' Compensation Act. It is based on substantial medical information, a rating of impairment that your arm has lost 20% of its usefulness. Under the terms of the act, your arm is not 100% disabled. Because your injury is scheduled, your actual loss of earning capacity is not at issue. Whether you lost no earning capacity or all earning capacity, your benefit for permanent partial disability is the same.

Mrs. Murphy's attempted payment of your scheduled injury is proper under subsection .155(a) of the Act. If you choose to reject the money, that is your choice. By accepting the money, you lose no rights under the Act whatsoever. If the extent of disability of your arm is later determined to be higher, you could collect any higher amount due.

Your weekly compensation benefits were terminated because there is no evidence in the file that your disability is temporary in character. For periods when you are undergoing medical treatment, such as you describe in your letter, temporary total disability is payable for those days. Upon receipt of doctors' reports that you were in fact under treatment those days, I am confident that Industrial Indemnity will pay the temporary total disability.

James A. McCarthy
December 15, 1980
Page 2

As far as transportation to and from medical treatment facilities outside the state, the matter is fairly complex. If your in-state doctor directly and specifically refers you to an out-of-state facility, as part of your treatment, your travel is payable. Your reasonable, ordinary and necessary expenses for obtaining such treatment will either be advanced by the carrier or reimbursed to you. For "second opinion" by way of examination only, it is conceivable that subsection 095(g) would require that you bear that cost yourself. However, the carrier may wish to schedule you for what is called an independent medical examination, and where there is any question to be resolved in a case, they frequently do this. In that case, if the examination is out of state, they will pay your travel. If you merely undertake to go Seattle to a designated treating physician there, and then return, the carrier will pay for your medical treatment if it is required by the nature of your injury or in aid of your recovery therefrom, but they are not required to pay for transportation if the same type of treatment is available locally or within the state. To change to a treating physician out-of-state, permission of the Board is required, and is routinely given. If you are permanently disabled from returning to a job in which you will earn substantially the same wages that you were earning at injury, you may be eligible for a substantial retraining benefits. Upon submission and approval of a retraining plan, the board will likely find that your disability is again "temporary" because it can be lessened by the retraining. Therefore during retraining, your weekly compensation would be restored and various other benefits from the carrier and possibly from the state of Alaska are payable to you. If you wish to pursue rehabilitation, I recommend you contact our office in Fairbanks at the state office building.

If we can provide further assistance, please contact us.

Very truly yours,



Paul R. Troeh, Jr.
Deputy Director
Workers' Compensation Division

cc: Industrial Indemnity
Box 307
Anchorage, AK 99510

Alaska State Legislature

WCC

PATRICK M. O'CONNELL
REPRESENTATIVE
DISTRICT 13



ROUTE 2, BOX 743
SOLDOTNA, ALASKA 99669
(907) 262-4218

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

House of Representatives

1 May 1981

Tom Harvey, Owner-Manager
Servicemaster of Kenai
P. O. Box 537
Kenai, Alaska 99611

Dear Tom:

I am in receipt of your letter of April 15, 1981, addressed to Mr. Ken Moore of the Division of Insurance, concerning Worker's Compensation. I do agree with you that there are some possible injustices and problems with the current Worker's Compensation laws and regulations.

I have been in contact with the Division of Insurance on your problem, specifically with regard to your point that you are placed in a position of proving that you have been unfairly classified, rather than the National Council of Compensation Insurance proving that you should be reclassified. This policy seems to run opposite to the principles of this country.

In talking with Mr. John George, the Deputy Director of the Division of Insurance, I was told that you should or will shortly be hearing from Mr. Don Koch regarding a possible appeal in front of the C&R (Classification and Rate) Committee of the NCCI (National Council of Compensation Insurance). Mr. Koch is the individual in the division working with Worker's Compensation. Although this is not a truly acceptable recourse, it is the only one available at this time.

The Legislature is currently in the process of evaluating the Worker's Compensation program. Although it is doubtful that any final action will be taken yet this session, I am hopeful that the Legislature will find solutions to some of these problems during the second session of the Twelfth Legislature.

I am forwarding copies of your letter to Rep. Brian Rogers and Sen. Terry Stimson who are the legislative members on the Worker's Compensation Task Force. If I can be of any further service, please do not hesitate to write or call.

Very respectfully,

A handwritten signature in cursive script that reads "Patrick M. O'Connell".

Patrick M. O'Connell
Representative

PMO: ew
cc: Rep. Brian Rogers, Sen. Terry Stimson



ServiceMaster of Kenai

(907) 283-7477

Serving the Western Kenai Peninsula

TOM HARVEY
owner-manager

April 15, 1981

Mr. Ken Moore
Division of Insurance
Pouch D
Juneau, Alaska 99811

Dear Mr. Moore:

As per our telephone conversation of a few days ago I am sending you copies of pertinent information concerning our Workman's Compensation policy carried by Industrial Indemnity through our agent Leo Oberts.

I am very disturbed by the indiscriminate changing of our classification from "Buildings-Operations By Contractor" to "Carpet Rug or Upholstery Cleaners." This has resulted in a sudden raise in our required deposit of about \$750. right in the middle of our year of coverage!

What is even more disturbing is that I must pay the deposit without any recourse or hearing, and that I am in the position of having to prove that you are in error. I believe it should be your responsibility to justify your actions, especially since we have had the same classification for five years without any change or problems.

I was told by my agent that my insurance would be cancelled if payment was not made immediately. My policy has already been paid. How can a change like this be made in the middle of the year?

For your information wages paid in 1980 for Contract Janitorial Services amounted to 49,528.92, as opposed to only \$20,267.26 for in-home services. In fact, part of our in-home services include cleaning of walls, floors and other janitorial type services.

I would appreciate your looking into this injustice and informing me of your findings.

Sincerely,

cc: Rep. Pat O'Connell P.O. BOX 537 Kenai, Alaska 99611
Sen. Don Gillman

*Pat:
This is to
bring to your attention
problems with Workman's
Compensation. I understand
I'm not the only one
encountering this. I believe
the classification & rate
structure needs to be
looked into. I
appreciate your
efforts & hard work
in Juneau.
Thanks,
Tom Harvey*

"Cleaning People Who Care"

WHILE IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4925

HOME:
BOX K - COLLEGE
FAIRBANKS, ALASKA 99708
(907) 456-2037

BRIAN ROGERS
Alaska State Legislature

1 April 1981

TO: LEGIALSTIVE AFFAIRS
SHARON STURROCK

FROM: REP. BRIAN ROGERS

RE: TRAVEL AND PER DIEM - WORKERS COMPENSATION STUDY COMMISSION

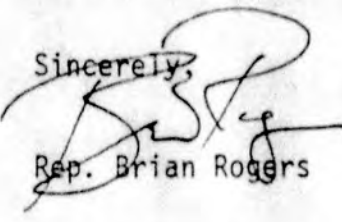
Five members of the Workers Compensation Study Commission will be traveling to Juneau on April 22 to attend two days of meetings. They will return on April 23rd. Through this memo, I am requesting that you send my office all the necessary paperwork to insure that prepaid airline tickets are available at the airline counters in both Fairbanks and Anchorage for those members listed below and that arrangements are made for reimbursement for per diem.

Four members, Chancy Croft (272-3508), F. Mike Swalling (272-3461), Thomas O'Keefe (279-9441) and Dennis Maloney (243-2400), will be leaving Anchorage at 8:10 a.m. on April 22 via Alaska Airlines Flight # 62 and arriving in Juneau at 11:35. They will leave Juneau at 6:15 p.m. on April 23 via Alaska Airlines Flight #67. I have made reservations for one night at the state rate at the Cape Fox, Sheffield House.

One member, Dave Rasley (452-1258) will be leaving Fairbanks at 7:00 a.m. on April 22 via Alaska Airlines Flight 92/62 and arrive in Juneau at 11:35 a.m. He will return via Flight #67/87 on April 23 at 6:15 p.m. arriving in Fairbanks at 7:05. Reservations at the Cape Fox for April 22 have been made for him also.

Funding for this travel has been approved by the Legislative Council as per the attached letter. Airline reservations have been made through Alaska Travel and they are awaiting TR's from your office before completing the tickets. Your earliest attention to this matter will be most appreciated.

Sincerely,


Rep. Brian Rogers

Enc: Legislative Council Correspondence
(March 23, 1981)

BR/vb

WHILE IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4925

HOME:
BOX K - COLLEGE
FAIRBANKS, ALASKA 99708
(907) 456-2037

REPRESENTATIVE
BRIAN ROGERS
Alaska State Legislature

March 23, 1981

To: Rep. Hugh Malone, chairman
Legislative Council
From: Rep. Brian Rogers, co-chairman *BR*
Workers' Compensation Study Commission
Re: Funding for commission meeting

Last year the legislature voted to create a Workers' Compensation Study Commission to investigate the state's workers' comp system and to recommend changes to that system. The commission completed the first phase of its work, introducing HB-159/SB-179 making several changes to the comp statutes. The commission has recommended continuation for an additional year to complete its work.

Those two bills are currently before House and Senate Labor and Commerce Committees; representatives of employer groups and labor unions have asked that the commission members meet again during this legislative session to discuss the legislation, possible changes to the legislation, and to meet with the appropriate committees.

The commission's funding was carried over by the previous Legislative Council, but the new Council voted to hold funding for its review. As co-chairman of the commission (with Sen. Stimson), I would like to request the Council to allocate funding from our previous appropriation to cover the costs of travel and per diem for a meeting in mid-April. Commission members include:

M *L* Chancy Croft, Anchorage -
M *L* Frank Chapados, Fairbanks -
L Dave Rasley, Fairbanks -
L Dwayne Carlson, Juneau
M Mike Swalling, Anchorage -
10 *M* Tom O'Keefe, Anchorage -
M Dennis Maloney, Anchorage -

Jim. McCarthy - injured 2 yrs ago.
• Problems w/ insurance co → countering
after 2 yrs. Injured in April; misdiagnose;
Pinched Nerve → changed doctors → treated
Tennis elbow, arm + neck. Went to Sea →
back to work 8-12 wks if surgery.
Pulled + pinched nerves. Gradually
worse. Anything to avoid surgery - 10%
traction makes worse.

Jackie has letter; Ken Moore too.
Can't wait 2-3 mo before anything
done.

WCC

333 Dunbar Avenue
Fairbanks, Alaska 99701
March 26, 1981

Representative Byron Rodgers
Pouch V
Juneau, Alaska 99811

Dear Mr. Rodgers:

Enclosed is some information in regard to my injury, Claim No. C13181.

Please call me at 452-7154 as I would like to talk with you. As you can see I am not getting the cooperation I need for my recovery. The insurance company is not paying the bills at this time.

James A. McCarthy

James A. McCarthy

Ginger -

*Please call him
for me*

B

Jackie McClintock - 2790

333 Dunbar Avenue
Fairbanks, Alaska 99701
March 19, 1981

Insurance Commissioner
State of Alaska
Juneau, Alaska 99811

Re: No. 59-013-181, Bayless & Roberts, 6-14-79

Dear Sir:

I am asking you to investigate a case for me involving the Industrial Indemnity Insurance Co.

I was injured on my job. My right arm, shoulder and neck were involved. I was treated at the Tanana Clinic for two weeks and was told I had a tennis elbow. After these two weeks, I was finally able to see a doctor---Dr. Waldo H. Hanns. He said it was only a tennis elbow. I complained about my shoulder and neck. He said he could find nothing wrong with my shoulder and that since I had had a previous surgery on my neck, he would not put down on my record that my neck hurt. I told him my arm still hurt too much to use it. He said, "Keep using it, the insurance company doesn't like you guys laying around doing nothing." After a few days I went back to work only to injure the arm and neck more and the pain has become more intense.

I changed to Dr. Ed Lindig. He said he could only treat me for what Dr. Hanns had written on my medical records. He finally operated on my elbow but it did not help. After a lot of therapy, it was no better, only getting worse all the time.

The insurance company sent Virginia Collins, a nurse, to see me. I told her each time I tried to pull or lift with my arm, it hurt and I would lose the strength in it. She reported to the insurance company that I had reinjured my arm and they sent me a letter saying they were no longer responsible.

Dr. Lindig has not released me to go back to work. I went to Seattle to have extensive tests made and therapy because of the constant pain. They have found nerve damage in the C8 section of the spine that is affecting my arm. Three of the best doctors in Seattle say at this time I am totally disabled.

Virginia Collins told the insurance company that my present condition was not related to the injury of 6-14-79 and yet I have not been able to work for nearly two years. Why is a nurse able to override the Doctors? You can check with my wife, Dr. Ed Lindig, Dr. Keith Petersen at the Seattle Sports Medicine Clinic, Dr. Silverman at Providence Hospital, Seattle and Dr. Gordon Mulder in Seattle. He is a neurological surgeon and he said I should have a myelogram and possible surgery and could be back to work in 8-12 weeks. Dr. Ed Lindig sent me out to Seattle to have another opinion and the myelogram. The insurance company has refused to pay for these expenses or anything further.

Page 2

March 19, 1981

Insurance Commissioner
State of Alaska
Juneau, Alaska 99811

Over the last few months the pain has gotten worse to the point it has even affected my thinking. The pain and frustration from not getting this settled is more than I can take at times.

Would you please send someone to investigate Virginia Collins and help me get this straightened out soon. I will look forward to talking to one of your investigators.

Sincerely,

James A. McCarthy

James A. McCarthy

333 Dunbar Avenue
Fairbanks, Alaska 99701
March 24, 1981

Mrs. Jacquelyn L. McClintock, Director
Workers' Compensation Division
State of Alaska, Department of Labor
Box 1149
Juneau, Alaska 99811

Dear Mrs. McClintock:

Re: My injury on 6-14-79

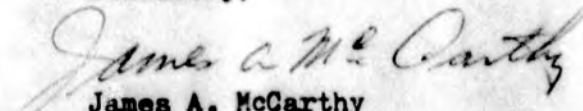
I received your letter of March 20, 1981 in regard to the final report sent to you by Industrial Indemnity Insurance Company.

You stated that I should contact you immediately if the medical bills were not paid and if I cannot work. I cannot work and there are many medical bills that are not paid. I have paid some of the medical bills and have not been reimbursed. There is an unpaid bill from the Ballard Hospital in Seattle and one for over \$800.00 from the Seattle Sports Medicine Clinic and one from the Mason Clinic to mention a few of the unpaid bills, plus the bills I have already paid and expenses I have incurred.

I am enclosing a letter from Dr. Gordon Mulder that states that it would be possible for me to get back to work in 2 to 3 months if surgery is performed.

Dr. Ed Lindig's report will be enclosed as I see him tomorrow and will let him mail it with this letter.

Sincerely,


James A. McCarthy

333 Dunbar Street
Fairbanks, Alaska 99701
December 1, 1980

Miss Marilyn Murphy
Claims Examiner
Industrial Indemnity Company of Alaska
P. O. Box 307
Anchorage, Alaska 99510

Dear Miss Murphy:

The following is a list of expenses incurred going to Seattle for medical examination and treatment. I have not yet received Dr. Silverman's bill. My treatment began the day after I arrived and ended the day before I left to return home: 11-12-80 to 11-25-80, 14 days.

Airline ticket	\$285.02
Parking Fees	28.00
Transportation	76.63
Dr. Peterson	59.65
Traction Harness	28.38
Dr. Haney, xrays	160.05
Food, 14 days @ \$25.00 per day	350.00
Lodging	<u>150.00</u>
Total	\$1,137.73

I paid one-half month's rent on a friends apartment for lodging.

I will pay Dr. Silverman's bill as soon as I receive it and will send it to you for reimbursement.

I have not cashed the last check you sent. What do you want me to do with it as I will not accept it as a payoff.

Sincerely,

J. A. McCarthy
J. A. McCarthy

JAM:g

I have not yet been reimbursed for the above expenses I have paid.

INDUSTRIAL INDEMNITY COMPANY
OF ALASKA

February 10, 1981



Gordon Moulder, M.D.
1221 Madison, Suite 414
Seattle, Washington 98104

Home Office
301 W. Northern Lights Blvd.
Mailing Address: P.O. Box 307
Anchorage, Alaska 99510
Telephone (907) 279-9441

Re: Claim No. : 59-13181
Employer : Bayless & Roberts, Inc.
Claimant : James A. McCarthy
Date of Injury : 4/9/79

Dear Dr. Moulder:

Our office was recently contacted by your office with regard to a question of responsibility for a myelogram and cervical discectomy which is scheduled to take place February 17, 1981.

This letter is to advise you that Industrial Indemnity will not assume responsibility for payments of the myelogram nor the subsequent surgery as being related to our April 9, 1979 industrial injury.

We trust this letter will clarify our position in this matter.

Very truly yours,

Toni Mortieau
Claims Representative

TM/np
cc: Workmens Compensation Board

Robert C. Blackford, Esq.
205 B Street
Fairbanks, Alaska 99701

James McCarthy
333 Dunbar Street
Fairbanks, Alaska 99701

Virginia Collins, R.N.
COLLINS, WEED & ASSOCIATES
2600 Denali - Suite 101
Anchorage, Alaska 99503

GORDON MULDER, M. D.
J. TIMOTHY STUNTZ, M. D.
NEUROLOGICAL SURGEONS, INC., P. S.
1221 MADISON STREET
SEATTLE, WASHINGTON 98104
TELEPHONE 623-8820

March 4, 1981

Toni Mortieau
Claims Representative
Industrial Indemnity Company of Alaska
P.O. Box 307
Anchorage, Alaska 99510

RE: Mr. James A. McCarthy
59-13181

Dear Ms. Mortieau:

I saw James McCarthy on one occasion which was February 6, 1981. It was my impression that he had an acute cervical disc herniation and I proposed a myelogram to substantiate this diagnosis and possible surgery if all parties involved agreed that it was the best plan to treatment of his condition. If this were all done it would be approximately two plus months before he could return to work as a truck driver.

Sincerely,

Gordon Mulder

Gordon Mulder, M.D.

GM/c11

Enclosure

WHILE IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4925

REPRESENTATIVE
BRIAN ROGERS
Alaska State Legislature

PHONE:
BOX K - COLLEGE
FAIRBANKS, ALASKA 99708
(907) 456-2037

2 April 1981

James A McCarthy
333 Dunbar Avenue
Fairbanks, Ak 99701

Dear Mr. McCarthy,

Thank you for sending me a copy of your correspondence regarding the trouble you have had with coverage under Workers Compensation.


While I am not in a position to handle individual complaints, I am looking into the whole aspect of coverage and associated problems for the injured workers through the hearings I have attended as a member of the Workers Compensation Study Commission.

I did contact Jackie McClintock, the Director of the Workers Compensation Division and she said she had received your correspondence and was mailing you forms to apply for a hearing on this matter today. I realize this process will take more time and time is one of the problems in your situation, but this is apparently the only recourse open to establish that the original doctors opinion was in error and that that error resulted in loss of coverage for you.

I am sorry I cannot fix this problem in a hurry but I hope the action already taken will be sufficient to bring some justice into the situation.

Thank you for taking the time to alert me as to whats going on with you and please stay in touch.

Sincerely,


Rep. Brian Rogers

BR/vb

2/16WCC

Brian

Thanks for Wilkens report and
note. Thought you ought to
be aware of Minnesota Study
Commission report, if staff
doesn't have it, before you write
yours — Cheers

PAF 

February 13, 1981

Rep. Brian Rogers, Co-Chair
Workers' Compensation Study Commission
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Brian:

As you probably know, the Minnesota State Fund Study Commission made its recommendations in a report submitted to the Minnesota State Legislature and Governor Jan. 1, 1981. The majority recommended establishment of a state fund and replacement of the existing regulated rate-making system with a competitive file-and-use system. The 325-page report, which follows the Minnesota Study Commission's 1979 report and recommendations on workers' compensation, contains several items that might be of interest to the Alaska Workers' Compensation Study Commission. I'll highlight a few for you:

1. Oligopoly

" . . . it is an unchallengeable economic fact that competition in a non-oligopoly market will result in lower costs for the same unit of production than oligopoly, and much less than absolute monopoly, which is what exists in workers' compensation. We tolerate regulated monopoly rates for telephone and power service, since these are natural monopolies which might otherwise abuse their position. But there are in excess of 200 workers' compensation insurers active in Minnesota, none of which has a market share greater than 8 percent. If competition would cause some of these insurers to withdraw from Minnesota, it is likely to draw others to our state. The number of insurers and the \$500,000,000 market at stake are sufficient to guarantee the cost advantages of competition to the employers and the employees of the state."

(Majority report, pp. 33-34)

(RAF comment: Note the contrast between Minnesota, as described above, and Alaska, where three carriers write over 70% of the premium, the total premium at stake is roughly one-fifth that of Minnesota, less than 100 carriers write at all and coming in is a major move for a company due to Alaska's geographic isolation.)

"Workers' compensation insurers and the workers' compensation rating association should be made subject to state law equivalent to the appropriate provisions of the Sherman, Clayton and Federal Trade Commission Acts so as to assure competitive behavior."

(Majority recommendation, p. 5)

2. Adversary Rate Hearings

"In 1979 . . . the Commission proposed and the Insurance Commissioner refined a plan for the transformation of the rate hearing into an adversary process in which the rate proposals had to be justified and could be challenged by interested parties, including the Insurance Division staff. . . . This process has fallen far short of meeting expectations. . . . we believe it is now apparent to all concerned that regulated rate hearings are not conducive to the goal of

developing rates which are equivalent to what competitive rates would be if we had competition. . . ."

(Majority report, pp. 29-30)

(RAF comment: After extensive and extremely time-consuming hearings, Minnesota's Commissioner has yet to promulgate rates that will withstand challenge, one Insurance Department staff person in Minnesota advises.)

3. C. Arthur Williams on Open Competition

"What are the advantages and disadvantages of extending Minnesota's open competition law to workers' compensation insurance? As a member of the Minnesota Study Commission I voted in favor of such an extension. In my opinion, in the short run such an extension would raise workers' compensation premiums, but in the long run premium would be less than under the present one-price (except for dividends) system. I would be more comfortable with this position, however, if we had more evidence on which to base a decision." (p. 150)

(RAF comment: What is the probability of long-run premium reduction in Alaska's oligopolistic market?)

4. Other States

"Three states, Illinois, California and Montana, have successfully introduced elements of competition in workers' compensation rates without ill effects." (Majority report, p. 25.)

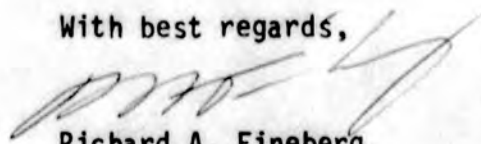
(RAF comment: California and Montana have competitive state funds. With regard to Illinois, I cannot accept this statement without further study: High workers' comp rates prompted special joint hearings by the Illinois Industrial Commission and the Director of Insurance in Nov.-Dec. 1979. Further hearings were scheduled for 1980, as well as other legislative and executive consideration of workers' comp problems.)

5. IBNR

Actuarial consultant Lena Chang, Ph.D., argued that using historical comparisons of ultimate claim costs to initial estimates would provide a more accurate substitute for IBNR, thereby removing IBNR (an estimate tacked onto an estimate, in her estimation) from rate calculations. (pp. 164-202)

There is much in this in-depth study that you might find significant. In view of its possible relevance to Alaska, I just wanted to make sure you were aware of this report's existence.

With best regards,



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

**ALASKA
STATE LEGISLATURE**

WC

17 February 1983

MEMORANDUM

TO: WILSON L. CONDON
ATTORNEY GENERAL

FROM: REP. BRIAN ROGERS *BR*

RE: WORKER'S COMPENSATION

Sorry its been awhile since I got back to you about your February 6th letter regarding Workers Compensation litigation. I appreciate your keeping me informed about the problems you are facing and believe that when you look over the final report from the Worker's Compensation Study Commission (available through Senator Stimson's office) you will be relieved as far as the problems you mention in your letter. In any case, please feel free to call me or set up a meeting if you think it is necessary. I'd be happy to talk with you about it.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 6, 1981

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

465-3654

The Honorable Brian D. Rogers
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Workers Compensation
Board litigation

Dear Brian:

I'm not sure whether the Workers Compensation Study Commission is aware of the pending case of Gordon v. Workers Compensation Board, the outcome of which will be greatly affected by what the Study Commission and the legislature do this session. This is a class action in Fairbanks Superior Court by workers comp claimants who aren't receiving decisions within twenty days of their hearings, as required by AS 23.30.110(a). It is important that you be aware of it for two reasons:

1) The Board's basic defense is that it is deciding cases as quickly as it can with the resources available to it. In order to convince the court (Judge Hodges) that there is no intentional denial of anyone's rights, we have impressed upon the judge that everyone, from the legislature on down, is anxious to remedy the problem. This line of argument became a little less useful when HB 670 was amended out of existence in the final days of last session. But we can still point to the Study Commission as evidence that the State as a whole is seriously (and expeditiously) addressing the problem. If the result of the Commission's work and the legislative session is merely minor tinkering, or nothing at all, then I'm afraid Judge Hodges will consider a more drastic remedy, such as the following.

2) Judge Hodges has already indicated some willingness either to a) order the legislature to appropriate more funds for the Board; or b) order the Board to spend additional funds without an appropriation. Both of these moves would be so drastic an infringement on the legislature's constitutional prerogatives that I doubt that we'd have any difficulty


February 6, 1981

overturning them on appeal, but naturally the preferable course would be to convince the court not to issue such orders to begin with. And one way to do that is to show that we are really working on the problem.

I'm not in a position to make any specific recommendations to the Commission, but you should be aware that this case is still around and that Judge Hodges is, in a sense, looking over your shoulder. When you get the chance I'd like to talk this over with you.

Very truly yours,

WILSON L. CONDON
ATTORNEY GENERAL

By: 
Douglas K. Mertz
Assistant Attorney General

DKM/blc

MEMORANDUM

State of Alaska

TO: Jacquelyn L. McClintock, Director
Division of Workers' Compensation

Thru: *John Post*
John Post, Director
Division of Administrative Services

FROM: *Nico Bus*
Nico Bus, Finance Officer
Division of Administrative Services

DATE: January 26, 1981

FILE NO: 5-3.1

TELEPHONE NO: 465-2720

SUBJECT: Second Injury Fund

Mr. Paul House inquired why the administrative costs of the Second Injury Fund have been paid out of the Second Injury Fund rather than out of the State General Fund. The Second Injury statute does not address the payment of the administrative cost out of the Fund.

In checking with Mr. Jim Steh, Deputy Director of the Office of Budget and Management, Office of the Governor, he stated that it probably was based on the "user pays for the service" principle. However, he also said that if the Workers' Compensation Study Commission could justify why the General Fund should pay for the administrative costs of the Second Injury Fund, we could ask for general funding in the FY 1983 budget.

As this would benefit the solvency of the fund, I would suggest that you bring the possibility of general funding to the attention of the study commission and together prepare a justification.

If I can be of any assistance, please let me know.

cc: Judy Knight
Paul House

\$200K
- 182.4

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

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.

Reserves as a Percent of Outlays

<u>Contribution Rate</u> (Percent)	<u>At Least</u> (Percent)	<u>But Less Than</u> (Percent)
7	-	25
6	25	50
5	50	75
4	75	100
3	100	125
2	125	150
1	150	175
0	175	-

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.

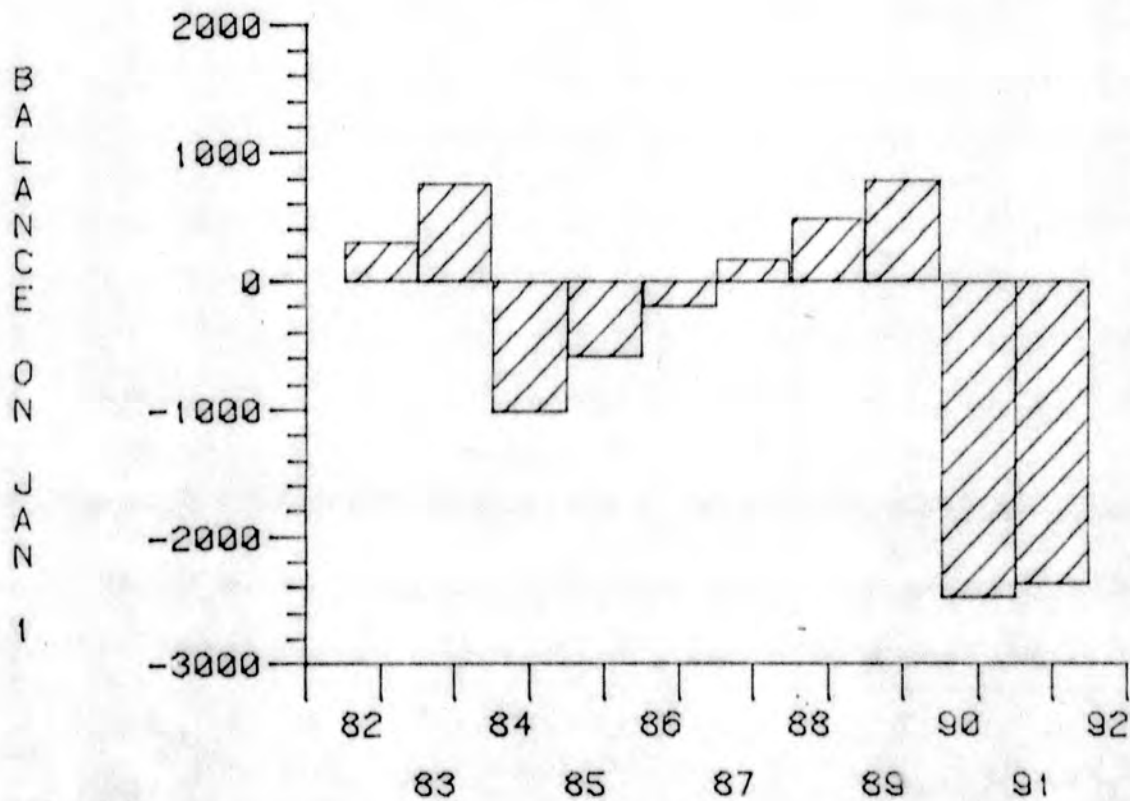
Eight Percent Rate with \$600,000 Reserve Ceiling (in \$1000)

Year	Fund Balance	Rate	Paid Losses	Fund Receipts	Fund Disbursements	Surplus (Deficit)	Fund Balance	Balance + Disbursements (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

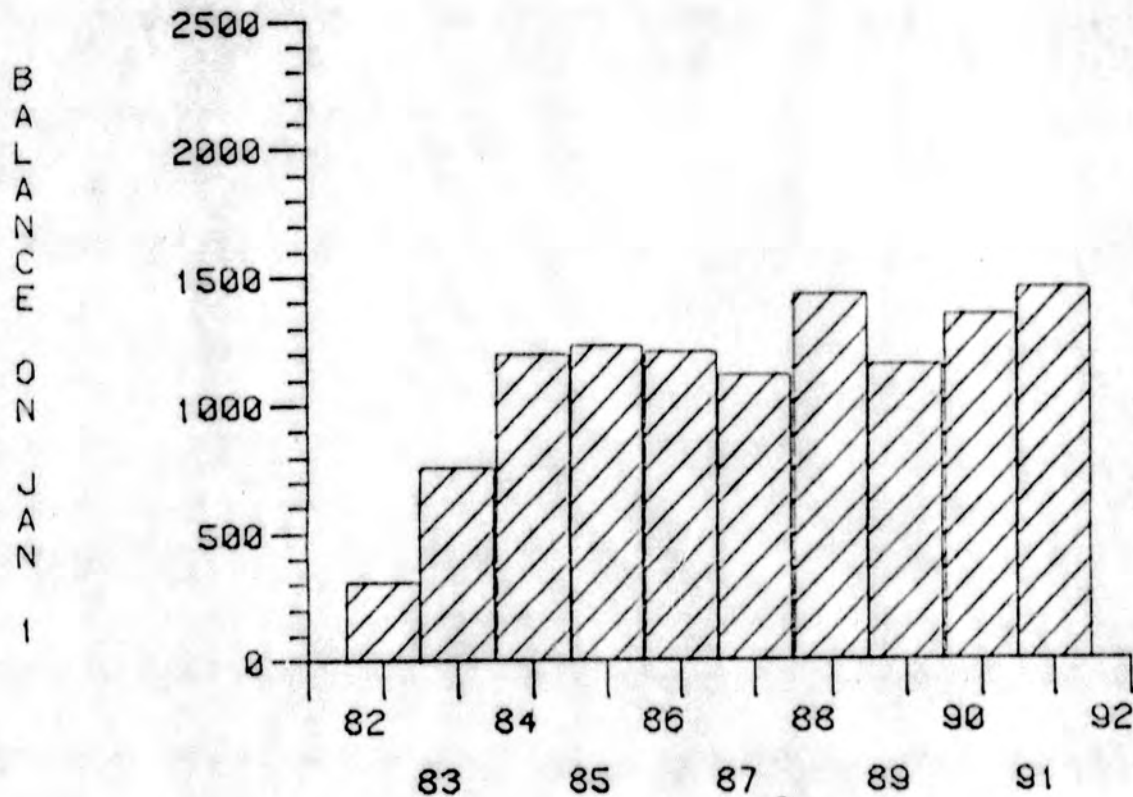


Flexible Rate Schedule (in \$1000)

Year	Fund Balance	Rate	Paid Losses	Fund Receipts	Fund Disbursements	Surplus (Deficit)	Fund Balance	Balance + Disbursements (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	53385	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.



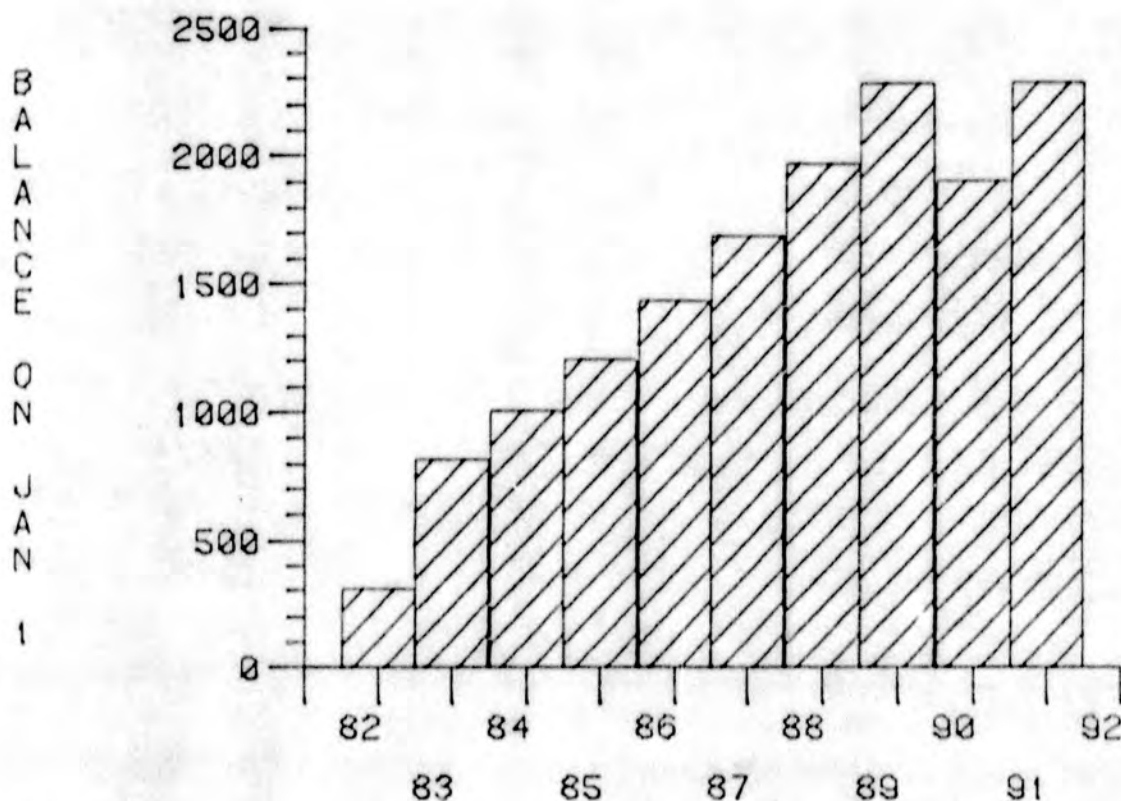
(paid losses) grows at eight percent per year while outlays grow at 11.1 percent per year. The purpose of the above "worst case" scenario is to demonstrate that the schedule can support an extreme level of outlays. The table below is a more likely scenario; fund disbursements and regular compensation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

Flexible Rate Schedule (in \$1000)

Year	Fund Balance	Rate	Paid Losses	Fund Receipts	Fund Disbursements	Surplus (Deficit)	Fund Balance	Balance + Disbursements (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.

MEMORANDUM

State of Alaska

TO: Jacquelyn L. McClintock, Director
Division of Workers' Compensation

DATE: January 26, 1981

FILE NO: 5-3.1

Thru: *John Post*
John Post, Director
Division of Administrative Services

TELEPHONE NO: 465-2720

FROM: *Nico Bus*
Nico Bus, Finance Officer
Division of Administrative Services

SUBJECT: Second Injury Fund

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As this would benefit the solvency of the fund, I would suggest that you bring the possibility of general funding to the attention of the study commission and together prepare a justification.

If I can be of any assistance, please let me know.

cc: Judy Knight
Paul House

LAW OFFICES

BIRCH, HORTON, BITTNER, MONROE
PESTINGER AND ANDERSON

A PROFESSIONAL CORPORATION

130 SEWARD STREET, SUITE 411

JUNEAU, ALASKA 99801

(907) 586-2890

1127 WEST SEVENTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 276-1550
TELEX 25-356

711 GAFFNEY ROAD
FAIRBANKS, ALASKA 99701
(907) 452-1666

1140 CONNECTICUT AVE., N. W., SUITE 1100
WASHINGTON, D. C. 20036
(202) 659-5800

RONALD G. BIRCH
HAL R. HORTON
WILLIAM H. BITTNER
SUZANNE C. PESTINGER
LLOYD V. ANDERSON
W. BRUCE MONROE
RODNEY B. CARMAN
MICHAEL R. SPAAN
JOSEPH M. CHOMSKI
DOUGLAS J. SERDAHELY
WINSTON S. SURBANK
CAROL A. JOHNSON
JOSEPH W. EVANS
E. BUDD SIMPSON
CONSTANCE E. BROOKS*
JACK D. CLARK
PAUL H. GRANT
PATRICK H. OWEN
DANIEL W. WESTERBURG
WILLIAM P. BRYSON
C. FLOYD MATHEWS*
KATHRYN A. BLACK
PAUL L. DILLON
STANLEY T. LEWIS
MARC W. JUNE
SUSAN P. BEHLKE

January 30, 1981

*NOT ADMITTED IN ALASKA

Messrs. Greg O'Claray
and Dwayne Carlson
124 Front Street
Juneau, Alaska 99801

Re: Workers' Compensation Claims

Dear Greg and Dwayne:

What follows is the letter promised during our meeting of January 26, 1981. As you will recall, we discussed the problems inherent in the existing State of Alaska Workers' Compensation Statutes which we felt would work to the extreme prejudice of legitimate claimants by making it difficult to obtain competent counsel. These problems stem principally from two specific areas of the Alaska Workers' Compensation Law. The first is the Social Security offset, as set forth in AS 23.30.225 (amended in 1977), and the attorneys' fees provisions of AS 23.30.145. For your information, I am attaching copies of each of these statutes.

The Workers' Compensation Law was originally conceived as a benefit to workers injured or killed on the job, but who often had difficulty proving the negligence or lack of contributory negligence necessary to bring a civil action. It is commonly perceived that these laws have more recently been twisted to benefit the employer and its insurance carrier. This situation has been brought home to us by our experiences in a recent Workers' Compensation death case in which we represented the widow and dependent child.

In the case in question, the deceased husband and father was a warehouseman in Ketchikan who was killed on the job when a forklift fell over and crushed him. The employer's Workers Compensation carrier denied coverage on the basis of some rather weak hearsay information to the effect that the deceased worker may have been operating the forklift outside the scope of his employment. This controverson of the claim was made despite the fact that there is a presumption that when someone is killed or

Messrs. Greg O'Claray
and Dwayne Carlson
January 30, 1981
Page 2

injured on the employer's premises during work hours, it is within the scope of his employment. In any event, the widow's and child's claims were denied and they sought representation, which we undertook because we believe strongly in the merits of their claim, even though we realized that in Workers Compensation cases the attorneys' fees are often inadequate. In this case, the insurance carrier offered a "nuisance value" settlement of the case (\$10,000) prior to the hearing before the Workers' Compensation Board. We felt this was unreasonably low, and proceeded to a full-scale hearing on the merits, which included substantial amounts of preparation, transportation and expenses of witnesses brought from Ketchikan to Juneau and many, many hours of attorneys' time. The evidence brought forth at the hearing was most convincing in favor of the widow's claim. This is evidenced by the fact that shortly after the hearing, but before the Board had had an opportunity to render a decision, the insurance carrier made a settlement offer in excess of \$50,000.

It was in the context of the settlement negotiations that the problems with the law became apparent. Based upon what the deceased was making at the time of his death and the present age and actuarially determined life span of his dependants, the full value of his claim would have been in excess of \$400,000. However, because of the Social Security offset provisions of Section 225, the widow's and child's awards, if paid on a weekly basis over a period of time, would gradually have decreased to zero after a period of about 12 years. This is because Social Security benefits increase annually with the cost of living, while Workers' Compensation benefits remain fixed. Each time Social Security goes up, the Workers' Compensation benefit would decrease by 50% of that amount, under the Section 225 formula. Therefore, an award which should have been valued at over \$400,000 becomes worth something under \$150,000.

With a maximum value of the claim being less than \$150,000, the insurance carrier made a settlement offer of around \$55,000, which represents something very close to the full present value of the maximum possible award. (Present value is the current cash value of a sum of money which would be larger if paid over a period of time, almost like interest in reverse). Accordingly, after the hearing was held, the settlement offer was for all practical purposes as much as our client could have recovered had she been given a full award by the Board.

With respect to attorneys' fees, the carrier offered the sum of \$5,000, which would probably have compensated us for ap-

Messrs. Greg O'Claray
and Dwayne Carlson
January 30, 1981
Page 3

proximately one-third of the time actually spent in the case had we been billing at our hourly rate. Any award of attorneys' fees in a Workers' Compensation case must be approved by the Board, even in the context of a settlement, and under Section 145, the Board ordinarily allows fees based on the minimums provided. This is so even though the Alaska Supreme Court has stated that there is a public policy of assuring that attorneys' fee awards in Workers' Compensation cases are sufficient, and in fact should even be on the high side so as to assure an adequate overall rate of compensation when counsel's work on unsuccessful claims is considered (see Wein Air Alaska v. Arant 592 P.2d 352 (Alaska 1979)).

The offer of a virtually maximum settlement to our client, with a clearly inadequate offer of attorneys' fees to us, placed us in a serious ethical dilemma. We were obligated to recommend to our client the acceptance of the offer to her, even though we were faced with a situation of being inadequately compensated ourselves. In most civil litigation based upon a contingent fee, the attorneys' fee aspect is built in in such a way that they receive a percentage of the total award. In a Workers' Compensation case, because the attorneys' fees are subject to Board approval, attorneys can be virtually "whipsawed," so that as an economic proposition attorneys would be extremely reluctant to take on such cases. In a non-Workers' Compensation contingent fee case, a good award for the client assures an adequate return for the attorneys' efforts, and there is never any problem of an attorney being tempted to misadvise his client as to the adequacy of a settlement offer out of fear of inadequate compensation for himself.

The net effect of all of this is that, in any reasonably difficult or marginal Workers' Compensation Claim, this firm will in all probability decline representation of claimants in the future. Of course, this plays directly into the hands of the insurance carriers, who would prefer that injured parties or their dependants not have legal representation. Had we not advised our client in Ketchikan that we felt the insurance carrier was in error in denying her claim, and then followed through, she would have nothing at this time. Likewise, even had she been advised that she might have a claim, without professional assistance, there would have been virtually no possibility of her ever receiving an award. Our firm is one of the largest law firms in the state and to remove it from the available marketplace of plaintiffs' counsel in Workers' Compensation cases

Messrs. Greg O'Claray
and Dwayne Carlson
January 30, 1981
Page 4

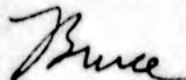
would have a serious impact on the availability of counsel to claimants. Fortunately, as a large firm we are in a position to absorb occasional marginally profitable undertakings. Smaller firms or sole practitioners, however, would probably suffer an even greater adverse impact were they to undertake a large number of unprofitable cases.

Accordingly, it would be our recommendation that legislative action be applied to effect amendments to the attorneys' fees provisions of Title 23, either permitting attorneys to make fee arrangements directly with their clients as in other cases, or at least raising the minimum fee schedules. Secondly, for the benefit of injured Alaskan workers, the abolition or modification of the current Social Security offset provisions would be imperative.

As we mentioned during Monday's discussion, our concern is expressed not primarily for our own benefit from a business context, but rather because of the potential injustice which may be worked to any number of deserving claimants in Alaska who will be deprived of representation. We can cut our losses by declining to accept their cases. The average widow or injured worker has no such alternative. Your attention to this matter and your interest in it are, of course, greatly appreciated.

Best regards,

BIRCH, HORTON, BITTNER, MONROE,
PESTINGER AND ANDERSON



Bruce Monroe

BM/rv

exceptions to the
ok v. Alaska Work-
ion Bd., Sup. Ct. Op.
o. 1168), 476 P.2d 29

1) of the Administra-
ct applies to compensa-
gs. and specifically
onsideration of hear-
ok v. Alaska Work-
ion Bd., Sup. Ct. Op.
o. 1168), 476 P.2d 29

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nd. Libby, McNeill &
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l. 13 Alaska 401, 191
r. 1951), cert. denied,
42 U.S. 913, 72 S. Ct.
683 (1952).

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Libby, McNeill & Libby
s. Bd., 12 Alaska 334
Alaska 401, 191 P.2d
1951), cert. denied, 42
2 U.S. 913, 72 S. Ct.
683 (1952).

letters merely suppl-
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ely in the conduct of
s, regardless of the
any common-law
which might make
admission of such
McNeill & Libby
Bd., 13 Alaska 334
(9th Cir. 1951), cert.
aska 581, 342 U.S. 921
96 L. Ed. 683 (1953).
y, McNeill & Libby
Bd., 13 Alaska 401, 191
Cir. 1951).

orroboration of the de-
yee's declarations
testimony of physician
ka Workmen's Compens-
p. Ct. Op. No. 644 (1970)
P.2d 29 (1970).

Alaska Redi-Mix, Inc. v.
men's Compensation Bd.,
No. 369 (File No. 622)
(1966).
reference.—58 Am. J. of
ompensation, § 539.

Sec. 23.30.140. Appointment of guardian by court. The board may require the appointment of a guardian or other representative by a competent court for any person who is mentally incompetent or a minor to receive compensation payable to the person under this chapter and to exercise the powers granted to or to perform the duties required of the person under this chapter. If the board does not require the appointment of a guardian to receive the compensation of a minor, appointment for this purpose is not necessary. (§ 10 ch 193 SLA 1959; § 7(4) (c) ch 193 SLA 1959; § 8(2) ch 193 SLA 1959)

Sec. 23.30.145. Attorney fees. (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 per cent on the first \$1,000 of compensation or part of the first \$1,000 of compensation, and 10 per cent of all sums in excess of \$1,000 of compensation. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. When the board advises that a claim has not been controverted, but further advises that bona fide legal services have been rendered in respect to the claim, then the board shall direct the payment of the fees out of the compensation awarded. In determining the amount of fees the board shall take into consideration the nature, length and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.

(b) If an employer fails to file timely notice of controversy or to pay compensation or medical and related benefits within 15 days after it becomes due or otherwise resists the payment of compensation or medical and related benefits and if the claimant has employed an attorney in the successful prosecution of his claim, the board shall make an award to reimburse the claimant for his costs in the proceedings, including a reasonable attorney fee. The award is in addition to the compensation or medical and related benefits ordered.

(c) If proceedings are had for review of a compensation or medical and related benefits order before a court, the court may allow or increase an attorney's fees. The fees are in addition to compensation or medical and related benefits ordered and shall be paid as the court may direct.

§ 1 ch 26 SLA 1969)

Effect of amendment. — The 1969 amendment inserted "or medical and related benefits" throughout subsection (b) and (c).

Legislative committee report.—For

report on ch. 26, SLA 1969 (HB 46), see 1969 House Journal, p. 87.

This section reflects the legislature's intent that attorneys in compensation proceedings should be rea-

should have indicated, in its order, how it arrived at determination of amount. AS 23.30.145(a, b).

7. Workers' Compensation ⇄ 1981

Employer's failure to file notice of controversion was not dispositive on question of attorney fees in workers' compensation case, and Workmen's Compensation Board was required by statute to find whether there was controversion in fact, and properly found such controversion where employer had consistently denied and litigated its obligation to pay increase sought and eventually received by death benefit claimants though employer agreed to pay compensation and only disputed amount. AS 23.30.145(a, b), 23.30.155.

8. Workers' Compensation ⇄ 1981

Workmen's compensation statute seeks to insure that attorney fee awards in compensation cases are sufficient to compensate counsel for work performed, so that workers will not have difficulty finding counsel willing to argue their claims. AS 23.30.145(a, b), 23.30.155, 23.30.155(d, e).

9. Workers' Compensation ⇄ 1983

High attorney fee awards for successful workers' compensation claims may be necessary for adequate overall rate of compensation, when counsel's work on unsuccessful claims is considered. AS 23.30.145, 23.30.145(a, b), 23.30.155, 23.30.155(e).

10. Workers' Compensation ⇄ 1983

In fixing attorney fee award in workers' compensation case, superior court should consider fee award by Workmen's Compensation Board, and this is relevant where application of statutory formula has produced disproportionately large award for proceeding before Board. AS 23.30.145(a); Rules of Appellate Procedure, rule 29.

Alan Sherry of Merdes, Schaible, Staley & DeLisio, Anchorage, for appellants, cross-appellees.

1. Initially, there was a disagreement over the \$1,000.00 figure, but Wien no longer seems to contest it. The exact weekly salary of Mr. Arant is not material to resolution of this dispute.

Arden E. Page of Burr, Pease & Kurtz, Inc., Anchorage, for appellees, cross-appellants.

Randall J. Weddle, Faulkner, Banfield, Doogan & Holmes, Juneau, Alaska, for amicus curiae Alaska Trucking Assn., Inc.

OPINION

Before BOOCHEVER, C. J., and RABINOWITZ, CONNOR, BURKE and MATTHEWS, JJ.

BOOCHEVER, Chief Justice.

This case involves a claim by the wife and two children of a deceased worker for an increase in death benefit payments. We affirm the determination of the Workmen's Compensation Board and the Superior Court's decision that claimants are entitled to an increase. We hold that the formula set forth in AS 23.30.145(a) governs the attorney fee award for the Board proceeding and remand to the Board for a new determination of attorney's fees. We instruct the Superior Court to redetermine reasonable attorney's fees for the appeal, taking into account the Board's fee award.

The facts are little in dispute. William Arant was employed as a pilot by Wien Air Alaska at an average weekly wage of about \$1,000.00.¹ On August 30, 1975, he died in a work-related plane crash. His wife, Joyce Arant, and his two dependent children (hereinafter the Arants) started receiving workers' compensation payments of \$198.40 a week eleven days after the accident.²

On February 13, 1976, the Workmen's Compensation Board received application for adjustment of claim from the Arants, requesting an increase in compensation payments to \$357.59 per week. Wien denied that such an increase was due. After a hearing, the Board, applying the table of maximum benefits in AS 23.30.175(a), ruled

2. Wien Air Alaska and Underwriters Adjusting Company are jointly contesting the Arants' claim. We refer to both these parties as Wien.

wage figure previously set by the subdivision to make this determination and in no case may the wage for calculating compensation be less than the minimum wage computed on the basis of 40 hours work per week. (am §§ 10, 11 ch 75 SLA 1977; am § 2 ch 77 SLA 1979)

Effect of amendments.

The 1977 amendment repealed paragraph (1), which read "if at the time of the injury the employee has been employed in the same or similar employment for 27 weeks immediately before the injury, the average weekly wage is the weekly wage at the time of the injury," and deleted "if at the time of the injury the employee has been employed in the same or similar employment for less than 27 weeks immediately before the injury" from the beginning of paragraph (2).

The 1979 amendment, in paragraph (5),

inserted "ambulance attendant, policeman or" in two places and "ambulance attendants, policemen or" in one place and substituted "to make this determination" for "for the purpose of making this determination."

As the rest of the section was not affected by the amendment, it is not set out.

Applied in *Absher v. State*, Sup. Ct. Op. No. 826 (File No. 1468), 500 P.2d 1004 (1972).

Quoted in *Bradley v. Mercer*, Sup. Ct. Op. No. 1424 (File No. 3057), 563 P.2d 880 (1977).

Sec. 23.30.225. Social security offset. (a) When periodic retirement or survivors' benefits are payable under Title II of the Social Security Act (42 U.S.C. 301 et seq.), the weekly compensation provided for in this chapter shall be reduced by an amount equal as nearly as practicable to one-half of the federal periodic benefits for a given week.

(b) When it is determined that, in accordance with 42 U.S.C. 401 et seq., periodic disability benefits are payable to an employee or his dependents for an injury for which a claim has been filed under this chapter, weekly disability benefits payable under this chapter shall be offset by an amount by which the sum of (1) weekly benefits to which the employee is entitled under 42 U.S.C. 401 et seq., and (2) weekly disability benefits to which the employee would otherwise be entitled under this chapter, exceeds 80 per cent of the employee's average weekly wages at the time of injury. (§ 9 ch 75 SLA 1977)

Article 6. General Provisions.

Section	Section
241. Special officers	244. Civil defense and disaster relief forces as state employees
243. Extending coverage to certain firemen	265. Definitions

Sec. 23.30.230. Persons not covered.

Cited in *Gordon v. Burgess Constr. Co.*, Sup. Ct. Op. No. 401 (File No. 716), 425 P.2d 602 (1967).

Sec. 23.30.240. Officers of corporations, municipal corporations, and nonprofit corporations as employees.

Cited in *Gordon v. Burgess Constr. Co.*, Sup. Ct. Op. No. 401 (File No. 716), 425 P.2d 602 (1967).

WHILE IN SESSION
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4825

REPRESENTATIVE
BRIAN ROGERS
Alaska State Legislature

198102
BOX K - COLLEGE
FAIRBANKS, ALASKA 99708
(907) 456-2027

22 January 1981

Tom Wilton
Wilton Adjustment Service
P.O. Box 244
Fairbanks, Alaska 99707

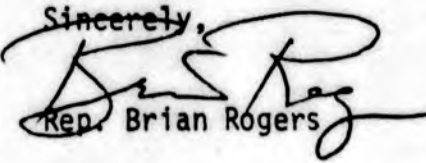
Dear Mr. Wilton,

Thank you for your letter of January 19th regarding the task force study on workers compensation.

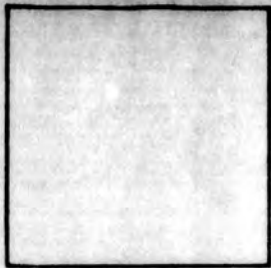
I am enclosing a copy of a report by Robert William, Special Assistant to the Workers Compensation Interim Committee which you refer to in your letter. This is not a final study simply one of several that have been done. The final written comments with input from industry persons should be in by the middle of next week as the final hearings are to be held on January 29th and 30th commencing at 1:00 p.m. on Thursday here in Juneau.

I hope this will be of help to you. Please keep in touch and let us hear from you right away.

Sincerely,


Rep. Brian Rogers

BR/vb



WAS



January 19, 1981

WILTON ADJUSTMENT SERVICE TOM WILTON
EXPERIENCED/PROFESSIONAL INSURANCE ADJUSTING

Representative Brian Rogers
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

RE: Workmen's Compensation Task Force Report

Dear Mr. Rogers:

I understand from the newspapers that the task force reviewing workmen's compensation in Alaska has completed their report and it has been submitted to the legislature. I would appreciate a copy of that report and what your thoughts are with respect to any review of the task force recommendations and input from industry persons such as myself before the legislature.

Thank you very much.

Sincerely yours,

Tom Wilton

TW/dd

STIMPSON
3713
LIEIA WILL CALL US
+ SEND COPY OF REPORT
TO US.

Williams Report?
- TELECONFERENCED -
Prior 29 + 30
ADDRESS TO STIMPSON

20th + 30th

Rt. 1 Box 335
Kenai, Alaska 99611

WADE
NA

December 19, 1980

State of Alaska
Department of Commerce
Division of Insurance
Pouch D
Juneau, Alaska 99811

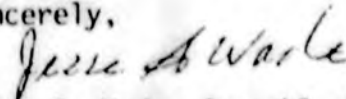
Dear Mr. Moore:

Since this resolution was prepared there have been two other concepts surface that add understanding as to why we feel the workmens compensation cost and coverage has so many inequities.

The area we are most aware of deals with the Cook Inlet Oil Industry. At the Anchorage Telecommunication conferences held December 13, 1980, it was indicated that the loss exposure ratios were all intercalculated for all areas of the state. In this case the construction era of the North Slope and the Trans Alaskan pipeline were equally integrated in with the Cook Inlet Oilfield for loss ratios. This is an extreme inequalable and unjust evaluation or analyzation. The two different areas have a very different type risk and accident level. The differences would probably account for the several hundred percent increase in loss or accident levels beyond any accounting for increase in volume of activity level. In this situation it is unfair to force Cook Inlet operators who have a very safe operation to pay for loss and coverages that are not realistically a true and fair reflection of their operation and accident cost for their area. This situation seems to have happened in evaluating the oil and gas lease 6216 code for the state as a whole rather than make separate appropriate application where they apply. We all feel that what ever the accident and loss costs realistically are, then we will have to pay for them. When these costs are not appropriate then they should be straightened out to fix these costs where they rightfully develope from.

Another area that should be given consideration is that with the controlled regulation of the workmens compensation industry by the state which may have created a degree of a monopoly may have also created an open ended, cost plus, uncontrolled or uncontained type operation. I'm sure our state regulation designers have safe guards against this type of self feeding, self propagating and self benefitting business. However, we feel that closer and wiser evaluations with a wide spread input from all people affected needs to be made regarding the state regulation of this business area.

Sincerely,



Jesse S. Wade, Assembly Member
Kenai Peninsula Borough

Pipeline waste

Dear Editor:

Where was our administration, legislators and state Department of Law when the pipeline was being built? They knew from the beginning that the amount of royalties that we would receive would be based in part on the total cost of the pipeline. Now they want to appropriate \$24.5 million to correct a situation that should and could have been prevented in the first place for a lot less money.

This was a cost-plus operation. Anyone who has ever worked in construction knows when a contractor is awarded this type of contract, the contractor does everything possible to inflate the costs so that he makes a bigger profit. For those people who do not know what a cost-plus contract is: the contractor is paid a pre-arranged percentage above the actual cost of the project for "time and materials." The more the project costs, the more money the contractor makes. It was the state's responsibility to protect its citizens' interests. This could have been accomplished simply by employing five or six experts in road construction, building construction, pipeline construction, transportation, food services, supply and purchasing fields and placing them in the camps and

pump stations to monitor the contractors. This would not have cost the state a fraction of the \$24.5 million they are now asking to make up for their mistakes, in a lawsuit they are very likely to lose anyway.

Instead of doing this, the state allowed Alyeska to hire its own firm to monitor themselves. Anyone who has worked on the pipeline knows that there is no question of the mismanagement and ridiculous waste of equipment and manpower used to build it. However, their figure of \$1.5 billion dollars attributed as wasted monies is beyond a doubt very, very conservative. The actual figure would be closer to \$3 billion.

As a foreman on the pipeline, I could cite instances of extreme waste all day long without ever repeating myself, as any other foreman who worked on the pipeline could if you could get them to come forth. Now I think it is a little late to cry "foul" and go after the sly fox (Big Oil) who has a long-standing winning record.

It will be interesting to observe just how these \$24.5 million-dollar attorneys present our case in this political ring-toss fiasco.

Wayne E. Conley
1107 Norman St.

*An example
of Cost Plus
Contracting
in Paper
on 12-23-80*

Introduced by: Wade
Date: Dec. 16, 1980
Vote: Unanimous
Action: Adopted

KENAI PENINSULA BOROUGH

RESOLUTION 80-150

URGING THE STATE OF ALASKA, DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT, DIVISION OF INSURANCE, TO POSTPONE ANY ACTION ALTERING WORKMEN'S COMPENSATION COVERAGE, BENEFITS AND INSURANCE RATES PENDING THE REPORT OF THE WORKMEN'S COMPENSATION STUDY COMMISSION.

WHEREAS, most employers within the State of Alaska, including the Borough, are required to maintain Workmen's Compensation insurance coverage in effect at all times; and

WHEREAS, the current cost of this coverage represents a significant financial burden upon employers, especially small businesses; and

WHEREAS, the State of Alaska, Department of Commerce & Economic Development, Division of Insurance, has commissioned the National Council of Compensation Insurance, a private statistical bureau, to prepare information used to justify workmen's compensation insurance rates; and

WHEREAS, the National Council of Compensation Insurance has proposed that the State adopt, as of January 1, 1981, a workmen's compensation coverage and benefits formula which would require employers, including the Borough, to pay premiums upon the full amount of every employee's salary, no matter how high, rather than upon the fixed amount of salary now insured; and

WHEREAS, the proposed rate base increase, in conjunction with the unusually high benefit levels provided within the State of Alaska, and the hazardous work surcharges and remote site provisions, have an exceptionally burdensome effect upon small construction and oil field businesses; and

WHEREAS, the petroleum industry is the largest single employer within the Borough and the State of Alaska; and

Kenai Peninsula Borough
Resolution 80-150
Page 1 of 3 Pages

WHEREAS, the proposed changes in the insurance rate base, in conjunction with the other provisions set out above, may result in a 200% to 400% increase in workmen's compensation insurance rates as of January 1, 1981; and

WHEREAS, such increases will have an undesirable financial impact upon the Borough and may force some small businesses to close or to cutback their work force; and

WHEREAS, the high cost of providing workmen's compensation coverage within Alaska has deterred most insurance companies from offering competitive rates and this near monopoly further increases the rates which the Borough and local businesses must pay and indirectly increases the cost to the public; and

WHEREAS, the claims investigation and benefits payment procedures approved by the Division of Insurance have been inadequately monitored and this has caused undue delay and hardship to many workers entitled to benefits; and

WHEREAS, the Workmen's Compensation Study Commission appointed by the legislature is making a comprehensive study of the Alaska workmen's compensation system, and associated insurance rates, and will present its findings and recommendations to the legislature within the next two (2) months; and

WHEREAS, the assembly finds that it is desirable that the State of Alaska, Department of Commerce & Economic Development, Division of Insurance, postpone any action which would affect the current Workmen's Compensation program and insurance rate base until the Workmen's Compensation Study Commission has presented its findings and recommendations to the legislature and the legislature has had the opportunity to act upon them;

NOW THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

Section 1. That the assembly urges the State of Alaska, Department of Commerce & Economic Development, Division of Insurance to postpone the implementation of any changes to workmen's compensation benefit levels or insurance rate bases until such time as the legislative Workmen's Compensation Study Commission has had the opportunity to present its findings and recommendations to the State legislature and the legislature has had the opportunity to act upon them. The assembly further urges the Division of Insurance to explore

mechanisms for improved claims investigation and benefit payment procedures.

Section 2. That the assembly urges the legislature to appoint a representative from the petroleum industry to the Workmen's Compensation Study Commission.

Section 3. That the assembly urges the Workmen's Compensation Study Commission to evaluate and publish current insurance rates and benefit levels for each major industry in the State and to reevaluate the necessity for remote site and off-shore provisions having an exceptionally burdensome effect upon the petroleum industry.

Section 4. That the Clerk shall serve a copy of this resolution upon the Honorable Jay S. Hammond, Governor of the State of Alaska, upon the Honorable Daniel Moore, Director of the Division of Insurance, upon the Honorables Terry Stimson and Brian Rogers, Co-chairmen of the Legislative Workmen's Compensation Study Commission, upon Ms. Jackie McClintic, Division of Insurance, Workmen's Compensation Bureau, upon the Honorable President of the State Senate, upon the Honorable Speaker of the State House, upon the Honorable Donald Gilman, State Senator, and upon the Honorables Bette Cato, Hugh Malone and Pat O'Connell, State Representatives.

Section 5. That this resolution takes effect immediately upon its adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH
ON THIS 16 DAY OF December, 1980.

Paul A. Fischer
Paul Fischer, Assembly President

ATTEST:

Jessie Byrnes
Borough Clerk

Judge Gerald J. Van Hoomissen
Post Office Box 2059
Fairbanks, Alaska 99707
February 5, 1980

The Honorable Brian Rogers
House of Representatives
P.O. Box K
College, Alaska 99708

Sir:

I am taking this opportunity as a private citizen (as well as a concerned member of the judiciary) to communicate with you recognizing a very serious need which apparently only the legislature of our state can correct.

I had the unfortunate responsibility to sit as the presiding superior court judge in a contempt proceeding involving various members of the Workmen's Compensation Board of this state in a case entitled Gordon, et al. vs. Alaska Workmen's Compensation Board, Superior Court No. 4FA-79-1741. I am no longer involved with the foregoing case as the order to show cause was issued by another judge, and I was handling the matter only in his absence. As you may know, it is incumbent upon the person against whom a citation for contempt is issued, to show cause why that person should not be held in contempt. To meet that burden the chairman of the Fairbanks division of the Workmen's Compensation Board and the labor and management members of the Board were all called to testify and presented a logical and compelling reason why the members of the Board should not be held in contempt. Basically, their testimony demonstrated why they were completely unable to comply with Alaska Statute 23.30 10(b)(c) which in effect requires the Board to make an award within twenty days of a hearing. The gist of their testimony was that the average decision took in excess of ninety-eight

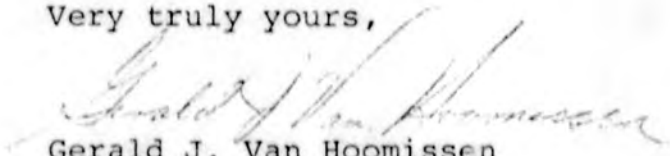
days from the time of hearing to the decision. Many cases took up to one hundred eighty days. All the parties agreed that that was an unreasonably excessive period of time between hearing and decision, and subverted the reasons and purposes for the Workmen's Compensation Act to the detriment of claimants. Such a delay puts the claimant in the position of having to compromise his claim for substantially less than he is entitled to under the law. I have had claimants complain to me personally that they have been put in the position of having to compromise their claim for as little as \$.20 on the dollar pending issuance of the decision, sometimes pending appeal. The Supreme Court of Alaska sometime ago recognized that some of the delay preventing ultimate decision in Workmen's Compensation cases rested in the superior court's appellate procedure. Consequently, we, as the judges reviewing the decisions of the Workmen's Compensation Board, are absolutely required to render decision within forty-five days from the date the record is filed in superior court. We have the wherewithal to do that. I am convinced from hearing the testimony of the Board members that substantial hearing officers should be added to the Workmen's Compensation Commission in order to timely and properly process the claims that come before the Board. I have no doubt whatever that the hearing officer, at least in the Fairbanks district, is conscientious and extremely diligent in performing her duties. The testimony is clear that she works many times between fifty and sixty hours a week in order to try and get out these decisions, at the same time performing counseling and other required functions during regular working hours for other claimants.

In addition to the shortage of help in the form of insufficient hearing officers to actually take part in the adjudicative process and write the decisions, it appears from the testimony of one of the Board members that the internal procedures of the Board are extremely antiquated and have not been updated since statehood. Again, it appears that funding is the major problem.

I certainly do not presume nor hold myself up to be any kind of expert in government funding or the management of government agencies. I am aware, however, that Commissioner Orbeck has requested through the Governor's office, Division of Budget and Management, the necessary personnel and funding to properly allow the Workmen's Compensation Commission to fulfill its legislative mandate. I can only sincerely encourage that you consider the Commissioner's request and adequately fund this very important part of government so that it can fulfill its legislative mandate. I am convinced from the testimony I have heard and from my experience in the handling of Workmen's Compensation cases over the past ten years that the people involved in the administration of the Workmen's Compensation program have performed remarkably well in the face of the inadequate personnel and funding. I am equally assured that, in spite of their efforts, a lot of legitimate claimants, residents of the State of Alaska, are suffering needlessly. Since a class action suit against the Workmen's Compensation Board has been instituted by the attorneys for the plaintiffs in Gordon vs. Workmen's Compensation Board, supra, a transcript of the hearing on the order to show cause was prepared. If you would like a copy of the transcript, please do not hesitate to call on me, and I will furnish it to you on your request.

Thanking you in advance for your consideration of this matter, I am

Very truly yours,


Gerald J. Van Hoomissen

MILLARD F. INGRAHAM

LAW OFFICES OF
MILLARD F. INGRAHAM
1919 LATHROP STREET, DRAWER 33
FAIRBANKS, ALASKA 99701

(907) 456-2157

July 28, 1981

Frederic Brown, Esq.
P. O. Box 1718
Fairbanks, Alaska 99707

Dear Fred:

I have recently had a Worker's Compensation case that has brought my attention an anachronism in AS 23.30.095, Medical Examinations, that should be legislatively excised. AS 23.30.095 (a) presently provides that medical benefits continue only for two years after the date of injury unless the board authorizes continued treatment or care "as the process of recovery may require." Alaska Pacific Assurance Company, and perhaps some other insurance carriers, has begun to take the position that unless the treatment will cure the worker from his disability, the carrier need not continue to pay for medical care beyond the two years. In my case, for example, the client is permanently and totally disabled from working. She sees Dr. Lindig at the Fairbanks Clinic about once a month where she receives some therapy for her pains, has her prescriptions refilled and is sometimes remeasured for support hose and therapeutic devices. She will never be cured of her problems to the extent that she can return to work. However, both she and Dr. Lindig feel that she needs continuing medical care for her problems.

Alaska is one of only six jurisdictions that still retains a limit on medical benefits. 2 Larson, Workmen's Compensation §61.11, p. 10-665-666 reads as follows:

In 44 states [medical] benefits are essentially unlimited as to duration and amount.

It is interesting to observe that in the space of about thirty-five years the number of states providing full medical coverage has risen from about a dozen to more than four times that number. This appears to evince agreement with the finding of an authoritative study that "it is impossible

fully to relieve pain and to assure restoration of seriously disabled persons when medical care is arbitrarily limited. Equally important is the convincing evidence that unlimited medical benefits are economically the soundest benefit; that over the long term, they become the least expensive.

I believe that Alaska should join the 44 states that provide for unlimited medical benefits. I am attaching a copy of AS 23.30.095(a) with the proposed deletion indicated in brackets.

Very truly yours,

LAW OFFICES OF MILLARD F. INGRAHAM



Millard F. Ingraham

MFI/mlc
Enclosure

Sec. 23.30.095. Medical examinations.

(a) The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, [, not exceeding two years from and after the date of injury to the employee. However, if the condition requiring the treatment, apparatus, or medicine is a latent one, the two-year period runs from the time the employee has knowledge of the nature of his disability and its relationship to his employment and after-disablement. It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the board. The board may authorize continued treatment or care or both as the process of recovery may require.] When medical care is required, the injured employee may designate a licensed physician inside the state to render the care except in cases where, in the judgment of the board, care or treatment or both can best be administered by the selection of another physician. Upon procuring the services of a physician, the injured employee shall give proper notification of his selection to the employer within a reasonable time after first being treated. If for any reason during the period when medical care is required the employee wishes to change to another physician, he may do so in accordance with rules prescribed by the board.

Judge Gerald J. Van Hoomissen
Post Office Box 2059
Fairbanks, Alaska 99707
February 5, 1980

The Honorable Brian Rogers
House of Representatives
P.O. Box K
College, Alaska 99708

Sir:

I am taking this opportunity as a private citizen (as well as a concerned member of the judiciary) to communicate with you recognizing a very serious need which apparently only the legislature of our state can correct.

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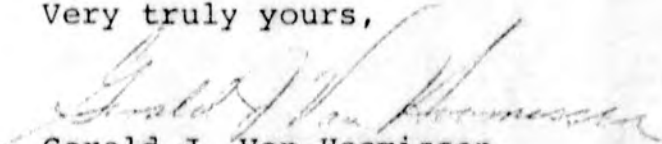
days from the time of hearing to the decision. Many cases took up to one hundred eighty days. All the parties agreed that that was an unreasonably excessive period of time between hearing and decision, and subverted the reasons and purposes for the Workmen's Compensation Act to the detriment of claimants. Such a delay puts the claimant in the position of having to compromise his claim for substantially less than he is entitled to under the law. I have had claimants complain to me personally that they have been put in the position of having to compromise their claim for as little as \$.20 on the dollar pending issuance of the decision, sometimes pending appeal. The Supreme Court of Alaska sometime ago recognized that some of the delay preventing ultimate decision in Workmen's Compensation cases rested in the superior court's appellate procedure. Consequently, we, as the judges reviewing the decisions of the Workmen's Compensation Board, are absolutely required to render decision within forty-five days from the date the record is filed in superior court. We have the wherewithal to do that. I am convinced from hearing the testimony of the Board members that substantial hearing officers should be added to the Workmen's Compensation Commission in order to timely and properly process the claims that come before the Board. I have no doubt whatever that the hearing officer, at least in the Fairbanks district, is conscientious and extremely diligent in performing her duties. The testimony is clear that she works many times between fifty and sixty hours a week in order to try and get out these decisions, at the same time performing counseling and other required functions during regular working hours for other claimants.

In addition to the shortage of help in the form of insufficient hearing officers to actually take part in the adjudicative process and write the decisions, it appears from the testimony of one of the Board members that the internal procedures of the Board are extremely antiquated and have not been updated since statehood. Again, it appears that funding is the major problem.

I certainly do not presume nor hold myself up to be any kind of expert in government funding or the management of government agencies. I am aware, however, that Commissioner Orbeck has requested through the Governor's office, Division of Budget and Management, the necessary personnel and funding to properly allow the Workmen's Compensation Commission to fulfill its legislative mandate. I can only sincerely encourage that you consider the Commissioner's request and adequately fund this very important part of government so that it can fulfill its legislative mandate. I am convinced from the testimony I have heard and from my experience in the handling of Workmen's Compensation cases over the past ten years that the people involved in the administration of the Workmen's Compensation program have performed remarkably well in the face of the inadequate personnel and funding. I am equally assured that, in spite of their efforts, a lot of legitimate claimants, residents of the State of Alaska, are suffering needlessly. Since a class action suit against the Workmen's Compensation Board has been instituted by the attorneys for the plaintiffs in Gordon vs. Workmen's Compensation Board, supra, a transcript of the hearing on the order to show cause was prepared. If you would like a copy of the transcript, please do not hesitate to call on me, and I will furnish it to you on your request.

Thanking you in advance for your consideration of this matter, I am

Very truly yours,


Gerald J. Van Hoomissen

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

Fairbanks, Alaska

December 18, 1980

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

Dear Brian and Terry:

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

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

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

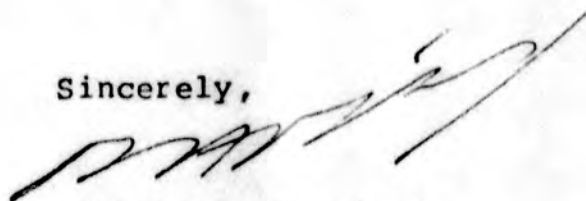
Fineberg / Stimson-Rogers
Dec. 18, 1980 (letter)
Page Two

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

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

With best regards, I am

Sincerely,



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

(enc.)

I. General Assumptions Underlying Open-Rating Proposal

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

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

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

II. General Assumptions about Workers' Comp

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

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

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

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

III. Some Possible Scenarios

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

III. Some Possible Scenarios (cont'd)

Scenario #1: TRADITIONAL PRICE WAR

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

Scenario #2: MICRO-APPROACH TO TRADITIONAL PRICE WAR

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

III. Scenarios (cont'd)

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

Scenario #3: CUT-RATE INVADERS PREVAIL

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

III. Some Possible Scenarios (cont'd)

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

If I understand the argument put to the Study Commission for pure premium rate-filing, it is that the existing system is keeping the price of workers' comp up by inhibiting deviations, and that workers' comp in Alaska is a loser.⁽⁷⁾ If carriers cannot make money on workers' comp in Alaska, why do they write it at all? Answer: They want investment income. In this situation, anything that pressures carriers to reduce comp prices carries the risk that with the downward pressure on prices other insurance markets in other areas would become more desirable to the major carriers.

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

IV. RECOMMENDATIONS

1. Adopt a comp-specific reporting system for Alaska similar to Minnesota's Form I-57.
2. Increase budget/personnel provisions for Division of Insurance to make sure the I-57 reports are drafted to glean significant information, then tabulated and analyzed.
3. Examine the Milliman and Robertson Oct. 1, 1979 report to the Division of Insurance to determine whether its conclusions are (a) valid and (b) applicable to the general reserving practices for Alaska workers' comp claims for the 1976-80 period.
4. Analyze previous rate filings with emphasis on outstanding losses and investment income.
5. Assess similarities and differences in the comp markets of Alaska and other states.
6. After completion of a thorough examination of workers' comp profitability in Alaska and the unique characteristics of the Alaska workers' comp market, make recommendations concerning ways to improve the pricing mechanism for workers' comp in Alaska.

V. FOOTNOTES

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

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

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

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

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

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

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

MEMORANDUM

TO: WORKERS' COMPENSATION STUDY COMMISSION
FROM: RICHARD A. FINEBERG
DATE: DEC. 18, 1980
RE: NEW YORK STATE FUND / MILLUS / CLAIMANTS

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

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

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

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

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

Fineberg
Memorandum
Dec. 18, 1980
Page Two

RE: ALBERT MILLUS

I spoke briefly with Millus about the New York State Fund and pure premium rate-filing.

Millus did not wish to comment informally by telephone. He expressed interest in consulting for Alaska as an expert in the field. To offer an opinion on the merits of any proposal he said he would have to see:

1. Details of the last three years' experience;
2. The last three rate filings -- applications and opinions; and
3. a copy of the current law

After looking at those materials, he would be able to tell us how much time he would need to evaluate the information. (He said his basic fee is \$100/hr., but the fee is adjustable.)

Millus did wish to make sure that an error in the Best's version of the manuscript filed with the Study Commission Dec. 13 did not result in confusion. According to Millus, Best's inadvertently dropped the capitalized words from the following passage, reversing his meaning:

...Without the volume of quality statistical detail now required by rating bureaus and obtained from all insurers, sound actuarial analysis of benefit changes and the determination of creditable rate levels would not be POSSIBLE. WITHOUT UNIFORM INPUT OF STATISTICAL DATA TO THE BUREAUS, THE DATA BASE WOULD BE diluted and eroded. . . .

Millus says a correction will appear in January, along with a companion article. He said the manuscript we have is correct.

Millus also suggested caution in using New York State Fund data, indicating that he could interpret it for us -- at \$100/hour, presumably.

For the record, Millus' address is 120 Broadway, Suite 1744, New York, NY 10271 (tel 212/964-1133).

Fineberg
Memorandum
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Page Three

RE: CLAIMANTS

Finally, I wish to express my disappointment that this Study Commission has failed to cover claimants' problems in an effective and systematic manner.

As I have indicated in presentations to the Study Commission (and in an Oct. 6 memorandum to Rep. Rogers and informal discussions with Sen. Stinson and Member Croft), I believe that the Study Commission should be conducting systematic interviews with claimants. Although the Study Commission has provided numerous opportunities for individuals to express their viewpoints (and certain problems have been identified as a result of this process), this unstructured approach begs a central question the Study Commission ought to be trying to answer: Are the individual claimant complaints the inevitable few failures of an otherwise competent system, or is there a pattern to problems associated with comp claims (or certain kinds of claims, such as long-term disabling injuries, applicants for permanent partial disability benefit(s)?

It is my belief -- backed up by numerous interviews and file examinations but unsupported by statistical analysis because I have not had the means at my disposal to attempt such an analysis -- that one aspect of the workers' comp crisis in Alaska in the '70's is that long-term disability cases were handled unevenly, and that some individuals suffered dearly and unfairly as the overloaded comp system failed to function properly. The only way to determine whether there is a carrier tendency to oppose long-term disability applications, regardless of merit, is to sample and examine files in a systematic manner, interviewing the claimants as a part of that examination since the records are known to be inadequate.

Despite its potential and its intentions, the Study Commission has failed in this regard. Despite the numerous indications of this disturbing pattern already on the record, the Study Commission has not taken the necessary steps to document the pattern, to assess and seek remedies to such a pattern. In view of the widely held notion that government should do for the people only what they cannot do for themselves, the Study Commission's failure is particularly lamentable: Insurance companies and employers can bring their grievances to the Study Commission quantified and analyzed in cogent arguing form: both have institutions and an economic base from which to make their presentations. On the other hand, the claimant has nothing but his/her own resources, inadequate understanding(s) of a complicated system and (possibly) distorted perceptions. Since my numerous recommendations in this regard are already recorded, I'll not repeat them here.

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

1 AS 21 IS AMENDED BY ADDING A NEW CHAPTER TO READ:

2 CHAPTER 62. WORKER'S COMPENSATION SELF-INSURANCE

3
4 SEC. 21.62.010. SELF-INSURANCE. AN EMPLOYER, TWO OR
5 MORE EMPLOYERS HAVING COMMON MANAGEMENT OR TWO OR MORE
6 EMPLOYERS HAVING COMMON INTEREST MAY ELECT TO PAY DIRECTLY
7 THE COMPENSATION REQUIRED IN AS 23.30 AFTER PROVIDING
8 SATISFACTORY PROOF OF ITS FINANCIAL ABILITY TO MAKE DIRECT
9 PAYMENTS AND HAS BEEN ISSUED A SELF INSURANCE CERTIFICATE
10 BY THE DIRECTOR

11
12 SEC 21.62.020 SELF-INSURANCE FUND. (a) A WORKER'S
13 COMPENSATION SELF-INSURANCE GROUP FORMED BY TWO OR MORE
14 EMPLOYERS HAVING COMMON INTEREST SHALL ESTABLISH A SELF-
15 INSURANCE FUND WITH AN INITIAL BALANCE TO BE DETERMINED
16 BY THE DIRECTOR, BUT NOT LESS THAN \$250,000.

17 (b) THE SELF-INSURANCE FUND SHALL BE ADMINISTERED
18 BY A BOARD OF TRUSTEES SELECTED BY MEMBERS OF THE
19 SELF-INSURANCE GROUP.

20 (c) THE GROUP SHALL ADOPT BY-LAWS GOVERNING THE
21 OPERATION OF THE FUND

22
23 SEC. 21.62.030 APPLICATION. (a) AN EMPLOYER DESIRING
24 TO BECOME AN INDIVIDUAL SELF-INSURER OR TWO OR MORE
25 EMPLOYERS HAVING COMMON MANAGEMENT DESIRING TO BECOME A
26 GROUP SELF-INSURER SHALL MAKE APPLICATION FOR THE PRIVILEGE

1 ON A FORM PRESCRIBED BY THE DIRECTOR.

2 (b) THE TRUSTEES OF A GROUP OF TWO OR MORE EMPLOYERS
3 HAVING COMMON INTEREST DESIRING TO BECOME A GROUP SELF-INSURER
4 SHALL MAKE APPLICATION FOR THE PRIVILEGE ON A FORM
5 PRESCRIBED BY THE DIRECTOR.

6 (c) AN APPLICANT FOR SELF INSURANCE SHALL ANSWER ALL
7 QUESTIONS ON THE APPLICATION. THE ANSWERS SHALL BE SWORN
8 TO AND NOTARIZED. THE APPLICATION SHALL BE SUBMITTED AT
9 LEAST 90 DAYS BEFORE THE PROPOSED EFFECTIVE DATE OR RENEWAL
10 DATE OF THE SELF-INSURANCE CERTIFICATE.

11
12 SEC. 21.62.040. DOCUMENTS REQUIRED OF INDIVIDUAL SELF-
13 INSURER. EACH APPLICATION BY AN EMPLOYER FOR INDIVIDUAL
14 SELFINSURANCE SHALL BE ACCOMPANIED BY:

15 (1) A FINANCIAL STATEMENT NOT MORE THAN THREE MONTHS
16 OLD AT THE TIME OF APPLICATION SHOWING A NET WORTH OF NOT
17 LESS THAN \$500,000 WITH ASSETS EXCEEDING LIABILITIES.

18 (2) AN AGREEMENT TO FULLY DISCHARGE BY CASH PAYMENT
19 ALL AMOUNTS REQUIRED TO BE PAID UNDER AS 23.30.

20
21 SEC. 21.62.050. DOCUMENTS REQUIRED OF GROUP SELF-
22 INSURER HAVING COMMON MANAGEMENT. EACH APPLICATION
23 BY A GROUP OF TWO OR MORE EMPLOYERS HAVING COMMON
24 MANAGEMENT FOR GROUP SELF-INSURANCE SHALL BE ACCOMPANIED
25 BY:

26 (1) A FINANCIAL STATEMENT NOT MORE THAN THREE

1 MONTHS OLD AT THE TIME OF APPLICATION FOR EACH MEMBER OF
2 THE GROUP SHOWING A COMBINED NET WORTH OF ALL MEMBERS OF
3 THE GROUP TO BE NOT LESS THAN \$500,000 WITH CURRENT
4 ASSETS TO EXCEED CURRENT LIABILITIES.

5 (2) AN INDEMNITY AGREEMENT JOINTLY AND SEVERALLY
6 BINDING EACH MEMBER OF THE GROUP TO FULLY DISCHARGE BY
7 CASH PAYMENT ALL AMOUNTS REQUIRED TO BE PAID UNDER AS 23.30.

8
9 SEC. 21.62.060. DOCUMENTS REQUIRED OF GROUP SELF-
10 INSURERS HAVING COMMON INTEREST. EACH APPLICATION BY
11 THE TRUSTEES OF A GROUP OF TWO OR MORE EMPLOYERS HAVING
12 COMMON INTEREST FOR GROUP SELF-INSURANCE SHALL BE
13 ACCOMPANIED BY:

14 (1) A FINANCIAL STATEMENT NOT MORE THAN THREE
15 MONTHS OLD AT THE TIME OF THE APPLICATION FOR EACH MEMBER
16 APPLYING FOR COVERAGE ON THE INCEPTION DATE OF THE SELF-
17 INSURANCE FUND SHOWING A COMBINED NET WORTH OF ALL MEMBERS
18 OF THE GROUP TO BE NOT LESS THAN \$1,000,000 WITH CURRENT
19 ASSETS EXCEEDING CURRENT LIABILITIES.

20 (2) AN INDEMNITY AGREEMENT JOINTLY AND SEVERALLY
21 BINDING THE SELF-INSURANCE FUND AND EACH MEMBER OF THE
22 GROUP TO FULLY DISCHARGE BY CASH PAYMENT ALL AMOUNTS
23 REQUIRED TO BE PAID UNDER AS 23.30.

24 (3) AN INDIVIDUAL APPLICATION FOR EACH MEMBER OF THE
25 GROUP APPLYING FOR COVERAGE ON THE INCEPTION DATE OF THE
26 SELF INSURANCE FUND.

1 (4) A SET OF BY-LAWS OR TRUST AGREEMENT WHICH SHALL
2 GOVERN THE OPERATION OF THE SELF-INSURANCE FUND

3 (5) PROOF OF THE EXISTENCE OF AN INITIAL BALANCE IN THE
4 SELF-INSURANCE FUND AS REQUIRED BY SECTION 020(Q) OF
5 THIS CHAPTER.

6 (6) A PROJECTION OF ALL ADMINISTRATIVE EXPENSES OF
7 THE SELF-INSURANCE FUND.

8
9 SEC. 21.62.070. ADDITIONAL REQUIREMENTS. IN ADDITION
10 TO THE REQUIREMENTS OF SECTIONS 030-070 OF THIS CHAPTER,
11 AN APPLICANT FOR SELF-INSURANCE SHALL SUBMIT THE FOLLOWING
12 DATA WITH THE APPLICATION FOR SELF-INSURANCE:

13 (1) EVIDENCE OF A WORKING CAPITAL OF AN AMOUNT
14 ESTABLISHING FINANCIAL STRENGTH AND LIQUIDITY TO PAY NORMAL
15 COMPENSATION CLAIMS PROMPTLY.

16 (2) THE PROPOSED AMOUNT OF RETENTION PER LOSS AND
17 RETENTION IN THE AGGREGATE.

18 (3) THE PROPOSED PROGRAM OF EXCESS COVERAGE.

19 (4) PROOF THAT THE APPLICANT HAS AMPLE FACILITIES AND
20 COMPETENT PERSONNEL TO SERVICE THE SELF-INSURANCE PLAN OR A
21 COPY OF A SIGNED SERVICE AGREEMENT WITH AN APPROVED SERVICE
22 COMPANY TO PROVIDE THOSE SERVICES.

23 (5) THE LOCATION WITHIN THIS STATE WHERE ALL RECORDS OF
24 SELF-INSURED LOSS WILL BE MAINTAINED.

25 (6) A DESCRIPTION OF ANY LOSS CONTROL PROGRAMS TO BE UTILIZED
26 BY THE APPLICANT.

1 (7) ANY FURTHER EVIDENCE WHICH THE DIRECTOR MAY REQUIRE
2 TO ESTABLISH THE ABILITY OF THE APPLICANT TO MEET ITS
3 OBLIGATIONS UNDER AS 23.30.

4
5 SEC. 21.62.080 DIRECTORS REVIEW. (a) UPON RECEIPT OF
6 AN APPLICATION AND DOCUMENTS REQUIRED UNDER SECTIONS
7 030-070 OF THIS CHAPTER, THE DIRECTOR SHALL DETERMINE
8 TO HIS SATISFACTION, IF THE APPLICANT HAS THE FINANCIAL
9 ABILITY TO MEET ITS OBLIGATIONS UNDER AS 23.30.

10 (b) THE DIRECTOR MAY DETERMINE THE AMOUNT OF EXCESS
11 INSURANCE COVERAGE NECESSARY FOR THE PROTECTION OF THE
12 APPLICANT.

13 (c) THE DIRECTOR MAY REQUIRE A SURETY BOND AS A
14 CONDITION TO ISSUANCE OF A SELF-INSURANCE CERTIFICATE.

15 (d) THE DIRECTOR MAY WAIVE THE REQUIREMENT THAT ASSETS
16 EXCEED LIABILITIES IN THE CASE OF A PUBLIC UTILITY OR A
17 MUNICIPALITY, IF THE REQUIREMENT IS SHOWN TO BE
18 UNREASONABLE.

19 (e) THE DIRECTOR SHALL INFORM THE APPLICANT IN WRITING
20 NOT LATER THAN 30 DAYS BEFORE THE PROPOSED EFFECTIVE DATE
21 OF HIS DECISION TO APPROVE OR DISAPPROVE AN APPLICATION FOR
22 SELF INSURANCE. HE SHALL, IN THE CASE OF AN APPROVAL, LIST ALL
23 CONDITIONS WHICH MUST BE MET BEFORE THE CERTIFICATE OF
24 SELF-INSURANCE CAN BE ISSUED.

25
26 SEC. 21.62.090. CERTIFICATE OF SELF INSURANCE (a)

1 THE DIRECTOR SHALL, UPON APPROVAL OF AN APPLICATION AND
2 RECEIPT OF PROOF OF ANY CONDITIONS ESTABLISHED UNDER
3 SECTION 080(2) OF THIS CHAPTER, ISSUE A CERTIFICATE OF
4 SELF-INSURANCE.

5 (b) THE CERTIFICATE OF SELF INSURANCE SHALL BE ON A FORM
6 PRESCRIBED BY THE DIRECTOR AND SHALL BE ISSUED FOR A
7 PERIOD OF ONE YEAR.

8
9 SEC. 21.62.100. BOND. (a) THE DIRECTOR MAY REQUIRE
10 A CORPORATE SURETY BOND TO SECURE THE PAYMENT OF
11 COMPENSATION LIABILITIES UNDER AS 23.30 AS THEY ARE
12 INCURRED.

13 (b) THE BOND SHALL BE ON A FORM PRESCRIBED BY THE
14 DIRECTOR.

15 (c) THE AMOUNT OF THE BOND SHALL BE EQUAL TO OR GREATER
16 THAN THE AGGREGATE RETENTION OF THE SELF-INSURER PLUS
17 OUTSTANDING WORKERS COMPENSATION LIABILITIES LESS RECOVERIES
18 FROM THIRD PARTIES BUT NOT LESS THAN \$25,000.

19 (d) THE DIRECTOR MAY REQUIRE AN INCREASE IN THE BOND AMOUNT
20 IF HE DETERMINES THAT THE SELF-INSURER HAS EXPERIENCED A
21 DETERIORATION IN FINANCIAL CONDITION.

22 (e) THE BOND SHALL BE ISSUED BY A CORPORATE SURETY
23 AUTHORIZED UNDER AS 21.09. TO DO BUSINESS IN THIS STATE.

24 (f) A BOND UNDER THIS SECTION MAY BE CANCELLED,
25 EXCHANGED OR REPLACED PROVIDED NOT LESS THAN 60 DAYS WRITTEN
26 NOTICE IS GIVEN TO THE DIRECTOR AND TO THE SELF-INSURER.

1 SEC. 21.62.110. CONTRACTS FOR EXCESS INSURANCE (a) THE
2 DIRECTOR MAY DETERMINE THE AMOUNT AND KIND OF EXCESS
3 INSURANCE REQUIRED OF AN APPLICANT FOR SELF INSURANCE BASED
4 ON THE SIZE OF THE APPLICANT, FINANCIAL STRENGTH, PAST HISTORY
5 OF LOSS, DEGREE OF HAZARD IN THE APPLICANTS OPERATIONS AND
6 ANY OTHER FACTORS HE DEEMS APPROPRIATE.

7 (b) EXCESS INSURANCE COVERAGE SHALL BE WRITTEN BY A
8 CASUALTY INSURER AUTHORIZED UNDER AS 21.09. TO DO
9 BUSINESS IN THIS STATE, EXCEPT AS PROVIDED IN (b) OF THIS SECTION.

10 (c) AN EXCESS INSURANCE POLICY ISSUED UNDER THIS CHAPTER
11 MAY NOT BE CANCELLED OR RENEWAL REFUSED EXCEPT UPON
12 60 DAYS WRITTEN NOTICE BY CERTIFIED MAIL TO THE DIRECTOR
13 AND TO THE SELF INSURER.

14 (d) IF AN EXCESS INSURANCE POLICY ISSUED UNDER THIS CHAPTER
15 CONTAINS ANY TYPE OF COMMUTATION CLAUSE IT MUST PROVIDE

16 (1) THAT ANY COMMUTATION EFFECTED UNDER THE POLICY
17 SHALL NOT RELIEVE THE UNDERWRITER OR UNDERWRITERS OF
18 FURTHER LIABILITY WITH RESPECT TO CLAIMS AND EXPENSES
19 UNKNOWN AT THE TIME OF THE COMMUTATION OR IN REGARD TO
20 CLAIMS APPARENTLY CLOSED BUT WHICH MAY BE SUBSEQUENTLY REVIVED
21 BY OR THROUGH A COMPETENT AUTHORITY, AND

22 (2) THAT IF THE UNDERWRITER OR UNDERWRITERS PROPOSE TO
23 REDEEM ANY FUTURE PAYMENTS PAYABLE AS COMPENSATION FOR
24 LOSSES OCCURRING DURING THE TERM OF THE POLICY BY THE PAYMENT
25 OF A LUMP SUM TO BE FIXED AS PROVIDED IN THE COMMUTATION
26 CLAUSE OF THE POLICY, THE DIRECTOR SHALL BE GIVEN NOT LESS

1 THAN 30 DAYS WRITTEN NOTICE OF THE COMMUTATION.

2 (2) IF A COMMUTATION OF AN EXCESS INSURANCE POLICY UNDER
3 THIS CHAPTER IS EFFECTED, THE DIRECTOR MAY DIRECT THAT THE
4 SUM EITHER

5 (1) BE PLACED IN TRUST FOR THE BENEFIT OF THE INSURED
6 EMPLOYEE OR EMPLOYEES ENTITLED TO FUTURE PAYMENTS OF
7 COMPENSATION COVERED BY THE POLICY, OR,

8 (2) BE INVESTED IN APPROVED SECURITIES AND DEPOSITED
9 WITH THE DIRECTOR TO ASSURE THE FUTURE PAYMENTS OF
10 COMPENSATION TO THE EMPLOYEE OR EMPLOYEES ENTITLED TO
11 BENEFITS COVERED BY THE POLICY.

12 (f) THE EXCESS INSURANCE POLICY SHALL CONTAIN A PROVISION
13 THAT THE DIRECTOR MAY ORDER THE PAYMENT OF OBLIGATIONS DUE
14 UNDER THE TERMS OF THE POLICY TO BE MADE TO A PARTY OTHER
15 THAN THE EMPLOYER, WHERE SUCH ACTION IS NECESSARY TO ASSURE
16 THE PROMPT PAYMENT OF BENEFITS TO INJURED EMPLOYEES.

17 (g) THE NAMED INSURED COVERED BY AN EXCESS INSURANCE
18 POLICY UNDER THIS CHAPTER SHALL COVER ONLY THE ENTITY
19 NAMED IN THE APPLICATION FOR SELF INSURANCE UNDER SECTION
20 030 OF THIS CHAPTER.

21 (SEE NOTE ON PAGE 16)

22 SEC. 21.62.120. SERVICING FOR SELF INSURERS (a) IT
23 SHALL BE THE SOLE RESPONSIBILITY OF EACH SELF-INSURER TO
24 PROVIDE FOR COMPETENT PERSONS TO SERVICE ITS PROGRAMS IN THE AREAS
25 OF CLAIMS ADJUSTING, ^{UNDERWRITING} AND LOSS CONTROL. IF THE SELF INSURER IS UNABLE
26 OR UNWILLING TO PROVIDE ANY OR ALL OF THESE SERVICES THROUGH THE USE

1 OF ITS OWN EMPLOYEES, THEN IT SHALL CONTRACT WITH ONE OR MORE
2 OUTSIDE AGENCIES WITH ESTABLISHED COMPETENCIES TO PROVIDE THESE
3 SERVICES ON A FULL-TIME BASIS.

4 (b) IF A SELF-INSURER ELECTS TO CONTRACT WITH ONE OR
5 MORE APPROVED SERVICE COMPANIES, THE DIRECTOR MAY CHOOSE TO
6 USE ANY OR ALL OF THE SERVICE COMPANIES AS AN INTERMEDIARY
7 IN ITS DEALINGS WITH THE SELF-INSURER. THIS COURSE OF ACTION
8 IS AVAILABLE TO THE DIRECTOR UPON HIS DETERMINATION THAT
9 IT WILL RESULT IN A MORE RAPID AND MORE ACCURATE FLOW OF
10 INFORMATION FROM THE SELF-INSURER AND IF IT WILL ASSIST THE
11 SELF-INSURERS COMPLIANCE WITH THIS SECTION.

12

13 SEC. 21.62. 130. QUALIFICATIONS FOR SERVICING
14 COMPANIES (a) A BUSINESS DESIRING TO BECOME

15 QUALIFIED AS A SERVICE COMPANY FOR SELF-INSURERS IN THIS
16 STATE FOR ANY OR ALL OF THE SERVICE CATEGORIES NOTED IN
17 SECTION 120(a) OF THIS CHAPTER SHALL MAKE APPLICATION TO
18 THE DIRECTOR ON FORMS PRESCRIBED BY HIM. THE APPLICATION
19 MUST BE APPROVED BY THE DIRECTOR BEFORE ANY CONTRACT FOR
20 SERVICE UNDER SECTION 120 OF THIS CHAPTER CAN BE
21 RECOGNIZED.

22 (b) A BUSINESS MAKING APPLICATION AS A SERVICE COMPANY IN
23 ANY OR ALL OF THE SERVICE CATEGORIES NOTED IN 120(a) OF THIS
24 CHAPTER, SHALL FURNISH PROOF THAT IT HAS A SUFFICIENT NUMBER
25 OF EXPERIENCED AND QUALIFIED PERSONS EMPLOYED ON A FULL-
26 TIME BASIS FOR EACH SERVICE CATEGORY TO MEET THE NEEDS OF ALL

1 SELF-INSURERS WITH WHICH IT INTENDS TO CONTACT. THE LOSS
2 CONTROL SERVICE CATEGORY SHALL INCLUDE EXPERTISE IN SAFETY
3 ENGINEERING. THE CLAIMS SERVICE CATEGORY SHALL INCLUDE
4 EXPERTISE IN WORKER'S COMPENSATION CLAIMS. THE UNDERWRITING
5 SERVICE CATEGORY INCLUDES EXPERTISE IN THE OVERALL PLANNING
6 AND COORDINATING OF A SELF-INSURANCE PROGRAM, THE ABILITY
7 TO PROCURE BONDS AND EXCESS INSURANCE, THE ABILITY TO PROVIDE
8 SUMMARY DATA REGARDING THE SELF-INSURER'S COST OF ACCIDENTS
9 INCLUDING THE FREQUENCY AND DISTRIBUTION BY TYPE AND CAUSE,
10 AND THE SKILL TO MAKE RECOMMENDATIONS TO THE SELF-INSURER
11 REGARDING THE CORRECTION OF ANY DEFICIENCIES THAT ARISE IN
12 THE SELF-INSURANCE PROGRAM.

13 (c) A BUSINESS MAKING APPLICATION TO QUALIFY AS A SERVICE
14 COMPANY SHALL FURNISH PROOF THAT IT MEETS THE FOLLOWING
15 CONDITIONS BEFORE APPROVAL CAN BE GRANTED:

16 (1) THAT ALL RECORDS CONCERNING SELF-INSURERS IN THIS
17 STATE BE MAINTAINED AT A LOCATION WITHIN THIS STATE.

18 (2) THAT AN OFFICE BE MAINTAINED AT ONE OR MORE
19 LOCATIONS IN THIS STATE WITH A RESIDENT ADMINISTRATOR
20 AUTHORIZED TO ACT IN ALL MATTERS CONCERNING THE SERVICE
21 COMPANY.

22 (d) UPON COMPLIANCE TO THE SATISFACTION OF THE DIRECTOR
23 WITH (a) - (c) OF THIS SECTION, HE SHALL ISSUE A CERTIFICATE
24 OF APPROVAL AS A RECOGNIZED AND AUTHORIZED SERVICE
25 ORGANIZATION. FAILURE TO COMPLY WITH THE QUALIFICATION
26 CONDITIONS OR ANY RULES THE DIRECTOR MAY ADOPT SHALL BE

1 CONSIDERED GOOD CAUSE FOR WITHDRAWAL OF THE CERTIFICATE OF
2 APPROVAL.

4 SEC 21.62.140. REQUIREMENTS FOR SERVICING

5 COMPANIES. (a) EACH SERVICE COMPANY SHALL FILE WITH THE
6 DIRECTOR, WITHIN 30 DAYS OF ENTERING INTO A CONTRACT FOR
7 SERVICING, A COPY OF ITS SERVICING CONTRACT AND A CERTIFICATION
8 THAT IT HAS PROVIDED SUFFICIENT PERSONNEL TO FULFILL THE TERMS
9 OF ITS CONTRACT.

10 (b) EACH CLAIMS SERVICE CATEGORY CONTRACT ENTERED INTO
11 BY A SERVICE COMPANY SHALL PROVIDE THAT ALL CLAIMS INCURRED
12 DURING THE CONTRACT PERIOD SHALL BE HANDLED UNTIL THEIR
13 CONCLUSION.

14 (c) EACH SERVICE COMPANY SHALL FILE A CURRENT ANNUAL
15 FINANCIAL STATEMENT AND A FORM PRESCRIBED BY THE DIRECTOR
16 CERTIFYING THAT THE SERVICE COMPANY IS COMPLYING WITH THE
17 CONDITIONS OF SEC. 130 OF THIS CHAPTER ON A CONTINUING BASIS.
18 THE FINANCIAL STATEMENT AND CERTIFICATION SHALL BE FILED
19 ANNUALLY NO LATER THAN JUNE 30 EACH YEAR. AFTER AN
20 ANNUAL REVIEW FOR COMPLIANCE WITH THIS RULE, THE DIRECTOR
21 SHALL ISSUE A RENEWAL CERTIFICATION TO EACH SERVICE
22 COMPANY FOUND TO BE IN COMPLIANCE. A SERVICE COMPANY WHICH
23 FAILS TO DEMONSTRATE ANNUALLY THAT IT IS IN COMPLIANCE WITH
24 THIS SUBSECTION SHALL HAVE ITS AUTHORIZATION WITHDRAWN.

25 (d) FINDINGS BY THE DIRECTOR THAT A SERVICE COMPANY IS
26 ENGAGED IN QUESTIONABLE CLAIMS HANDLING TECHNIQUES,

1 QUESTIONABLE PATTERNS OF CLAIMS, QUESTIONABLE PATTERNS OF
2 UNREASONABLY CONTROVERTED CLAIMS, POOR PAYMENT PRACTICE, OR
3 VIOLATIONS OF AS 21.36.125 AS CONSTITUTE A GENERAL BUSINESS
4 PRACTICE OF A SERVICE COMPANY SHALL BE CONSIDERED GOOD CAUSE
5 FOR THE WITHDRAWAL OF THE AUTHORIZATION OF THE SERVICE COMPANY.

6 (E) EACH SERVICE COMPANY SHALL BE SUBJECT TO AUDIT BY
7 THE DIRECTOR OR HIS DESIGNEE AT HIS DISCRETION BUT NOT LESS
8 FREQUENTLY THAN EVERY THREE YEARS. PRIOR NOTICE OF THE
9 AUDIT IS NOT REQUIRED. THE AUDIT MAY CONCERN CLAIMS,
10 FINANCIAL MATTERS OR ANY ISSUE REASONABLY RELATED TO
11 THE QUALIFICATIONS OR DUTIES OF A SERVICE COMPANY UNDER
12 THIS CHAPTER.

13 (F) THE DIRECTOR MAY ESTABLISH GUIDELINES FOR THE
14 RETENTION OF SELF-INSURER DOCUMENTS MAINTAINED BY A
15 SERVICE COMPANY.

16 (G) IF THE DIRECTOR HAS CAUSE TO WITHDRAW AN AUTHORIZATION
17 FOR A SERVICE COMPANY, HE SHALL GIVE PRIOR WRITTEN NOTICE OF
18 THE WITHDRAWAL. THE SERVICE COMPANY MAY REQUEST A HEARING
19 WITHIN 20 DAYS OF THE NOTICE BY THE DIRECTOR. FAILURE TO
20 REQUEST A HEARING WITHIN THE TIME PRESCRIBED SHALL RESULT
21 IN THE WITHDRAWAL BECOMING EFFECTIVE 30 DAYS FROM THE
22 MAILING DATE OF THE WITHDRAWAL NOTICE. THE NOTICE SHALL BE
23 GIVEN TO THE SERVICE COMPANY AND ALL INTERESTED PERSONS. THE
24 HEARING SHALL BE HELD UPON 10 DAY WRITTEN NOTICE TO THE
25 SERVICE COMPANY AND ALL INTERESTED PERSONS. HEARING SHALL
26 BE CONDUCTED PURSUANT TO AS 21.06.180-240. A RULING BY THE

1 DIRECTOR SHALL BE MADE EFFECTIVE NOT LESS THAN 15 DAYS
2 FOLLOWING HIS ORDER.

3
4 SEC 21.62.150. RECORDS. (a) A SELF-INSURER OR A
5 SERVICING COMPANY ON BEHALF OF A SELF-INSURER SHALL
6 MAINTAIN ALL CLAIMS RECORDS AT A LOCATION WITHIN THIS
7 STATE.

8 (b) SELF-INSURER RECORDS MAINTAINED BY A SELF-INSURER
9 SHALL BE SUBJECT TO GUIDELINES ESTABLISHED BY THE DIRECTOR
10 CONCERNING THEIR RETENTION AND REVIEW BY THE DIRECTOR.

11 (c) ALL CLAIMS FILES OF A SELF-INSURER ARE SUBJECT TO
12 REVIEW BY THE DIRECTOR DURING NORMAL BUSINESS HOURS AT A
13 LOCATION IN THIS STATE AS STATED IN THE APPLICATION FOR
14 SELF INSURANCE.

15
16 SEC. 21.62.160. REPORTS. THE DIRECTOR MAY BY REGULATION
17 REQUIRE REPORTS CONCERNING PAYROLL, LOSSES, RESERVES,
18 FINANCIAL CONDITION AND OTHER MATTERS REASONABLY INTENDED
19 TO AID IN THE EXECUTION OF THIS CHAPTER. FAILURE TO COMPLY
20 WITH SUCH REQUIREMENTS IS SUFFICIENT CAUSE FOR REVOCATION
21 OF THE SELF-INSURANCE CERTIFICATE.

22
23 SEC. 21.62.170. INDEMNITY AGREEMENT. THE DIRECTOR
24 MAY BY REGULATION ESTABLISH THE FORM OF THE INDEMNITY
25 AGREEMENT REQUIRED IN SECTION 050(2) OF THIS CHAPTER. AN
26 INDEMNITY AGREEMENT MAY ALSO CONTAIN OTHER PROVISIONS NOT

1 INCONSISTENT WITH THE PROVISIONS ADOPTED UNDER A REGULATION.

2
3 SEC. 21.62.180. SOLVENCY OF FUND. THE DIRECTOR MAY
4 BY REGULATION ADOPT RULES RELATING TO THE SOLVENCY OF THE
5 SELF-INSURANCE FUND UNDER SECTION 020 OF THIS CHAPTER.

6
7 SEC 21.62.190 REVOCATION OR TERMINATION OF THE
8 SELF INSURANCE CERTIFICATE (a) FAILURE TO COMPLY
9 WITH THE PROVISIONS OF THIS CHAPTER SHALL BE CONSIDERED GOOD
10 CAUSE FOR REVOCATION OR TERMINATION OF THE CERTIFICATE OF SELF-INSURANCE
11 NONCOMPLIANCE WITH AS 23.30 SHALL BE CONSIDERED GOOD CAUSE
12 FOR REVOCATION OR TERMINATION OF THE CERTIFICATE OF SELF-INSURANCE.

13 (b) THE DIRECTOR SHALL GIVE 15 DAYS WRITTEN NOTICE OF A
14 REVOCATION OR TERMINATION OF THE CERTIFICATE OF SELF-INSURANCE. THE
15 SELF INSURER MAY REQUEST A HEARING WITHIN THAT TIME. FAILURE
16 TO REQUEST HEARING WITHIN THE TIME PRESCRIBED SHALL RESULT
17 IN THE REVOCATION OR TERMINATION BECOMING EFFECTIVE 30 DAYS
18 FROM THE DATE OF MAILING THE ORIGINAL NOTICE. THE NOTICE SHALL
19 BE SENT TO ALL INTERESTED PARTIES.

20 (c) THE CERTIFICATE OF SELF INSURANCE SHALL AUTOMATICALLY
21 TERMINATE UPON THE DATE WHEN THE SELF-INSURER QUALIFIED
22 UNDER SECTIONS 040 OR 050 EXPERIENCES A CHANGE IN MAJORITY
23 OWNERSHIP.

24 (d) A PERSON AFFECTED BY AN ORDER UNDER THIS SECTION MAY
25 APPEAL THE ORDER AS PROVIDED IN AS 21.06.230.

1 SEC. 21.62.200. INDEXING. THE DIRECTOR MAY
2 ADOPT REGULATIONS TO PROVIDE FOR REVISION OF THE DOLLAR
3 AMOUNTS IN SECTIONS 020(a), 040(i), 050(i), 060(i), 100(e),
4 AND, 110(b) OF THIS CHAPTER TO REFLECT DEVALUATION
5 OF THOSE AMOUNTS DUE TO INFLATION. THE AMOUNTS STATED
6 SHALL HAVE A BASELINE DATE OF JULY 1, 1981.

7
8 SEC. 21.62.210. REGULATIONS. THE DIRECTOR MAY
9 ADOPT REGULATIONS TO IMPLEMENT THIS CHAPTER.

10
11 SEC. 21.62.900. DEFINITIONS. AS USED IN THIS CHAPTER

12 (1) "COMMON INTEREST" MEANS, A GROUP OF EMPLOYERS
13 BELONGING TO THE SAME OR SIMILAR TYPE OF BUSINESS PROVIDED THAT
14 UNRELATED BUSINESSES WHICH ARE OWNED OR CONTROLLED BY THE
15 SAME INTERESTS SHALL BE ELIGIBLE FOR MEMBERSHIP IN A SELF-
16 INSURERS FUND IF ANY ONE OF THEM IS ELIGIBLE.

17 (2) "COMMON MANAGEMENT" MEANS, A GROUP OF EMPLOYERS
18 IN THE SAME OR IN UNRELATED BUSINESSES WHICH ARE OWNED OR
19 CONTROLLED BY THE SAME INTERESTS AND ARE MANAGED BY THE
20 SAME EXECUTIVE OFFICERS.

21 (3) "FUND" MEANS, SELF-INSURANCE FUND.

22 (4) "TRUSTEE" MEANS A GROUP OF MEMBERS ELECTED BY A
23 SELF-INSURERS FUND FOR STATED TERMS OF OFFICE, TO DIRECT THE
24 ADMINISTRATION OF A SELF-INSURERS FUND, AND WHOSE DUTIES
25 INCLUDE RESPONSIBILITY FOR APPROVING APPLICATIONS FOR NEW
26 MEMBERS OF THE FUND THEY ADMINISTER. THE MAJORITY OF

1 OF TRUSTEES MUST BE MEMBERS OF THE SELF-INSURERS FUND. A
2 TRUSTEE MAY NOT BE AN OWNER, OFFICER OR EMPLOYEE OF THE
3 SERVICE AGENT.
4
5
6

7 NOTE:

7 ADD ADDITIONAL SUBSECTION TO SEC 21.62.110 ON P.B, L. 21
9

10 (h) NOTWITHSTANDING (b) OF THIS SECTION, THE DIRECTOR
11 MAY APPROVE AN EXCESS INSURANCE COVERAGE LAYER STARTING
12 AT \$1,000,000 IN AN INSURER WRITING BUSINESS IN THIS STATE
13 PURSUANT TO AS 21.33.
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WCC

March 6, 1981

Representative Brian Rogers
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Rogers,

I understand from David Dye, by way of Betty Ramage, that you are looking for someone to head a committee to revise the Alaska Workers' Compensation statutes. I am interested in the position and have enclosed a resume.

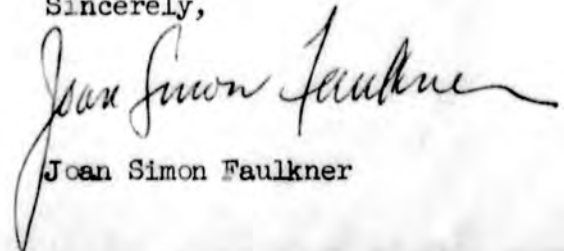
I am currently under contract with Jackie McClintock, Director of the Division of Workers Compensation, Dept. of Labor. As you are undoubtedly aware, the Alaska Workers Compensation Board decisions are now filed away, inaccessible to anyone, client or attorney, who wishes to know how the Board found on any particular issue. In order to remedy this situation, I am compiling a Reference Digest of all existing Board cases to be distributed to law libraries and appropriate government agencies. To date, I have composed an extensive subject matter index which combines the peculiarities of the Alaska statutes and cases and the generalities of Larson's treatise on Workmen's Compensation. I am now distilling all the 1979 and 1980 Board decisions into a few core sentences. These short briefs of the cases will be filed in three separate digests, (1) Subject Matter Index, under the appropriate headings, (2) Statute Index, under the appropriate statute, and (3) by case name. In addition, there will be a separate reference index which will key Alaska Supreme Court and U.S. Supreme Court cases to those Board decisions which have relied on the higher court's decisions. The Hearing Officers will be trained to distill their own cases so that the system will be self-perpetuating in the near future.

I have also been involved with statutory revision during my clerkship with Justice Douglas of the New Hampshire Supreme Court. The New Hampshire statutes on Jails and Houses of Correction were conflicting, archaic, and hopelessly contradictory. I submitted a first draft suggested revision in an effort to convince the legislature to fund a full committee for a thorough revision.

I am now spending some time down south, in New York and New Hampshire. I can be reached at 212-224-0189, or by message at 603-228-0275. Any mail to my Juneau address, on the resume, will be relayed to me.

I hope to hear from you soon.

Sincerely,



Joan Simon Faulkner

JOAN SIMON FAULKNER

401 8th Street
Juneau, Alaska 99801
(907) 586-9598

EDUCATION: FRANKLIN PIERCE LAW CENTER J.D., 1980
Concord, New Hampshire

UNIVERSITY OF NORTHERN COLORADO M.A., Anthropology,
Greeley, Colorado 1975

QUEENS COLLEGE,
CITY UNIVERSITY OF NEW YORK B.A., History,
New York, New York 1967

PUBLICATIONS: PRISON LAW MONITOR
Washington, D.C.

Staff Writer: Case analysis of federal and state decisions
on criminal, juvenile and prison-related issues. 1978.

*1979 Summary of Impact Decisions for Distribution to District
and Municipal Court Judges*, distributed by the New Hampshire
Supreme Court. January, 1980.

LEGAL
EXPERIENCE: ALASKA DEPARTMENT OF LABOR Attorney
DIVISION OF WORKER'S COMPENSATION
Jacquelyn McClintock, Director
Juneau, Alaska 99801

Job Description: Currently producing Worker's Compensation Digest
for Alaska Worker's Compensation Board. June, 1980 - present.

NEW HAMPSHIRE SUPREME COURT
Hon. Charles A. Douglas, III Law Clerk
Concord, New Hampshire 03301

Responsibilities: Researching and drafting of opinions; first-draft
revision of New Hampshire RSA's on Jails and Houses of Correction.
Spring, 1980.

NEW HAMPSHIRE PUBLIC DEFENDER
Peter H. Leahy, Esq. Law Clerk
Concord, New Hampshire 03301

Responsibilities: Litigation of misdemeanor cases, research,
investigation, client interviews, plea bargaining, pre-trial
preparation for felony litigation and appeals. Summer. Fall. 1979.

NEW HAMPSHIRE CIVIL LIBERTIES UNION

Law Clerk

Jonathan Myers, Esq.
Concord, New Hampshire 03301

Responsibilities: Legislative lobbying, testimony before House and Senate committees, legal research, memoranda of law. Spring. 1979.

FAMILY AND HOUSING LAW CLINIC

Franklin Pierce Law Center
Concord, New Hampshire 03301

Intern

Responsibilities: Caseload consisting primarily of domestic and landlord-tenant disputes; all pre-trial and trial work, under supervision. Summer. 1978.

COLLEGE
TEACHING:

NEW ENGLAND COLLEGE
Henniker, New Hampshire
1976-1977

Lecturer
Women's Studies

NATHANIEL HAWTHORNE COLLEGE
Antrim, New Hampshire
1976-1977

Instructor
Fine Arts

RELEVANT
NON-LEGAL
EXPERIENCE:

NEW YORK CITY DEPARTMENT OF
SOCIAL SERVICES
New York, New York
1968-1969

Caseworker

MOBILIZATION FOR YOUTH
New York, New York
1966

Educational
Counselor

ORGANIZATIONS:

NEW HAMPSHIRE WOMEN'S LAW CAUCUS
Concord, New Hampshire

Children: Jeremy Bram, age 9; Adam Robert, age 5.
Travel: Europe, Middle East, India, Central America.
Avocation: Potter.

REFERENCES AND WRITING SAMPLES AVAILABLE ON REQUEST.