

ALASKA LEGISLATURE COMMITTEE FILES 1901-1902

1764

HLC

HB

159

It is our view that the Division of Workers' Compensation, the Board and the Division of Insurance need to have the ability to audit for compliance with the laws and the tools to enforce the laws, but they should not be put into the position of usurping the responsibilities of the private insurance sector in the day to day handling and administering of a very complex act.

2. The whole new reporting mechanism is adding a substantial burden of time and expense to the already expensive cost of handling a workers' compensation case. This additional cost must be loaded into the price of workers' compensation insurance and passed on to the employers. This ordinarily would prove to be no problem to the insurance carrier, however, we are concerned that with the substantially increasing costs on the benefit side of the premium dollar, more and more employers are being forced into alternatives to purchasing workers' compensation insurance. While we cannot attribute last year's legislation and the implementation by the Division of Workers' Compensation concerning these reports as the sole contributing factor to these phenomena, we have observed that the overall increase in cost for workers' compensation has driven employers to either:
 - a. Ignore the law and not purchase workers' compensation insurance;
 - b. Force themselves in some way to qualify for self-insurance status to avoid having to purchase insurance;
 - c. Become involved with groups or alternatives to purchase of single insurance with questionable financial responsibility, or
 - d. In some cases go out of business.

While we recognize that there ought to be periodic reconsideration of the benefit structures and a balancing in light of new public policy of the interest of the injured workers against the cost to employers, we do not feel that it is appropriate to continually increase the expense of the system unless there is some compelling reason to impose new administrative burdens.

We are, of course, concerned that in the last month or so in which the reports have been submitted to the Division, I have been given to understand that the Division has returned forms for minor technical errors and has indicated to the insurance carrier that until the forms were resubmitted correctly the penalty periods would be running. The impact is that for minor technical flaws in filling out the report an insurance carrier could be subjected to severe financial penalties.

We think it is ludicrous that an insurance carrier could be penalized more for failure to submit a report to the Board than for failure to submit the payment to the injured employee.

I have made some effort to try to determine what value this new computer system offers injured workers in the State of Alaska or the Division of Workers' Compensation.

The Division is quick to offer several specific examples of how they have been able to use the terminal access facility to answer questions of claimants who make phone calls to the Division. They also indicate that at some point in time the computer system will enable them to digest data for statistical purposes and also enable them to have immediate access to benefit history for a claimant in order to evaluate compromise and release agreements and other matters coming before the Board.

We believe that the limited value derived from having the computer available does not warrant its substantial expense.

Values of The System

1. Ability to answer claimant's questions.

It is indeed of some value to have access to the history of claim payments when a claimant asks a question of the Division of Workers' Compensation. It should be observed, however, that first not all of the claim payment history is or ever will be in the computer since only changes in payments are required to be reported except at anniversary time. Accordingly, when claimants call prior to an anniversary date only inadequate data will be on the computer and it still will be necessary for the Division to refer a claimant to his insurance carrier to get the full information. Furthermore, the frequency of claimant inquiries at the Division, which they regard as substantial, is miniscule when compared to the number of injured workers in the workers' compensation system.

2. Statistical Data

It is true that the Division has been asked by the legislature and by interested groups to provide statistics on frequency and severity of loss by different classifications in the State of Alaska. In fact, while I was Director of the Insurance Division, I argued that the Division of Workers' Compensation should have that information and in the Richard L. Block & Associates' report of 1980 I recommended that the Division have access to that information. My position in this regard has not changed, and I believe it is appropriate that the Division be able to accumulate relevant statistical information on accident frequency and severity. The computer system which they have devised certainly has the capacity for accumulating that data,

but I would point out that absolutely none of the interim reports filed by the carrier contribute in any way to that information. The only information submitted by a carrier which could be used for statistical purposes is the first notice to the Board of the existence of the accident and the last report filed by the carrier which gives a complete description and evaluation of payments, benefits, cause of loss, etc.

3. Ability to evaluate the propriety of compromise and release claims and other inquiries made by the parties.

The value that the computer will have to determine the propriety of matters coming before the Board on specific cases is, at best, questionable. The fact is that compromise and release claims are submitted to the Board for a variety of factors only a minority of which have anything to do with the amount of payments which have in fact been made to date. A compromise and release agreement submitted to the Board must be approved on the merits of each individual case based on information only some of which will be statistical or financial submitted by the employer and the employee. It is ludicrous to establish a complex computer system to accumulate data on every single claim processed in the State of Alaska in order to provide a facility to approve the few lump-sum compromise and release agreements submitted to the Board when those submitting those agreements can provide that information themselves.

Cost of The System

There is little available information on the true cost of operating this computer system, however, a review of the Division's budget would indicate that there are several employees either in the Division of Administration or in the Division of Workers' Compensation who have dedicated their time to processing the paper work to make the computer system operative.

In addition and not reflected in the Division of Workers' Compensation's budget is the computer time and computer programming costs which would be more properly buried in the Data Processing Division's budget.

Further, there is the time of employees devoted to working the system for interested inquirers.

I have been advised by Jackie McIntock that they are up to date currently in processing the paper work which has come in; but, as the system becomes more mature and claim frequencies increase, there is going to have to be a substantial additional burden placed on the Division of Workers' Compensation to process all of these reports. After all, if there are to be three or four reports for every claim, then the claim

processing capabilities of the Division of Workers' Compensation would have to essentially be equal to the claim data processing capabilities of all of the carriers processing workers' compensation claims in this state at any point in time.

It is our conclusion that this expense, whatever it may be, is not justified to obtain the limited benefits which are gained from that system.

There are some other issues upon which I can only speculate.

I did observe in reviewing the system that there is a substantial amount of confidential information in the computer. I am troubled by the fact that because it is in the possession of the State it comes under the freedom of information provisions and thus the privacy of every workers' compensation claimant is potentially violated. It is possible, for example, for anyone to go into a Department of Labor office and ask for information concerning a claimant and find out his wages, what physicians he has been seeing in connection with his injury, what his workers' compensation entitlements are and other pertinent information, all of which would not be available if the information were not filed with the State.

I was interested to observe also that the Division is maintaining a master list of attorneys and keying each attorney into the cases he is handling. It is thus possible to write a program to access a report showing all fees paid to the lawyers in the State, who their clients are and other information which I believe the members of the Bar would be concerned to learn is now publicly available information. Each lawyer is now designated in the system as an employers' lawyer or an employees' lawyer.

A further collateral issue has to do with the maintenance of the law digest portion of their program.

Frankly, the work done in preparing the law digest function on the computer appear to be extremely well done, and they are to be complimented for putting together a very good program. My concern is not that they have built this aspect of the system, but rather they have concentrated their efforts on making available to their own internal staff an excellent means of accessing opinions of the Workers' Compensation Boards in order to help draft future opinions, but they have devoted no time whatsoever to making printed versions of the workers' compensation opinions available to anyone else.

The history of access to Board opinions in this regard is that for those lawyers who had contacts with the Juneau office, photo copies of mimeographed versions of their opinions could be obtained; but no one else in the State could have access to them except the parties to each case. Now I understand that the Juneau office will not make them available even to lawyers in Juneau. This means that the Board intends to rely on prior cases in drafting its future opinions, but the lawyers who must argue before the Boards will not have access to those opinions in any way. It seems to me that it would be more appropriate for the Division of Workers' Compensation to have created a facility to make the opinions available to a private publishing firm in Alaska, who could have developed the digest and made it commercially available to all lawyers and other interested parties. It may be that the Division is considering making the opinions and the digest available to interested parties which would be a step forward, but it strikes me as completely inappropriate that such a function that could be well done by private concerns is being done by a state agency.

Alternative Suggestion

While I believe it is inappropriate for the State to be accumulating this information, there are certain things which I do believe are appropriate for the employee to have and it is interesting to note that no one has drafted any statute requiring this information be made available to the employee. It is true that in the set of instructions promulgated by the Board, they ask that the original report go to the employee.

It is further our concern that the reports are so complex that in their current form they are probably more confusing to the employee than they are helpful.

I attach a proposed alternative to be included in Section 155.

Its salient points are these:

1. The carrier must report to the employee at every change in compensation.
2. The form upon which such reports are made to the employee must meet minimum standards established by the Board but are not prepared on Board forms. This will permit each carrier to design a simple form which meets minimum standards but which are readable and understandable by the claimant.
3. There are penalties imposed upon the carrier for not submitting the reports in a timely fashion, but instead of the penalties being automatic they are imposed upon application by the employee, are paid to the employee and are determined ultimately by the Board.

4. The Board will receive only a first notice from the carrier acknowledging receipt of some information concerning the existence of a claim and a final notice which provides whatever statistical information the Board believes is relevant to monitoring the workers' compensation system. This, of course, is in addition to the notice of injury submitted by the employee.

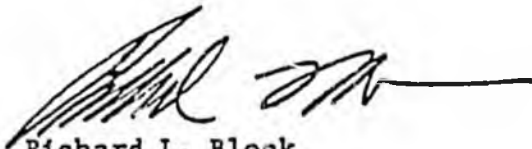
It is our opinion that with the information the Board will be in a position to know all claims have been acknowledged by a carrier and who that carrier is, enabling the Board to refer an injured worker to the proper person handling the workers' compensation claim should any inquiries come to the Division of Workers' Compensation.

Under current law, which we do not propose be changed, an injured worker could file a specific request for hearing before the Board on their workers' compensation claim if they feel they are not being treated properly by the carrier, or may file a claim with the Division of Insurance to investigate whether the insurance company is properly handling the workers' compensation claim and giving it its due attention.

All of the interim reports currently required by Section 155 to be filed with the Board by the carrier would be eliminated.

We regard the change in direction as extremely important and hope the Committee will see fit to adopt the proposed amendment.

Yours cordially,



Richard L. Block
President

RLB/crl

23.30.155 (c) Repeal
23.30.155 (h) Repeal
23.30.155 (m) Repeal
23.30.155 (g) Add

(i) Within 14 days after receipt of any document which evidences the existence of a claim under this Act, the employer or carrier shall file with the Board and provide to the employee an acknowledgment of claim which shall be on a form prescribed by the Board and which shall be for the purpose of providing both the Board and the claimant with the name and point of contact in the state of Alaska for information concerning the claim, proposed disposition of the claim, and claimants rights and entitlements under the Act.

(ii) The employer shall notify the claimant of any change in compensation to be paid to claimant. The notice shall be delivered to claimant within 14 days after a last payment before termination or suspension of payments, or with any payment that is less than, more than or being paid pursuant to a different statutory entitlement than any previous payment or which is a resumption of payments. The notice shall be on a form prepared by the employer but which meets minimum standards set by the Board and shall contain:

- 1) Nature of the change in payment.
- 2) Reason for the change.
- 3) Amount of the change.
- 4) Method of calculation.
- 5) Statutory entitlement being paid, terminated, suspended or modified.

(iii) Within 14 days after final payment of compensation has been made, the employer shall send to the Board a notice on a form prescribed by the Board stating:

1. Reason for closing the case
2. Total amount paid for compensation, medical, rehabilitation and allocated loss expense.
3. Other statistical information as is necessary to determine accident frequency and severity, trends, and which is prescribed by regulation.
4. Other information which the Board determines necessary to properly administer the workers' compensation system.

(iv) If the employer fails to notify the employee, the Board, upon application of the employee, may assess a civil penalty, payable to the employee of up to \$100.00 for each notice not timely rendered.

As of 10-79 \$ 554,828
 As of 10-80 902,697
 As of 10-81 1,160,314*

*Reduced to an effective value of \$902,697 as a result of the Group's Loss Limitation Agreement.

The question is often raised, "Weren't we over-reserved when dividend shares were first distributed?" The answer is, "no!"

The original reserve for incurred, but unreported claims (variations in claims values, unreported claims) was 12%. As of October, 1981 the shortfall in reserves for 1977 amounted to a net 15% after deducting the incurred-but-unreported original reserve. Who makes up the difference? The insurer. This is done through investment earnings on the reserves held for the account of the Group. Certainly, if this income merely decreases the loss short-fall, it certainly cannot be considered a profit to the insurer.

As of October, 1981 the 1977 Group Year carries 21 open cases valued at \$554,000, all of which are still in the medical care stage of development. Next year the medical fee schedule will increase by 33% as a result of medical fee price fixing action in 1981.

Why aren't all claims for 1977 closed? Lots of reasons, mainly due to the character of the injuries themselves. Take the case of the driver who overturned and went off the road in a blizzard in December 1977. His nearly frozen body was found half a day after he was trapped in his truck with head injuries. The extent of his injuries took nearly three years to assess. Permanent brain damage requires institutional care for the rest of his life. The injury is irreversible. Lifetime medicals, lifetime pension, and ultimately, a death benefit. The man is 47 years old, otherwise physically in fairly good shape. What began as a routine frostbite and anoxia case turns out to be a massive neurological disability.

The CMSA Group Isn't The Only Victim Of Claim Maturation.

The California 8293, Mover's, Classification experience over the years shows a constant picture of upward cost development each year. Here is a seven year history disclosed by the California Workers' Compensation Insurance Rating Bureau:

Year	Six Months After Year End Loss Ratio	Thirty Months After Year End Loss Ratio
1971	40.8%	56.5%
1972	45.7	57.9
1973	46.1	45.0
1974	46.5	64.5
1975	52.6	68.4
1976	54.8	63.8
1977	58.3	65.2*

*Only 18 months development

Five Percent Of Mover's Injury Claims Cost Two-Thirds Of The Money.

Severe injuries, deaths, permanent partial and permanent total disabilities comprise only about 5% of all reported work injuries in the moving industry. Yet the dollar outlay for their care involves twice as many claims dollars as are involved in the other 95% of the injuries. The four major causes of loss in the moving industry are:

Strains, sprains including back: 38.3% of cost
 Struck by, striking stationary objects: 5.3% of cost
 Falls: 16.2% of cost
 Moving vehicle accidents: 12.2% of cost

Vehicle over turns generate the largest individual claim cost. (\$23,300 each on the average), striking fixed objects claims are at the lower end of the disabling injury average claims cost scale (\$400 each on the average). Non-disabling claims, so-called medical only claims, represent 54% of all occurrences, currently cost an average of \$157.

Nothing is inexpensive in the injury business. That's why renewed effort at loss frequency and severity reduction is imperative. The progress shown in the 1979-1980 year as well as the industry as a whole, despite inflating costs of services and benefit increases. How do you accomplish this objective? Better activity planning, preventative oriented supervision, training, and fitness (qualification).

How Do You Cope With An Insurance Subject In Which The Cost Of Goods Sold Cannot Be Determined For Years After The Service Has Been Sold At A Fixed Price?

At times it seems that all insurance executives are finance experts. It all looks so easy. If it is so easy, why are most of the nation's major insurers and a large number of the not-so-great companies suffering substantial underwriting losses? Inflation beats out the rising cost of claims after the protection has been sold. To offset the impact of inflation on claims costs, many insurers have made heavy investments in the short-term high earnings money market. Mostly in U.S. Government paper. What is going to happen as short money earnings continue to fall? Plenty. All the cut rates will disappear, it will be back to paying claims out of underwriting, not investment earnings. For a lot of folks that got highly discounted deals from companies using cash flow to fuel competitive strategies aimed at cornering all the cash, there is going to be a considerable shock. There will be no free lunches for the buyer, and the sellers will have

to retreat from the market, their surplus in jeopardy.

Competition can be a great leveller, a destroyer. The extent to which the cash-flow insurance theorists are going reflects their desperation. Take the hysterical effort to get open workers' compensation rating. Most of the insurers clamoring for open rates have never made a case for displayed ability to earn a consistent underwriting profit through good claims management and through efficient administration. Deferred payment plans, cash-flow plans, paid-loss-retrospective plans are systems which appeal to those who believe that there is money to be made on reserves. Large buyers may be benefitted, but at the cost to small insurance buyers. By reducing the spread of risk, economically, by distorting loss information upon which any rate system depends through impecunious claims management, the smaller buyers will suffer.

For years the objective of insurance company regulation was centered on the idea of maintaining solvency of insurers. Today the prevailing idea is that freedom of enterprise must prevail—freedom to compete and freedom to fail. The idea became fashionable as insolvency guarantee associations emerged that require surviving insurers to pick up the losses of failing and insolvent insurers. And so the number of endangered insurers have increased as weak small competitors emerged and conglomerate manipulation of well-established companies raped conservative companies for cash-flow profit. The quick buck, easy solution business is flourishing.

What this all has to do with the Group is simply this. This Group is the alternative to buffeting by all the wide shoe deals that wax and wane in the industry.

Our Group starts out with protecting the equities of the buyer, not the fueling of impossible cross subsidies of insurer's cash-flow dilemmas. It provides quality services, stability, a constant, fair division of underwriting profits on a clear, clean-cut basis, and provides you, as a buyer, with expertise and performance overview that counts. Your Group operates through a system of contractual arrangements with an insurer that makes a commitment to support your Association's objective of a lower net cost system of outstanding protection quality. A lot of the companies now looking at your business today were in hiding years ago. They only come out in the fair weather. Look at their long-term actual performance records; then compare what our Group has done for your industry. Your Group can give more bang for your protection dollar than anyone—even the government-owned, non-profit, non-taxpaying enterprises. Your continued support of your Group means your Group's continued support of your interests. Our plan is working!

California Leads The Nation As User Of Work Comp Benefit System.

The California Workers' Compensation Institute reports that 15% of the nation's work injury benefits were

paid to California workers, with a \$1.422 billion outlay in 1979. Nationwide the payout for job injuries totaled \$11.9 billion, up from 22% the previous year.

Drawn from Social Security research, the study deals with paid claims only, not incurred but unreported or other reserves. Tracking of work injury payments by the federal agency began in 1949. About 20% of all work comp benefits paid in the nation are covered by federal work injury programs.

Rand Institute Releases Its Report On "The Law And Economics Of Workers' Compensation".

The Rand Corporation performs independent objective policy analysis and research on a vast range of subjects, including the Civil Justice System. The report does not attempt to establish a public policy position but it does identify issues about which more should be learned. One conclusion of the report is that the dream of a self-administering system has not been realized because state agencies have not sufficiently participated in clarifying statutes and settling disputes. The clear inference is that litigation has become a popular pastime in the comp business, that's why sharper legal definitions and statutes are never realized. The report cites the fact that 17% of the cost of benefits paid go to the adjudication process. The view of the Rand people is that many workers, weary of the litigation of comp claims are looking to other social insurance programs instead for benefits.

The researchers point out that most of the alternatives to the existing system aren't so hot, either. For example, Tort suits against employers. Suits against third parties. All of which would please the legal profession but put greater distance between the injured worker and basic benefits when he most needs help. Linda Darling-Hammond and Thomas Kneisener, project authors, identify areas in which answers must be found before true work comp reform can be realized:

1. How do the practices of various actors within the system — administrators, insurers, employers, lawyers, employees, and unions — affect the system's outcome, (i.e., who pays and is paid, how much is paid and how promptly)?
2. How do statutes, administrative rulings, and judicial interpretations of the laws affect the outcomes of the system?
3. How do the rules that govern compensation affect the behaviour of the key actors? How do the actors seek to cope with uncertainties created by changes in the rules?

In 1982 there is a strong likelihood that another attempt will be mounted to reform the California Workers' Compensation System. If you would like more information about the findings of the Rand research, write Rand Corporation, 1700 Main Street, Santa Mon-

ica, California 90406 for information about their report R-2716/1CJ.

Year before last when State Senator Greene introduced his bill that was aimed at "making all the changes that would be required for the next 20 years" the only result was a substantial increase in benefits with no reform over the judicial process. Regarded in the Legislature as a matter too technical, even for legislators, the tendency has been to relegate change to the lawyers, the unions, and the government itself. What this Group seeks is to establish an effective advocacy in behalf of employers who are supposed to fund the benefits which must and should be paid to the legitimately injured with as little need for outside predators as possible. How about it? Are you ready for mounting an effort to be heard? Support your Group, urge your peers in the moving industry to join.

Promptness Of Payments Semi Annual Report.

The Department of Industrial Relations released its January to June, 1981 ranking of insurers and self insurers as to the promptness of first payments.

Long recognized as the critical point in which the injured worker makes the decision whether to approach his injury benefit needs on an adversary basis or on a basis of understanding and trust in the system that's supposed to operate simply, the fourteenth day following the injury is pretty important. If the worker doesn't get his first disability benefit payment by the fifteenth day, the odds are he'll get help—and that seldom includes help from a concerned employer. In 104,181 disability cases handled between January and June this year, the average number of days from disability to first payment was 19.4. The law expects the first payment will be made within 14 days. The previous six months record was an average of 18 days.

Your Group urges you to report all claims promptly. Without your report, nothing happens. If you really care, check with your injured, off duty employee to see if his benefits are coming through. If not, call your responding Claims Office or your Agent of Record. Late claims bear with them a penalty loading of 10% of the delinquent benefit. If you don't report promptly, you have no complaints when your loss costs increase. If you can't tell us when the insurer isn't apparently doing his job, we can't free up snarls. Don't wait for the doctor's first report. Simply complete the claim form and get it in. If you are short details, say so but send what you have and let us follow through. **Follow the Action Plan** in your Information To Members Booklet. If you have questions or unusual problems, let's hear about them early on. It will save you a lot of money. **Get involved, stop being a mere spectator.**

EYES LEFT!

As the 1980 legislative products of California pass in review one of the late items to graduate into law may be

the harbinger of substantial increases in workers' compensation benefits next year. Senate Bill 347 (Greene) amends the Unemployment Insurance Code Section 2655 to read "weekly benefit amount from \$30 to \$154 to \$50 to \$175." That pretty well establishes the level to which permanent partial disability benefits and permanent total disability benefits will rise. If this comes to pass without any restraint or better definition of disability conditions or judicial process and review reform, the cost of just one benefit increase could represent as much as a 22% increase in insurance rates. It is difficult to argue that the truly disabled are seriously disadvantaged in the growing spread between actual wages and time-loss benefits earned while unable to work because of a job injury. But what worries everyone is that no one can yet establish, without extensive litigation and arguments in a judicial environment that shuns precedent rule making, just how injured someone is. Doctors disagree, lawyers disagree, insurers disagree, employers disagree, and suddenly the injured worker is the hostage in a system in which everyone but him profits from the uncertainty of it all. Your Group works hard at minimizing the costs of claims, increasing the promptness of benefit payment, and attempts to inform Group Members of the reasons behind questioned conclusions. Your average insurer is interested in moving claims as fast as possible, and is protected by a minimum rate law that raises the ante as costs rise. Your Group doesn't have votes. You do. You can first vote for a safe workplace or you can vote for rising costs. You can't vote or cause to be enacted effective reform legislation unless you are informed and properly led. You need the leadership of your Group, your Association. Your equities in the system aren't going to be protected by anyone else.

Group Renewal For 1981 Under Way.

Your Association has filed its statement of intent to renew the CMSA Group under the underwriting management of the Truck Insurance Exchange with the Department of Insurance and the Workers' Compensation Rating Bureau.

Renewal face sheets should be in the mail prior to December 1, 1981, together with new manual rates. Members should contact your Group by telephone or by mail to indicate changes of address, changes of ownership, or additional workplaces.

Also, if Members have changed accounting firms, the Group should be notified so that a new audit authorization can be prepared for signature.

If you require new **Information To Members** booklets, additional **Action Plan** cards, or claims supplies, call or write your Group Agent of Record, L.E. August, at (213) 986-4610, PO Box 256, Encino, California, 91316. Your Group is now beginning its fifth consecutive year of service to the Members of CMSA.



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LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTION

One

SUBSTANCE:

Grants specific authority to file and use a deductible workers' compensation policy.

POSITION:

Not opposed to the substance but redrafting is indicated.

ACTION:

Obtain redrafting of the language then do not oppose.

BACKGROUND:

This company has already filed and obtained approval for a deductible plan; this provision is not objectionable. The provision is more appropriately found in the Insurance Code with some language revisions.

SUGGESTED ALTERNATIVE:

SECTION 1: AS.21.42. is amended by adding a new section to read:

"21.42.165 - An insurer issuing a workers' compensation insurance policy pursuant to AS 23.30.025 may contain a provision requiring the insured to pay a portion of the benefits due under AS.23.30. provided the provision making that requirement has the prior approval of the Director and provided further the policy provides that as to the employee and the Workers' Compensation Board the policy meets all the requirements of 23.30.025 and 23.30.030. Filing for approval under this section is not a deviation under AS.21.39.077.



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LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTIONS

Two through Eight

SUBSTANCE:

Substantially modifies the approach to providing rehabilitation benefits.

POSITION:

Opposed.

ACTION:

All of the sections must be removed from the bill. If the sections are not withdrawn from the bills the bill must be opposed. Preventing adoption of these sections is considered of highest priority.

BACKGROUND:

Rehabilitation has always been regarded as an important part of the workers' compensation system, however, there has not been agreement as to what constitutes effective and reimbursable rehabilitation programs.

Typically, rehabilitation is provided where it is believed vocational retraining will return the injured worker to the level of gainful employment enjoyed prior to injury in a work setting as closely approximating his work setting prior to injury as his new physical condition will permit.

On the other hand, there are those who believe that the rehabilitation program ought to be used to reorient the injured worker to a life or work style unnecessarily different from that he enjoyed prior to injury.

To develop appropriate cost effective and responsive rehabilitation programs, most carriers use professional rehabilitation counselors who determine the need for, and probable value of rehabilitation programs, develop plans and implement them, all at the expense of the employer.

This legislation would usurp the primary responsibility for making professional determinations concerning rehabilitation from the trained professionals operating in and funded by the private sector and transfer that responsibility to a new, unqualified and expensive state bureau at an initial cost of over one quarter of a million dollars.

More particularly:

Section 2 removes any limit for rehabilitation benefits paid from the Second Injury Fund at the same time the Board is granting full temporary total benefits to workers while they are on rehabilitation.

Section 3 establishes a set of principles to guide rehabilitation efforts. While the principles are essentially not objectionable, they are of no value in a statute unless other statutes in fact accomplish those objectives. It is our view that the other sections do not tend toward the intended objectives.

Sections 4, 5, 6 set up the bureaucracy to implement the intended objectives. The Director of the Division of Workers' Compensation testified that the initial cost to the state would be \$350,000. It is our belief that the more difficult to assess but substantially larger cost would be in the increased costs to employers to fund unnecessary, premature, redundant, ill conceived or unwelcome rehabilitation programs designed and mandated by state designated rehabilitation specialists.

Section 6 [23.30.041 (b)], further provides that the Rehabilitation Bureau may impose a rehabilitation program when ever it deems it appropriate which could be in every permanent total disability case. The costs which could be imposed under this and following subsections could be astronomical. They include:

- a) Extension of the rehabilitation program beyond the first 37 weeks at the direction of the rehabilitation administrator with no defined limit.
- b) Travel to and lodging at any location away from the employees residence for the full rehabilitation period.
- c) Temporary total benefits for the full period of rehabilitation.



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LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTION

Eleven

SUBSTANCE:

Adds a new subsection to give the Board specific definition of permanent impairment.

POSITION:

Not opposed.

ACTION:

No action except to seek modification as indicated.

BACKGROUND:

The Board currently has no specific guidelines for determining the degree of permanent impairment. The proposed section would give the Board authority to establish a schedule for determining the existence and degree of permanent impairment. We believe that the authority to adopt such a schedule is a useful device to add certainty to the system. We would urge however that giving the Board carte blanche authority to adopt a schedule without guidelines is inappropriate.

The Board is currently using, without specific statutory authority to do so, the American Medical Association Guide To Permanent Impairment, a document to which the American Medical Association has devoted a great deal of time and study. We believe this is a satisfactory, impartial, fair, easy to administer, and objective definition of permanent impairment and one with which the medical profession, which must actually render the impairment ratings, is familiar.

We believe that the Board should be directed to use this standard.

SUGGESTED ALTERNATIVE:

We would urge the language be modified as follows:

"(j) the board shall adopt and use the American Medical Association Guide To Permanent Impairments as the basis for determining the existence and degree of permanent impairments".



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LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTION

Twelve

SUBSTANCE:

Requires an injured employee to grant specific authority to release medical information to the employers, carriers and so forth.

POSITION:

Favor, but would suggest an improvement.

ACTION:

Seek an improvement in the measure, but support in any event.

BACKGROUND:

When a workers' compensation claim is filed it is necessary for the insurance company to obtain medical information from the treating physicians, examining physicians, or physicians who have rendered medical care in prior cases for the injured worker.

Doctors are understandably reluctant to give out medical information without having a specific release from the employee in order not to violate their responsibilities of privacy.

This statute requires the employee to execute whatever authorities are required by other physicians in order to obtain release of medical information.

We believe that this is an important addition to the workers' compensation statute.

SUGGESTED IMPROVEMENT:

If a provision were placed in the law which had the effect of pro tanto granting the authority would eliminate the need for getting specific written authority and protect the physicians and hospitals.

Further, the authority in the proposed language relates to medical information only relative to his injury.

It is vital that we have access to medical information concerning prior medical treatments.

For example, it is relevant to any adjustment of a case for injury to the employee to have access to medical records concerning prior injuries or prior illness since it bears on the method of handling the medical treatment of the existing case.

We would suggest the following language:

"Upon the filing of a claim under this Act an employee thereby authorizes all providers of medical treatment pertaining to the injury or rendered prior to the date of injury to release information to the employer. If requested by the employer, the employee shall execute all releases to facilitate access to that information."



Alaska National

INSURANCE COMPANY

A policy of service and protection

LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTIONS

15 & 32

SUBSTANCE:

These two sections of the bill change the degree to which the presence of alcoholism or drugs can defeat the injured employees rights to compensation.

POSITION:

Support.

ACTION:

No action.

BACKGROUND:

These two sections read together change the burden of proof for the employer with respect to alcoholism from the requirement that they demonstrate liquor solely caused the accident to liquor proximately caused the accident, and adds a similar provision with respect to drugs.

We have some cases in which alcoholism was definitely present and a contributing factor to the accident, however, it is clearly the case that no single factor could ever be argued as the sole factor in a accident.

If we could demonstrate that although it wasn't the sole factor it was the proximate cause of the accident it would be useful in defeating some alcoholism and drug related claims.



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A policy of service and protection

LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTION

Seventeen

SUBSTANCE:

Same as Section 11 of CSHB 159 (Sofa) January 25, 1982.

ADDITIONAL COMMENT:

We would point out that if the Legislature is concerned about those carriers which will offset for over payment or advance payments by making no payments at all, we would not be adverse to a provision which reads as follows:

"(j) if an employer has made advance payments or over payments of compensation, he is entitled to be reimbursed, out of any unpaid installment or installments of compensation due up to an amount equal to fifty percent of each of the subsequent payments. If the employer seeks to offset by more than fifty percent of subsequent payments such additional offsets require the prior approval of the Board."



Alaska National

INSURANCE COMPANY

A policy of service and protection

LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTION

Eighteen

SUBSTANCE:

Authorizes lump sum payments.

POSITION:

Support.

ACTION:

Support.

BACKGROUND:

This is similar to Section 12 of CSHB 159, January 25 (Sofo), with this material change; the legislature has added the words "and the parties agree". This means that if the parties agree the Board may authorize the lump sum payment but it cannot do so without the parties concurrence. This was my principle concern with the drafting in the other bill.

IMPORTANT DRAFTING NOTE:

In Section 25 of the proposed legislation there is substantial modification to AS 23.30.190. They neglected to remove the last phrase of subsection (20). In view of the adoption of this section in the bill the last phrase in subsection (20) is unnecessary and should be removed.



Alaska National

INSURANCE COMPANY

A policy of service and protection

LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTION

19, 23, 24, 26, 27, 28 & 29

SUBSTANCE:

Makes changes to reflect a change basis for calculating benefits from 66 2/3% of gross wages to 80% of spendable wages.

POSITION:

Support.

ACTION:

Support.

BACKGROUND:

Changing compensation from 66 2/3% of a workers gross wages to 80% of his spendable wages will probably have salutary effect on the benefit levels particularly with respect to higher wage earners.

The exact magnitude of the savings to be effected by such a change cannot now be determined but it is believed that there will be a reduction in benefits as a result.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y. STATE CAPITOL
JUNEAU, ALASKA 99811
907-455-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 26, 1982

SUBJECT: Worker's compensation
(CSHB 159 (L&C))

TO: Representative Terry Martin
Chairman, House Labor and
Commerce Committee

FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

Paragraph (e) on page 4, lines 17 to 20 of the bill provides:

(e) The employer and employee may agree on a vocational rehabilitation plan. If the employer and employee fail to agree on a vocational rehabilitation plan, a plan may be filed for approval with the rehabilitation administrator.

The second sentence is in the passive form and does not indicate who can file a plan. This leaves an ambiguity.

I have left the paragraph as it is since I understand final determination of who can file a plan has not been made. When that determination has been made the paragraph should be corrected to reflect the decision of the committee.

BGB:ljb

Enclosure

THE LEGISLATURE OF THE STATE OF ALASKA
 TWELFTH LEGISLATURE
FISCAL NOTE

I. REQUEST

Bill/Resolution No. CS for House Bill No. 159
 Title "An Act relating to workers' compensation, and providing for an effective . . ."
 Requested by Labor and Commerce Committee Date 2/18/82

II. FISCAL DETAIL

Agency Affected Labor
 Program Category Affected Worker Protection
 BRU, Program, or Subprogram(s) Affected Workers' Compensation
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)
EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		151.8	178.0	195.8	215.4	236.9
200 TRAVEL		20.0	22.0	24.2	26.6	29.3
300 CONTRACTUAL		122.3	71.3	78.4	86.2	94.9
400 COMMODITIES		3.4	3.7	4.1	4.5	4.9
500 EQUIPMENT		10.4	0	0	0	0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	317.9	275.0	302.5	332.7	366.0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	0	317.9	275.0	302.5	332.7	366.0
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	0	4	4	4	4	4
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

1. Assumes an inflation rate of 10% per annum after FY '83.
2. Assumes an effective date of July 1, 1982.
3. The total cost for FY'83 for the four new positions is detailed on attached forms 13. In addition the following items are included in the FY '83 costs.
(Continued page 2)

IV. DATE February 19, 1982 PREPARED BY Nico Bus
 AGENCY Labor
 PHONE 465-2720
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA
 TWELFTH LEGISLATURE (Continued)

TITLE: An Act relating to workers' compensation, and providing for an effective . . ."

Agency Affected: Department of Labor

Page 2

III. Analysis

A Workers' Compensation Officer I reclassification to a Workers' Compensation Officer II with related travel and contractual services. Cost \$16.6

100 Personal Services	\$ 5.5
200 Travel	5.0
300 Auto, Lease, Indirect, etc.	6.1
	<u>\$16.6</u>

The data processing operations cost will increase by \$14.0 because of enhancements for a tickler system, running two systems parallel and the files expansion to retain the addresses of all claimants.

The printing of 10,000 Workers' Compensation Act's and 25,000 Employee Information booklets. \$35.0

The design and printing of new forms. \$2.5

Computer program modifications to implement the changes introduced by the bill. \$20.0

Equipment expense for computer terminals, panelling, cabinets, and files. \$6.0

Included one-time items in FY '83

Equipment	\$10.4
Booklets and Acts	35.0
Design and printing of new forms	2.5
Computer programs	20.0
	<u>\$67.9</u>

FY'83 Component Breakdown:

<u>Workers' Compensation Administration</u>		<u>Second Injury Fund</u>
PS		\$161.8
Travel		20.0
Contract*	\$47.0	75.3
Commodities		3.4
Equipment		10.4
TOTAL	<u>\$47.0</u>	<u>\$270.9</u>

*\$10,000 Workers Compensation Acts; \$25,000 Information Booklet; \$12,000 Data Processing

1	POSITION TITLE Rehabilitation Administrator			RANGE/STEP 22A	BARG. UNIT.	LOCATION EBA	APPROV.	DISAPP.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No. N/A	PCN No. New Position	PRIORITY	FORM 12 N/A	PAGE/LINE	LEG.

3	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
4	PERSONAL SERVICES: SALARY 3714 x 12		44,568
5	BENEFITS .1592		7,095
6	SBS .0613		2,188
7	FIXED BENEFITS	183 x 12	2,196
8	TOTAL PERSONAL SERVICES 01		56,047
9	TRAVEL 02		10,000
10	CONTRACTUAL 03		15,607
11	COMMODITIES 04		850
12	EQUIPMENT 05		1,600
13	OTHER		
14	TOTAL COST		84,104

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The rehabilitation administrator is necessary to develop and implement a workers' compensation rehabilitation program designed to administer and monitor the rehabilitation benefits of industrially injured workers covered by the Alaska Workers' Compensation Act.

Extensive travel within the state is necessary to provide assistance to approximately 12,000 employers in developing programs for re-employment of injured workers and coordinating counselor services with workers, insurers/employers, labor unions, and rehabilitation providers.

- 9. Travel: \$10,000 (20 trips @ \$500 per trip)
- 10. Contractual: Space \$3,100 (to be transferred to NOA)
Auto Lease & Operating Costs \$5,600
Indirect (11.46% x 44,568 = \$5,107)
Other costs which include communications, equipment rental, etc., \$1,800
- 11. Commodities: Cost per position
- 12. Equipment: Desk, desk chair, side chairs, bookcase, file - \$1,600

	RECEIPT CODE	FUNDING SOURCE	
15		FED RCPTS. 1002	
16		GF MATCH. 1003	
17	100	GEN. FUND 1004	84,104
18		I-A RCPTS. 1005	
19		PGM RCPTS 1028	
20		OTHER	
21	CO. TERMINATION		
22	ADDIT ON	X	

FOR B&M USE ONLY

4A KEY NUMBER

COLUMN NO.

AGENCY Labor PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Second Injury Fund

13 REQUEST FOR NEW POSITION

Page 1 of 4 REVISED DATE _____

FY 83

1	POSITION TITLE Workers Compensation Officer II			RANGE/STEP 18A	BARG. UNIT. GPU	LOCATION JBA	GOV.	APPROV.	DISAPP.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No. N/A	PCN No. New Position	PRIORITY	FORM 12 PAGE/LINE N/A	REG.		

3	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
4	PERSONAL SERVICES.		
	SALARY 3249 x 12		38,988
5	BENEFITS .1592		6,207
6	SBS .0613		2,188
7	FIXED BENEFITS 183 x 12		2,196
8	TOTAL PERSONAL SERVICES	01	49,579
9	TRAVEL	02	5,000
10	CONTRACTUAL	03	14,968
11	COMMODITIES	04	850
12	EQUIPMENT	05	1,395
13	OTHER		0
14	TOTAL COST		71,792

	RECEIPT CODE	FUNDING SOURCE	
15		FED RCPTS. 1002	
16		GF MATCH. 1003	
17	100	GEN. FUND 1001	71,792
18		I-A RCPTS. 1005	
19		PGM RCPTS 1028	
20		OTHER	

21	CONTINUATION		FOR B&M USE ONLY
22	ADDITION	X	

7A KEY NUMBER _____ COLUMN NO. _____

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The workers' compensation officer is necessary to coordinate with workers, employers, insurers and rehabilitation providers to expedite the retraining and re-employment of injured workers. Travel within the Fairbanks and Northern regions will be necessary to coordinate this effort.

- 9. Travel: \$5,000 (10 trips @ \$500 per trip)
- 10. Contractual: Space \$3,100 (to be transferred to DOA) Auto Lease, Maintenance Agreement & Operating Costs \$5,600 Indirect Costs (11.45% x 38,988 = \$4,468) Other costs which include communications, equipment rental, etc. \$2,800
- 11. Commodities: Cost per position
- 12. Equipment: Desk, desk chair, side chair, file, work-table, bookcase \$1,395

AGENCY Labor PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Second Injury Fund

13 REQUEST FOR NEW POSITION.

Page 2 of 4 REVISED DATE _____

FY 83

1	POSITION TITLE Clerk Typist III			RANGE/STEP 9B	BARG. UNIT. GBII	LOCATION AVA	GOV.	APPROV.	DISAPP.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No. N/A	PCN No. New Position	PRIORITY	FORM 12 N/A	PAGE/LINE	LEG.	

3	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
4	PERSONAL SERVICES:		
	SALARY 1530 x 12		18,360
5	BENEFITS .1592		2,923
6	SBS .0613		1,125
7	FIXED BENEFITS	183 x 12	2,196
8	TOTAL PERSONAL SERVICES	01	24,604
9	TRAVEL	02	
10	CONTRACTUAL	03	7,004
11	COMMODITIES	04	850
12	EQUIPMENT	05	700
13	OTHER		
14	TOTAL COST		33,158

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The Clerk III position will provide clerical assistance to the Workers' Compensation Officer in the Juneau Second Injury Fund office and will be responsible for providing and coordinating distribution of information from the claim files to the other regions.

10. Contractual: Space \$3,100 (to be transferred to DOA)
Indirect (11.46% x 18,360 = \$2,104)
Other costs which include communications, equipment rental, etc. \$1,800

11. Commodities: Cost per position

12. Equipment: Desk, desk chair \$700

	RECEIPT CODE	FUNDING SOURCE	
15		FED RCPTS. 1002	
16		GF MATCH. 1003	
17	100	GEN. FUND 1004	33,158
18		I-A RCPTS. 1005	
19		PG&S RCPTS 1008	
20		OTHER	

21	CONTINUATION		FOR R&R USE ONLY
22	ADDITION	X	

4A KEY NUMBER _____ COLUMN NO. _____

AGENCY Labor PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Second Injury Fund

13 REQUEST FOR NEW POSITION.

Page 3 of 4 REVISED DATE _____

FY 83

1	POSITION TITLE Clerk IV	RANGE/STEP 9B	BARG. UNIT. GBU	LOCATION ERA	GOV	APPROV.	DISAPP.
2	TYPE OF POSITION PFT	STAFF MONTHS 12	RP No. N/A	PCN No. New Position	PRIORITY	FORM 12 N/A	PAGE/LINE

3	TYPE OF EXPENDITURE	AMOUNT
	1	2
4	PERSONAL SERVICES: SALARY 1627 x 12	19,524
5	BENEFITS .1592	3,108
6	SES .0613	1,197
7	FIXED BENEFITS 183 x 12	2,196
8	TOTAL PERSONAL SERVICES 01	26,025
9	TRAVEL 02	J
10	CONTRACTUAL 03	7,137
11	COMMODITIES 04	850
12	EQUIPMENT 05	700
13	OTHER	
14	TOTAL COST	34,712

JUSTIFICATION:

It is the intent of the Legislature that an injured worker receive rehabilitation services which enhance returning to work as quickly as possible at earnings as close as possible to the worker's gross earnings at the time of the injury. The implementation of a delivery system to provide timely and adequate rehabilitation services is fundamental in meeting this objective.

The Clerk IV position will provide clerical assistance to the Rehabilitation Administrator and Workers' Compensation Officer and will be responsible for maintaining follow-up on all rehabilitation files.

	RECEIPT CODE	FUNDING SOURCE
15		FED RCPTS. 1002
16		GF MATCH. 1003
17	100	GEN. FUND 1001
18		I-A RCPTS. 1005
19		PGM RCPTS 1028
20		OTHER

- 10. Contractual: Space \$3,100 (to be transferred to DOA) Indirect (11.46% x \$29,524 = \$2,237) Other costs which include communications, equipment rental, etc. \$1,800
- 11. Commodities: Cost per position
- 12. Equipment: Desk and desk chair \$700

21	CONTINUATION	
22	ADDITION	X

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4A	KEY NUMBER	COLUMN NO.
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AGENCY Labor PROGRAM Worker Protection

BRU Workers' Compensation

COMPONENT Second Injury Fund

13 REQUEST FOR NEW POSITION.

Page 4 of 4 REVISED DATE _____

FY 83

WEEK OF FEBRUARY 1, 1982

business insurance

update:

NYIE expects to gain new authority this week

NEW YORK—New York lawmakers are expected this week to approve legislation that would allow the New York Insurance Exchange to directly underwrite risks located outside the state as a surplus lines market. The New York Assembly was to vote Monday on the measure; a Senate vote

Continued on next page

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Court orders equal spouses' benefits

By JERRY GEISEL

RICHMOND, Va.—A federal appeals court ruling mandating equitable pregnancy benefits for spouses could boost thousands of employers' health insurance costs.

In a case with national significance, the U.S. Fourth Circuit Court of Appeals said Newport News Shipbuilding violated the 1978 Pregnancy Discrimination Act by refusing to provide equal pregnancy benefits to wives of male employees in its group health insurance plan.

The appellate court decision is a victory for the Equal Employment Opportunity Commission. It had appealed a lower court decision

that said the Pregnancy Discrimination Act only requires employers to offer equal pregnancy benefits to employees—and not to employees'

spouses, too (*BJ*, Feb. 23, 1981).

The EEOC says if an employer's health insurance plan covers the medical expenses of female employees' spouses, it must equally cover maternity expenses of male employees' spouses.

The appellate court decision upholding that guideline—and the

first appellate level ruling on the Pregnancy Discrimination Act—is a costly blow to employers, like Newport News Shipbuilding, that said EEOC had no legal authority to require equitable pregnancy coverage for male employees' wives.

Newport News Shipbuilding, which has asked the appellate court to reconsider its decision, says equalizing pregnancy benefits for male employees' wives will hike the company's health insurance costs about \$700,000 a year, said Bob Ponton, manager of equal employment opportunity for Newport News which has 23,000 employees.

Nationwide, the cost of equalizing spouses' pregnancy benefits could run into the tens of millions

of dollars for the thousands of employers who do not provide equal pregnancy benefits in their dependent health insurance plans.

"We are talking about massive amounts of money," said Steve Bokat, senior labor counsel for the National Chamber Litigation Center in Washington, D.C.

Employers' dependent health insurance premiums could rise 3% to 14% if they were forced to provide equitable pregnancy benefits for spouses of male employees, according to insurance company actuaries. Firms with predominantly male workforces would face the greatest increases.

However, employers who r...

Continued on page 31

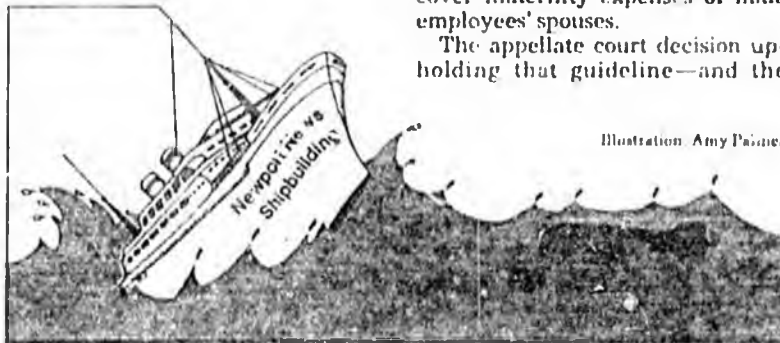


Illustration: Amy Palmer

Court orders equal benefits for pregnancy

Continued from page 1

quire their employers to pay some or all of the cost of dependent health care coverage would be shielded from much of this cost.

Although the appellate court decision only applies in Maryland, North Carolina, South Carolina, Virginia and West Virginia where the 4th Circuit Court has jurisdiction, it could be cited as a precedent in other states where the EEOC is suing employers for failing to provide equitable pregnancy benefits.

For example, EEOC is suing Emerson Electric Co. because the St. Louis, Mo.-based electronics giant's group health insurance plan provides greater benefits to husbands of female employees than to wives of male employees (BI, Sept. 7, 1981).

And with the appellate court victory under its belt, the EEOC will continue to sue companies that won't heed its guidelines on pregnancy benefits for spouses, according to Michael Connolly, EEOC general counsel.

The EEOC maintains that the Civil Rights Act of 1964 makes it clear that there must be equality of benefits for spouses in group health insurance plans. The Pregnancy Discrimination Act amends the Civil Rights Act.

"If an employer makes available to female employees insurance that covers the cost of all the medical conditions of their spouses, but provides male employees with insurance coverage for only some of the medical conditions (i.e., all but pregnancy-related) of their spouses, male employees are receiving a less favorable fringe package," the EEOC says.

The Newport News Shipbuilding case, which benefit managers around the country were watching closely, involved a 1980 suit filed by the firm challenging the pregnancy benefit guideline issued by the EEOC.

In its largest group insurance plan covering hourly employees, Newport News Shipbuilding pays all reasonable and customary expenses for spouses of male employees, but it places a \$500 cap on their pregnancy hospitalization benefits for spouses of male employees.

In the February 1981 ruling, federal Judge Calvitt Clarke Jr. agreed with Newport News Shipbuilding's argument that the Pregnancy Discrimination Act only applied to employees and not to spouses.

"The clear legislative intent behind the Pregnancy Discrimination Act was to ensure that working women are protected against all forms of employment discrimination based on sex," Judge Clarke wrote.

But the appellate court disagreed with this decision. It argues that the Pregnancy Discrimination Act also applies to spouses' pregnancy benefits because those benefits are employment related.

"When an employer considers extension of medical benefits to spouses of employees, it does so with an 'employment-related purpose' just as it does when it considers the extension of such benefits to employees," the appellate court said. "Benefits would never be extended to spouses if the extension did not serve an employment-related purpose."

The appellate court decision "will go a long way to ensuring that employees, both male and female, are compensated equally without regard to distinctions based on pregnancy," said Mr. Connolly. ■

Workers' compensation can pay off big—and in some strange situations

YOUR HIDDEN BENEFITS

by Andrew Tobias

A secretary unhinged by the discovery of her boss' dead body was awarded workers' compensation benefits. So was the widow of a judge whose death was held to have been related to the enormous size of his case backlog. So, too, a foundry worker who hurt his arm banging a recalcitrant vending machine during his coffee break, and an attorney who injured his back stretching across his desk to pick up a pen. (The injury laid him up for 90 days.)

Eighty-eight percent of all salaried and wage-earning Americans in 1981 were covered by workers' compensation insurance against job-related injuries and illnesses. And the definition of "job-related" grows ever broader.

A 37-year-old employee of an American auto parts manufacturer, on assignment in Birmingham, England, collapsed and died in March 1979 following sexual intercourse with a female co-worker. It was determined that vapors from a space heater in her flat had been the cause. Even though their meeting had been held after normal working hours and occurred off company premises, a Michigan administrative law judge ruled that the man's family was eligible for workers' compensation benefits. ("The deceased's work assignment in England exposed him to situations and hazards that were different in nature and degree from those in Michigan," wrote the judge.)

One could write at length about the dreadful ways insurance companies will occasionally abuse their patrons (one large insurer until recently denied that the cost of a cemetery plot, a clergyman or flowers were allowable "fu-

neral expenses"); or, on the other hand, about the dreadful ways policyholders cheat their insurance carriers (an extreme being the man who blew up an airliner to collect on his mother's flight insurance). But here and there in the contentious, inefficient, half-trillion-dollar world of insurance, one finds a relatively bright spot. Workers' compensation insurance, although not without flaws, is one such spot. Most of us have it—we are covered, automatically, by our employers—but few of us think about it. In short, you may be better insured than you think.

Each state has its own rules, but in most, disabled workers receive two-thirds of their pre-disability wage, up to certain limits—*tax-free* (see Table A). In all but a few states, the same weekly benefits are paid during periods of *temporary* total disability, as

well as to the spouse and children of workers killed on the job. Table B shows some of the lump sum payments made *in addition* to weekly benefits.

If a safety inspector in Pittsburgh falls into a blast furnace or a Philadelphia bank executive is murdered by an irate loan applicant, his or her spouse will collect \$13,624 a year in workers' comp benefits, tax-free, for life (or until remarriage). That is, *unless* the deceased happened to be an employee of the federal government (a *federal* safety inspector or an executive of the Philadelphia Federal Reserve Bank), in which case the spouse would collect \$37,596 a year. Federal employees, in whatever state they are employed, have their own special schedule of weekly and lump sum benefits.

A normal Nebraskan thumb is worth \$10,800. If it hangs from the hand of

a Nebraskan on the federal payroll, it's \$54,209. Similarly, the loss of a foot brings \$16,870 to a Californian, but \$148,170 to a Californian on the federal payroll.

Prior to the enactment of workers' (formerly workmen's) compensation laws, beginning in 1911, an injured worker had to prove negligence on the part of his or her employer in order to recoup medical expenses and lost wages, let alone collect damages. The employer, on the other hand—presumably better equipped to wage and wait out a protracted legal struggle—had only to prove that the employee's injury was his own fault ("We never asked Charlie to stick his hand in the machine") or the fault of a fellow worker ("Caspar shouldn't have turned the thing on while Charlie was looking around inside it") or even merely that the worker had taken the job knowing it could result in his injury ("Whoever said coal mining was safe?"). It was a miserable system, not unlike the auto insurance system we still have.

Under the new laws (rather like what no-fault auto insurance ought to be but isn't), workers gave up their right to sue employers for damages in return for a guarantee of swift and certain benefit payments, regardless of fault. Benefit levels have naturally risen many times since 1911 and continue to rise with inflation. Today, coverage is mandatory everywhere but South Carolina, New Jersey and Texas, with very limited exceptions. Claims—millions of them—range from things like paper cuts and ankles sprained in company softball games to mangled limbs and worse. There were 13,000 on-the-job fatalities in 1980.

Workers' compensation insurance cost employers some \$25 billion in 1981, and, like any other cost of business, it was passed on to consumers: about \$300 per household. In Florida not long ago, it accounted for \$2000 of the cost of building a \$55,000 house.

continued



TABLE A: YOUR MAXIMUM WEEKLY BENEFITS

State	1970	1981	Increase	State	1970	1981	Increase
Ala.	\$ 50	\$148	196%	Neb.	\$55	\$180	227%
Alaska	83	859	935%	Nev.	66	245	269%
Ariz.	154	204	32%	N.H.	67	213	218%
Ark.	49	126	157%	N.J.	91	199	119%
Cal.	52	175	237%	N.M.	48	222	363%
Colo.	60	245	308%	N.Y.	80	215	169%
Conn.	84	285	239%	N.C.	50	210	320%
Del.	75	175	133%	N.D.	59	213	261%
D.C.	70	456	551%	Ohio	56	275	391%
Fla.	56	228	307%	Okla.	43	155	260%
Ga.	50	110	120%	Ore.	63	281	314%
Hawaii	113	235	109%	Pa.	60	262	337%
Idaho	43	198	360%	R.I.	70	217	210%
Ill.	71	376	430%	S.C.	50	216	332%
Ind.	57	140	146%	S.D.	50	191	282%
Iowa	56	384	586%	Tenn.	47	119	153%
Kan.	56	170	204%	Tex.	49	133	171%
Ky.	56	233	316%	Utah	47	230	389%
La.	49	163	233%	Vt.	61	208	241%
Me.	73	322	341%	Va.	62	213	244%
Md.	85	248	192%	Wash.	81	205	152%
Mass.	70	245	250%	W. Va.	66	262	300%
Mich.	104	181	74%	Wis.	79	249	215%
Minn.	70	244	249%	Wyo.	35	362	934%
Miss.	40	98	145%	Federal			
Mo.	58	150	159%	Employees	405	723	103%
Mont.	60	219	265%	U.S. Cost of Living Change			135%

Andrew Tobias is the author of "The Invisible Bankers: Everything the Insurance Industry Never Wanted You To Know," to be published later this month, from which this article is adapted. Copyright © 1982 by Andrew Tobias.

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HIDDEN BENEFITS /continued

5 cents of every dollar's worth of garbage collection and \$1.75 of every \$25 bag of groceries!

What made the system so expensive? One worker hurt his hand so badly in a Disney World tram accident, he maintained, that he could no longer drive a bus. He received \$3810 for his disability. Yet he reportedly managed to play pinball right after the tragedy, then to drive back to West Palm Beach. Another worker filed a workers' comp claim the day he was told the CETA program under which he was employed would expire. Ac-

ording to his boss, his injury had been sustained when he deliberately dove out of a moving car.

Florida's sown former insurance commissioner—later convicted of extortion and mail fraud—collected over \$19,000 for a heart attack, arthritis, ulcers and depression. The heart attack occurred in his rush to catch a flight to Las Vegas to attend a convention.

Florida's system has been tightened considerably in the last couple of years, but it typifies the sort of abuses to which any insurance scheme is liable. Which is one of the reasons insurance in America is as unfair and inefficient as it is—but that's another story.

TABLE B: LUMP SUM BENEFITS FOR SELECTED DISABILITIES

State	Arm at Shoulder	Hand	Thumb*	Leg at Hip	Foot	Toe**	Eye
Ala.	\$32,856	\$25,160	\$9,176	\$29,600	\$20,572	\$1628	\$18,352
Alaska	43,680	33,600	10,400	40,320	28,700	2240	22,400
Ariz.	43,725	36,437	10,931	36,437	29,150	1822	21,862
Ark.	25,200	18,900	7560	22,050	15,750	1260	12,600
Cal.	29,488	21,770	3797	32,288	16,670	420	10,553
Colo.	17,472	8736	4200	17,472	8736	924	11,676
Conn.	88,920	71,820	27,075	67,830	56,430	3705	66,975
Del.	43,800	38,544	13,140	43,800	28,032	2628	35,040
D.C.	142,347	111,323	34,218	131,397	95,529	7300	72,998
Fla.	No schedule.	Determined case by case.					
Ga.	24,750	17,600	6,600	24,750	14,850	2200	13,750
Hawaii	73,320	57,340	17,625	67,680	48,175	3760	37,670
Idaho	36,300	32,670	13,310	24,200	16,940	870	21,175
Ill.	48,438	71,503	26,343	75,266	58,331	4516	60,213
Ind.	17,750	15,000	4500	16,875	13,125	2250	13,125
Iowa	88,250	67,070	21,180	77,660	52,950	5295	49,420
Kan.	35,700	25,500	10,200	34,000	21,250	1700	20,400
Ky.	No schedule.	Determined case by case.					
La.	32,600	24,450	8150	28,525	20,375	1630	16,300
Me.	66,434	54,808	18,608	66,434	54,808	3322	33,217
Md.	74,400	62,000	24,800	74,400	62,000	2480	62,000
Mass.	6750	5250	—	6000	4500	—	6000
Mich.	56,490	45,150	13,650	45,150	34,020	2310	34,020
Minn.	65,880	53,680	15,860	53,680	43,260	3660	39,040
Miss.	19,600	14,700	5880	17,150	12,250	980	9800
Mo.	20,880	15,750	5400	18,630	13,500	1260	12,600
Mont.	30,660	21,900	8212	32,850	19,710	1752	18,068
Neb.	40,500	31,500	10,800	39,700	27,000	1800	22,500
Nev.	No schedule.	Determined case by case.					
N.H.	45,582	37,275	10,650	45,582	32,103	2130	26,838
N.J.	48,161	29,255	4583	45,972	24,412	917	23,882
N.M.	44,300	26,688	12,182	44,300	25,472	3101	28,795
N.Y.	32,760	25,620	7875	30,240	21,525	1680	16,800
N.C.	50,400	42,000	15,750	42,000	30,240	2100	25,200
N.D.	10,000	10,000	3250	9360	6000	480	6000
Ohio	30,938	24,082	8250	27,500	20,625	1375	17,188
Okla.	22,500	18,000	5400	22,500	18,000	900	18,000
Ore.	19,200	15,000	4800	15,000	13,500	400	10,000
Pa.	107,420	87,770	26,200	107,420	65,500	4192	72,050
R.I.	67,704	52,948	16,275	67,704	44,485	2170	34,720
S.C.	47,720	35,340	14,040	42,120	30,240	2160	21,600
S.D.	38,200	28,650	9550	30,560	23,875	1910	28,600
Tenn.	23,800	17,850	7140	23,800	14,875	1190	11,900
Tex.	26,600	19,950	7890	26,600	16,625	1330	13,300
Utah	28,611	25,704	10,251	19,125	13,484	612	18,360
Vt.	44,720	36,400	10,400	44,720	36,400	2080	26,000
Va.	42,600	31,950	12,780	37,275	26,625	2130	21,300
Wash.	36,000	32,400	12,960	36,000	25,200	2760	14,400
W.Va.	41,033	34,944	13,978	41,933	24,461	2796	23,063
Wis.	35,000	28,000	11,200	35,000	17,500	1750	19,250
Wyo.	36,234	29,470	10,629	32,611	24,156	1691	22,707
Federal Employees	225,507	175,358	54,209	208,161	148,170	11,564	115,845

Table abbreviated from "Analysis of Workers' Compensation Laws," U.S. Chamber of Commerce, Washington, D.C. 20062

* Other fingers not shown are successively less valuable
** Great toe not shown is worth a great deal more
† Weekly benefits are deducted from these lump sums



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LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTION

19, 23, 24, 26, 27, 28 & 29

SUBSTANCE:

Makes changes to reflect a change basis for calculating benefits from 66 2/3% of gross wages to 80% of spendable wages.

POSITION:

Support.

ACTION:

Support.

BACKGROUND:

Changing compensation from 66 2/3% of a workers gross wages to 80% of his spendable wages will probably have salutary effect on the benefit levels particularly with respect to higher wage earners.

The exact magnitude of the savings to be effected by such a change cannot now be determined but it is believed that there will be a reduction in benefits as a result.



Alaska National INSURANCE COMPANY

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LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTION

Eighteen

SUBSTANCE:

Authorizes lump sum payments.

POSITION:

Support.

ACTION:

Support.

BACKGROUND:

This is similar to Section 12 of CSHB 159, January 25 (Sofa), with this material change; the legislature has added the words "and the parties agree". This means that if the parties agree the Board may authorize the lump sum payment but it cannot do so without the parties concurrence. This was my principle concern with the drafting in the other bill.

IMPORTANT DRAFTING NOTE:

In Section 25 of the proposed legislation there is substantial modification to AS 23.30.190. They neglected to remove the last phrase of subsection (20). In view of the adoption of this section in the bill the last phrase in subsection (20) is unnecessary and should be removed.



Alaska National

INSURANCE COMPANY

A policy of service and protection

LEGISLATIVE POSITION PAPER

LEGISLATION: Labor and Management Compromise substitute for CSHB 159

SECTION

Seventeen

SUBSTANCE:

Same as Section 11 of CSHB 159 (Sofa) January 25, 1982.

ADDITIONAL COMMENT:

We would point out that if the Legislature is concerned about those carriers which will offset for over payment or advance payments by making no payments at all, we would not be adverse to a provision which reads as follows:

"(j) if an employer has made advance payments or over payments of compensation, he is entitled to be reimbursed, out of any unpaid installment or installments of compensation due up to an amount equal to fifty percent of each of the subsequent payments. If the employer seeks to offset by more than fifty percent of subsequent payments such additional offsets require the prior approval of the Board."



Alaska National INSURANCE COMPANY

A policy of service and protection

March 17, 1982

Honorable Terry Martin
House of Representatives
Pouch 4
Juneau, Alaska 99811

Dear Terry:

For the past two weeks, I have been working diligently with representatives of the Labor and Management Coalition to work out language which meets the concerns which we all have for curing the problems in rehabilitation but doing so in the context of the existing mechanisms for case management.

As you know Terry, I am very strongly opposed to setting up a new function or staff in the bureaucracy to do that which is, by and large being properly handled and, which with some changes in the law, can work well, in the private sector.

As of last night (3/16/82) we have come close to concurrence in principle on the items which heretofore have divided us.

I have, at the request of the Labor and Management Coalition drafted language to make HB 159 acceptable to me and still meet all of the objectives of the Labor and Management Coalition. They have not had time to review this last draft (RLB 3/17/82).

Briefly, these changes:

- 1) Impose a statutory requirement for a rehabilitation evaluation within 90 days of injury or, if not appropriate, a preliminary evaluation.
- 2) Define those entitled to rehabilitation exactly as in the Labor and Management Coalition's version.
- 3) Set standards for qualifying a rehabilitation program.
- 4) Impose a mechanism for quickly resolving disagreements concerning rehabilitation.
- 5) Provide for no new functions or positions in Division of Workers' Compensation. Thus, there is genuinely no fiscal impact on the General Fund or the Second Injury Fund.

- 6) Cleans up a number of concerns which do not deal with rehabilitation shared by all of us. All proposed changes not dealing with rehabilitation have been agreed to by labor, management and the insurers.

One final point.


I have been led to believe that Jackie McKlintock has expressed concern that she does not now have the staff to carry the current work load, any future obligations placed on the Board. I would make the following observations:

- 1) The recommended changes will reduce the work load because rehabilitation funding from the Second Injury Fund is eliminated. Use of DVR is eliminated and only disputed cases will go to the Board.
- 2) Because DVR's role in workers' compensation cases is eliminated by these changes, whatever money is released in DVR can be transferred in the budget approval process to the Division of Workers' Compensation to hire additional hearing representatives.

Terry, I believe it is imperative that the proposed changes be inserted as presented into HB 159.

Your cooperation over these last few weeks is very much appreciated. I believe, as a result of our mutual efforts a very fine bill will result.

Yours cordially,



Richard L. Block
President

RLB/cv

PROPOSED CHANGES
TO
CSHB 159 (L & C) 3/3/82

SECTION 1. (p. 1 l. 19)

Eliminate subsection (4)

SECTION 2.

Remove

SECTION 3. (p. 2 l. 19)

Change "AS 20.20.041" to "AS 23.30.097"

SECTION 4.

Remove and substitute a new section 4.

SEC. 23.30.005 (f) is amended to read.

(f) Two members of a panel constitute a quorum for hearing claims, and the action taken by a quorum of a panel is considered the action of the full Board; the Commissioner or his designated representative acting alone shall constitute a quorum for making determinations of propriety of a rehabilitation program pursuant to AS 23.30.097.

SECTION 5.

Remove and add proposed new section to add AS 23.30.097 to read:

AS 23.30.097 Rehabilitation Program

- (a) When an employee suffers a permanent disability which precludes his return to suitable gainful employment, he shall be entitled to be fully evaluated for participation in a rehabilitation program within 90 days after date of injury. The full evaluation shall be performed by a qualified rehabilitation professional. The reasonable costs of the evaluation shall be at the expense of the employer. If in the opinion of the qualified rehabilitation professional, the medical, physical or emotional state of the employee is such that a full evaluation cannot then be made, the rehabilitation professional shall prepare a preliminary evaluation.
- (b) The full evaluation by the qualified rehabilitation professional shall determine if the employee would benefit from a rehabilitation program. The determination shall be based on the following criteria:

- (1) The rehabilitation program will restore the employee to a position to accept suitable, gainful employment equal to or as near as possible to that of his pre-injury employment. An employee is restored to a position of suitable gainful employment if he can return to (in the order of preference)
 - i) Return to work at the same or similar job with the same employer or employer in the same industry as the employer at the time of injury.
 - ii) A job using essentially the same skills as the job at time of injury but in a different industry.
 - iii) A job using different skills but the same academic achievement level as attained at the time of injury.
 - iv) A job requiring an academic achievement level which is different from that attained at the time of injury, but which rehabilitation evaluation determines is attainable by the employee and which job is believed to be available to the employee in his community at the time academic training is completed.
- (2) The employee cannot be restored to a position to accept suitable gainful employment without the rehabilitation program.
- (3) The cost of the rehabilitation program, including all costs to be incurred by the employer for and during the rehabilitation program, plus an estimate of continuing benefits due the employee after the conclusion of the rehabilitation program are equal to or less than the benefits due the employee under this Act, assuming no rehabilitation program is implemented and assuming no discounting or lump-sum payment of benefits.
- (4) The rehabilitation program may consist of any of the following, however, if the employee may be restored to a suitable gainful employment with rehabilitation programs of high preference, then a rehabilitation program of a lower preference need not be offered by the employer.

In order of preference rehabilitation programs are:

- i) Prosthetic devices and training enabling work at the same or similar employment as at the time of injury.
- ii) Work site modification and vocational training to the same or similar occupation.
- iii) On the job training for a new occupation.
- iv) Vocational training for a new occupation.

- v) Academic training for a new occupation. The employer is not obligated to provide academic training for a period longer than two consecutive school semesters, except that the Board may, after successful completion of the first two semesters authorize up to two more consecutive semesters.
- (c) A preliminary evaluation shall include the reasons why a full evaluation cannot be rendered, an opinion as to when the employee will be eligible for a full evaluation, any information which would be included in a full evaluation which can be determined and reported by the rehabilitation professional at the time of the preliminary evaluation.
- (d) If the full evaluation or preliminary evaluation is not timely scheduled for an employee entitled thereto by the employer, the employee or the Board may designate a qualified rehabilitation professional to perform the evaluation, the reasonable costs of which shall be paid by the employer. If the full evaluation shows that the employee would benefit from a rehabilitation program, the program shall be provided at the expense of the employer.
- (e) Refusal by an injured employee to participate in an evaluation or a rehabilitation plan offered by the employer results in forfeiture of disability compensation for the period the refusal continues. However, if an employee begins participation in an evaluation or rehabilitation plan within two months from the date of refusal, and successfully completes the evaluation and rehabilitation plan and becomes employed for a period of 30 consecutive business days following the completion of the rehabilitation program, the employee shall receive a lump-sum payment of 25 percent of the compensation forfeited by him. The lump-sum payment is available only once to an employee refusing rehabilitation. The Board may find that an employee refuses to participate in an evaluation or rehabilitation plan if the employee fails to cooperate with the qualified rehabilitation professional.
- (f) The employer responsible for the benefits under this Act shall be liable for, and any subsequent employer hiring the employee during and as part of the rehabilitation program shall not be liable for, benefits under this Act for injuries occurring to the employee while engaged in job training, work readiness, work therapy experience or work sampling which is part of the rehabilitation program offered by the employer and the earnings for which, if any, are credited to gross wages upon which compensation benefits are calculated.
- (g) Compensation payable pursuant to AS 23.30.185 or AS 23.30.200 shall be paid, in lieu of any other compensation except compensation due under AS 23.30.190 during the period the employee is actively engaged in a rehabilitation program.

(h) In this section

- 1) "Suitable gainful employment" means employment that is reasonably attainable in light of an individual's age, education, previous occupation, and injury, and that offers an opportunity to restore the individual as soon as practical to a remunerative occupation and as nearly as possible to his average weekly wage as determined at the time of injury.

- 11) "Qualified rehabilitation professional" means a person who by education, professional training and experience has the skills to make judgements, administer and interpret tests, counsel, and make recommendations with respect to a persons medical, intellectual, emotional, physical or motivational capacity to accept and perform suitable gainful employment, and to design, implement and supervise programs which tend to enhance a person's medical, intellectual, emotional, physical or motivational capacity to accept suitable gainful employment.

SECTION 6.(p. 5 l. 15)

Change "AS 23.30.041" to "AS 23.30.097"

SECTION 7.

Remove

SECTION 8.

No changes

SECTION 9.

No changes

SECTION 10.

No changes

SECTION 11.

No changes

SECTION 12.

Remove and adopt a new section to read:

add to Chapter 23.30 a section to read
"AS 23.30.096."

Upon the filing of a claim under this Act, an employee thereby authorizes all providers of medical treatment pertaining to the injury or rendered prior to the date of injury to release information to the employer. If requested by the employer, the employee shall execute all releases to facilitate access to that information.

SECTION 13.

No changes

SECTION 14.

Acceptable except add to the subsection (c) the following additional sentence to read:

"If a claim is controverted by the employer and the employee does not request a hearing for a period of two years following the date of controversion, the claim is deemed denied by the Board."

SECTION 15. (p. 8 l. 25)

Strike "occasioned solely" and insert in lieu "proximately caused".

SECTION 16. (p. 9 l. 3)

Add after "...is conclusive" and before "even if..." a phrase to read:

", provided there is some evidence of record to support the finding,"

SECTION 17.

Strike and instead add a section to read:

"AS 23.30.155(j) if an employer has made advance payments or overpayments of compensation, he is entitled to be reimbursed out of any unpaid installment or installments of compensation due up to an amount equal to twenty per cent of each of the subsequent installments. If the employer seeks to offset by more than twenty per cent of the amount of each subsequent installment, prior Board approval is required.

SECTION 18.

No change

SECTION 19.

No change

SECTION 20.

No change

SECTION 21.

No change

SECTION 22.

No change

SECTION 23.

No change

SECTION 24.

Add to subsection (12) (p. 13 1. 3) a clause to read:

"but no benefit is payable for loss of hearing above 3,000 cycles per second unless hearing above 3,000 cycles per second is a requirement of the job held at the time of injury."

SECTION 25.

No change

SECTION 26.

No change

SECTION 27.

No change

SECTION 28.

No change

SECTION 29.

No change

SECTION 30.

No change

SECTION 31. (p. 18 1. 13)

Change "occasioned solely" to "proximately caused"

SECTION 32.

No change

SECTION 33.

No change

SECTION 34.

No change

SECTION 35 (p. 20 l. 10)

Add after "---of injury" and before ";" a phrase to read:

"up to the amount which when added to all other components of gross earnings brings gross weekly earnings up to the state's average weekly wage "

SECTION 35 (p. 20 l. 19-21)

Should be amended to read:

"and (b) the amount that is or would be deducted or withheld as of January 1, preceding the injury under the Social Security Act of 1935 from the earnings of"

SECTION 36.

Remove and insert new section to read:

SEC. 23.30.145 (a) is amended to read as follows:

Fees for legal services rendered in respect to a claim are not valid unless approved by the Board, and the fees may not be less than 25 percent on the first \$1,000 of compensation or part of the first \$1,000 of compensation, and 10 percent of all sums in excess of \$1,000 of compensation. When the Board advises that a claim has been controverted, in whole or in part, the Board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. For purposes of this section a hearing before the Board on the propriety of a rehabilitation program pursuant to AS 23.30.097 is not a controversion of a claim. When the Board advises that a claim has not been controverted, but further advises that bonafide legal services have been rendered in respect to the claim, then the Board shall direct the payment of the fees out of the compensation awarded. In determining the amount of fees the Board shall take into consideration the nature, length and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.

SECTION 37.

Add sections to be repealed as follows:

23.30.040(e)
23.30.191

SECTION 38.

Remove

SECTION 39.

Add new section to read:

SEC. 23.30.125 add new subsection

23.30.125 (c) An order of determination of the propriety of a rehabilitation program pursuant to AS 23.30.097 issued by the Commissioner or his designated representative acting alone, may be heard before a full panel upon the petition of employee or employer filed within 10 days after issuance of the order.

The Board shall give priority in calendaring its cases for hearing to hearings to determine the propriety of a rehabilitation program pursuant to AS 23.30.097.

SECTION 39.

This Act shall take effect October 1, 1982, and shall effect only claims occurring on or after the effective date hereof.



ARCTIC SLOPE ALASKA GENERAL CONSTRUCTION COMPANY, INC.

April 29, 1982

Representative Terry Martin
Pouch V
Juneau, AK 99811

Dear Representative Martin:

Just this morning I was alerted to the possibility of the State Legislatures voting to make changes in the Workmen's Compensation Act.

Due to the finality of legislative changes in the Act, full public understanding of all changes (and how they affect employees and employers alike) is extremely important.

Since this cannot be done before adjournment, I am asking you to help defeat passage and re-submit this bill in the next session.

Very truly yours,

ARCTIC SLOPE ALASKA GENERAL

Cliff Tomlinson
Senior Vice President



ARCTIC SLOPE ALASKA GENERAL CONSTRUCTION COMPANY, INC.

April 29, 1982

Representative Terry Martin

Pouch V
Juneau, Ak 99811

Dear Representative Martin:

I have just learned that HB 159 is scheduled for a vote this session. Certainly a bill of this magnitude should be given more time and consideration.

With the session so close to adjournment, we feel that defeat of this bill is the only sensible course of action for you to take.

Please do not consider voting on HB 159 this session.

Sincerely,

ARCTIC SLOPE ALASKA GENERAL

C. L. Conger
Executive Vice President



ARCTIC SLOPE ALASKA GENERAL CONSTRUCTION COMPANY, INC.

April 29, 1982

Representative Terry Martin
Pouch V
Juneau, Ak 99811

Dear Representative Martin:

I hope this letter reaches you before HB 159 comes up for passage or defeat.

Any change in the Alaska Workmen's Compensation Act should be carefully considered, changes or amendments debated then compromised.

Voting on this bill at this late date (when adjournment is receiving much publicity) would not be in the best interests of workers or their employers.

I ask you to vote for defeat of this bill.

Very truly yours,

ARCTIC SLOPE ALASKA GENERAL

Irene Bartee
Office Manager



ARCTIC SLOPE ALASKA GENERAL CONSTRUCTION COMPANY, INC.

April 29, 1982

Representative Terry Martin
Pouch V
Juneau, AK 99811

Dear Representative Martin:

I understand HB 159 is scheduled for a vote this session of the Legislature. Certainly more careful study must be given to a bill of this nature.

Both employers and employees must be given time to study and consider a bill of this type.

I ask for immediate defeat of HB 159 should it come up for vote in this session.

Sincerely,

ARCTIC SLOPE ALASKA GENERAL

Kelly Crick
Vice President



ARCTIC SLOPE ALASKA GENERAL CONSTRUCTION COMPANY, INC.

April 29, 1982

Representative Terry Martin
Pouch V
Juneau, AK 99811

Dear Representative Martin:

Before HB 159 comes up for vote in this session (if in fact it does get out of committee) I wish to enlist your help to defeat this bill in its entirety.

I am in the Safety field and after several calls to other people that also deal in Workmen's Compensation Cases, none of us have any idea of what the bill encompasses.

I know there has been a lot of pressure to adjourn, and I don't want a bill that affects the future of so many to be rushed through.

Please defeat this bill if it comes up for vote.

Very truly yours,

ARCTIC SLOPE ALASKA GENERAL

Leo Gilbert
Safety Manager



ARCTIC SLOPE ALASKA GENERAL CONSTRUCTION COMPANY, INC.

April 29, 1982

Representative Terry Martin
Pouch V
Juneau , Ak 99811

Dear Representative Martin:

Defeat of HB 159 is of utmost importance for this session.

Proper time and investigation must be given to a bill affecting
so many people.

With adjournment such an imminent possibility, we ask you to defeat
HB 159 for this session.

Sincerely,

ARCTIC SLOPE ALASKA GENERAL

Dick McMillian
Vice President



Scott Wetzel Services Incorporated

An Affiliate of The Home Group, Inc

741 Sesame Street • Suite 1A • Anchorage, Alaska 99503

Phone: (907) 276-2111

February 9, 1982

The Honorable Terry Martin
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Re: David Butler/Municipality of Anchorage

Dear Mr. Martin:

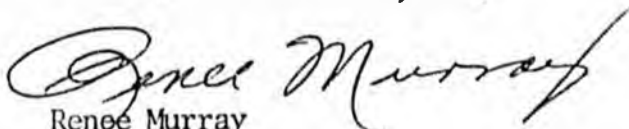
The attached decision from the Workers' Compensation Board is a classic example of the serious problems inherent in our current Workers' Compensation laws.

This employee, who had a minor hearing loss, basically corrected by a hearing aid, was kept on full salary through non-cashable sick leave for the period 4/1/80 through 12/8/80 while he was awaiting action on his request for retirement from the Municipality, which was subsequently granted. After he was retired and after he had received full payment in the amount of \$27,658.67 from his employer for the period 4/1/80 through 12/8/80, he filed for worker's compensation for the same period of time and the Board has now ruled that the employer must also pay him compensation benefits of an additional \$21,668.04 for the exact same period of time loss. The employee has therefore recovered in excess of 200% of his normal salary for a period of 9 months. Full payment by an employer, regardless of what fund it is paid from, or what they call it, should certainly satisfy the requirements of the Workers' Compensation Board.

Your comments will be appreciated.

Very truly yours,

SCOTT WETZEL SERVICES, INC.


Renee Murray
Claims Manager

RM/vb

cc: Ed Hite - Daryl Cody & Assoc.
Harry Sjoberg - MOA



DAVID W. BULTER,
Employee,
Applicant,

vs.

MUNICIPALITY OF ANCHORAGE
(Self-Insured),
Employer,
Defendant.

DECISION AND ORDER
Case No. 80-04-0548.

On December 10, 1981 the defendant requested modification of the Board's November 19, 1981 Decision and Order. No opposition was submitted by the employee and the Board deemed the record closed on January 15, 1982.

Defendant alleges the Board erred in a determination of fact. The defendant asserts that employee is not entitled to compensation between April 1, 1980 and December 8, 1980 because he was being paid his full salary.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

There was no mistake in a factual determination. Evidence was presented at the November 12, 1981 hearing that employee received sick leave payments in the amount of his full salary between April 1, 1980 and December 8, 1980. Evidence was also presented, and the defendant does not dispute, that employee was disabled.

There is no provision in the Alaska Workers' Compensation Act permitting for offsets of amounts received by an injured worker from any private source as a result of the same injury. A special exception is made for Social Security payments. See AS 23.30.225

In the instant case the employee was paid his full salary from his non-cashable sick leave reserve. We have no knowledge of the terms of the Municipality's sick leave program nor do we have jurisdiction over it. If sick leave payments were made to the employee in error the defendant must seek another forum for his recovery.

ORDER

Defendant's petition for Modification is denied and dismissed.

Dated at Anchorage, Alaska, this 4th day of February 1982.

ALASKA WORKERS' COMPENSATION BOARD

/s/ William F. Reeves
William F. Reeves, Designated
Chairman

/s/ Jim Robison
Jim Robison, Member

/s/ Ann Pittenger
Ann Pittenger, Member

WFR/cw

APPEAL PROCEDURES

A compensation order may be appealed through proceedings in Superior Court brought by a party in interest against the Board and all other parties to the proceedings before the Board, as provided in the Rules of Appellate Procedure of the State of Alaska.

A compensation order becomes effective when filed in the office of the Board, and unless proceedings to appeal it are instituted, it becomes final on the 31st day after it is filed.

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of David Bulter, employee/applicant; vs. Municipality of Anchorage/Police Department employer; Case No. 80-04-0548; dated and filed in the office of the Alaska Workers' Compensation Board in Anchorage, Alaska, this 4th day of February 1982.

Cynthia Williams
Clerk

David Cottrell, C.P.A. Special Master
3301 Denali
Anchorage, Alaska 99503

January 31, 1982

Dear Mr. Cottrell:

As advised by my attorney, I am submitting to you a claim for Compensation tort settlement, as a former employee of the Southcentral Regional Resource Center in the amount of \$7,826.63.

\$4,175.32	Salary: bounced payroll check, October wages, 30 day difference in pay, ^{-from 9/80}
1,604.00	tax sheltered annuities - payroll deduction
603.31	attorney fees, to collect wages
336.84	TSA. interest @ 14.00% - Comm. Mutual
1,034.76	Salary interest @ 17.38 Merrill Lynch Ready Assets Annualized Interest Rate.
72.40	lawyers fee. interest @ 12.00%.
<hr/>	
\$7,826.63	

Christine Talasz

O.C. ✓ Terry Martin, Representative.
Joe Montgomery, Representative.
Miss Sturgulewski, Senator

Christine Talasz
4101 Resurrection Dr.
Anchorage, Alaska 99524
337-5578 (home)

Terry - Although the legislature has appropriated \$300,000 the word I've gotten so far is that "there isn't enough money to pay me my claim." I've been offered \$4,000+ if I sign a release. I'm told, if I don't sign the release, I may not get any money. Since the claim in this letter is lower

just a portion of my loss, I don't feel I should
accept any less. (I wonder where all the
money has gone???) There will be a hearing to
try to settle outstanding employee claims
which will be on either Feb. 18th or 19th
in Anchorage. I'm ready to do battle!
Wish me luck. Do you have any other suggestions
on how I can get my money?

Chris

CHAPTER 5. SAVINGS ASSOCIATIONS

ARTICLE 2. ASSOCIATION PRACTICES

Section

- 110. Communication between members
- 120. Service charges on dormant accounts
- 130. Redemption of savings accounts
- 140. General reserve account
- 150. Net worth requirements
- 160. Alternative mortgage instruments
- 170. NOW accounts
- 180. Participation in first mortgages where
property is located outside of State

3 AAC 05 is amended by adding one new section to read:

3 AAC 05.180. PARTICIPATION IN FIRST MORTGAGES WHERE MORTGAGED
PROPERTY IS LOCATED OUTSIDE OF STATE. An association may participate
in conventional loans or pools of conventional loans secured by a
mortgage on a one-to-four family residence where the mortgaged
property is located outside the State.
(Eff. / / , Reg.)

Authority: AS 06.01.020
AS 06.30.030
AS 06.30.500(3)
AS 06.30.530

ADVERTISING ORDER

NOTICE TO PUBLISHER

INVOICE MUST BE IN TRIPPLICATE SHOWING ADVERTISING ORDER NO., CERTIFIED AFFIDAVIT OF PUBLICATION (PART 2 OF THIS FORM) WITH ATTACHED COPY OF ADVERTISEMENT MUST BE SUBMITTED WITH INVOICE.

I. PUBLISHER	
DEPT. NO.	A.O. NO.
AO- 08	2141

PUBLISHER	Juneau Empire 235 Second Street Juneau, Alaska 99801	VENDOR NO.	DATE OF A.O. December 24, 1981
	FROM	Department of Commerce & Economic Development Division of Banking & Securities	DATES ADVERTISEMENT REQUIRED: Two times. Once immediately, and then again one week later. In legal section. THE MATERIAL BETWEEN THE DOUBLE LINES MUST BE PRINTED IN ITS ENTIRETY ON THE DATES SHOWN.
		BILLING ADDRESS: DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT ADMINISTRATIVE SERVICES, FISCAL Pouch D, Juneau, Alaska 99811-0800	

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STATE OF ALASKA

NOTICE OF PROPOSED CHANGES IN REGULATIONS OF THE DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

Notice is hereby given that the Department of Commerce and Economic Development, under authority vested by AS 06.05.005, AS 06.15.010, AS 06.20.340, AS 06.25.315, AS 06.30.025, AS 06.30.030, AS 06.40.180 and AS 06.45.010, proposes to adopt regulations to Title 3, Chapter 1 of the Alaska Administrative Code to implement AS 06.05.060 as follows:

3 AAC is amended by adding new provisions that provide for the confidentiality of the records, reports and correspondence files of the Division of Banking, Department of Commerce & Economic Development.

Notice is also given that any person interested may present oral or written statements or arguments relevant to the action proposed at a hearing to be held in the Conference Room of the Commissioner of Commerce & Economic Development, Room 203, Michael Building, 610 East Tenth Street, Anchorage, Alaska, at 10:00 a.m., Tuesday, February 16, 1982.

Written testimony may also be submitted to the Division of Banking and Securities so long as it is received by 4:30 on February 16, 1982.

Copies of the proposed regulations may be obtained by writing to:

Division of Banking & Securities
 Pouch D
 Juneau, Alaska 99811-0800

TO BE COMPLETED BY ORDERING DEPARTMENT									PAGE NO. 1 OF 2 PAGES	TOTAL ALL PAGES	\$
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									DATE ENTERED	VOUCHER NUMBER	

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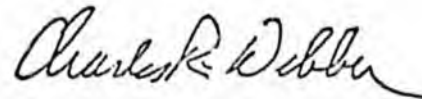
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STATE OF ALASKA

The Department of Commerce and Economic Development, upon its own motion or at the insistence of any interested person, may, at the hearing or after it, adopt the proposals substantially as described above without further notice or may decide to take no action on them.



Charles R. Webber, Commissioner

Date: 12/24/81

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									DATE ENTERED			VOUCHER NUMBER

Register

COMMERCE AND
ECONOMIC DEVELOPMENT

3 AAC 01.905

CHAPTER 1. FINANCIAL INSTITUTION
GENERAL ADMINISTRATION

ARTICLE 4. GENERAL PROVISIONS

Section

905. Records; disclosure and limitation on disclosure
910. Definitions

3 AAC 01 is amended by adding one new section to read:

3 AAC 01.905. RECORDS; DISCLOSURE AND LIMITATION ON DISCLOSURE. (a) The records, reports and correspondence files of the division shall not be public documents, shall not be subject to subpoena nor shall they be open for inspection by the public. Neither the commissioner, the director nor any member of their respective staffs may disclose any information obtained in the discharge of official duties to any person not connected with the division, except that the commissioner may disclose such information:

(1) to representatives of federal agencies insuring accounts in the financial institution;

(2) to representatives of federal agencies, other states and foreign countries having supervisory authority over the activities of the financial institution or enterprises or similar financial institutions or enterprises if such representatives are permitted to and do upon request of the commissioner disclose similar information respecting those financial institutions under their supervision;

(3) to the attorney general of this state; and

Register

COMMERCE AND
ECONOMIC DEVELOPMENT

3 AAC 01.910

(3) prepare and circulate reports provided by
law.

(c) Nothing in this section shall prevent any person or a financial institution covered under this chapter from access to records, reports and correspondence which apply to him or the institution to the extent that those portions of the records, reports and correspondence which do so apply are reasonably segregable from the portions of the records, reports and correspondence which do not apply to him or the institution and also to the extent that federal laws and statutes do not proscribe the disclosure. (Eff. / / , Reg.)

Authority:	AS 06.05.005	AS 06.30.025
	AS 06.05.060	AS 06.30.030
	AS 06.15.010	AS 06.40.180
	AS 06.20.340	AS 06.45.010
	AS 06.25.315	

3 AAC 01.910 is amended by adding new sections to read:

(6) "director" means the director of banking, securities, small loans and corporations or his designee;

(7) "division" means the Division of Banking, Securities, Small Loans and Corporations. (Eff. / / , Reg.)

Authority:	AS 06.05.005	AS 06.30.025
	AS 06.15.010	AS 06.40.180
	AS 06.20.340	AS 06.45.010
	AS 06.25.315	

Basic democracy.

Committee is a catalyst. — —

However there are some overriding public concerns
that we a leg. must consider —

You need to compromise and at times the
leg. must bite the bullet..

FLORIDA'S NEW WORKERS'

COMPENSATION SYSTEM:

AN INTERIM REPORT

March 1981

(WITH OCTOBER 1981 ADDENDUM)

Prepared By:

BUREAU OF ECONOMIC ANALYSIS
DIVISION OF ECONOMIC DEVELOPMENT
FLORIDA DEPARTMENT OF COMMERCE

ADDENDUM

October 1981

Since the completion of this report in March 1981 there has been a second Workers' Compensation premium reduction ordered by the State Insurance Commissioner. This reduction can be described briefly.

The effective date of the rate reduction was July 1, 1981. On average, Workers' Compensation premiums paid to private insurance carriers were decreased 15.6%. Since the volume of premiums paid in a year in Florida is about \$1 billion, that would mean a savings of \$156 million for Florida employers annually.

The actual premium reduction varied by employment class. All 600 classes were guaranteed at least a 5% reduction. The manufacturing classes averaged a 22.7% decrease with rates for some manufacturing classes falling by as much as 48%.

This latest action was the third Workers' Compensation premium decline since the 1979 reforms. The first, a 15% across-the-board reduction was enacted by the Legislature as a part of the 1979 reform package. The Insurance Commissioner ordered an 11.4% rate reduction in January 1981 which actually translated into a 5.1% premium dollar reduction when other changes were considered.

Cumulatively, the impact of these premium reductions has been to lower premium rates by 36.4% and save Florida employers \$325 million annually in premiums. The average Workers' Compensation premium rate is now at its lowest point since September 1975 and places the State only 23rd highest in the nation. Before the reforms, Florida had ranked among the five most expensive states in this regard.

Further premium reductions may be in the offing. As is indicated on pages 21-24 of this report, early indications of claims activity, total claim costs, attorney involvement and other factors are quite promising. The State Insurance Commissioner has requested another Workers' Compensation premium rate filing later this year to take effect January 1, 1982.

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I. OVERVIEW

At one time, Florida's Workers' Compensation program was a system seriously in need of fundamental reform. Injured workers genuinely entitled to assistance received inadequate benefits. Employers were overburdened with premiums while insurance carriers lost millions of dollars annually attempting to provide Workers' Compensation coverage. The State's efforts to attract new industry were severely hampered by the reputation of the Florida Workers' Compensation system as extremely costly to employers.

Study of the system indicated that its very structure encouraged subjectivity in benefit determination. This fact, in turn, provided incentives for exaggerated if not invalid claims, and for the unusually frequent involvement of attorneys and medical specialists. The inadequate authority and resources accorded those government agencies charged with overseeing Workers' Compensation further contributed to the problem.

These problems were directly addressed in sweeping change to the Workers' Compensation law effective August 1, 1979. These reforms were aimed at making Florida's Workers' Compensation system affordable, equitable and efficient. Perhaps the most important change was a switch to the "wage-loss" concept in benefit determination. Under this concept, a worker disabled by an injury on the job would receive (in addition to coverage of his medical expenses) compensation based on the actual decrease in average wages he suffered as a result of his disability.

Among the more important additional changes were: 1) an increase in statutory benefit levels for injured workers; 2) fundamental revisions in the authority and responsibilities of the Bureau of Workers' Compensation; 3) an enhancement of the ability of both the citizenry and its government to participate in the rate-making process; 4) a shift, to the claimant, of responsibility for paying attorneys' fees; 5) the discouragement of lump sum settlements of claims; and, 6) an across-the-board 15 percent reduction in premium rates with further reductions anticipated as experience was gained under the new law.

Any future reductions in Workers' Compensation premium rates are likely to be ordered by the Florida Insurance Commissioner based on his evaluation of rate filings made by the insurance industry. (Direct action by the Legislature is always a theoretical possibility.) Not until June 1981 will the insurance industry make its first premium rate adjustment filing based directly on experience under the new law.

Nevertheless, the early indications are quite positive in regard to the Legislative objective of reducing the cost of the Workers' Compensation system. Substantial progress already has been made; available information encourages the belief that further premium rate reductions are a distinct possibility. At this point, the following observations are warranted:

1. The Workers' Compensation insurance industry has been able to absorb two sizable premium rate reductions. Estimates made at the time these rate reductions were put into effect suggest that they will result in combined premium savings of approximately \$170 million annually for Florida employers. The two rate reductions marked the reversal of a long-term trend of rapidly increasing Workers' Compensation premiums in the State. Before the 1979 legislative action, Florida ranked 5th in the nation in terms of its premium rates for Workers' Compensation coverage. It now has fallen to 13th.
2. These significant premium reductions have occurred even while statutory benefits available to injured workers were being increased substantially. The maximum weekly benefit amount has gone from \$130 in 1978 to \$228 in 1981, moving Florida's rank among the states from 41st to 18th. The maximum period for benefit collection has been extended; the inflation adjustment used in benefit calculation, increased; and the schedule of fees for medical services, revised upward by nearly 30 percent.
3. Available analyses suggest that the new law is having its intended effects in terms of the costliness of Workers' Compensation claims.
 - A study commissioned by the Insurance Committee of the Florida House of Representatives found that, during the first five months of operation of the new law, the percentage of claims of the particularly expensive "permanent partial" injury type had declined significantly. So too had indemnity costs and the percentage of claims involving attorney representation. The proportion of workers returning to their same employer after recovery from their injury had increased.
 - A November 1980 analysis by the National Council on Compensation Insurance (NCCI) also found a decrease in the frequency of permanent partial injury claims. While concluding that available data did not yet provide an adequate basis for a premium rate adjustment decision, one preliminary finding was an indication of significant insurance carrier cost reductions resulting from experience under the new law.
 - A Division of Workers' Compensation comparison of 1979 and 1980 data revealed that, during the first full year under the new law, there was a 4 percent reduction in total premiums paid by employers in the State. The number of formal claims declined by 48 percent. The number of joint petition settlements of Workers' Compensation claims fell by 36 percent while benefits paid in these claims dropped by 18 percent--a savings of \$15.7 million. The amount of attorneys' fees awarded in Workers' Compensation cases decreased by 10.6 percent.

As the first state in the nation to adopt the wage-loss concept as the basis for determining permanent disability benefits for injured workers, Florida is serving as an experimental model watched closely by other states. Perhaps the best guarantee that Florida's Workers' Compensation reforms will succeed is the number of determined and careful monitoring programs being conducted both inside and outside government.

II. WORKMEN'S COMPENSATION IN FLORIDA (1935-1979)

A System in Need of Reform

In 1935, the State of Florida established a Workmen's Compensation system designed to lend stability and predictability to an employer's obligations to his injured employees while, at the same time, insuring that the injured worker would receive prompt and adequate compensation for his injury.¹ By the 1970s, Workmen's Compensation had evolved into a system which was unsatisfactory from virtually every perspective.

Consider the plight of the parties directly involved in the Workmen's Compensation system prior to its reform in 1979:

The Injured Worker--The benefits available to the average injured worker in Florida were quite low compared to those available in other states. An analysis conducted by the National Council on Compensation Insurance (NCCI) revealed that Florida's "statutory benefits", that is the maximum benefit amounts and collection periods set by law, ranked the state 37th in the nation.² For example, while in most states an injured worker received 66-2/3 percent of his average weekly wage while disabled, in Florida he received 60 percent.

Furthermore, compensation claims were taking a long time to resolve. The Miami Herald, in a comprehensive analysis of Florida's Workmen's Compensation system, reported that many injured workers were forced to hire attorneys because their legitimate claims were not being paid on time.³

The Employer--The cost to Florida employers of carrying the required Workmen's Compensation insurance was extremely high. Florida's premium rates (the decimal fractions applied to payrolls to calculate premiums due) were the fifth highest in the nation in 1979 according to NCCI data.⁴ These premium rates had increased 229 percent from 1970 to 1978 and further rate increases were being requested by the insurance industry.⁵ In 1979, the total premiums paid by Florida employers ranked it seventh in the nation according to figures from the National Association of Insurance Commissioners.⁶

These ever-increasing premiums did more than just force up the cost of doing business in Florida. They also put the State's businesses at a disadvantage when bidding for contracts against out-of-state firms. Bids submitted by Florida firms reflected the unusually high Workmen's Compensation premiums.⁷

The Insurance Companies--During the five-year period extending from 1973 through 1977, insurance companies offering Workmen's Compensation coverage in the State experienced \$205.1 million in net losses according to NCCI data.⁸ Although investment returns did result in a 3 percent net profit in 1978, there had not been an underwriting profit in Florida Workmen's Compensation since the 1950s.⁹

The impact of this unsatisfactory system extended beyond those directly involved. Ultimately, all Floridians felt the effects of the escalating premiums. Producers of goods and services passed their increased operating costs on to consumers.

State efforts to diversify the Florida economy, to further develop the industrial base, were severely hampered by the costly Workmen's Compensation system. Premium rates paid by Florida employers were nearly triple those paid by Alabama, North Carolina and South Carolina--states very much in competition with Florida in efforts to attract new industries. The NCCI reported that the cost of claims from permanently and totally disabled Florida workers was double that of seven other southern states.¹⁰ An "Economic Development Study" prepared by the Fantus Company for the Florida Council of 100 cited high Workmen's Compensation premium rates as a competitive disadvantage for the State in its effort to recruit industry.¹¹

In their efforts to attract new industry to Florida, officials often were confronted with questions about the reputation of Florida's Workmen's Compensation system. Former Commerce Department Secretary Phil Ashler once described a standard industrial recruitment scenario demonstrating the obstacle posed by Florida's high Workmen's Compensation premiums. According to Ashler, a prospective employer typically would ask a series of questions about the adequacy of labor supply and other business conditions. As State officials responded to these questions, the attractiveness of Florida to the prospect would grow--until the issue of Workmen's Compensation was encountered. At that point, Florida's image suffered a setback.¹²

The Miami Herald reported that the Governor and Lieutenant Governor had similar experiences. While delivering a promotional speech in Chicago, Governor Bob Graham was interrupted by a firm's indignation over Florida's Workmen's Compensation rates. Lieutenant Governor Wayne Mixson lamented the effects of a costly Workmen's Compensation system on industrial recruitment.

Several prospects that we've had, specific prospects that we've talked to in other states that have had the kind of industry or business that we would desire to locate in Florida, have been reluctant to make any commitment because of that, the workmen's comp.¹³

Further Defining the Problem

Florida's Workmen's Compensation system was costing employers and insurance companies far more than the typical benefits paid to the vast majority of injured workers warranted. Why was this the case?

In 1978, a study was conducted by the National Council on Compensation Insurance (NCCI) with the results printed by the Florida Association of Insurance Agents.¹⁴ This analysis, which compared Florida's claim and benefit figures to those of Alabama and Georgia, identified the major elements of Florida's Workmen's Compensation problem.

1. Total medical benefits paid to injured workers in Florida were significantly higher than those paid in other states.¹⁵ The average medical benefits paid, the proportion of cases in which specialized medical practitioners were used, the frequency with which injured workers were confined to a hospital and the average hospital bill in Florida were invariably higher than in Alabama and Wisconsin.
2. Benefits paid for impairment or disability in Florida were higher than for Alabama and Wisconsin despite Florida's comparatively low statutory benefits.
3. Workmen's Compensation activity in Florida featured an unusually great amount of litigation. The percentage of Florida cases in which attorneys were involved on the plaintiff side (20.8 percent) was far above that of Alabama (2.8 percent) and Wisconsin (3.0 percent). Attorneys typically became involved at an earlier point in Florida cases; Florida cases normally took a longer time to be resolved; and, a greater number of cases were reopened by plaintiff attorneys. According to the Division of Workers' Compensation, Florida Compensation lawyers took in \$19.7 million in fees during 1978.¹⁶
4. The proportion of cases which involved "permanent partial" disabilities was far higher in Florida than in Alabama or Wisconsin. Furthermore this injury category was responsible for a disproportionately large share of the Workmen's Compensation benefits paid in the State.

Because this fourth item was perhaps the key finding, it deserves more detailed attention. In the table below, Florida's

distribution of Workmen's compensation by injury type is compared to those of Alabama and Wisconsin.

TABLE 1

PERCENTAGE DISTRIBUTION OF RESOLVED
WORKMEN'S COMPENSATION CASES BY
INJURY TYPE:
FLORIDA, ALABAMA AND WISCONSIN
(November-December 1977)

<u>Injury Type</u>	<u>Florida</u>	<u>Alabama</u>	<u>Wisconsin</u>
Death	0.4	0.2	0.4
Permanent Total	0.8	0.1	0.5
Permanent Partial	30.0	7.1	9.0
Temporary Total	68.5	90.6	89.0
Temporary Partial	0.3	2.1	1.2

SOURCE: Florida Association of Insurance Agents, 1977 Workmen's Compensation Closed Claim Study, conducted by the National Council on Compensation Insurance, March, 1978.

Note that the proportion of resolved Florida cases which fall into the permanent partial category was more than three times the proportion recorded in Wisconsin and more than four times the Alabama figure.

The disproportionately large role of permanent partial injuries is just as striking when the distribution of benefits by injury type is examined as in Table 2.

TABLE 2

PERCENTAGE DISTRIBUTION OF BENEFITS
PAID IN RESOLVED WORKMEN'S COMPENSATION
CASES BY INJURY TYPE:
FLORIDA, ALABAMA AND WISCONSIN
(November-December 1977)

<u>Injury Type</u>	<u>Florida</u>	<u>Alabama</u>	<u>Wisconsin</u>
Death	1.6	2.1	5.4
Permanent Total	10.8	1.9	2.2
Permanent Partial	67.2	37.5	40.8
Temporary Total	20.3	57.4	50.8
Temporary Partial	0.0	1.0	0.8

SOURCE: Florida Association of Insurance Agents, 1977 Workmen's Compensation Closed Claim Study, conducted by the National Council on Compensation Insurance, March, 1978.

As the table reveals, permanent partial injury cases accounted for 67.2 percent of medical and indemnity benefits paid in Florida but only 37.5 percent and 40.8 percent of Alabama and Wisconsin benefits, respectively.

Causes Underlying the Problems

The responsibility for these problems appeared to rest with the structure of Florida's Workmen's Compensation system itself. More specifically, it was a system which placed too much reliance on the subjective judgments required of doctors and of Judges of Industrial Claims. It was a system which encouraged the active involvement of attorneys and the granting of lump sum settlements by insurance companies. It was a system which provided government agencies with insufficient authority and resources with which to regulate the program in the public interest. Finally, it was a system which provided indemnity benefits to injured workers who had not actually suffered any loss in wages.

The subjectivity of procedures was most evident at the point of "maximum medical improvement" or MMI, i.e., the point of which a doctor decided that the injured worker had recovered to the greatest extent possible. At that point, it would be determined whether the worker had either: 1) no disability, 2) a partial disability which was nonetheless permanent (permanent partial), or 3) a permanent and total disability (permanent total).

As noted previously the permanent partial category was responsible for an unusually large number of cases and a disproportionately high level of benefits in Florida. If a worker had received a permanent partial disability in the form of an injury specified in the Florida Statutes (a "scheduled" injury), he received a specific number of weeks of compensation at 60 percent of his average weekly wage. These benefits were paid whether or not the worker had been able to resume employment at his previous wage or even higher.

For "unscheduled" injuries within the permanent partial category, a doctor assigned a percentage disability rating to the worker. This percentage disability rating then was multiplied first by a specified number of weeks (175 for a 1-to-10 percent rating, 350 for an 11-to-50 percent rating, and 525 for a 51-to-100 percent rating) and then by 60 percent of the worker's average weekly wage.

This rating system was not only highly judgmental, it also provided a strong incentive for attempting to increase the disability rating. Fred Karl, speaking for the Florida Association of Insurance Agents, provided an example of this. At the time his example was formulated, the maximum weekly benefit amount available to an injured worker was \$130. Note the difference in benefits paid if the worker's disability rating were to be raised from 10 percent to 11 percent.

10% x 175 weeks @ \$130 per week = \$2,275

11% x 350 weeks @ \$130 per week = \$5,005

A one percentage point revision in the disability rating raised the benefits paid to twice the original amount. This was because, as was explained earlier, the 11 percent disability rating marked a threshold in the benefit structure. The disability rating increased by one percentage point, but, more significantly, the number of weeks of benefits paid jumped from 175 to 350. This latter change was primarily responsible for the huge jump in the benefit amount. A similar threshold existed at the 51 percent rating level.

The subjectivity did not stop with the doctor's disability rating however. In recognition of the fact that the same injury could affect the careers of two people in different occupations to a much different extent (for example, compare the ramifications of the loss of a finger to a lawyer as opposed to a pianist), the system had a second form of disability rating, wage diminution. The worker's lifelong wage earning capacity could be diminished by his injury. This contention would be presented to a Judge of Industrial Claims who would determine a diminution of wage earning capacity rating based on such factors as the age, occupation, education of the worker and other circumstances. In the end, the higher of the two disability ratings, the wage diminution rating from the judge or the physical disability (impairment) rating from the doctor, would determine the worker's benefits.

In other words, the system provided the injured worker with an incentive to obtain a higher disability rating. This incentive, combined with the subjectivity of the ratings themselves, resulted frequently in the use of legal counsel and the involvement of medical specialists. The NCCI study of two months' of resolved permanent partial cases in 1977 revealed that 71 percent of injured Florida workers were represented by an attorney. This proportion was more than twice the Alabama figure and four times that of Wisconsin.¹⁷ Medical specialists, as opposed to general practitioners, were involved in 63.4 percent of the Florida cases in which physicians were consulted. The corresponding percentages for Alabama and Wisconsin were 30.8 percent and 39.3 percent, respectively.¹⁸ This suggested what the Miami Herald called "doctor shopping", an attempt to find the physician who would give a higher disability rating.¹⁹

While the role of subjective judgments in benefit determination was perhaps the most central deficiency in the system, there were other, often related problems.

1. Attorneys' fees were related to benefit and settlement amounts. Until 1978, the claimant paid no attorney's fees. Legislation in that year required that claimants pay 25 percent of the fees with certain exceptions. Thus, attorneys had an incentive to strive for the largest award possible unencumbered by concern about the claimant's ability to pay an attorney's fee.

2. According to the Miami Herald, many Judges of Industrial Claims tended to give the benefit of the doubt to the Workmen's Compensation claimants. That publication reported instances of compensation awards when there was, in fact, no injury.²⁰
3. Insurance companies frequently faced lengthy and costly litigation. To extricate themselves, they tended to offer lump sum settlements or washouts of medical expenses to injured workers.²¹
4. The government agencies involved lacked the authority and resources to remedy the situation. The Bureau of Workmen's Compensation was too overwhelmed with paperwork to advise claimants on rights and procedures or to see that benefits were paid equitably and in a timely manner. The Department of Insurance had to rely on the National Council on Compensation Insurance, an insurance industry organization, to provide the statistical basis for evaluating rate adjustment requests.²²

III. THE MAJOR ELEMENTS OF THE 1979 CHANGES TO THE WORKMEN'S COMPENSATION LAW

The Intent of the Legislature

It had become clear that rather fundamental changes were needed in Florida's Workmen's Compensation system. A joint Senate-House Select Committee was appointed and the Workmen's Compensation issue was identified as the key issue facing the 1979 Legislature.²³

The overall goal of the legislative effort was to reduce the cost of Workmen's Compensation to employers. However, the aims of restoring equity in benefit awards and of reducing the delay in claims resolution were also important. In other words, it was hoped that the system could be made affordable, efficient and equitable.

Two major targets of reform were identified. The first was comprised of the indemnity benefit determination provisions in the existing law which required subjective estimates of disability by doctors and by Judges of Industrial Claims. This subjectivity had led to extensive litigation which, in turn, had been a major factor in the high cost of the system. The second target consisted of the administrative provisions used in handling a claim. The ineffectiveness of these provisions had resulted in delays in claims processing and had contributed to the extensive litigation characteristic of the system. An improved administrative structure was seen as increasing the equity of benefit determination by reducing the system's dependence on ". . .the vagaries of the adversary process."²⁴

The Changes in the Law

By the end of the 1979 Legislative sessions, Florida had a new "Workers'" Compensation law. The major changes were the following.²⁵

1. Florida became the first state to adopt a "wage-loss" concept for a considerable proportion of Workers' Compensation benefit determination. The switch to a wage-loss concept was intended to decrease dramatically the subjectivity involved in benefit determination.

This change concerned the indemnity component rather than the medical services component of Workers' Compensation benefits. Recall that, under the old system, injured workers suffering a permanent and partial disability either were eligible for benefits specified by statute (scheduled injuries) or were compensated based on a disability rating (unscheduled injuries). Within the unscheduled category, workers received the higher of the physical impairment and the diminution of earning capacity ratings.

Under the new system, impairment benefits would be paid for certain severe injuries: amputation, 80 percent loss of vision (after correction), or serious head or facial disfigurement. However, indemnity benefits in the majority of cases were to be determined solely by the actual loss in wages experienced by the injured worker due to his disability.²⁶ Under the wage-loss concept, the injured worker would receive 95 percent of the difference between 85 percent of his pre-injury wages and his wages after maximum medical improvement. This rule translates into the proposition that the worker must have experienced at least a 15 percent wage loss. After the worker had collected wage-loss benefits for two years, his post-injury wages would be discounted to adjust for inflation.

2. The statutory benefit levels for injured workers were raised. The maximum weekly benefit amount was increased from 66-2/3 percent of the statewide average weekly wage to 100 percent of that figure.
3. The structure and authority of the agency responsible for overseeing the operation of the Workers' Compensation were changed in the interest of making that agency more administratively effective. The Bureau of Workmen's Compensation was upgraded to a Division within the Department of Labor and Employment Security. This Division was instructed to ". . . assume an active and forceful role" in administering the system.²⁷ Under the new law, the employer would report employee injuries directly to the Division rather than indirectly to the Division through the insurance carrier. Steps were to be taken to ensure that injured workers were fully and promptly informed of proper procedures and their rights under the law. For example, injured workers were to be mailed an informational brochure while those suffering injuries which might permanently disable them were to be contacted personally. The Workers' Compensation Division would become more actively involved in controverted claims issuing advisory opinions as to benefits payable in each case. The judges of industrial claims were retitled deputy commissioners. Appeals of rulings by the deputy commissioners would now go to the First District Court of Appeals rather than to the Industrial Relations Commission, abolished by the 1979 legislation. The main burden of workers rehabilitation was shifted from the Division to the insurance carrier and employer. Finally, the Division was required to examine claims files, report annually on carrier promptness of payment and notify the Department of Insurance of patterns of questionable claims handling techniques by carriers.

4. The ability of citizenry and government to participate in the rate-making process was increased. A Bureau of Workers' Compensation Rating was established within the Department of Insurance to provide analytical support to the Insurance Commissioner in his review of insurance industry rate filings. Insurance company reporting requirements were changed in order to facilitate analysis by the Department of Insurance. Meetings by insurance industry rate-making authorities were required to take place in Florida and in the "sunshine." Excessive profits by insurance companies were prohibited.
5. The responsibility for paying attorneys' fees was shifted entirely to the claimants. Previously the claimant was to pay 25 percent of the fees while the remaining 75 percent was paid by the employer or insurance carrier. Certain exceptions to the rule of claimant payment were set forth. For example, attorneys' fees for recovery of medical benefits were to be paid by the employer or insurance carrier.
6. "Washouts" of benefits were to be strongly discouraged. Prior to the 1979 legislation, all parties could agree to a one-time payment to the claimant for benefits, thereby ending or "washing out" the employer's liability. Washouts of medical benefits would be prohibited. Lump sum settlements of disability benefits would be barred until six months after maximum medical improvement and then permitted only in special circumstances.
7. A 15 percent, across-the-board reduction in premium rates was mandated by the statute. The Legislature expected changes in the Workers' Compensation law--particularly the switch to a wage-loss system of disability benefit determination--to result in a substantial decline in insurance carrier costs. This decline was expected to more than counter-balance the increases called for in compensation benefits. To avoid excessive insurance carrier profits, the 15 percent premium rate reduction was ordered.

IV. THE EARLY PERFORMANCE OF FLORIDA'S NEW WORKERS' COMPENSATION SYSTEM

Examining the Impact

The fundamental reforms made in the Workers' Compensation law in 1979 were intended to make the system more equitable and efficient in meeting the genuine needs of injured workers while at the same time, making the system less costly to employers and insurance carriers. The reforms have been in effect for twenty months as of this writing. Although the new system will not have been given a fair test until it has been in operation for a number of years, an examination of the early performance of the law is warranted. Essentially, the question to be asked is this: Does the new Workers' Compensation law appear to be having its intended effects?

The scope of this analysis will be limited to the effects on employer costs (which reflect insurance carrier costs to a substantial extent). Certainly, the new system will not be considered a success unless it results in the fast, efficient and equitable delivery of compensation and services to the injured worker. However, an evaluation of that aspect of the system's performance is considerably more complicated than an assessment of the impact of the new law on employer costs. An examination of available statistics--benefits paid, numbers of claimants, premium rates and amounts--can provide a good preliminary indication of the impact of the new law on costs.

Reductions Already Accomplished in Employer Premiums

As was reported in Section III, one element of the 1979 legislation was a 15 percent, across-the-board reduction in Workers' Compensation premium rates. Simplifying somewhat, premium rates are multiplied by the employer's payroll to determine his Workers' Compensation insurance premium. At the time this rate reduction was enacted, a legislative staff analysis estimated that it would save Florida employers \$135-142 million annually.²⁸

As of yet, the insurance industry has not filed for a premium rate adjustment based directly on performance of Florida's new Workers' Compensation law. Nevertheless, an insurance industry rate filing submitted in December 1980 is worth noting. That filing concerned changes to the expense program used in calculating premiums and to the transition program for switching to a "total payroll" concept in computing premiums. As approved by the State Insurance Commissioner on January 1, 1981, this filing resulted in average premium rate reductions of 11.4 percent overall.²⁹ The Department of Insurance estimated that this premium rate reduction would result in savings of \$34 million to Florida employers.³⁰ The NCCI determined that Florida's average manual premium rate following this change would rank it 13th among the 45 states permitting private Workers' Compensation insurance in the nation.³¹ As was noted earlier, Florida had ranked fifth in the nation prior to the 1979 legislation. While the 11.4 percent rate reduction was

not based directly on experience under the new law, it does seem to suggest an improved economic state for insurance carriers after over a year and a half under the new law.

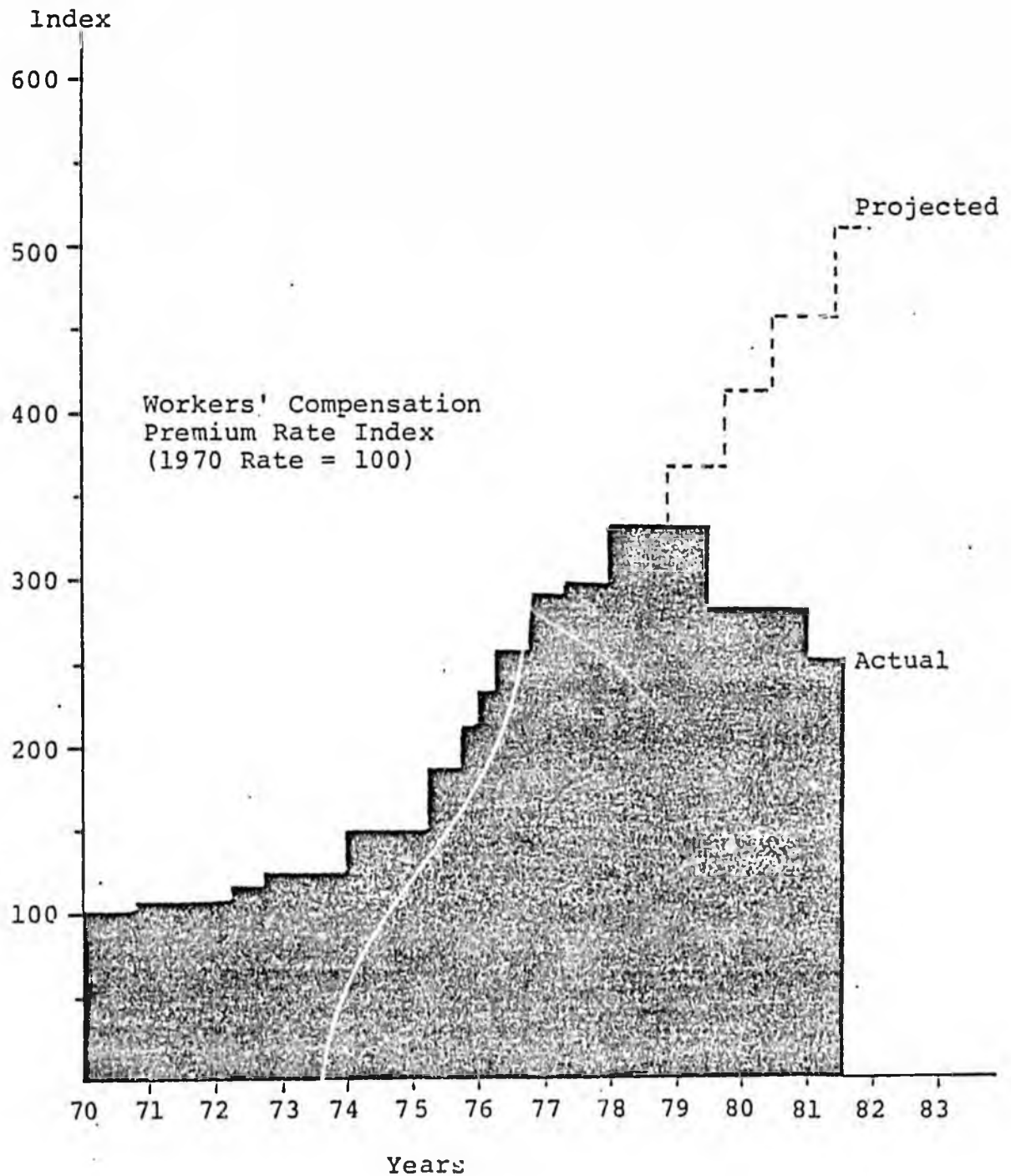
These premium rate reductions give early indication that the long-term trend of ever-increasing Workers' Compensation insurance premiums in Florida has ~~been~~ ended or perhaps even reversed. To demonstrate this development, an index of the overall Workers' Compensation manual premium rate has been developed. The average manual premium rate for all covered Florida employers, excluding those with self-insurance arrangements, as of January 1970 was set equal to 100.³² Changes in the index over time then were calculated by applying the percentage changes in the overall manual premium rate reported at the time of the legislative action or the approved industry filing.³³ For example, an insurance industry filing for a rate increase was approved by the Insurance Commissioner and made effective August 1, 1970. This increase was estimated to have the effect, on the average, of raising Workers' Compensation premium rates by 7.2 percent. Thus, the value of the index was increased from 100 to 107.2 (100 + 7.2 percent) as of August 1, 1970.

In Figure 1, the trend in the manual premium rate index from 1970 to the present is portrayed. (The actual index trend is portrayed by the darkened area. The dashed lines are explained subsequently.) Note the rapid--even accelerating--rate of increase prior to the 1979 legislation. The 15 percent rate reduction order'd by the legislation was the first rate reduction of the decade. The second rate reduction, effective January 1, 1981, brought the premium rate index to its lowest level since September, 1976.

The reduced premium rate levels stand in stark contrast to what might have been the case had the Workers' Compensation legislation not been enacted. From January 1970 through July 1979, there were eleven premium rate increases affecting most or all classifications. That constitutes an average of one rate increase every 10.5 months. The average rate increase was 11.5 percent, compounded. Assuming that this trend had continued from the date of the final premium rate increase (effective January 1, 1979) prior to the 1979 legislation, the Workers' Compensation premium rate index would have stood at 457.0 in March 1981 rather than at its actual level of 248.3. The dashed-line bars in Figure 1 portray this possible path of the index had the 1979 changes to the Workers' Compensation law not been put into effect.

FIGURE 1

OVERALL TREND IN FLORIDA WORKERS' COMPENSATION
PREMIUM RATES, 1970-1982: IMPACT OF NEW LAW



SOURCE: Historical rate increase data series provided upon special request by Bureau of Workers' Compensation Rating, Florida Department of Insurance. All index values, including hypothetical projections, calculated by Bureau of Economic Analysis, Florida Department of Commerce.