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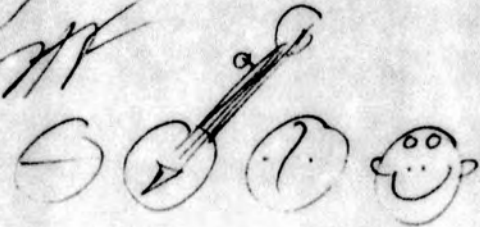
Brian:

Although you are already familiar with much of my thinking on pure-premium rate-filing for workers; comp, you might want to take a look at the basis for this proposal to monitor reserves (pages 4, 5) and the table and worksheets (pages 9, 10); these are the new elements to my recommendations (pages 14, 15). If you and Terry are willing to consider this proposal formally, please advise me so that I can arrange to be available via teleconference from Fairbanks. In any event, please send me copies of the Commission report and any bills proposed.

PS

Copy of letter and  
report  
mailed to Stinson

Cheers,  
JMK



January 23, 1981

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

Dear Brian and Terry:

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

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

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

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

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

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

## PURE-PREMIUM RATE-FILING FOR WORKERS' COMPENSATION

A Report Prepared By

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January 23, 1981

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

## PURE-PREMIUM RATE-FILING FOR WORKERS' COMPENSATION

I. Synopsis

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

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

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

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

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

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

In this valley of darkness, the proposal the Study Commission latched onto is to alter the rate-making mechanism by removing the carrier's expenses from regulation and setting a minimum on the loss pay-out (wage replacement, medical and rehabilitation payments for the claimant). Ostensibly, this proposal -- originally introduced in the Feb. 1980 report of Richard L. Block & Associates and known as pure-premium rate-filing<sup>1</sup> -- would require the carriers to compete on expenses while leaving the loss pay-out (pure premium) in the regulated rate base.

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

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

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

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

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

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

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

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

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

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

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

The history of insurance price-fixing aptly summarized for the Commission in Robert Williams' draft report<sup>2</sup> suggests another problem: In the absence of state regulation, industry price-fixing is a danger. The smaller the number of actively-competing companies, the greater this danger. In this context the domination of Alaska's comp market by a few carriers assumes new importance. The public's defense against pricing collusion is vigorous policing of rates by the Division of Insurance. The pure-premium proposal does not provide the state with the data necessary to respond to consumer complaints in a prompt or effective manner.

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

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

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

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

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

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

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<sup>1</sup> Williams, "Worker's Compensation Ratemaking," p. 15.

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

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

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

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

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<sup>1</sup> See "Goodguy Insurance Co."

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

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

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

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

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

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

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

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

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

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

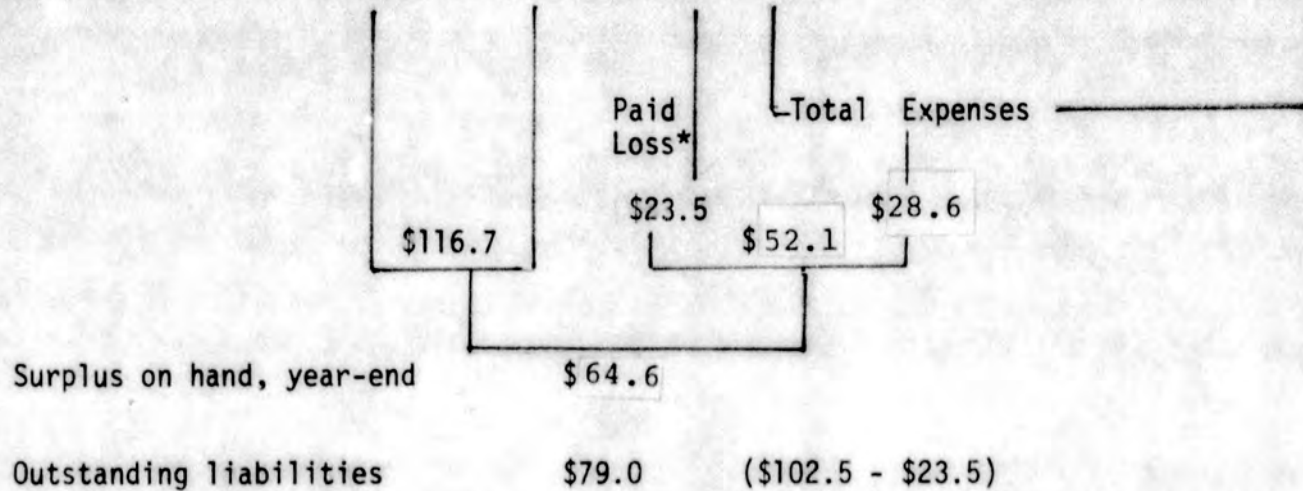
The experience of the New York State Workers' Compensation Fund provides real-world confirmation for the suggestion that even a supposed high-loss year such as 1978 can result in a profit. The New York Fund wrote for several years in a row at a loss ratio similar to Alaska's in 1978; by the end of the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

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

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

ALASKA 5/29/79 (p. 15)

LINE OF BUSINESS	Premium Earned	Investment Income	Incurred Loss	Loss Adjusting Expense	General Expenses	Sales Expenses	Taxes, Lic. & Fees	Dividends to Policyholders	Fed. Income Tax	Underwriting Profit	Operating Profit
Workers' Comp	\$107.1	9.0 %	95.8 %	9.3 %	6.3 %	7.3 %	3.5 %	0.4 %	-8.4 %	-11.8 %	-5.3 %
Approx. \$ Value	\$107.1	\$9.6	\$102.5	\$10.0	\$6.7	\$7.8	\$3.7	\$0.4	\$-9.0	\$-12.6	\$-5.6



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

WORKSHEET: CLOSING OUT ALASKA WORKERS' COMP CLAIMS FOR 1978

Fineberg / 10

\$64.6 million on hand 12/31/78 (end Year 1)

79.0 Unpaid Loss (End Year 1)

Assume 10% Interest (5% semi-annual)	Assume 12% Interest (6% semi-annual)	Assume 15% Interest (7.5% semi-annual)	Loss Pay-out
START \$64.6	\$64.6	\$64.6	\$79.0
58.0 x .05 = 2.9	58.0 x .06 = 3.5	58.0 x .075 = 4.4	- 6.6
+ 2.9	+ 3.5	4.4	
END 60.9	61.5	62.4	72.4
START 60.9	60.9	62.4	- 6.6
54.3 x .05 = 2.7	54.9 x .06 = 3.3	55.8 x .075 = 4.2	
+ 2.7	+ 3.3	4.2	
END 57.0	58.2	60.0	65.8
START 57.0	57.0	60.0	- 6.6
50.4 x .05 = 2.5	51.6 x .06 = 3.1	53.4 x .075 = 4.0	
+ 2.5	3.1	4.0	
END 52.9	54.7	57.4	59.2
START 52.9	52.9	57.4	- 6.6
46.3 x .05 = 2.3	48.1 x .06 = 2.9	50.8 x .075 = 3.8	
+ 2.3	+ 2.9	3.8	
END 48.6	51.0	54.6	52.6
START 48.6	48.6	54.6	- 6.6
42.0 x .05 = 2.1	44.4 x .06 = 2.7	48.0 x .075 = 3.6	
+ 2.1	+ 2.7	3.6	
END 44.1	47.1	51.6	46.0
START 44.1	44.1	51.6	- 6.6
37.5 x .05 = 1.9	40.5 x .06 = 2.4	45.0 x .075 = 3.4	
+ 1.9	+ 2.4	3.4	
END 35.6	42.9	48.4	39.4
START 35.6	35.6	48.4	- 6.6
29.0 x .05 = 1.5	36.3 x .06 = 2.2	41.8 x .075 = 3.1	
+ 1.5	+ 2.2	3.1	
END 30.9	38.5	44.9	32.8
START 30.9	30.9	44.9	- 6.6
24.2 x .05 = 1.2	31.9 x .06 = 1.9	38.3 x .075 = 2.9	
+ 1.2	+ 1.9	2.9	
END 25.4	33.8	41.2	26.2
START 25.4	25.4	41.2	- 6.6

Compiled by Richard A. Fineberg for Workers' Compensation Study Commission  
 Based on 1978 NAIC profitability report for Alaska workers' compensation  
 Assumptions: Alaska carriers' loss pay-out = country-wide pay-out for workers' comp reported in INA annual report (see Sched. P-30, attached)  
 Preceding years' claims are reserved and paid independent of 1978 policy-year transactions.

Since 1978 is recorded on the books as an operating and tax loss, income tax is not considered.

END 25.4  
 ON HAND 12/31/82 at 10%  
 END 33.8  
 ON HAND 12/31/82 at 15%  
 END 41.2  
 ON HAND 12/31/82 at 15%  
 END 52.6  
 LOSS PAY-OUT TARGET  
 (See INA P-30)

## NOTES ON CONVERTING NAIC 1978 PROFITABILITY ANALYSIS TO REAL DOLLARS

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

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

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

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

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

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

7. Results:

- At 10% interest at the end of the fifth year the (understated) balance to meet future payments was \$25.4 million -- approximately equal to the outstanding payments of \$26.2 million.
- At 12% interest, at the end of the fifth year the understated balance to meet future payments was \$33.8 million -- an excess of \$7.6 million over the amount needed to make future payments.
- At 15% interest, at the end of the fifth year the understated balance was \$41.2 million -- an excess of \$15 million over the amount needed to make future payments.

NEW YORK STATE WORKERS' COMPENSATION FUND

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

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

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

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

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

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

NA = not available on transcript; e = estimated

Kramer comments:

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

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

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

#### IV. Conclusions / Recommendation

##### A. Conclusions

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

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

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

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

##### B. Recommendations

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

Recommendations

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

APPENDICES

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

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

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

**SCHEDULE P - PART 3C - MEDICAL**  
Calendar Year Premiums Earned, Accident Year Loss and Loss Expense Incurred

	Dollars (000 omitted)							Percentages						
	1 1973(a)	2 1974(a)	3 1975	4 1976	5 1977	6 1978	7 1979	8 1973(a)	9 1974(a)	10 1975	11 1976	12 1977	13 1978	14 1979
Summary Data from Schedule P - Part 1C														
1 Premiums Earned	XX	XX	25,452	16,941	15,085	8,718	14,623	XX	XX	100.0	100.0	100.0	100.0	100.0
2 Loss & Loss Exp Inc'd	XX	XX	21,718	14,401	12,828	7,410	12,430	XX	XX	85.3	85.0	85.0	85.0	85.0
LOSS & LOSS EXPENSE THROUGH 1 YEAR														
3 Paid	XX	XX	900	428	323	263	81	XX	XX	3.5	2.5	2.1	3.0	.6
4 Reserve (2) - (3)	XX	XX	20,818	13,973	12,505	7,147	12,349	XX	XX	81.8	82.5	82.9	82.0	84.4
LOSS & LOSS EXPENSE THROUGH 2 YEARS														
5 Paid	XX	XX	1,784	1,479	835	454	XX	XX	XX	7.0	6.7	5.5	5.2	XX
6 Reserve (2) - (5)	XX	XX	19,932	12,922	11,993	6,956	XX	XX	XX	78.3	76.3	79.5	79.8	XX
LOSS & LOSS EXPENSE THROUGH 3 YEARS														
7 Paid	XX	XX	3,630	2,115	1,343	XX	XX	XX	XX	14.3	12.5	8.9	XX	XX
8 Reserve (2) - (7)	XX	XX	18,088	12,286	11,485	XX	XX	XX	XX	71.1	72.5	76.1	XX	XX
LOSS & LOSS EXPENSE THROUGH 4 YEARS														
9 Paid	XX	XX	6,330	3,115	XX	XX	XX	XX	XX	24.9	18.4	XX	XX	XX
10 Reserve (2) - (9)	XX	XX	15,388	11,286	XX	XX	XX	XX	XX	60.5	66.6	XX	XX	XX
LOSS & LOSS EXPENSE THROUGH 5 YEARS														
11 Paid	XX	XX	8,491	XX	XX	XX	XX	XX	XX	33.4	XX	XX	XX	XX
12 Reserve (2) - (11)	XX	XX	13,227	XX	XX	XX	XX	XX	XX	52.0	XX	XX	XX	XX

**SCHEDULE P - PART 3D - WORKMEN'S COMPENSATION**  
Calendar Year Premiums Earned, Accident Year Loss and Loss Expense Incurred

	Dollars (000 omitted)							Percentages						
	1 1973	2 1974	3 1975	4 1976	5 1977	6 1978	7 1979	8 1973	9 1974	10 1975	11 1976	12 1977	13 1978	14 1979
Summary Data from Schedule P - Part 1D														
1 Premiums Earned	188,240	187,579	216,376	248,223	329,523	437,299	484,589	100.0	100.0	100.0	100.0	100.0	100.0	100.0
2 Loss & Loss Exp Inc'd	170,498	171,132	191,792	273,162	290,541	348,738	400,314	94.7	91.2	88.6	93.9	88.2	79.7	82.6
LOSS & LOSS EXPENSE THROUGH 1 YEAR														
3 Paid	44,323	46,774	48,070	60,754	70,332	79,887	88,012	24.6	24.9	22.2	24.5	21.3	18.3	18.2
4 Reserve (2) - (3)	126,375	124,358	143,722	172,408	220,209	268,851	312,303	70.1	66.3	66.4	69.5	66.8	61.5	64.4
LOSS & LOSS EXPENSE THROUGH 2 YEARS														
5 Paid	85,984	89,711	89,937	112,425	126,050	146,329	XX	47.7	47.8	41.6	45.3	38.3	33.5	XX
6 Reserve (2) - (5)	84,714	81,421	101,855	120,737	144,491	202,409	XX	47.0	43.4	47.1	48.6	49.9	46.3	XX
LOSS & LOSS EXPENSE THROUGH 3 YEARS														
7 Paid	107,185	112,187	116,793	136,166	163,784	XX	XX	59.5	59.8	54.0	54.9	49.7	XX	XX
8 Reserve (2) - (7)	63,513	58,945	74,999	96,996	126,757	XX	XX	35.2	31.4	34.7	39.1	38.5	XX	XX
LOSS & LOSS EXPENSE THROUGH 4 YEARS														
9 Paid	122,316	127,143	121,040	158,450	XX	XX	XX	47.9	47.8	60.6	63.8	XX	XX	XX
10 Reserve (2) - (9)	48,382	43,989	60,732	74,712	XX	XX	XX	26.8	23.5	28.1	30.1	XX	XX	XX
LOSS & LOSS EXPENSE THROUGH 5 YEARS														
11 Paid	132,136	139,421	142,245	XX	XX	XX	XX	73.3	72.2	65.7	XX	XX	XX	XX
12 Reserve (2) - (11)	38,562	35,711	49,547	XX	XX	XX	XX	21.4	19.0	22.9	XX	XX	XX	XX

**SCHEDULE P - PART 3E - FARMOWNERS MULTIPLE PERIL, HOMEOWNERS MULTIPLE PERIL, COMMERCIAL MULTIPLE PERIL, OCEAN MARINE, AIRCRAFT (ALL PERILS) AND BOILER AND MACHINERY**  
Calendar Year Premiums Earned, Accident Year Loss and Loss Expense Incurred

	Dollars (000 omitted)							Percentages						
	1 1973	2 1974	3 1975	4 1976	5 1977	6 1978	7 1979	8 1973	9 1974	10 1975	11 1976	12 1977	13 1978	14 1979
Summary Data from Schedule P - Part 1E														
1 Premiums Earned	401,035	438,098	467,608	560,747	671,996	729,072	763,108	100.0	100.0	100.0	100.0	100.0	100.0	100.0
2 Loss & Loss Exp Inc'd	249,632	295,575	338,880	340,021	390,871	419,088	497,188	62.2	67.5	72.5	60.6	58.2	57.5	65.2
LOSS & LOSS EXPENSE THROUGH 1 YEAR														
3 Paid	119,216	143,901	161,940	155,951	171,694	197,473	250,731	29.7	32.8	34.6	27.8	25.5	27.1	32.9
4 Reserve (2) - (3)	130,416	151,674	176,940	184,070	219,177	221,615	246,457	32.5	34.6	37.8	32.8	32.6	30.4	32.3
LOSS & LOSS EXPENSE THROUGH 2 YEARS														
5 Paid	186,549	231,416	261,828	254,717	311,858	320,418	XX	46.5	52.8	56.0	45.4	46.4	43.9	XX
6 Reserve (2) - (5)	63,083	64,159	77,052	85,304	79,013	98,670	XX	15.7	14.6	16.5	15.2	11.8	10.5	XX
LOSS & LOSS EXPENSE THROUGH 3 YEARS														
7 Paid	206,214	252,965	289,837	289,152	332,301	XX	XX	51.4	57.7	62.0	51.6	49.4	XX	XX
8 Reserve (2) - (7)	43,418	42,610	49,043	50,869	58,570	XX	XX	10.8	9.7	10.5	9.1	8.7	XX	XX
LOSS & LOSS EXPENSE THROUGH 4 YEARS														
9 Paid	221,272	265,371	309,426	301,691	XX	XX	XX	55.2	60.6	66.2	53.8	XX	XX	XX
10 Reserve (2) - (9)	28,360	20,204	29,454	38,330	XX	XX	XX	7.1	6.9	6.3	6.8	XX	XX	XX
LOSS & LOSS EXPENSE THROUGH 5 YEARS														
11 Paid	XX	XX	XX	XX	XX	XX	XX	57.2	62.8	68.4	XX	XX	XX	XX
12 Reserve (2) - (11)	XX	XX	XX	XX	XX	XX	XX	5.1	4.6	4.1	XX	XX	XX	XX

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

TO: SEN. TERRY STIMSON, REP. BRIAN ROGERS  
WORKERS' COMPENSATION STUDY COMMISSION

FROM: RICHARD A. FINEBERG  
BOX 81835 - COLLEGE STA.  
FAIRBANKS, ALASKA 99708  
tel 479-5363

RE: FINEBERG JAN. 23, 1981 REPORT ON PURE-PREMIUM RATE-FILING

DATE: JANUARY 29, 1981

The left-hand column of the worksheet on Page 10 understates the income Alaska comp carriers would earn from the outstanding losses on their 1978 Alaska comp transactions at an assumed 10% interest rate. At the start of the fifth year (end 48 months) the balance should read \$39.4 million instead of \$35.6 million. Following through to the end of the fifth year, at the bottom line the cash on hand to meet outstanding liabilities should be \$29.2 million instead of \$25.4 million.

Although this correction adds force to the arguments in this report, no changes are necessary in the synopsis or conclusions. Two text changes might be made on Page 8, however, to reflect the new numbers:

- The first sentence on Page 8 should be amended at Line 4 as follows:  
" . . . the insurance companies / would virtually break even / APPARENTLY PROFITED on their comp transactions resulting from 1978 policies."
- Line 14 of Page 8 should be amended as follows:  
"From this conservative, rough-cut approximation, it appears that for the worst year in recent history, the comp transactions that produced a reported 5.3% operating loss / actually / EASILY broke even or made up to \$15 million, depending on the interest rates assumed."

Enclosed are corrected versions of Page 8, the worksheet and notes (Pages 10 and 12). Please insert this memo with the report or replace the original pages with the enclosed.

To my way of thinking these corrections indicate even more strongly the necessity for close scrutiny of the profitability to the carriers of the Alaska workers' comp transaction. Until the Study Commission devotes staff time to real-dollar analyses such as the kind I attempted on my own time for this report (in the absence of Study Commission efforts to develop this information), the recommendations of the Study Commission will necessarily be based on theory of questionable relevance to Alaska and scrap of data that may be quite misleading.

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

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

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

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

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

**\$64.6 million on hand 12/31/78 (cap loss 1)**

**77.0 Unpaid Loss (Emp Year 1)**

26.4 Unpaid Loss (Emp Year 5)  
(See INA P-3)

52.6 TARGET  
4-yr pay-out  
To reach target assume 8 semi-annual payments of \$6.6  
( $8 \times 6.6 = 52.8$ )

Compiled by Richard A. Fineberg for Workers' Compensation Study Commission  
Based on 1978 NAIC profitability report for Alaska workers' compensation  
Assumptions: Alaska carriers' loss pay-out = country-wide pay-out for workers' comp reported in INA annual report (see Sched: P-3D, attached)  
Preceding years' claims are reserved and paid independent of 1978 policy-year transactions.

Since 1978 is recorded on the books as an operating and tax loss, income tax is not considered.

Assume	Assume	Assume	Loss Pay-out
10% Interest (5% semi-annual) ↓	12% Interest (6% semi-annual) ↓	15% Interest (7.5% semi-annual) ↓	
64.6	64.6	64.6	79.0
$58.0 \times .05 = 2.9$	$58.0 \times .06 = 3.5$	$58.0 \times .075 = 4.4$	- 6.6
+ 2.9	+ 3.5	+ 4.4	
60.9	61.5	62.4	72.4
- 6.6	- 6.6	- 6.6	- 6.6
$54.3 \times .05 = 2.7$	$54.9 \times .06 = 3.3$	$55.8 \times .075 = 4.2$	
+ 2.7	+ 3.3	+ 4.2	
57.0	58.2	60.0	65.8
- 6.6	- 6.6	- 6.6	- 6.6
$50.4 \times .05 = 2.5$	$51.6 \times .06 = 3.1$	$53.4 \times .075 = 4.0$	
+ 2.5	+ 3.1	+ 4.0	
52.9	54.7	57.4	59.2
- 6.6	- 6.6	- 6.6	- 6.6
$46.3 \times .05 = 2.3$	$48.1 \times .06 = 2.9$	$50.8 \times .075 = 3.8$	
+ 2.3	+ 2.9	+ 3.8	
48.6	51.0	54.6	52.6
- 6.6	- 6.6	- 6.6	- 6.6
$42.0 \times .05 = 2.1$	$44.4 \times .06 = 2.7$	$48.0 \times .075 = 3.6$	
+ 2.1	+ 2.7	+ 3.6	
44.1	47.1	51.6	46.0
- 6.6	- 6.6	- 6.6	- 6.6
$37.5 \times .05 = 1.9$	$40.5 \times .06 = 2.4$	$45.0 \times .075 = 3.4$	
+ 1.9	+ 2.4	+ 3.4	
39.4	42.9	48.4	39.4
- 6.6	- 6.6	- 6.6	- 6.6
$32.8 \times .05 = 1.6$	$36.3 \times .06 = 2.2$	$41.8 \times .075 = 3.1$	
+ 1.6	+ 2.2	+ 3.1	
34.4	38.5	44.9	32.8
- 6.6	- 6.6	- 6.6	- 6.6
$27.8 \times .05 = 1.4$	$31.9 \times .06 = 1.9$	$38.3 \times .075 = 2.9$	
+ 1.4	+ 1.9	+ 2.9	
29.2	33.8	41.2	26.2
↑	↑	↑	↑
ON HAND 12/31/82 at 10%	ON HAND 12/31/82 at 12%	ON HAND 12/31/82 at 15%	LOSS PAY-OUT TARGET

FOR 12/31/82 (See INA P-3D)

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

## 7. Results:

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

3 February 1981


Dear ~~Mr~~ Richard

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

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

Thanks again and keep in touch.

Sincerely,

  
Rep. Brian Rogers

Workers  
Comp

January 23, 1981

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

Dear Brian and Terry:

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

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

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

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

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

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

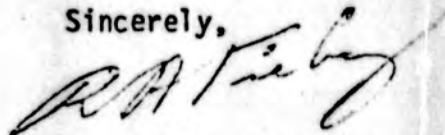
Fineberg to Rogers and Stimson  
Jan. 23, 1981  
Page Two

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

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

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

Sincerely,



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

# PURE-PREMIUM RATE-FILING FOR WORKERS' COMPENSATION

A Report Prepared By

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

907/479-5363

January 23, 1981

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

## PURE-PREMIUM RATE-FILING FOR WORKERS' COMPENSATION

I. Synopsis

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

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

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

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

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

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

In this valley of darkness, the proposal the Study Commission latched onto is to alter the rate-making mechanism by removing the carrier's expenses from regulation and setting a minimum on the loss pay-out (wage replacement, medical and rehabilitation payments for the claimant). Ostensibly, this proposal -- originally introduced in the Feb. 1980 report of Richard L. Block & Associates and known as pure-premium rate-filing<sup>1</sup> -- would require the carriers to compete on expenses while leaving the loss pay-out (pure premium) in the regulated rate base.

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

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

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

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

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

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

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

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

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

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

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

The history of insurance price-fixing aptly summarized for the Commission in Robert Williams' draft report<sup>2</sup> suggests another problem: In the absence of state regulation, industry price-fixing is a danger. The smaller the number of actively-competing companies, the greater this danger. In this context the domination of Alaska's comp market by a few carriers assumes new importance. The public's defense against pricing collusion is vigorous policing of rates by the Division of Insurance. The pure-premium proposal does not provide the state with the data necessary to respond to consumer complaints in a prompt or effective manner.

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

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

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

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

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

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

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<sup>1</sup> Williams, "Worker's Compensation Ratemaking," p. 15.

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

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

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

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

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<sup>1</sup> See "Goodguy Insurance Co."

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

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

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

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

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

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

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

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

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

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

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

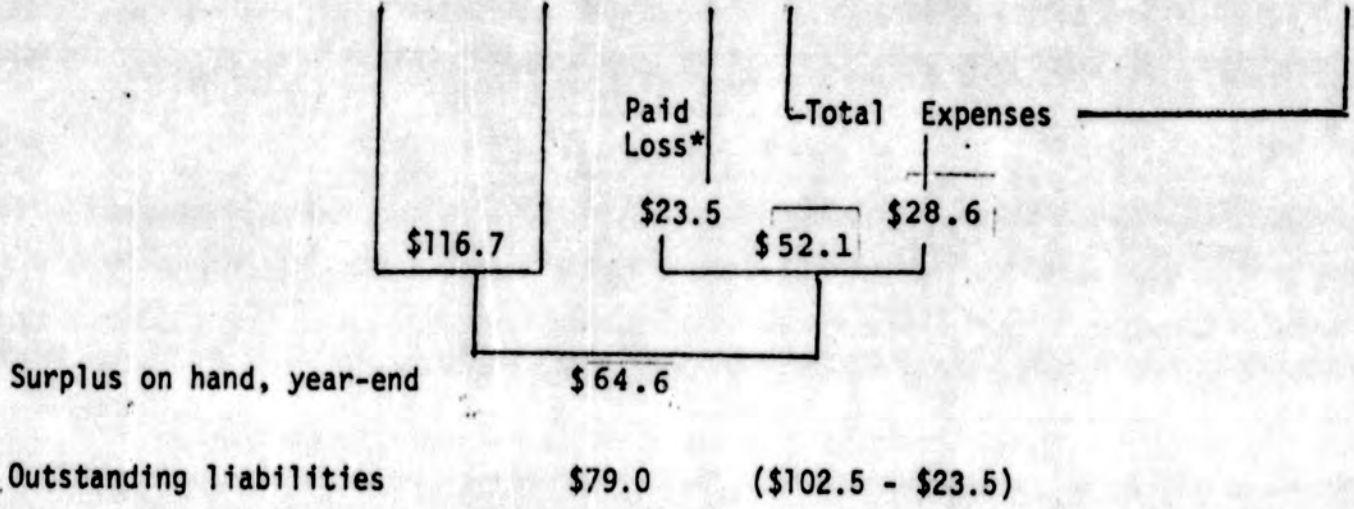
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<sup>1</sup> This simplified analysis focuses on investment income because workers' comp is what the insurance industry calls a "long-tail" line of insurance -- a term used to denote the fact that the carrier holds portions of the premium for relatively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

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

ALASKA 5/29/79 (p. 15)

LINE OF BUSINESS	Premium Earned	Investment Income	Incurred Loss	Loss Adjusting Expense	General Expenses	Sales Expenses	Taxes, Lic. & Fees	Dividends to Policyholders	Fed. Income Tax	Underwriting Profit	Operating Profit
Workers' Comp	\$107.1	9.0 %	95.8 %	9.3 %	6.3 %	7.3 %	3.5 %	0.4 %	-8.4 %	-11.8 %	-5.3 %
Approx. \$ Value	\$107.1	\$9.6	\$102.5	\$10.0	\$6.7	\$7.8	\$3.7	\$0.4	\$-9.0	\$-12.6	\$-5.6



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

**\$64.6 million on hand 12/31/78 (end Year 1)**

**79.0 Unpaid Loss**  
(End Year 1)

26.4 Unpaid Loss (end Year 5)  
See INA P-31

52.6 TARGET  
4-yr. pay-out  
To reach target  
assume 8 semi-annual  
payments of \$6.6  
(8 x 6.6 = 52.8)

Compiled by Richard A. Fineberg for Workers' Compensation Study Commission  
Based on 1978 NAIC profitability report for Alaska workers' compensation  
Assumptions: Alaska carriers' loss pay-out = country-wide pay-out for workers' comp reported in INA annual report (see Sched: P-3D, attached)  
Preceding years' claims are reserved and paid independent of 1978 policy-year transactions.

Since 1978 is recorded on the books as an operating and tax loss, income tax is not considered.

Assume	Assume	Assume	Loss Pay-out
10% Interest (5% semi-annual)	12% Interest (6% semi-annual)	15% Interest (7.5% semi-annual)	
64.6 6.6 58.0 x .05 = 2.9 + 2.9	64.6 6.6 58.0 x .06 = 3.5 + 3.5	64.6 6.6 58.0 x .075 = 4.4 + 4.4	79.0 - 6.6
60.9 6.6 54.3 x .05 = 2.7 + 2.7	61.5 6.6 54.9 x .06 = 3.3 + 3.3	62.4 6.6 55.8 x .075 = 4.2 + 4.2	72.4 - 6.6
57.0 6.6 50.4 x .05 = 2.5 + 2.5	58.2 6.6 51.6 x .06 = 3.1 + 3.1	60.0 6.6 53.4 x .075 = 4.0 + 4.0	65.8 - 6.6
52.9 6.6 46.3 x .05 = 2.3 + 2.3	54.7 6.6 48.1 x .06 = 2.9 + 2.9	57.4 6.6 50.8 x .075 = 3.8 + 3.8	59.2 6.6
48.6 6.6 42.0 x .05 = 2.1 + 2.1	51.0 6.6 44.4 x .06 = 2.7 + 2.7	54.6 6.6 48.0 x .075 = 3.6 + 3.6	52.6 6.6
44.1 6.6 37.5 x .05 = 1.9 + 1.9	47.1 6.6 40.5 x .06 = 2.4 + 2.4	51.6 6.6 45.0 x .075 = 3.4 + 3.4	46.0 - 6.6
39.4 6.6 32.8 x .05 = 1.6 + 1.6	42.9 6.6 36.3 x .06 = 2.2 + 2.2	48.4 6.6 41.8 x .075 = 3.1 + 3.1	39.4 - 6.6
34.4 6.6 27.8 x .05 = 1.4 + 1.4	38.5 6.6 31.9 x .06 = 1.9 + 1.9	44.9 6.6 38.3 x .075 = 2.9 + 2.9	32.8 - 6.6
29.2	33.8	41.2	26.2

ON HAND 12/31/82 at 10%

ON HAND 12/31/82 at 12%

ON HAND 12/31/82 at 15%

Loss Pay-out Target  
See INA P-3D

## NOTES ON CONVERTING NAIC 1978 PROFITABILITY ANALYSIS TO REAL DOLLARS

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

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

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

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

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

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

## 7. Results:

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

NEW YORK STATE WORKERS' COMPENSATION FUND

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

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

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

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

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

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

NA = not available on transcript; e = estimated

Kramer comments:

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

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

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

#### IV. Conclusions / Recommendation

##### A. Conclusions

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

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

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

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

##### B. Recommendations

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

Recommendations

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

APPENDICES



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

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

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

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

December 18, 1980

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

Dear Brian and Terry:

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

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

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

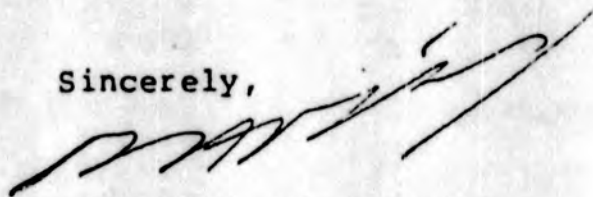
Fineberg / Stimson-Rogers  
Dec. 18, 1980 (letter)  
Page Two

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.)

MEMORANDUM

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

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

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

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

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

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

## I. General Assumptions Underlying Open-Rating Proposal

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

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

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

## II. General Assumptions about Workers' Comp

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

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

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

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

## III. Some Possible Scenarios

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

### III. Some Possible Scenarios (cont'd)

#### Scenario #1: TRADITIONAL PRICE WAR

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

#### Scenario #2: MICRO-APPROACH TO TRADITIONAL PRICE WAR

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

### III. Scenarios (cont'd)

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

#### Scenario #3: CUT-RATE INVADERS PREVAIL

Invaders compete successfully, offering cheaper comp policies with reduced services, poor claims practices. The Division of Insurance has demonstrated its inability and/or unwillingness to monitor comp trade practices in the past.<sup>(6)</sup> 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.<sup>(7)</sup> 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.<sup>(8)</sup> It is my premise -- which I presume the Study Commission shares -- that workers' comp exists to delivery a necessary service. If pure premium rate-filing might force carriers out of the market, in view of the extreme importance of the top three carriers (70.4% of the market) that provide this necessary service the numbers should be examined carefully before such a policy change is made.

IV. RECOMMENDATIONS

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

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

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

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

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

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

V. FOOTNOTES

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

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

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

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

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

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

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

(A)

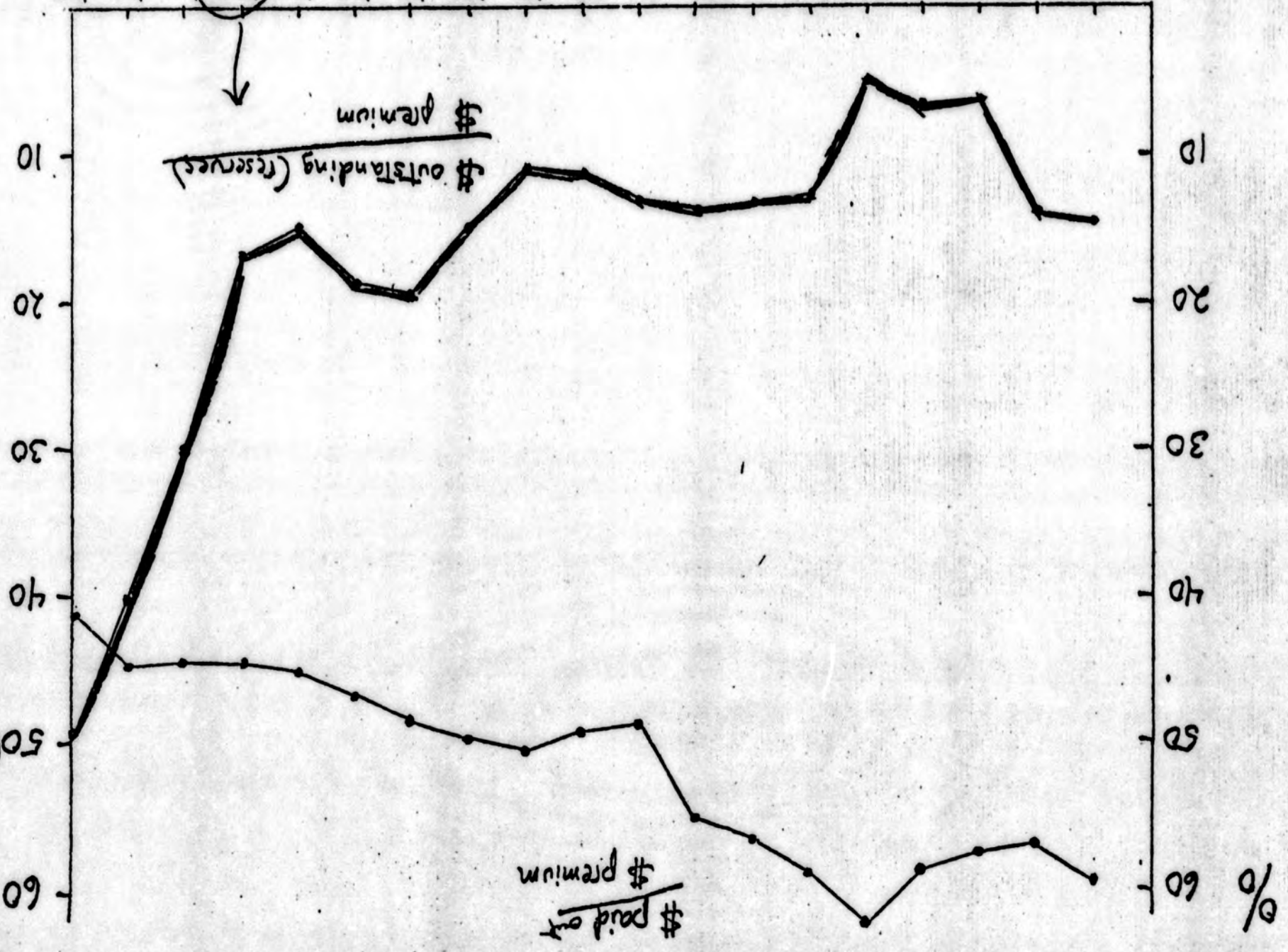
MINNESOTA W.C. EXPERIENCE - INSURANCE DIVISION FORM I-57

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

1960, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78

(70)

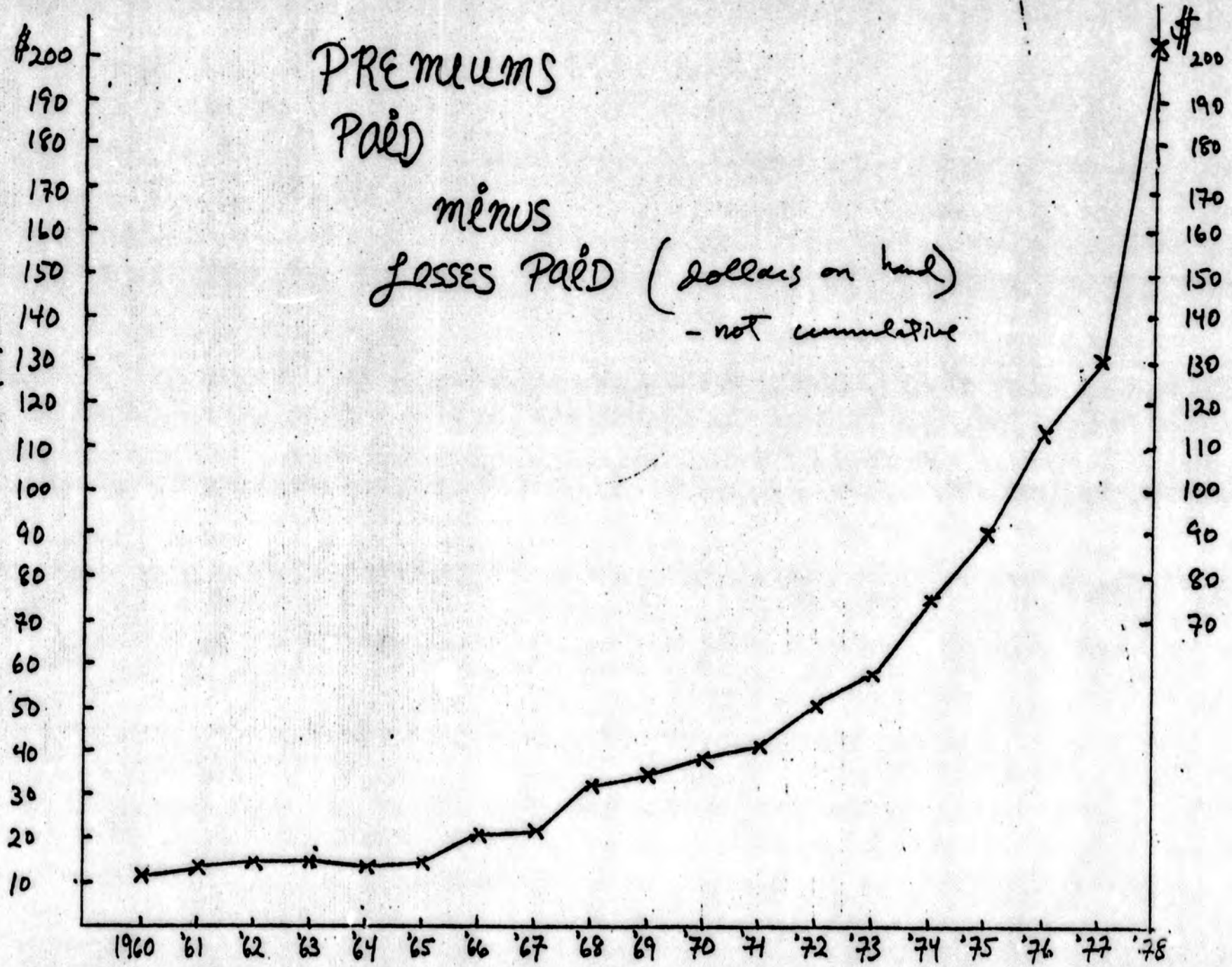
(B)



(C)

PREMIUMS  
PAID  
MINUS  
LOSSES PAID (dollars on hand)  
- not cumulative

DIFFERENCE  
(millions, \$)



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

January 29, 1980

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

Dear Peter:

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

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

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

With best regards,

Richard A. Fineberg  
Box 81875 - College Sta.  
Fairbanks, AK 99708

Copy to: Rep. B. Rogers

January 21, 1980

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

Dear Representative Rogers:

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

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

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

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

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

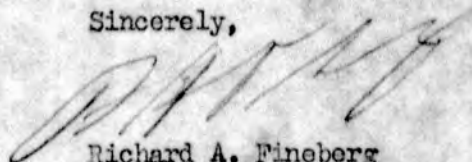
in Fairbanks and Anchorage, after some comp protestors formed an organization to try to help others with similar problems and after repeated cries of anguish from comp claimants had been repeatedly ignored by responsible authorities. One reason the problem developed and went uncorrected for so long,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

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

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

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

Sincerely,



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

(tel) 479-5363

CONTRACT BETWEEN

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

and

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

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

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

CLAUSE I - STATEMENT OF WORK

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

(B) Work Products

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

CLAUSE II - PERIOD OF PERFORMANCE

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

CLAUSE III - TERMINATION

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

CLAUSE IV - PROJECT DIRECTOR

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

CLAUSE V - COMPENSATION AND METHOD OF PAYMENT

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

CLAUSE VI - RECORDS, DOCUMENTS, AUDIT

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

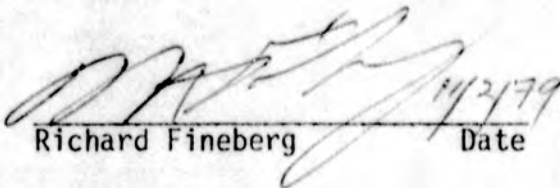
CLAUSE VII - ALL WRITINGS CONTAINED HEREIN

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

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

CONTRACTOR

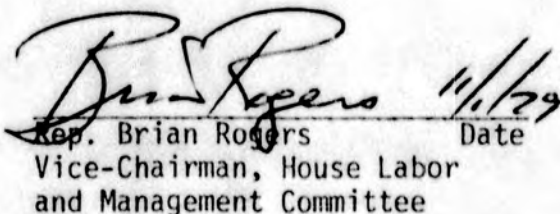
LEGISLATIVE AFFAIRS AGENCY

  
Richard Fineberg Date 11/21/79

\_\_\_\_\_  
Myrton R. Charney Date  
Executive Director

Accepted:

Approved as to form:

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

\_\_\_\_\_  
Agency Legal Counsel Date

rec'd 1/15  
final payment  
due upon  
submission  
of report

*[Handwritten signature]*  
Workers  
Comp

TO: REP. BRIAN ROGERS

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

RE: INTERIM RESEARCH ON WORKERS' COMP

DATE: OCT. 7, 1979

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

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

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

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

Enc: proposed budget, researcher's resume

TO: REP. BRIAN ROGERS  
 FROM: RICHARD A. FINEBERG  
 RE: INTERIM RESEARCH ON WORKERS' COMP (PROPOSED RESEARCH BUDGET)  
 DATE: OCT. 7, 1979

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

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

Resume

RICHARD A. FINEBERG  
Box 81835  
Fairbanks, Alaska 99708

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

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

Present Position: Freelance writer

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

Partial Publications List:

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

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

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

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

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

References: Available on request

Phone: (907) 479-5363

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

January 21, 1980

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

Dear Representative Rogers:

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

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

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

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

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

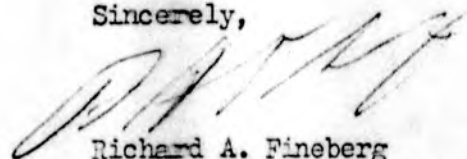
in Fairbanks and Anchorage, after some comp protestors formed an organization to try to help others with similar problems and after repeated cries of anguish from comp claimants had been repeatedly ignored by responsible authorities. One reason the problem developed and went uncorrected for so long,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

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

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

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

Sincerely,



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WORKERS' COMPENSATION PROBLEMS IN ALASKA

An Assessment Prepared for

The Alaska Legislative Affairs Agency

by

Richard A. Fineberg

Preliminary Draft

January 21, 1980

## Summary and Conclusions

### Summary

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

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

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

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

### Conclusions

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

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

### Conclusions (continued)

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

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

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

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

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

### Conclusions (continued)

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

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

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

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

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

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

- = the possibility of establishing a competitive state fund.

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Acknowledgement . . . . .

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

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

Richard A. Fineberg

January 20, 1980

A Note on Terminology . . . . .

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

## Chapter 1. Introduction

### A. General Background

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

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

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

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

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

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

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

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

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

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

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

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

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

#### B. Paperwork Problems and Claimant Problems

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

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

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

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

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

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<sup>1</sup> Legislative Affairs Agency, Workers' Compensation (op. cit.), p. 16.

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

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

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

#### D. Experience of Other States

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

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<sup>1</sup> Division of Insurance reports.

<sup>2</sup> Legislative Affairs Agency, Workers' Compensation, (op. cit.), p. 5.

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

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

Chapter 2. Comp Protestors: Clear Signals of Distress

A. Perspectives

1. Anchorage, November 7-8, 1979

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

The short, white-haired man who spoke at an informal public meeting held by the Division of Insurance in Anchorage November 7<sup>1</sup> did not give his name. He said his comp claim was proceeding smoothly at this point and he did not want to rock the boat. He said he was speaking because he had seen a lot of other claimants in doctors' waiting rooms, hospitals and various insurance offices, and he had spent long painful hours at home; what he had learned from his own experience, and from other comp claimants, convinced him that, "There is something wrong here, mighty wrong."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Narratives

Five Claimants Who Allege the System Is Failing Them

Preface

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

1. Patrick Jackson

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

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

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

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

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

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

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

September 1978: A second operation in Fairbanks was unsuccessful.

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

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

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

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

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

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

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

## 2. Cary R. Ortberg

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

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

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

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

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

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

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

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

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

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

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

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

Dear Mr. John Cook:

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

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

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

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

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

3. Lois Salisbury

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

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

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

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

*See Appendix 6*

#### 4. George Coon

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Lyle Heffner

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dear Sir:

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

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

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

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

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

Sincerely,

Lyle Heffner

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

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

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

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

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

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

### A. Preface

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

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

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

B. Workers' Compensation Division

(1) Background

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

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

TABLE I.

HEARING LOAD OF WORKERS' COMPENSATION BOARD

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

(Source: Workers' Comp Division)

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

<sup>2</sup> Estimates based on discussions with Division personnel.

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

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

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

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

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

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

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

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

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

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

<sup>a</sup> FY 80 figure does not include an \$83,000 supplemental appropriation by Governor

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

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

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

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

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

Although the Commissioner claims repeated requests for new positions were denied, the same memorandum indicates that during the preceding three years the Commissioner requested a total of 4.5 positions and received 2.<sup>1</sup> The Division got the extra person requested in FY 79; in fact, that year the Commissioner got 97.8% of his workers' comp budget request -- and the 2.2% cut was not made by the Legislature, but by the Governor. Last year it was the Governor -- not the Legislature -- that took a major chunk out of the Division's budget request increase; the Legislature's comparatively dainty bite was more than restored by a supplemental appropriation from the Governor.

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

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

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

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

## (2) Modernizing the Record-Keeping System

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

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

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

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

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

<sup>3</sup> Dept. of Labor, "Report to the IALABC on Promptness," Exhibit K of Analysis & Recommendations (op. cit.).

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

The internal review also reports:

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

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

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

<sup>1</sup> Dept. of Labor, Analysis and Recommendations (op. cit.), p. 9.

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

lack the knowledge or the capability to fight back.

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

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

### (3) Hearing Referees, Investigators

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

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

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

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

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

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

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

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

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

(4) Rewriting the Statute

Because the statute governing workers' comp has been amended piecemeal over the years, the Commissioner of Labor told critics of the comp system Oct. 5, "Alaska is in real need of a real rewrite."<sup>1</sup> Despite the Commissioner's belief that a complete rewrite of the law is necessary, this year the Division plans to introduce only a few minor changes the Director describes as "mostly house-keeping," and the Division has no plans to rewrite the statute at this time. It is not clear when the Commissioner concluded a rewrite was necessary, or what action he has taken in this regard. Meantime, the comp claimant who wants to learn the law must wade through a statute that begins with a 13 page index to key terms (which are undefined), followed by 103 pages of densely packed legal phrasing and 9 pages of Board rules. For some suggestions on changes in the law, see Chapter 5.

(5) Explanatory Booklet

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

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<sup>1</sup> Dept. of Labor tape, Oct. 5, 1979

<sup>2</sup> See speech of Minn. comp task force chief Steve Keefe (App. .)

<sup>3</sup> Division of Insurance has been no more responsive to this proposal. See Ch. 3 .

(6) Claimant Complaints

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

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

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

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

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

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

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

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

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

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

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

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

<sup>3</sup> Marvin E. Lewis in Lewis & Sadoff, Psychic Injuries, p. 380.

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

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

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

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

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

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

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

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

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

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

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

(7) Summary

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

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

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

### C. Division of Insurance

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

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

AS 23.30.030(7) reads (emphasis added):

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

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

<sup>1</sup> For statement of the Division's interpretation of the law as it relates to workers' comp, see the Division's transcript of workers' comp rate hearing, Anchorage, Nov. 8, 1979.\* Similar interpretation expressed to this writer in interviews in April and December 1979. Director of Insurance Kenneth Moore referred all substantive questions for this project to the Chief of Market Surveillance.  
(\* Claimant testimony portion appended to this report.)

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

Last spring, when this writer asked the Anchorage office chief how many comp claimants bring problems to his office, he checked with his staff and reported back that his office routinely forwarded about three complaints a week to the Workers' Comp Division. He seemed somewhat surprised by the frequency of comp complaints and acknowledged that if comp were a field of insurance for which his office had responsibility, that rate of complaints would require attention. However, he explained, claimant comp problems are outside his jurisdiction.<sup>1</sup> In December Division officials said they had not instituted any procedures to keep tabs on the number of complaints shuffled over to the Workers' Comp Division; nor had efforts been made to learn what action, if any, the Workers' Comp Division takes on complaints about the insurance that accounts for almost one-fourth of the total insurance premium bill in Alaska.<sup>2</sup>

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

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<sup>1</sup> Interview in Anchorage, April 1979. See Anchorage Daily News, April 30, 1979.

<sup>2</sup> Interviews with Division personnel, December 1979.

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

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

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

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

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

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

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

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

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

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

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

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<sup>1</sup> For background information on Alaska premium and benefit rate levels, see the following:  
 Legislative Affairs Agency, Workers' Compensation Rates in Alaska (A Study by Woodward and Fondiller Actuarial Consultants; Feb. 1977)  
 Legislative Affairs Agency, Workers' Compensation (The Feasibility of Establishing A State Fund; Feb. 1977)  
 Division of Insurance, Hearings on Workers' Comp Rates, Ketchikan, Anchorage and Fairbanks, Nov. 1975 (2 vols.; on file with Division of Insurance)  
 Division of Insurance, Alaska Workman's Compensation Insurance Rate Hearing, Anchorage, Nov. 8, 1979 (on file with Division of Insurance)  
 Division of Insurance, Order 76-1 (Feb. 17, 1976)

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

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

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

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

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

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

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

(1) What percentage of the workers' comp premium bill goes to claimant income maintenance?

(2) What percentage goes to medical examinations, treatment and rehabilitation?

(3) What percentage goes to attorneys and other costs associated with disputed cases?

(4) What percentage goes to carriers for administrative costs?

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

(5) What percentage goes to carriers as profit?<sup>1</sup>

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

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

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

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

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

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

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

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

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

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

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<sup>1</sup> NCCI does not audit data carriers submit but does try to ascertain accuracy.

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

<sup>3</sup> See Division of Insurance rate hearing transcript (op. cit.).

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

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

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

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

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

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

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

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

Chapter 5. Conclusions

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

A. Recommendations for Immediate Action

Immediate short-term measures that might be taken include:

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

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

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

a. Workers' Comp Division Failure to Enforce Statutes

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

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<sup>1</sup> See Chapter 3.B.2. above for a description of the Division's operations; for potential impacts on the individual claimant, read case 2.B.2.

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

(b) Division of Insurance Failure to Enforce Statutes

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

## 2. Special Review of Division and Board Actions

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

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

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

<sup>1</sup> For Florida statute mandating a report on problem areas, see Appendices.

#### 4. Explanatory Booklet

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

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

#### B. Some Suggestions for Long-Term Consideration

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

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

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

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

2. Revision of Statute

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

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

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

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

### 3. Interagency Interaction

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

### 4. Need for Fiscal Information

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

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

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

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

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

5. Proposals to Reduce Premium Rates for Small Employers

Minnesota has tried two programs that might reduce comp premium rates for small employers. One program is a state reinsurance program which takes responsibility for all benefit payments over \$300,000, thus reducing the risk to the carrier that the carrier may have to pay a virtually unlimited amount on even a small policy. The other idea, which Minnesota borrowed from Florida, is a mechanism that allows small businesses to band together to purchase comp insurance. This gives the group the potential for purchasing a large joint policy at the lower rates a large company enjoys because it spreads its risk, because it can get the benefit of rating techniques that are not possible for small employers, such as retrospective ratings. The Legislature might wish to examine whether statutory changes would be necessary to effect these changes in comp insurance, and whether these and similar proposals might reduce costs to the employer without reducing benefits.<sup>1</sup>

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<sup>1</sup> See remarks of Minn. State Sen. Steve Keefe, included in appendices.

6. Proposals for a State Fund

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

7. Task Force

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

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

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

-3-

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

## Appendices

### List of Items in Appendices

1. Statements of Legislative Intent (from Washington and Oregon statutes)
2. Remarks of Minnesota State Sen. Steeve Keefe at Legis 50 Conference
3. Alaska Workers' Compensation Insurance Rate Hearing (Nov. 8, 1979 — abridged transcript)
4. Some documents supporting Case Narratives in Chapter 2.
5. Commissioner of Labor's Workers' Comp Budget submission to Budget Review Committee, Nov. 16, 1977
6. Affidavit of Roy L. Kuhl
7. Oregon Workers' Compensation Department Organization
8. Workers' Compensation Brochure Printed by Florida Division of Workers' Compensation
9. Newspaper articles on Alaska workers' compensation

THESE ITEMS ARE ON FILE AT HOUSE LABOR & MANAGEMENT COMMITTEE

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

Received  
11/2/79  
gl

TO: REP. BRIAN ROGERS  
HOUSE LABOR & MANAGEMENT COMMITTEE

FROM: RICHARD A. FINEBERG

RE: WORKERS' COMPENSATION CONSULTING

DATE: NOV. 1, 1979

When I raised the subject of the relationship between serving the legislature as a temporary consultant on workers' compensation and reporting on the same subject for newspapers, you expressed the idea that my past activities in this regard (the research and writing of two detailed series on workers' comp for the Anchorage Daily News and the Alaska Advocate) simply added to my academic and research credentials and demonstrated my familiarity with the subject.

After I brought this matter to your attention, I discussed it with other working journalists. They were in general agreement with our assessment. In talking to the Daily News, I mentioned several new developments that have taken place in the comp field since the pieces I wrote for them last April. Because of the complexity of the subject, the Daily News asked me if it would be possible to give them an update on workers' comp before I sign on as a consultant. Since this subject is one that inevitably gets short shrift from reporters unfamiliar with it -- if it gets treated at all -- I have done that piece for the Daily News. I anticipate that they'll be carrying it early next week.

When I begin consulting work on workers' comp, my state time will be devoted solely to legislative research; the only relationship to my past reporting activities is that the legislature will have the benefit of both the general background and the specific information I acquired on the subject in the course of covering it freelance for the Daily News and The Alaska Advocate.

SUMMARY  
OF  
WORKERS' COMPENSATION PROBLEMS IN ALASKA

BY  
RICHARD A. FINEBERG

January 21, 1980

The Fineberg report was submitted to the Legislative Affairs Agency in January 1980. The report is designed for use by legislators and has three objectives: to delineate the complaints currently voiced about the State's workers' compensation system by claimants and employers; to assess the response to these complaints by state agencies overseeing the compensation system; and to propose courses of action legislators might take.

Fineberg provides background information in the first section of the report. We have excerpted material which may be of general interest:

- . In 1977, workers' compensation premium and benefit payments in Alaska represented \$107 million.
- . As of 1977, compensation insurance made up 24% of the state's insurance business.
- . The administrative structure overseeing the workers' compensation program for the state has remained essentially the same since statehood, even though there has been a tremendous increase in the dollar value of the program and in the volume of claims.
- . The Alaska Pacific Insurance Company (Alpac) writes 56% of the compensation coverage in Alaska.
- . Thirty-four states and territories (including Alaska) provide workers' compensation coverage through private insurance carriers and self-insurance.
- . Eight states handle workers' compensation through self-insurance and a state fund.

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This summary was prepared by the House Research Agency in response to a request by Representative Brian Rogers and Senator Terry Stimson. We were not asked to critically evaluate this report and have not done so. The analysis and conclusions presented here are those of Fineberg, not of the House Research Agency. However, in a few places, we have noted what appear to be inconsistencies in the text and problems with use of data or statistics. The numbers in parentheses indicate where the reader can find more information in the report.

- . Twelve states and territories offer coverage through all three mechanisms - self-insurance, private carriers and state funds.

#### Claimant Testimony

The second section of the Fineberg report contains short case histories of five injured workers who claim they were treated unfairly by insurance carriers or state agencies responsible for the compensation program. Their allegations are summarized below:

- . Insurance companies suspend temporary disability benefits in order to "starve" claimants into accepting a compromise and release settlement.
- . The companies are required by law to notify the Workers' Compensation Division when they suspend benefits to a claimant so that action may be taken to resolve the case as soon as possible or so that the Division may order interim payments until the case is settled, but they do not always do so. The State is making no effort to enforce compliance.
- . When notified by a claimant or a carrier that benefit payments have stopped, the Division of Workers' Compensation does not respond in a timely manner.
- . In many instances insurance carriers persistently challenge workers' claims, even though it is often their stated position that they side with the worker when a claim is in question. (The report quotes an insurance company executive who said, "I personally would rather pay a claim that was doubtful . . . than to take the chance I had denied benefits to a man unjustly.").
- . A worker whose claim is controverted by an insurance company must incur the expense of providing expert testimony and retaining attorneys in his defense.
- . The Workers' Compensation Board does not independently investigate the facts in any disputed cases even though it is permitted to do so by law.
- . Claimants are treated unfairly by carriers' out-of-state physicians, some of whom consistently testify that workers' claims are invalid.

- . The Workers' Compensation Board does not routinely request an independent medical examination when there is conflicting physician testimony.
- . Companies are sending injured workers to physicians outside of Alaska in order to increase their hardship and quicken settlement.
- . Carriers, State agencies, and elected officials are not responsive to citizen complaints.

#### Agency Response to Claimant Problems

In this section, Fineberg attempts to gauge how adequately the two State agencies with workers' compensation responsibilities - the Department of Labor's Workers' Compensation Division and the Department of Commerce and Economic Development's Division of Insurance - are addressing injured workers' complaints. In summary, Fineberg found that neither agency could reliably estimate to what degree claimant complaints are justified; personnel in both divisions are overloaded; there is little interaction between the agencies.

Addressing the Workers' Compensation Division specifically, he noted the following findings:

- . The Workers' Compensation Division workload increased approximately 200% between FY 1975 and FY 1979<sup>1</sup>
- . The Division estimates it currently handles 15,000 - 20,000 individual claims annually. "Disputed cases probably total 15 to 20 percent of that figure."
- . The Division has not received enough funding to keep up with the increase in work.
- . Although the Department of Labor claims that "legislative inattention and budget-cutting" have caused the Division's

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<sup>1</sup> According to Fineberg, the Division is not certain why there has been such an increase. Fineberg cites some of the explanations he encountered: "Population growth, coupled with the benefit increase of 1975 (which looks increasingly juicy during the post-pipeline period of high unemployment), may be contributing factors; part of the increase may be caused by decline in the quality of claimant services" (p. 26).

manpower shortage, the "Department's failure to request adequate funding in a timely manner and the Governor's budget cuts are both more significant factors than legislative action" (p. 27).

- . The Division has recently made improvements in its record-keeping system and anticipates it will be able to assess penalties against carriers who do not comply with time constraints set by statute.<sup>2</sup>
- . The Division has recently begun fining insurance carriers a \$100 civil penalty if they do not report within 16 days that they have suspended a claimant's compensation. "At this time, an individual may holler and get his temporary benefits reinstated, but the Division has no way of knowing whether this is an isolated incident, or whether the carrier is similarly squeezing other claimants (into accepting a settlement) who lack the knowledge or capability of fighting back." (p. 31)
- . Although State law requires the Division to issue a decision within 20 days of a hearing, the current time lapse is 97 days.
- . The Division is proposing to establish a second computer system to speed the decision process. The new system would index Board decisions by subject and provide hearing officers quick access to precedent decisions. The Division is anticipating that "the knowledge that the Board would rely on precedent might discourage attorneys from bringing some cases to the Board, further reducing the workload". (p. 31)
- . An internal review of the Workers' Compensation Division by the Department of Labor proposed that hearing officers devote their time fully to case adjudication, but did not thoroughly examine other methods of speeding the decision process.

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<sup>2</sup> An internal inquiry in 1978 indicated that only 28% of the carriers had made their first payment to claimants within the required 14 days.

- Because conflicting information is often presented at claims hearings, other states' workers' compensation departments frequently retain their own professional investigating staff.
- Other states also utilize what is called a "referee" system; their workers' compensation boards only hear cases in which a prior decision by a hearing officer has been protested.
- In other states Board members are full-time employees.
- . The State's Workers' Compensation Act needs to be rewritten.
- . A handbook explaining workers' compensation law would significantly reduce litigation.
- . Neither the Workers' Compensation Division nor the Department of Labor has made any attempt to ascertain whether worker complaints reflect the dissatisfaction of a few individuals or unfair operating procedures of the carriers, the Workers' Compensation Division, or the Workers' Compensation Board.<sup>3</sup>

Fineberg's review of the Division of Insurance yielded the following findings:

- . The Division of Insurance asserts that it can only handle complaints concerning insurance carriers who may be engaging in unfair trade practices. Questions claimants may have concerning their benefits are outside the Division's jurisdiction according to the Chief of Market Surveillance.
- . Even claimants who can document an unfair trade practice have no guarantee that the Division of Insurance will take action against the carrier.

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<sup>3</sup>Certain San Francisco specialists used extensively by Alaska carriers to evaluate individuals with back problems are cited in a legal textbook which says they consistently provide testimony damaging to plaintiffs seeking insurance payments. "If the Division cannot respond to serious questions on major cases such as the use and influence of specialists such as Dr. Pennell, one wonders how well the Division investigates day-to-day controversies about other carrier practices..." (p. 37)

A claimant cannot bring trade practice charges against a carrier if his case has not yet been settled.

The Division of Insurance has no guidelines to determine what constitutes an unfair claim settlement practice.

- . Even though the Division of Insurance asserts that it cannot handle claimant complaints, State statute gives them the authority to do so.
- . The Division of Insurance publishes information booklets on some other types of insurance, eg., home-owners and auto, but has not done so for workers' compensation.

In the next section of the report, Fineberg addresses complaints from employers about the high cost of coverage. He appears to conclude that on the basis of information currently available to the State, there is no way of knowing whether the premiums charged employers are excessive. Fineberg believes that in order to answer this question, it would be necessary to know what percentage of Alaska's premium pays for (1) injured workers' income maintenance; (2) injured workers' medical expenses; (3) litigation and claim dispute costs; (4) carriers' administrative costs; (5) carriers' profits.

Fineberg also suggests that insurance companies' investment income should not be overlooked by policymakers.

. . . in 1974, Alaska comp carriers earned \$2,257,000 in investments held to guarantee future comp payments. The underwriting operation for that year showed a net loss of \$669,000 for all carriers writing comp in Alaska, but the investment income enabled the carriers to pay expenses with \$1,528,000 left over (32,257,000 minus 669,000 = 31,588,000). According to the report, the insurance companies' return on capital - a standard measure of profitability - was a healthy 12.4 percent. However, because comp investment income was excluded from rate-making calculations, comp underwriting in Alaska for 1974 showed on the books as a net loss; since Alaska rates allow a 2.5% profit, the 1974 "loss" data enabled the carriers to push comp premium rates higher when rates were subsequently readjusted to reflect actual experience (p.45).

The report notes that some states require carriers to write premiums at a theoretical loss to "balance the profit they will earn on investment income before they eventually pay out on claims."

Fineberg cites studies which have concluded that carriers operating in Alaska are not significantly over-reserving. However, he points out that these studies neglected to address all carrier investments; and did not determine whether or not carriers are overestimating funds they currently set aside on statistical probability that an unforeseen loss will occur in the future. Investments in this category are known as "incurred but not reserved" (IBNR) and account for much of carriers' investment income, according to Fineberg.

#### Recommendations

In the concluding section of the report, Fineberg outlines what he believes are the policy options for legislators. Some of these he thinks merit immediate action while others are more long-term considerations. He believes that all requests for personnel and equipment to handle the increased caseload in workers' compensation should receive legislative support.

Fineberg makes the following recommendations for immediate action:

1. Public hearings should be held to determine the following:
  - . The extent to which certain statutory provisions have been enforced by the Workers' Compensation Division and the Division of Insurance. Fineberg maintains that ". . . the Alaska workers' comp statute contains provisions that would, if enforced, guarantee the claimant timely and equitable resolution of comp problems such as those described . . ." (p.49);
  - . The extent to which these provisions are enforceable. (Fineberg quotes staff from the Division of Insurance as saying that if a practice is widespread, even though it is in violation of the compensation code, this might indicate that the law, rather than the practice, needs to be changed.)

2. The Fineberg report suggests that there has been enough criticism of decisions reached by the Workers' Compensation Board to warrant a special review of cases that the Board has considered. The review would determine whether the Board's decisions have upheld the intent of the state's workers' compensation law. Fineberg notes that because the Department of Labor has been reluctant to conduct this kind of an investigation, the Legislature might require the review.
3. Legislature should require the Workers' Compensation Division to regularly submit information, indicating, for example, how often carriers delivered first payments within 14 days, and how much time generally elapses between hearings before the Workers' Compensation Board and issuance of a decision.
4. Legislature should mandate and fund a booklet explaining workers' compensation laws in lay terms.

Fineberg also makes the following recommendations for long-term consideration:

1. The state should study ways of making case adjudication more efficient.
2. Alaska's Workers' Compensation Code should be overhauled:
  - . It should include statements of legislative intent
  - . It should include a section defining terms used in the code.
3. Possibilities for closer interaction among the Division of Insurance, the Workers' Compensation Division, and the Division of Occupational Safety and Health should be explored.
4. Legislators should require additional financial information from insurance carriers in the state so that they know how premium dollars are spent. Similarly, policymakers should address the question of whether "the State should play a role in determining where and how insurance company investments are placed."

5. Consideration should be given to the following proposals for reducing small employers' premium rates:
  - . A state reinsurance program which takes responsibility for all benefit payments over \$300,000, thus reducing carrier risk.
  - . A mechanism permitting small businesses to group together to purchase compensation coverage.
6. Legislators should seriously consider a state fund for workers' compensation.
7. An existing legislative committee should undertake review of the State's workers' compensation system.

## Appendices

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WORKERS' COMPENSATION PROBLEMS IN ALASKA

ADDENDA

1. The text of the Florida statute requiring the workers' comp department to report to the Legislature on late payments and late decisions should be added to the appendices. The Florida law reads:

440.25 Procedure in respect to claims and hearing requests.—

• • • •  
(3)(d) Each deputy commissioner or the Industrial Relations Commission is required to submit a special report to the Division of Workers' Compensation in each contested workers' compensation case in which the case is not determined within 30 days of final hearing or within 180 days of filing an application for review. Said form shall be provided by the division and shall contain the name of the deputy commissioner, if the case is before a deputy commissioner; the attorneys involved; and a brief explanation by the deputy commissioner or the Industrial Relations Commission as to the reason for such a delay in issuing a final order. The Division of Workers' Compensation shall compile these special reports into an annual public report to the Governor, the Secretary of Labor and Employment Security, the Legislature, the Florida Bar, and the appellate district judicial nominating commissions.

2. Should report title page say "Prepared for the Alaska Legislative Affairs Agency and the House Labor and Management Committee" (Cover letter addresses report to the Committee.)?
3. Summary & Conclusions (unnumbered p. 2, line 10): Add underlined clarifying phrase: "their tasks on behalf of claimants in a manner")
4. Page 52 (line 12): change irregardless to regardless.

Summary Data from Schedule P - Part 3C														
	XX	XX	28,482	14,941	28,088	8,718	14,423	XX	XX	100.0	100.0	100.0	100.0	100.0
1 Premiums Earned	XX	XX	21,718	14,481	12,828	7,418	12,438	XX	XX	85.3	85.8	88.9	88.0	88.0
2 Loss & Loss Exp Inc'd	LOSS & LOSS EXPENSE THROUGH 1 YEAR													
3 Paid	XX	XX	988	428	323	263	81	XX	XX	3.6	2.9	2.1	3.0	.4
4 Reserve (2) - (3)	XX	XX	20,818	18,973	12,885	7,147	12,349	XX	XX	81.8	82.9	86.9	85.0	88.4
LOSS & LOSS EXPENSE THROUGH 2 YEARS														
5 Paid	XX	XX	1,784	1,479	835	484	XX	XX	XX	7.0	6.7	5.3	5.2	XX
6 Reserve (2) - (5)	XX	XX	19,932	12,922	11,993	6,954	XX	XX	XX	78.3	76.3	79.5	79.8	XX
LOSS & LOSS EXPENSE THROUGH 3 YEARS														
7 Paid	XX	XX	3,430	2,115	1,343	XX	XX	XX	XX	14.3	12.5	8.9	XX	XX
8 Reserve (2) - (7)	XX	XX	18,088	12,284	11,485	XX	XX	XX	XX	71.1	72.5	76.1	XX	XX
LOSS & LOSS EXPENSE THROUGH 4 YEARS														
9 Paid	XX	XX	6,338	3,118	XX	XX	XX	XX	XX	24.9	18.4	XX	XX	XX
10 Reserve (2) - (9)	XX	XX	15,388	11,286	XX	XX	XX	XX	XX	60.5	66.6	XX	XX	XX
LOSS & LOSS EXPENSE THROUGH 5 YEARS														
11 Paid	XX	XX	8,491	XX	XX	XX	XX	XX	XX	33.4	XX	XX	XX	XX
12 Reserve (2) - (11)	XX	XX	19,227	XX	XX	XX	XX	XX	XX	82.0	XX	XX	XX	XX

**SCHEDULE P - PART 3D - WORKMEN'S COMPENSATION**

Calendar Year Premiums Earned, Accident Year Loss and Loss Expense Incurred

	Dollars (000 omitted)							Percentages						
	1 1973	2 1974	3 1975	4 1976	5 1977	6 1978	7 1979	8 1973	9 1974	10 1975	11 1976	12 1977	13 1978	14 1979
Summary Data from Schedule P - Part 1D														
1 Premiums Earned	180,260	187,579	216,374	248,223	329,523	437,299	484,509	100.0	100.0	100.0	100.0	100.0	100.0	100.0
2 Loss & Loss Exp Inc'd	170,698	171,132	191,792	233,162	290,541	348,738	400,314	94.7	91.2	88.4	93.9	88.2	79.7	82.6
LOSS & LOSS EXPENSE THROUGH 1 YEAR														
3 Paid	44,323	46,774	48,070	60,754	70,332	79,887	88,012	24.6	24.9	22.2	24.5	21.3	18.3	18.2
4 Reserve (2) - (3)	126,375	124,358	143,722	172,408	220,209	268,851	312,303	70.1	66.3	66.4	69.5	66.9	61.5	64.4
LOSS & LOSS EXPENSE THROUGH 2 YEARS														
5 Paid	85,984	89,711	89,937	112,423	126,050	146,329	XX	47.7	47.8	41.6	45.3	38.3	33.5	XX
6 Reserve (2) - (5)	84,714	81,421	101,855	120,737	164,491	202,409	XX	47.0	43.4	47.1	48.6	49.9	46.3	XX
LOSS & LOSS EXPENSE THROUGH 3 YEARS														
7 Paid	107,185	112,187	116,793	136,164	163,784	XX	XX	59.5	59.8	54.0	54.9	49.7	XX	XX
8 Reserve (2) - (7)	63,513	58,945	74,999	96,996	126,757	XX	XX	35.2	31.4	34.7	39.1	38.5	XX	XX
LOSS & LOSS EXPENSE THROUGH 4 YEARS														
9 Paid	122,316	127,143	131,040	158,450	XX	XX	XX	67.9	67.8	60.6	63.8	XX	XX	XX
10 Reserve (2) - (9)	48,282	43,989	60,732	74,712	XX	XX	XX	26.8	23.5	28.1	30.1	XX	XX	XX
LOSS & LOSS EXPENSE THROUGH 5 YEARS														
11 Paid	132,136	138,421	142,245	XX	XX	XX	XX	73.3	72.2	65.7	XX	XX	XX	XX
12 Reserve (2) - (11)	38,562	35,711	49,547	XX	XX	XX	XX	21.4	19.0	22.9	XX	XX	XX	XX

**SCHEDULE P - PART 3E - FARMOWNERS MULTIPLE PERIL, HOMEOWNERS MULTIPLE PERIL, COMMERCIAL MULTIPLE PERIL, OCEAN MARINE, AIRCRAFT (ALL PERILS) AND BOILER AND MACHINERY**

Calendar Year Premiums Earned, Accident Year Loss and Loss Expense Incurred

	Dollars (000 omitted)							Percentages						
	1 1973	2 1974	3 1975	4 1976	5 1977	6 1978	7 1979	8 1973	9 1974	10 1975	11 1976	12 1977	13 1978	14 1979
Summary Data from Schedule P - Part 1E														
1 Premiums Earned	401,035	438,098	467,608	560,747	671,996	729,072	763,108	100.0	100.0	100.0	100.0	100.0	100.0	100.0
2 Loss & Loss Exp Inc'd	249,632	295,575	338,880	340,021	390,871	419,088	497,188	62.2	67.5	72.5	60.6	58.2	57.5	65.2
LOSS & LOSS EXPENSE THROUGH 1 YEAR														
3 Paid	119,216	143,901	161,940	158,951	171,694	197,473	230,731	29.7	32.8	34.6	27.8	25.5	27.1	32.9
4 Reserve (2) - (3)	130,416	151,674	176,940	184,070	219,177	221,615	246,457	32.5	34.6	37.8	32.8	32.6	30.4	32.3
LOSS & LOSS EXPENSE THROUGH 2 YEARS														
5 Paid	186,549	231,416	261,828	234,717	311,858	320,418	XX	46.5	52.8	56.0	45.4	46.4	43.9	XX
6 Reserve (2) - (5)	63,883	64,159	77,852	85,304	79,013	98,670	XX	15.7	14.6	16.5	15.2	11.8	13.5	XX
LOSS & LOSS EXPENSE THROUGH 3 YEARS														
7 Paid	206,214	252,965	289,837	249,152	342,511	XX	XX	51.4	57.7	62.0	51.6	49.4	XX	XX
8 Reserve (2) - (7)	43,418	42,610	49,843	50,869	58,570	XX	XX	10.8	9.7	10.5	9.1	8.7	XX	XX
LOSS & LOSS EXPENSE THROUGH 4 YEARS														
9 Paid	221,272	265,371	309,426	301,691	XX	XX	XX	55.2	60.6	64.2	53.8	XX	XX	XX
10 Reserve (2) - (9)	78,760	70,704	79,494	78,330	XX	XX	XX	7.1	6.9	6.3	6.0	XX	XX	XX
LOSS & LOSS EXPENSE THROUGH 5 YEARS														
11 Paid	229,368	275,286	319,911	XX	XX	XX	XX	57.2	62.8	68.4	XX	XX	XX	XX
12 Reserve (2) - (11)	20,264	20,289	18,969	XX	XX	XX	XX	5.1	4.6	4.1	XX	XX	XX	XX

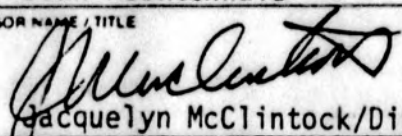
(a) Completion of this data is optional.

Note: Item 2 is taken from this year's Schedule P - Part I and is consequently updated each year. Items 3, 5, 7, 9 and 11 are taken from the Schedule P - Part I (or corresponding Part for years prior to 1975) of the year indicated by the heading immediately above each item, and consequently do not change after once being entered.

5 yr (24) paid  
 $\frac{163784}{290541} = 56.3\%$   
 1 yr (76) paid  
 $\frac{88011}{400314} = 22.0\%$   
 5 yr unpaid  
 $\frac{191792}{497188} = 38.6\%$   
 $\frac{70732}{290541} = 24.2\%$   
 on reserve

# Large Project Funding Packet

**SPECTRUM**

PROJECT NAME		PROJECT NO.	
Worker's Compensation		DL0133	
PROJECT MANAGER NAME		DATE	REVISION
John Recktenwald		9/15/80	
SPONSOR NAME / TITLE		APPROVED DATE	
 Jacquelyn McClintock/Director			

# LARGE PROJECT — PLAN

PROJECT NAME <b>WORKERS COMPENSATION</b>		PROJECT NO. <b>DL0133</b>
PREPARED BY <b>JOHN RECKTENWALD</b>	DATE <b>9/80</b>	APPROVED BY _____ DATE _____

<b>STATUS</b>	1. DEFINITION	2. DESIGN / DEVELOP	3. IMPLEMENTATION
	<input checked="" type="checkbox"/> 1.1 PROJECT PROPOSAL / PLAN	<input type="checkbox"/> 2.1 PRELIMINARY DESIGN	<input type="checkbox"/> 3.1 IMPLEMENTATION PLANNING
	<input checked="" type="checkbox"/> 1.2 USER REQUIREMENTS	<input type="checkbox"/> 2.2 DETAIL DESIGN	<input type="checkbox"/> 3.2 SYSTEM TEST
	<input checked="" type="checkbox"/> 1.3 SYSTEM DEFINITION	<input type="checkbox"/> 2.3 PROGRAM DESIGN	<input type="checkbox"/> 3.3 OPERATIONS TURNOVER
	<input type="checkbox"/> 1.4 ADVISIBILITY STUDY	<input type="checkbox"/> 2.4 PROGRAMMING/TESTING	<input type="checkbox"/> 3.4 START-UP / USER TRAINING
			<input type="checkbox"/> 3.5 SYSTEMS ACCEPTANCE
X = COMPLETE			

<b>SCHEDULE</b>	<b>CURRENT / PROPOSED SCHEDULE</b>	<b>COST / SCHEDULE HISTORY</b>		
	LAST APPROVED COMPLETION DATE <b>8/28/81</b>	FUNDING POINT	DOLLARS TO NEXT FUNDING POINT	TOTAL PROJECT COST
	PROPOSED NEW COMPLETION DATE <b>11/18/81</b>	1 START	14,910	296,190
	VARIANCE TO LAST APPROVED DATE	2 (1.4)	9,120	11/18/81
		3 (2.1)		
		4 (2.3)		
		5 (3.1)		

<b>DEVELOPMENT COST</b>		D O L L A R S			H O U R S		
		ACTUAL TO DATE	ESTIMATED TO GO	TOTAL	ACTUAL TO DATE	ESTIMATED TO GO	TOTAL
	PERSONNEL.....	29,000	156,990	185,990	967	5233	6200
	MACHINE TIME.....			20,000			
	EQUIPMENT.....			90,200			
	MATERIAL.....						
	OUTSIDE SERVICES.....						
	TOTAL.....			296,190			6200
	LAST APPROVED.....						6525
	VARIANCE.....						325
PROPOSED NEW BUDGET.....						6200	
SRB APPROVED BUDGET.....							

<b>OPERATING COST</b>		YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5
	OLD SYSTEM COST					
	NEW SYSTEM COST	122,600	98,400			
	SAVINGS (COST)					

<b>APPROVAL SIGNATURES</b>	_____ SIGNATURE	_____ DATE	_____ SIGNATURE	_____ DATE
	_____ SIGNATURE	_____ DATE	_____ SIGNATURE	_____ DATE
	_____ SIGNATURE	_____ DATE	<i>John Recktenwald</i> SPONSOR	<b>9/18/80</b> DATE

# LARGE PROJECT — NARRATIVE

PROJECT NAME Worker's Compensation System		PROJECT NO. DL0133	
PREPARED BY JOHN RECKTENWALO	DATE 9/5/80	APPROVED BY	DATE

## OBJECTIVE:

- 1) Reduce the incidence of disputed claims requiring Board hearings by 20%.
- 2) Reduce from 60 to 30 days the average number of days parties must wait to be scheduled for a hearing and reduce from 96 to 20 days or less the number of days for a decision after a hearing.
- 3) Increase the percentage of compliance by insurance carriers with the requirement of first voluntary payment of compensation occur within 14 days; from 26 to 45 percent.
- 4) Increase the percentage of compliance by employers with the requirement they report worker injuries within 10 days from 40 to 50 percent.

## HOW IT WOULD WORK:

Case data will be entered to the computer system as it is available and will be accessible by terminals in the field offices. There will be automatic prompting of staff and notification of delinquent parties to a claim. Second injury and litigated claims will be tracked with input by the persons using the tracking system.

Prior Board decisions will be easily accessible by terminal to hearing officers.

Word processing will be integrated into the system. The prior decisions will be available to the word processing system and word processing will be used to output many of the prompting letters.

## WHAT THE SYSTEM WILL NOT ACCOMPLISH:

Data for fraud detection with other agencies will be made available but the actual interfaces are not included.

## HOW IT DIFFERS FROM THE CURRENT METHOD:

Automates previously manual procedures.

There is currently no way to review case status in the field offices.

## POTENTIAL PROBLEMS (DURING DEVELOPMENT AND DURING OPERATION):

Current manual procedures may not be the most effective or efficient. The current filing system is exceeding its capabilities. There may not be adequate clerical staff for data handling. There will be additional staff required to maintain the old system while implementing the new one.

# LARGE PROJECT — BENEFITS

PROJECT NAME Worker's Compensation System		PROJECT NO. DL0133	
PREPARED BY J.L. McClintock	DATE 2/11/80	APPROVED BY	DATE 2-11-80
<b>TANGIBLE BENEFITS (MEASURABLE):</b>			
<ol style="list-style-type: none"><li>1. Will reduce incidence of disputed claims requiring Board hearing by providing the means for resolution of disputes at lowest level.</li><li>2. Will reduce number of days parties must wait between request for hearing and date case is scheduled for hearing.</li><li>3. Will reduce number of days parties must wait between Board hearing and Board issuance of Decision and Order.</li><li>4. Will provide controls for division enforcement of employer/carrier responsibility for timely first payment and notice of benefit suspension and enable automatic assessment of penalties for non-performance.</li><li>5. Will provide controls for division enforcement of employer responsibility to insure for Worker's Compensation insurance.</li><li>6. Will provide for immediate statistical data.</li></ol>			
<b>INTANGIBLE BENEFITS (UNMEASURABLE):</b>			
<ol style="list-style-type: none"><li>1. Will provide for distribution of workload to proper levels.</li><li>2. Will improve quality and consistency of Board decisions.</li><li>3. Will provide cross-match information to other Divisions and Departments, i.e., Safety Program needs, rate making, duplication of benefit payments, employer data.</li></ol>			

# LARGE PROJECT — STATUS

PROJECT NAME Worker's Compensation System		PROJECT NO. DL0133	
PREPARED BY JOHN RECKTENWALD	DATE 9/80	APPROVED BY	DATE
<b>WORK COMPLETED NARRATIVE:</b>  SPECTRUM tasks in Phase 1 are complete including Project Proposal, Project Plan, User Requirements, Systems Definition and Advisability Study except as noted below. The preliminary design sub phase of Systems Design is currently in process.			
<b>PLANNED WORK NOT COMPLETED AND ITS IMPACT:</b>  A portion of the advisability study is being used to evaluate word processing terminals and is being done as information is available. It is not delaying the project at this time.			
<b>PROBLEMS ENCOUNTERED AND CONSEQUENCES:</b>  The uncertainty of what DP system would be available and when has had a noticeable impact on this project. It is resolved at this time but has caused an elapsed time delay of 1 to 2 months. We are still safely within the time frame of the total project.			
<b>ANTICIPATED PROBLEMS AND WHAT WE SHOULD DO:</b>  1) The integration of word processing on a large mainframe is fairly new technology. The timing and availability of an appropriate system is not defined yet. 2) The Administrative Officer for Worker's Compensation will be a key figure in the development of this system before the end of the year.			







## WORKER'S COMPENSATION PROJECT PLAN

The Worker's Compensation Project has been re-estimated as a whole in SPECTRUM 1.4.20 to provide a cost for the project. The project actually will be broken down into 5 projects as outlined in the System Implementation Strategy in SPECTRUM 1.3.18 as the 5 levels of implementation. The project will proceed through an abbreviated preliminary design (2.1) to insure an integrated system will exist when all 5 levels are complete. The balance of the preliminary design will be done in the corresponding sub-projects. The sub-projects are as follows:

- 1) Large Project - On-line Summary File and Carrier Data
- 2) Small Project - Judicial Tracking and SIF
- 3) Small Project - Management Reporting (Batch)
- 4) Small Project - Legal Digest
- 5) Small Project - Fishermen's Fund

The User Requirements (1.2), System Definition (1.3) and Advisability Study (1.4), produced in the current large project, will be used for all 5 projects. Portions of the preliminary design can be used and supplemented with appropriate material for each sub-project as their preliminary design.

## M. LEVELS OF IMPLEMENTATION

The user requirements have been divided into application areas which can be used as implementation modules. These implementation modules are:

1. Legal Digest - This is an independent function from most of the system and can be implemented separately.
2. Summary Claim File - When this is available online in the field offices and home office it will provide the largest benefit of the system. It also involves the largest effort and a conversion.
3. Management Reporting
  - a. Insurance Carrier Data Automation
  - b. Monitoring/Prompting and Additional Reporting
4. SDS
  - a. SDS Tape Extract
  - b. Obtain and Install SDS Edit system
5. IAIABC Reporting - This is a minimal effort
6. Fishermen's Fund - Incorporate the Fishermen's Fund system into the Workers' Compensation system
7. Second Injury Fund - Automate Second Injury tracking
8. Interfaces to other Department of Labor users
9. Interfaces to other Departments
10. Interfaces to outside users
11. Hearings - Involves judicial tracking and automated docketing
12. Electronic Mail - This should be a package available from a vendor and can be implemented when terminals are installed in Anchorage and Fairbanks.
13. Word Processing - This should be available with the acquisition of hardware. It should provide usable output with operator training and no software development.

The following constraints apply: Items 12 and 13 are expected to be available with no development effort. Most other items except 1 are dependent on item 2. The entire system should be designed as an integrated whole before separating into implementation modules.

A phased implementation strategy of the above elements is highly desirable. Each phase should have an estimate and target date.

The phases or levels of implementation of the above modules as prioritized by the Workers' Compensation Division are:

1. System Design, 2, 3A, 4A, 12, 13
2. 7, 11
3. 3B, 5
4. 1
5. 4B, 6, 8, 9, 10

# LARGE PROJECT — SUMMARY OF ESTIMATED HOURS

PROJECT NAME <b>WORKERS COMPENSATION</b>										PROJECT NO <b>DLO133</b>			
ESTIMATE PREPARED BY <b>JOHN RECKTENWALD</b>				DATE		APPROVED BY					DATE <b>9/80</b>		
REMARKS	USER REQUIREMENTS	SYSTEMS DEFINITION	ADVISABILITY STUDY	PRELIMINARY DESIGN	DETAIL DESIGN	PROGRAM DESIGN	PROGRAMMING / TESTING	IMPLEMENTATION PLANNING	SYSTEM TEST	OPERATIONS TURNOVER	TRAINING / START-UP	ACCEPTANCE / WRAP-UP	
	1.2	1.3	1.4	2.1	2.2	2.3	2.4	3.1	3.2	3.3	3.4	3.5	
<b>ADJUSTMENT FACTORS</b>													
1. PROJECT SIZE							.1						
2. PROJECT LENGTH				.1	.1	.1	.1	.1	.1	.1	.1	.1	
3. SIZE OF PROJECT TEAM				-.1		.1							
4. AVERAGE EXPERIENCE LEVEL OF TEAM MEMBERS													
5. EXPERIENCE AS A TEAM													
6. % OF TIME ON OTHER WORK													
7. PROJECT MANAGER EXPERIENCE													
8. PROJECT MANAGER CONTINUITY/ PARKING OF A PROJECT													
9. NUMBER OF USER ORGANIZATIONS TO COORDINATE													
10. LEVEL OF USER UNDERSTANDING													
11. USER SUPPORT & AVAILABILITY				-.1	-.1			-.1	-.1		-.1	-.1	
12. SYSTEM COMPLEXITY				.1									
13. PROGRAM COMPLEXITY							.1	.1		.1			
14. COMPLEXITY OF FILES													
15. NEWNESS OF TECHNIQUES							.2	.2		.2			
16. NEWNESS OF SOFTWARE							.1			.1			
17. MACHINE TURNAROUND													
18. QUALITY OF CONVERSION DATA									.1				
19.													
20.													
ADDITIVE CONSTANT	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0	
TOTAL WEIGHT				1.0	1.0	1.4	1.6	1.0	1.5	1.1	1.0	1.0	TOTAL
TASK ESTIMATES (PAR)				304	496	343	1224	416	295	118	150	173	3519
ADJUSTED ESTIMATE				304	496	480	1958	416	443	130	150	173	4550
MAXIMUM ESTIMATE (+ 15 %)													5233



# Alaska Pacific Assurance Company

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4041 "B" STREET  
ANCHORAGE, ALASKA 99503

November 6, 1979

Mr. Billy Jones  
P.O. Box 3-641  
Anchorage, AK 99501

RE: Injury of 5/10/76

Dear Billy:

When you were in our office last week to pick up your benefits check, you advised that you had spoken to your attorney in Seattle and he advised that we were obtaining your medical reports illegally. Would you please furnish us with the name of your attorney and whether or not you have retained him. An attorney request form is attached for his signature and yours.

You also advised that we would not be receiving copies of your reports from Dr. Chaplin or the pain clinic. Please be advised we will not accept responsibility for payment of this stay at the pain clinic. By copy of this letter we are also informing the Alaska Workmen's Compensation Board of your unwillingness to supply medical reports.

Upon receipt of this letter, would you kindly advise us the name of the attorney you have now retained. An attached self-addressed envelope is enclosed for your convenience in forwarding us this information.

Very truly yours,



Elaine McNamara, Adjuster  
INA Claims Department

EM/pg

cc: File

c/o 2702 Denali, Anchorage, AK 99503

Enclosure: Attorney request form  
Self-addressed envelope

ALASKA DEPARTMENT OF LABOR  
Alaska Workmen's Compensation Board  
Box 1147 - Juneau, Alaska

# NOTICE TO THE BOARD THAT CLAIM WILL BE CONTROVERTED

(To be submitted in duplicate to Board, who will forward copy to employee)

NOTE.—This form must be completed and filed with the Alaska Workmen's Compensation Board on or before the 14th day after the employer has knowledge of the alleged injury or death, in all cases where the right of the injured to compensation is controverted.

1. Name of employer Fluor Alaska, Inc.
2. Office address: 1867 Airport Road City or Town Fairbanks, State Alaska 99701
3. Name of injured employee Billy E. Jones
4. Present address: P.O. Box 3-641 ECB City or Town Anchorage, State Alaska 99501  
Alternate Address: c/o 2702 Denali, Anchorage, AK 99503
5. Date of alleged injury or first illness from disease May 10, 19 76, M.
6. Nature of alleged injury or occupational disease Low back (right side)
7. When was notice of injury received from employer? 5/27, 19 76
8. This case will be controverted for the following reasons (State specific reasons to be relied upon):  
As of 4/9/79 cervical problems appeared which we believe to be unrelated to this injury  
and are therefore controverting all treatment for cervical problems by Dr. Trevor Ireland,  
Julian Vickers, D.C., E.E. Waldroup, D.C. and David Chaplin, F.R.C.F.
9. Do you believe that disposition of a claim in this case can be made without the necessity for formal hearing? Yes  No

Name of Insurance Carrier Alaska Pacific Assurance Co./INA  
4041 B Street, Anchorage, AK 99503

Signed by Maurcen Ketzner

Official title Claims Supervisor

Dated November 6

19 79

E111

① Rule 10. Transcript of Testimony (a) Transcript of testimony taken at hearings in compensation proceedings will ordinarily not be reported or transcribed, unless requested.

② Sec. 23.30.172  
Subsection (e)

CLAIMANT			ASSURED	CLAIM NUMBER				
LAST	FIRST	MIDDLE		01	02	03	04	05
JONES	Billy	E.	Fluor Alaska, Inc.	02	16	05	76	102152
								00

For Temporary Total Disability Benefits from 06-06-77 to and including 09-03-77 - 12 weeks, 6 days (13 weeks, 5 days total paid)

PAY Four thousand three hundred twenty six dollars and 54/100

09 01 77  
Amount  
\$4,326.54

Billy E. Jones  
980 Ponce De Leon Ave  
Atlanta, GA

Alaska Pacific Assurance Company

*Carroll M. Neume*  
Anchorage, Alaska

NATIONAL BANK  
OF ALASKA  
ANCHORAGE BRANCH  
ANCHORAGE, ALASKA

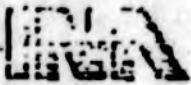
①00524978

①25200051

①01217917

EMN

③ Sec. 23.30.155  
Subsection (e)



INA CORPORATION INSURANCE COMPANIES  
Insurance Company of North America  
Allied Insurance Company  
Pacific Employers Insurance Company  
UNITED CALIFORNIA BANK, 405 Montgomery Street, San Francisco, California  
Fidelity Employers Insurance Company  
Life Insurance Co. of North America  
FIA Insurance Company of Illinois

KL1 513862

FILE NO A G205C102152-A	ACCOUNT NO A C1090051	DATE A 7/5/79	NON CASH VALUE FOR A PAYMENT FROM DATE
PAY TO THE ORDER OF	PAY \$673.02**		DOLLARS \$ 673.02**

TO THE ORDER OF Billy E. Jones

*Carroll M. Neume*  
Anchorage, Alaska

TTD from 6/24 to & incl. 7/7/79 2w.	AMOUNT PAID	834	ANCHORAGE/EMN/v1
(109w, 0d total)	Fluor Alaska		
5/10/76	Jones, Billy E.		
①00513862	①210000551	①621020475	

④ Sec 230.30.095 Medical EXAMINATIONS  
Selection by employee of out-of-state physician - under subsection (a) of this section, an injured employee has no right to select an out-of-state physician without the approval of the Board.

Title

An Act relating to the second injury fund; and providing for an effective date.

Date

Contact:

Judy DuBois  
Phone: 465-2700

Projections for the Second Injury Fund indicate that a serious fund balance problem will exist at the end of FY 80 (see attached). As the results of amendments to the Workmen's Compensation Act over the past five years, the cost of compensation payments to injured workers and reimbursement to employer/carriers has increased by approximately 400 percent. Primarily due to inflation, costs of vocational retraining and rehabilitation have also doubled during this same period.

The general trend has been to increase Workmen's Compensation benefits, thus expenditures with no provision for an increase in revenue. The maximum amount allowable for retraining and rehabilitation (\$5,000) has not increased since enactment of Alaska Workmen's Compensation laws in 1959. Likewise, the present method of obtaining revenue for the Fund has not been updated since July 1, 1970 and does not generate adequate funding to meet current statutory obligations. Present monetary demands on the Fund exceed receipts and the Fund is unable to reimburse employer/carriers in full for payments to injured workers as required in AS 23.30.205. It is forced to make reimbursement on a monthly installment basis. In the future, payments made on accounts owed in past years will combine with present debts to deplete the Fund and the program will be unworkable.

Several meetings have been held by the Second Injury Fund Officer with other members of the Department, Budget and Management representatives, insurance representatives, and Division of Vocational Rehabilitation personnel to consider alternative courses of action which would remedy the impending liquidity problem of the Fund. After analyzing the fiscal impact of cutting or severely limiting services to injured workers, it was determined that an alternative method of generating revenues was the most reasonable and logical course of action to follow.

Our original proposal outlined a plan recommended by the Council of State Governments whereby each employer or carrier shall, under regulations prescribed, make payments to the Fund in an amount equal to that proportion of 175 percent of the total disbursement made from the Fund during the preceding calendar year, less the amount of net assets in the Fund as of December 31 of the preceding calendar year. However, after discussing this procedure with the Administrator of Second Injury Fund from the State of Michigan (Michigan and Georgia are presently the only states operating on the 175 percent system) it was decided that the data systems necessary for the implementation and monitoring of this proposal were not available.

After further researching the matter, it has been decided that the most reasonable and logical means of generating revenues adequate for the Fund to meet its obligation is to provide for payments to the Fund by employer/carriers on all compensation paid for disability and Section .191 benefits. Under present law the fund derives revenue only in cases of permanent partial disability (8% of award) and death (\$10,000 in cases where the employee is not survived by a person eligible for benefits). Our proposal would reduce employer/carrier payments to the Fund to six percent of all disability compensation, and Section .191 benefits paid.

(Continued)

**POSITION PAPER/**Department of Labor

In cases of death, the provisions remain the same. (See #3 attached for payments made to the Fund in cases of death for the past five calendar years).

Division records show that the employer/carriers paid \$24,100,023 in compensation to injured workers during FY 79. Under the proposed system the Fund would have generated revenues of approximately 1.4 million dollars (see attached). Unless construction of the gas pipeline commences over the next two years, we foresee no large increases in compensation being paid. With the continued decrease in the number of Workmen's Compensation claims and the decreasing average annual wage which affect the amount of compensation paid, projections for FY 80 and FY 81 would reflect a lesser figure.

It is anticipated that within one year of implementation of the proposed plan, the Second Injury Fund will again be solvent. We believe that the repeal and re-enactment of these statutes is necessary if the Fund is to continue to meet its obligations and meet the needs of those injured workers eligible for Second Injury Fund benefits, as set out in Section .040 and .205 of the Alaska Workmen's Compensation Act.

The actuaries of the National Council on Compensation Insurance have indicated to the Alaska Division of Insurance that this legislation will cause no impact in workers' compensation insurance premium rates.

SECOND INJURY FUND

COMPARISON OF FUND BALANCES, RECEIPTS AND DISBURSEMENTS

Fiscal Year	July 1 Beginning Balance	Adjustments	Receipts	Disbursements	June 30 Ending Balance
1974	54,376	163,448	184,608	236,842	165,589
1975	165,589	(17,050)	239,481	271,550	116,469
1976	116,469		430,318	329,010	217,777
1977	217,777		445,410	334,133	329,054
1978	329,054		652,998	765,200	196,852
1979	196,852		1,085,600	990,500	291,952
1980	291,952		900,000*	1,236,300	(41,348)**

\* Estimated revenue 1980

\*\* Estimated balance for June 30, 1980

NUMBER OF WORKER'S COMPENSATION CLAIMS AND BENEFITS PAID

CALENDAR YEAR 1979

	<u># REPORTING</u>	<u># COMP. CLAIMS</u>	<u>AMT. COMP. PD.</u>	<u>MEDICAL PAID</u>	<u># MED ONLY CLAIMS</u>	<u>MEDICAL ONLY PAID</u>
<u>1st Quarter</u>						
Self-Insured	14	63	\$ 117,568.99	\$ 64,813.20	40	\$ 16,303.11
Carriers	27	4,584	\$ 5,562,494.01	1,639,939.66	2,614	301,604.47
<hr/>						
<u>2nd Quarter</u>						
Self-Insured	12	72	137,368.47	56,156.58	32	10,301.20
Carriers	25	4,561	6,476,570.09	1,512,283.33	2,477	403,624.75
<hr/>						
<u>3rd Quarter</u>						
Self-Insured	10	181	289,135.24	149,975.15	266	44,007.15
Carriers	23	2,511	3,044,746.53	935,117.60	1,770	262,110.11
<hr/>						
<u>4th Quarter</u>						
Self-Insured	8	32	99,231.92	42,402.82	76	14,501.04
Carriers	22	3,139	3,372,408.67	1,095,218.26	1,972	291,958.00
<hr/>						
TOTALS - Self-Insured		348	643,804.62	313,347.75	464	85,117.50
Carriers		15,195	23,456,219.30	5,182,558.35	8,833	1,259,297.33
<hr/>						
GRAND TOTALS		15,543	\$ 24,100,023.92	\$ 5,495,906.10	9,297	\$ 1,344,414.83

(QUARTERLY REPORTS - AS REPORTED TO THE ALASKA WORKMEN'S COMPENSATION DIVISION BY CARRIERS AND SELF-INSURED EMPLOYERS)

SECOND INJURY FUND

PAYMENTS MADE TO SIF IN CASES OF DEATH

Calender Year	Total No. of Death Reported	Amt. Paid to SIF
1979	51	\$70,000
1978	60	\$120,000
1977	68	\$100,000
1976	99	\$170,000
1975	94	\$180,000

## SECOND INJURY FUND

### CURRENT FORMULA

- 8% of PPD
- EXPECTED TO PRODUCE \$1,600,000 IN REVENUES FROM POLICIES IN FORCE DURING THIS YEAR

\$1,600,000 PPD

\$1,600,000 TOTAL

### PROPOSED FORMULA - HB 1011

- 6% OF PPD, PTD, TTD, TPD
- EXPECTED TO PRODUCE \$1,800,000 IN REVENUES FROM POLICIES IN FORCE DURING THIS YEAR.

- NO CHANGE IN RATE

\$1,200,000 PPD

- REVENUE SLIGHTLY INCREASED.

\$600,000 PTD, TTD, TPD

- CASH FLOW CHANGED.

\$1,800,000 TOTAL

### ALTERNATIVE PROPOSED FORMULA - CEHB 1011

- 8% OF PPD, PTD, TTD, TPD
- EXPECTED TO PRODUCE \$2,400,000 IN REVENUES FROM POLICIES IN FORCE DURING THIS YEAR.

- RATE CHANGE 1.1%.

\$1,600,000 PPD

- REVENUE INCREASED.

\$800,000 PTD, TTD, TPD

- CASH FLOW REVISED.

\$2,400,000 TOTAL

WORKER'S COMPENSATION STUDY COMMISSON

CO-CHAIRMEN: SENATOR TERRY STIMSON  
REPRESENTATIVE BRIAN ROGERS

SEPTEMBER 19th and 20th MEETING

- 1) PRESENTATION BY DIANE SIMONSEN - CLAIMS STUDY
- 2) DISCUSSION VOCATIONAL REHABILITATION/RE-EMPLOYMENT
- 3) PUBLIC TESTIMONY/INPUT
- 4) PRESENTATION BY JACKIE MCCLINTOCK - DIRECTOR, DIVISION OF WORKER'S COMPENSATION
- 5) PRESENTATION BY BOB WILLIAMS
- 6) FORMING OF SUB-COMMITTEES
- 7) DISCUSSION OF NEXT MEETING DATE
- 8) OPEN DISCUSSION AND FURTHER RECOMMENDATIONS BY MEMBERS OF COMMISSION

The proposed Capital Improvement program for Worker Protection involves one data processing project for Workers' Compensation.

The project team assigned to complete the systems definition for the Workers' Compensation Capital Improvement Project has progressed to the point that the proposal of October 24, 1979, may now be amended to properly estimate the project. An additional \$85,000 will be required, bringing the total capital budget to \$296,200. The original agency plan was for a one year capital appropriation to cover development of the data processing software and acquire a piece of microfilm equipment. The Department intended to lease/purchase the necessary data processing terminals and associated equipment in the FY 82 budget once these requirements were defined. In view of the House's action whereby the appropriation would cover two fiscal years, and in view of our progress in defining these equipment needs to date, it would seem appropriate to add these requirements to the capital project budget now and leave the appropriation intact for two fiscal years as provided by the House. This would reduce the recurring future operating costs to those of line costs, systems and hardware maintenance and possibly computer operation costs at the central computer.

The project addresses Governor's Policy Themes 3 and 4 by providing Workers Compensation program an effective tool for capturing and managing complex interdependent sets of data and releasing staff resources to resolve client problems promptly. It also addresses program quality in a legal sense by providing access to precedent information, reducing the ad hoc nature of Workers' Compensation Board decisions.

The policy objectives addressed by this request are:

Policy Budget Objective No.

2. Reduce from a 96 day average to 20 or less the number of days parties must wait for decisions of the Board after hearing.
3. Increase percentage of compliance by insurance carriers with statute requiring first payment of compensation within 14 days from 26 percent to 38 percent.

The impact of this request on these objectives is estimated to be as follows:

Objective No.

2. Through prompt and secure information handling, the Compensation Officer/Hearing Officers will reduce incidence of resisted claims, reducing the Workers' Compensation caseload by 20%. Through access to

**32 ANALYTIC STATEMENT  
(Six-Year Capital Program)**

CATEGORY Public Protection  
AGENCY Department of Labor  
PROGRAM Worker Protection

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precedents, the quality and consistency of decisions will be increased and the time required for research will be reduced.

3. By automatic prompting of staff and notification of all delinquent parties to a claim, first payment timeliness will be improved. Reduced staff time in manual filing and retrieval will be applied to first payment monitoring and enforcement. The estimated impact is achievement of the long range objective in FY'82 and increasing the rate to over 50% compliance in FY'83. Concurrently, penalties may be promptly assessed at the Board level with a deterrent affect on the carriers.

Other Impacts are Anticipated

Access to claim files in the field offices will enable Compensation Officers to resolve disputes in the early stages, thereby reducing the number of Board hearings. This will consequently reduce litigation and its costs for all parties. While this cost is not the main cost component to the parties it is an area that will benefit them.

This proposed system will accomplish the following:

A. Claimant Injury File

1. Front-end entry of injury/illness reports.
2. Prompt timely first pays.
3. Prompt listings of missing information and/or reports.
4. Assist Workers' Compensation Officers in maintaining current case files.
5. Allows Workers' Compensation Officers to promptly docket controverted cases for Board hearings.
6. Provide accurate and timely management reports.
7. Monitor final pay of Employer/Carrier with affirmation of claimant.
8. Provide front-end coding for SDS report.
9. Identify Employer/Insurance carrier.

B. Legal Digest File

1. Provide Board with index of precedent decisions of similar cases. (Indexed case files will be available at law libraries in Anchorage, Fairbanks and Juneau.)
2. Provide claimants, Employer, and/or carriers with same information.
3. Insure consistency of decisions from both panels of Board.
4. Provide new Board members with a learning tool to enable them to reach quick and logical decisions.
5. Maintain an updated central file of all Board and Court decisions on Workers' Compensation cases.

**CONTINUATION  
FROM:**

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Project Title Workers' Comp. Information Handling System		Location(s) Juneau		Election Districts Served Statewide		Start Date SCSHB60E.D.		Completion Date 1-1-82	
AGENCY REQUEST			Operational Cost & No. Personnel Increase -- (Decrease)		First Operating Year <u>82</u>	Ultimate Annual Year <u>83</u>	GOVERNOR'S REQUEST Approved <input type="checkbox"/> Deferred <input type="checkbox"/> Disapproved <input type="checkbox"/>		
.1002	Federal Receipts		Funding	Federal Receipts			1002	Federal Receipts	
1003	G/F Match			General Fund	122.6	98.4	1003	G/F Match	
1004	General Fund	296.2	Source				1004	General Fund	
1005	I/A Receipts						1005	I/A Receipts	
	G.O. Bonds		Total Annual Operational Cost		122.6	98.4		G.O. Bonds	
			Position (FTE)		1.0	.5			
			Previous Year-Priority	Agency Priority	Governor's Priority				
	Total	296.2						Total	

**PROJECT DESCRIPTION**

**I. Project Need Statement**

One of the objectives of the Workers' Compensation Division is to assure timely first payment of benefits to claimants who have suffered time-loss due to injury or illness on the job. The present computer system is inadequate to provide timely management information or retrieval of claims data. In order to monitor claims activity for timely reporting and resolution, the Division receives copies of all injury reports, physician's reports and first and final payment reports from insurance carriers or self-insured employers. The present method for monitoring the approximately 20,000 cases per year includes 4 manual processes: receipt, sorting, assignment of case numbers, and coding. These amount to more than 180,000 clerical transactions per year. Of these transactions 9 out of 10 must be completed before the Division can respond to or resolve problems. The Division, due to limited funding and workload increases has been unable to complete these mandatory processes in a timely manner. This untimeliness has prevented the consistent enforcement of the statutory claim payment provisions, resolution of disputes, where possible, before a Board hearing is required, and the assurance that all documentation is present for the Board to review. Further, the information availability is so untimely the staff spends inordinate time manually searching on any request for information from the parties to a claim. Searching for files is further complicated because time-loss cases are often out of circulation for statistical data entry. In addition, when action is being taken on a claim, the case file is in the custody of a Compensation Officer, again removing the case records from circulation or review by the Second Injury Fund Officer or response to an inquiry.

**35a PROJECT DESCRIPTION -  
PROPOSED CAPITAL  
PROJECT**

CATEGORY Public Protection  
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A second objective of the Workers' Compensation Division is to reduce the time the parties must wait for decisions of the Board after hearings. There is currently no retrieval system for researching Board or Supreme Court decisions; consequently decisions issued by the three regional panels are sometimes inconsistent with precedence and even each other. Access to a digest of prior decisions will provide a much needed research tool that will enable the Board to issue orders promptly and consistent with prior decisions. This will reduce hearings which are a result of court remands or Board modifications. The digest will provide immediate access to claimants and Employer/Carriers on precedent rulings of the Board and/or Court on similar issues which may enable the parties to resolve a dispute without a Board hearing. Also, the digest will be invaluable for training Board Members and Division staff.

**CONTINUATION  
FROM:** 35a

CATEGORY Public Protection  
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B-10-4

Capital Project Expenditures (Cash Flow)	Total	Budget Year	Budget Year Plus 1	Budget Year Plus 2	Budget Year Plus 3	Budget Year Plus 4	Remaining Cost
Planning and Engineering							
Land							
Construction							
Equipment							
Administration and Other							
Total Annual Expenditure (Capital Cost)							

**Project Justification**

II. Project Description

The primary requirements for an upgraded data processing and information handling system are (1) front-end data entry of key claimant information, (2) timely updates to the system, (3) on-line inquiry capability through remote terminals in Juneau, Anchorage and Fairbanks, and (4) on-line retrieval of the legal digest of prior decisions from the Board. To achieve these results, the Department has designed a multi-phase project to include: (1) systems definition, (2) general design with redefined requirements of the project in phase I, (3) detail design and (4) programming through implementation.

Approach

The workers' compensation project has completed the systems definition phase. The chosen course of action is to use the Department of Labor 370/148 and to use a phased implementation of a computerized information handling system. The phases identified are:

- 1) On line claim summary file and employer/carrier data
- 2) On line judicial tracking and Second Injury Fund
- 3) Management reporting
- 4) Legal digest and integrated Word Processing
- 5) Fishermen's Fund

**Project Type**

- Building Construction (C)
- Other Improvement (I)
- Equipment (E)
- Land (L)
- Professional Services (P)
- Other (O)

**Project Characteristics**

- Totally New Facility
- Addition to Existing Facility
- Renovation of Existing Facility
- Major Maintenance or Repair
- Supplement Previously Authorized
- Funds to Enable Completion
- One of Several Phases
- Major External Funding Source
- Other

**Site Features**

NO YES

- Site Currently Owned?
- All Utilities Available?
- Access Already Available?

PROJECT TITLE W/C Information Handling System

CATEGORY Public Protection

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PROGRAM Worker Protection

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**35b**

PROJECT JUSTIFICATION

**PROPOSED CAPITAL PROJECT**

III & IV Documentation of Capital & Operating Costs

		Equipment	
<u>Juneau</u>		Acquisition	Operation
1	3276 Terminal	8,000	41.50
4	3278 Terminals	12,800	62.00
1	3287 Printer	6,500	50.00
1	3278 Compatible Word Processor with 60 CPS printer	15,000	125.00
1	Modem		35.00
1	Phone line		44.00
<u>Anchorage</u>			
1	3278 Compatible Word Processor with 60 CPS printer	15,000	125.00
1	3278 Terminal	3,200	15.50
1	3287 Printer	6,500	50.00
<u>Fairbanks</u>			
1	3278 Compatible Word Processor with 60 CPS printer	15,000	125.00
	Disk Storage - 49K (3 years data) (admin. rates)	_____	<u>196.00</u>
<u>TOTALS</u>			
	Terminals	37,000	494
	Word Processors	45,000	375
		<u>82,000</u>	<u>869</u>
	Plus 10% Contingency	8,200	x 12 mos.
		<u>90,200</u>	<u>10,428</u>

W/C Information Handling System

CATEGORY Public Protection

**CONTINUATION  
FROM:** 35b

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Operation Costs

Equipment	10,428
System Programmer Support	44,000
Data Processing Charge Back	50,000
Printer Supplies	7,000
	<u>111,428</u>
10% Contingency	11,143
	<u>\$122,571</u>

V. Identification of Alternatives

The systems definition phase of the Workers' Compensation Project included identification and evaluation of alternatives. The following decisions were made:

- A. An alternative is to leave the system as it is. The increasing court interest and inefficiency in information handling make continuance of a manual system undesirable in both a "quality of decision" and "timeliness" sense.
- B. The Department of Labor, ESD, has aquired an IBM 370/148. This system has been selected as the most cost effective.
- C. Word Processing interfaced or integrated into the information handling system will be used.
- D. Front end microfilming of files will not be used.
- E. Use of a minicomputer has been eliminated.
- F. ATMS/STAIRS will not be used for the legal digest.

W/C Information Handling System

CATEGORY Public Protection

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**CONTINUATION  
FROM:** 35b



W Comp

TO: REP. BRIAN ROGERS

FROM: RICHARD A. FINEBERG  
BOX 81835 - COLLEGE STA.   
FAIRBANKS, AK 99708

RE: WORKERS' COMP BIBLIOGRAPHY AND QUESTIONS

DATE: AUGUST 3, 1980

A useful background volume is published by the U.S. Chamber of Commerce annually:

Analysis of Workers' Compensation Laws (1979 edition)  
Prepared and published annually by the Chamber of Commerce  
of the United States

Contents include state-by-state breakdown, in handy chart form, of:

- == type of law and insurance requirements;
- == coverage of laws;
- == coverage of minors;
- == coverage of occupational diseases;
- == benefits;
- == waiting period;
- == rehabilitation . . . etc.

I don't believe this volume was identified in the bibliography list; it would be most useful. I'm sure the Division has a couple of copies.

During the afternoon I did not hear anyone raise this question: Are there any other states in which one private carrier has 50-60 per cent of the comp market? Does this situation have a potentially adverse affect on delivery of service and competition? Do state antitrust statutes have any bearing here? I believe this line of questioning should be added to the task force list.

Brian,

Virginia Collins <sup>and</sup> would like to  
speak Sat AM if at all possible  
she represents private industry  
~~a~~ sort of counterpart to McClintock

she is with "Collins, Weed & Assoc."

February 2, 1980

WAS

**WILTON ADJUSTMENT SERVICE TOM WILTON**  
EXPERIENCED/PROFESSIONAL INSURANCE ADJUSTING

Brian Rogers  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Mr. Rogers:

Thank you for your January 22, 1980 letter and the copy of the preliminary draft on Workers' Compensation Problems in Alaska, by Richard A. Fineberg.

I have reviewed Mr. Fineberg's draft and have had opportunity to discuss it with some claims managers representing various insurance carriers operating here in Alaska. I have made copies available for them as they were very interested in the comments and general proposals. In brief I will comment on the proposals and the paper prepared by Mr. Fineberg but there is a great deal more details which unfortunately one outside of the insurance industry and in particular the claims aspects of workmen's compensation wouldn't know from his brief investigation and review of these problems.

Generally Mr. Fineberg raises some very good points and it's apparent that he prepared his paper based upon his earlier writings in the Alaska Advocate on his workmen's compensation problems relating to the pipeline activities. It appears he did a hurry up job of preparing this report based upon his experiences as he was attempting to get this report in to the legislature to review it and give consideration to solving some of the problems in this current session. Time and budgetary problems obviously kept him from getting into further details in this report. An example would be he has not contacted the insurance carriers in this investigation other than what contacts he had made in the preparation of his article for the Alaska Advocate and there it was only a contact with one particular insurance carrier whom he was leveling the heaviest criticisms.

I would first of all recommend that if there is any serious consideration to be given to making changes and improving procedures and alleviating alot of the problems we experience in handling workmen's compensation claims in Alaska then a much more detailed and objective study be made by those of us in the industry as well as persons outside of it such as Mr. Fineberg in order that we may clearly identify the problem, make reasonable explanations of how they come about and how they are resolved by the various insurance carriers. About five years ago the State Legislature financed a citizen's committee to make recommendations on improving the efficiency of state government in Alaska

and their proposal was an indepth investigation and resulted in recommendations which eventually assisted in streamlining and saving millions of dollars in Alaska government. Worker's compensation deserves the same study and analysis by those of us who are in it and have the suggestions for improving the structure and by taking input from other areas such as the medical field and the safety field in order to come with a better product.

I'd like to make it perfectly clear that as an insurance adjuster I don't wish to propound the views which some may think only represent the best interest of the insurance carrier and the greatest profitability for that carrier. I have a long extensive background in worker's compensation having been trained extensively in it and realize the social intent of worker's compensation and the moral responsibility of society. I recognize that inequities often arise in any system and we must make any efforts to minimize those inequities and hardships which they pose on people. Worker's compensation by law and tradition is a no fault, socially responsible method of giving assistance to the person injured on the job. Insurance carriers and their adjusters realize this and for the most part carry out thier duties in a very responsible and competent manner. The workmen's compensation act designates the law in Alaska as it pertains to the handling of workmen's compensation claims. The Legislature makes the law which goes into that act and has a responsibility to understand them, change them and improve them to better clarity and for better benefit structure when required. The Legislature needs the information presented to them in a precise objective analysis and not an impassioned plea by a number of claimants who may feel they have been wronged by one particular insurance carrier.

Mr. Fineberg raises numerous issues in his report and it would take me as long to review those issues as it did for him to write them and their simply isn't time. I would agree with the conclusion that additional funding is desperately necessary for the Alaska Workmen's Compensation Board to improve their procedures to speed up the ability to make decisions and rulings. I do not agree with his conclusion to computerize precedent decisions in order that they may simply refer to those decisions without any new thinking.

Obviously the Workmen's Compensation Board has become backlogged in their annual 20,000 claims in controlling the paperwork. I'm not so sure that a computerized system is the answer to that because again there are so many things that go into each individual claim such as the report of claim, report of first payment, the medical report, and any communication or letters from carriers or claimants as well as any disputes which may arise in the course of the claim and to put this all on the computer may not be as simple as it sounds.

There's definitely need to revise the statute and consider ways to improve the problems of first pay, allow the Workmen's Compensation Board methods of settling minor disputes short of the formal hearings which they now conduct and allow for greater moutoring of the carrier's in the normal course of handling a claim.

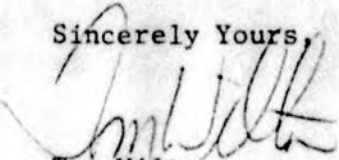
In conclusion I could review in detail many more problems with the current workmen's compensation structure that Mr. Fineberg has raised since I am much

closer to the industry than he. These could come out in the course of a normal indepth investigation by a task force designed to review the entire process and make recommendation to the Legislature to correct the many inequities for both the claimants and the carriers and set up guidelines for future changes in the act. Such an indepth study and investigation could cost the Legislature \$100,000.00 but I believe it's firmly necessary to analyze the situation once and for all and bring about reforms so that our system of handling workmen's compensation can become more sophiscated and responsive.

I'd be happy to testify before the committee regarding the problems of worker's compensation in Alaska. I do have a good overview of many of the carriers operating in Alaska such as Providence Washington Insurance Company, Industrial Indemnity Company of Alaska, The Home Insurance Company, Fireman's Fund, Employer's Insurance of Wassau and others. As an ex-claims manager of Alaska Pacific Assurance Company I've also have some familiarity with their operations even though I've been out of their employ for over three years.

Thank you for your interest and attention to these worker's compensation problems and I'd like to see the Legislature give serious attention to bring about a much needed change in numerous areas of workmen's compensation in Alaska.

Sincerely Yours,



Tom Wilton