ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672 345
4773 HJUD SB 322 (FILE 3)

order: Robinett v. Ensearch Alaska Construction, AWCB No. 870210 (September 4, 1987).

Section 6. **ALL STATES RIDER NOTIFICATION**
Page 3, Line 22

This section requires that an insurer who extends workers' compensation insurance coverage to an out-of-state employer under another state's coverage policy must provide notice to the Department of Labor. This section addresses the problem of out-of-state employers using out-of-state insurance rates to obtain contracts at lower bid prices than Alaska employers. This will allow the department to investigate employers using other state's coverage policies to assure that all employers doing business in Alaska are paying Alaska premium rates.

Section 7. **SEMI-ANNUAL PAYMENTS**
Page 3, Line 27

This section allows an employer to pay an insurance premium on a semi-annual basis if the annual policy is $2,000 or more.

Section 8. **SECOND INJURY FUND PAYMENTS**
Page 4, Line 3

This section changes the method and time period the employer must contribute to the second injury fund. Currently, the employer/insurer pays into the fund on the anniversary date of each employee's injury or on termination of each claim, whichever is sooner. This change will allow the employer/insurer to issue one check on all claims annually at the time the

annual report is filed under AS 23.30.155(m), instead of issuing hundreds of checks throughout the year. This will not only save time and expense for employers/insurers but save administrative costs as well.

Section 9. **SECOND INJURY FUND EXPENSES**
Page 5, Line 5

This section provides that expenses incurred in the administration of the second injury fund be paid from the fund itself instead of from the general fund of the state. This approach returns to the pre-1981 method of paying the fund's administrative expenses. The financial condition of the fund has improved considerably because of the funding formula enacted in 1981, and the second injury fund can now bear the costs of its administration without jeopardizing the integrity of the fund.

Section 10. **VOCATIONAL REHABILITATION**
Page 5, Line 9

This section repeals prior law and reenacts a fundamentally changed workers' compensation rehabilitation system. The most significant changes are these:

1) Under this section the system is no longer mandatory. Thus, an employee who is eligible for rehabilitation benefits may elect whether or not to receive them. If he/she opts for rehabilitation, the employer is obliged to provide rehabilitation benefits. The intent of this change is to reduce the use of rehabilitation as a tool for litigation

and encouraging the use of rehabilitation services for people most likely to benefit and who truly desire and need them.

2) Under this section an employee who opts for rehabilitation may, in the first instance, select the rehabilitation specialist who will help the employee develop and implement a reemployment plan. The purpose of this change is to encourage employees to cooperate fully in their own rehabilitation and to minimize disputes that result under the present system because employees often distrust specialists chosen by the employer. On the other hand, to prevent selection of unqualified or biased specialists, the rehabilitation administrator, who is an employee of the Division of Workers' Compensation, may select the specialist from a list of qualified specialists if the employer objects to the employee's selection.

3) This section shortens the time lines for each step in the rehabilitation process. An eligibility evaluation for rehabilitation must be made within 90 days after the employee's notice of injury. The purpose of this change is to encourage early rehabilitation intervention.

4) This section redefines an employee's eligibility for rehabilitation benefits as the inability to return to the job held at time of injury or other jobs held or trained for within 10 years prior to injury or following injury.

The employee is not eligible for rehabilitation benefits if the employer offers a job with

minimum wages or 60 percent of prior injury wages, whichever is greater. Eligibility is also denied if the employee was rehabilitated following a prior injury and returned to work in a job that required the same physical demands as the pre-injury job.

5) This section provides for the following benefits during the evaluation and rehabilitation process: temporary benefits (TTD) during the healing period, permanent partial disability (PPD) benefits after medical stability, and if PPD benefits end before rehabilitation is completed, a wage at 60 percent of spendable weekly wages with a $525 cap. The current system provides for the payment of temporary benefits during the entire process.

6) This section establishes a two-year maximum for rehabilitation services and a $10,000 maximum for the costs of the plan. Under current law the maximum time for most plans is 37 weeks with provisions for 74 weeks of services in exceptional cases and no dollar maximum for plan costs.

The rehabilitation costs will be paid for by the employer on an expense incurred basis.

7) The employer may terminate the rehabilitation plan if the employee is not cooperating with it.

8) This section also redefines "rehabilitation specialist" as someone who is certified in the field.

Section 11. **EXCLUSIVENESS OF LIABILITY**
Page 13, Line 1

This section adds a provision that preserves the exclusiveness of employer liability under workers' compensation law even if an employee's claim is barred under AS 23.30.020(b). See comments to section 5.

Section 12. **PENALTY FOR EMPLOYER NONCOMPLIANCE**
Page 13, Line 19

This section increases the penalty for an employer's failure to insure and keep insured its liability for workers' compensation from $1,000 to $10,000 and makes the fine mandatory.

Section 13. **DOCTOR SHOPPING**
Page 14, Line 6

This section adds language that clarifies where the employee can seek medical treatment and limits the employee to no more than one change in choice of attending physician without the written consent of the employer. It also requires the employee to give prior notice of the change. Its purpose is to prevent the abuse of frequent pnysician changes, with its resultant costly overtreatment, by those seeking opinions to support their claims.

Section 14. **TREATMENT PLAN**
Page 15, Line 6

This section adds language invalidating a course of medical care that requires continuing and multiple

treatment unless a written treatment plan is prescribed and submitted to the employer by the attending physician.
Treatment is limited to 20 visits in the first 60 days and four visits per month after the first 60 days unless the attending physician documents the need for excess services in the written treatment

Section 15. **EMPLOYER INDEPENDENT MEDICAL EXAM (IME)**
Page 15, Line 28

This section clarifies that, at reasonable times throughout disability, the employee must submit to an examination by a physician or surgeon of the employer's choice and establishes a presumption of reasonableness. It also limits the employer to no more than one change in choice of physicians without the written consent of the employee. It is the intent of sections 13 and 15 to afford equal rights to the employee and employer in the selection and change of their respective physicians.

Section 16. **MEDICAL FEES**
Page 17, Line 7

This section adds language establishing a medical fee standard, as determined by the board, but not to exceed usual, customary and reasonable fees for the treatment or services in the community in which it is rendered. It also provides that an employee may not be held responsible for the payment of a fee or charge for medical treatment or service.

Section 17. **MEDICAL FEE REVIEW**
Page 17, Line 16

This section is repealed and reenacted authorizing the board to appoint or contract with a medical services review committee to assist and advise on the appropriateness, necessity and cost of medical and related services.

Section 18. **BOARD IME**
Page 17, Line 22

This section adds a new provision which grants the board authority to establish a list of physicians and select a physician from the list to conduct an independent medical examination in the event of medical disagreement between the employee's and the employer's physicians. The employer will pay for the examination. It also establishes a presumption that the board's independent medical examiner's opinion is correct and provides the examiner with protection from damages for rendering an opinion or giving testimony.

This section requires that the board's physician be the same specialty as the employee's treating physician unless the board agrees unanimously on a case by case basis to approve a different selection.

Section 19. **STATUTE OF LIMITATIONS**
Page 18, Line 15

This section codifies the board's interpretation of the meaning of compensation for statute of limitation purposes under AS 23.30.105 and partially complies with the Supreme Court's directive 14 years ago in Williams v. Safeway Stores, 525 P.2d 1087, 1089 n.6 (Alaska 1974), that the legislature clarify

when compensation includes medical and other benefits and when it means time loss benefits only. For the purposes of filing a claim for additional disability compensation, the board has consistently concluded that when compensation payments have been made without an award, the claim must be filed within two years after the last payment of disability or death benefits and cannot be extended by the payment of medical benefits only.

Section 20. **HEARINGS AND CONTINUANCES**
Page 19, Line 2

This section addresses the delays being experienced by the parties to the workers' compensation system in getting disputed cases before the board and the board's problems in timely docketing cases for hearing. While budget and staff constraints set an outside limit on the number of cases that can be heard, the board's analysis of the current backlog problem is that it is caused in large part because of excessive continuances and the unpreparedness of the parties in presenting their case to the board, which results in the hearing record remaining open.

This amended section will require an affidavit be filed stating that the party has completed all necessary discovery obtained, all necessary evidence, and is fully prepared for the hearing. Once a hearing has been scheduled, a continuance will not be granted, and after the hearing the board will close the hearing record.

Section 21. **STRESS CLAIMS**
Page 19, Line 27

This section shifts the burden of proof to the employee for establishing a compensable claim for mental injury resulting from work-related stress, consistent with the amendment to AS 23.30.265(17) found in section 40.

Section 22. **BOARD FINDINGS**
Page 20, Line 2

This section codifies legislative intent in section 1 that findings of fact made by the board in its orders are conclusive unless the court specifically finds that a reasonable person could not have reached the board's conclusion.

Section 23. **STATUTE OF LIMITATIONS**
Page 20, Line 7

This section codifies the board's interpretation of the meaning of compensation for statute of limitations purposes under AS 23.30.130, which provides that a request for modification of a compensation award must be made within one year after the last payment of disability or death benefits. This is consistent with the amendment to AS 23.30.105 found in section 19.

Section 24. **REPORTING REQUIREMENTS**
Page 20, Line 20

This section reflects changes consistent with the repeal and reenactment of AS 23.30.155(m) found in section 27, concerning the reduction of reporting penalties.

Section 25. **BENEFIT PAYMENTS DURING CONTROVERSION**
Page 21, Line 16

This section provides protection for the injured worker whose benefits are denied solely on the grounds that another employer or insurer may be liable for all or some of the benefits. This section requires that the most recent employer or insurer who is party to the claim and may be liable must pay the injured worker temporary disability benefits during the pendency of disputes over liability between various employers and insurers. This section also requires that when liability has been determined, any reimbursement, including interest and all attorney's costs and fees, must be paid within 14 days.

This amendment addresses the problems in Alaska's "last injurious exposure rule" by discouraging needless or frivolous litigation through assessment of costs and interest of successful employers against the ultimately liable employers. It also puts an end to the delays in paying benefits to injured workers who under the current system must often wait months or years with no benefits while two or more employers/insurers fight over liability.

Section 26. **LATE PAYMENT PENALTY**
Page 22, Line 5

This section increases the employer's penalty from 20% to 25% for late payment of compensation to an employee.

Section 27. **REPORTING REQUIREMENTS**

Page 22, Line 13

This section repeals and reenacts employer/insurer reporting provisions requiring that an annual, instead of an anniversary, report be filed with the board by March 1 of each year showing the total amount of all compensation by type, medical and related benefits, vocational rehabilitation expenses, legal fees, and penalties paid on all claims during the preceding calendar year. Currently, data is collected on a per claim basis through interim and claim anniversary reports. However, there is no data collected showing what employers/insurers have paid for claims on an annual basis, making it impossible to meaningfully analyze insurance rates or to make effective changes in the workers' compensation system.

Also, it is the purpose of this section to encourage compliance with the reporting system by assessing full penalties against employers/insurers who repeatedly fail to comply with reporting requirements, but forgiving the occasional reporting oversight for insurers showing substantial compliance. Additional civil penalties are included for those insurers who fail to comply with the annual report requirement.

Section 28. **SELF-INSUREDS, UNFAIR CLAIM SETTLEMENTS, BANK REQUIREMENTS FOR BENEFIT PAYMENTS**
Page 23, Line 13

This section clarifies that if the employer is self-insured, the requirements of AS 23.30.155(c) and (m) in sections 24 and 27 apply to the employer.

This section also requires the board to notify the division of insurance if it is determined that an insurer has frivolously or unfairly controverted an employee's compensation. The division of insurance is then required to make a determination if the insurer has committed an unfair claim settlement practice under AS 21.36.125.

The section further requires that benefits paid to recipients residing in Alaska be paid by checks or other negotiable instruments drawn on Alaska banks or by certified check.

Section 29. **RATES OF WEEKLY COMPENSATION**
Page 23, Line 26

This section repeals and reenacts the minimum and maximum rates of compensation to be paid an Alaska injured worker. It decreases the maximum weekly compensation rate from 200% of the state's average weekly wage, which for 1988 is $547 equalling a weekly compensation rate of $1094, to an absolute maximum of $700 per week. It increases the minimum weekly compensation rate from $110 to $154 per week, except in those cases where the employee does not provide documentary proof of past wages or the employee's spendable weekly wages are less than $154 per week. The minimum of $154 approximates the Alaska minimum wage. The purpose of this section is to redistribute workers' compensation dollars to provide a more livable compensation rate for low wage earners without unduly increasing employer costs. It is further the purpose of this section to override the Alaska Supreme Court's holding in Peck v. Alaska Aeronautical Inc., Op. No. 3240 (October

30, 1987), by providing for a fixed maximum compensation rate which can be predicted.

This section also reenacts the provision that Alaska rates of compensation shall be adjusted for those employees who leave the state, except for medical or rehabilitation services not available in Alaska, by the ratio of the cost of living in the locality the employee resides to that of Alaska. It also provides that the board, by regulation, shall determine and annually update living costs for the state and other localities. A similar law providing for the adjustment of the Alaska compensation rate by ratios of states' average weekly wages to those of Alaska was struck down as unconstitutional in Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264, 271 (Alaska 1984). However, the court suggested that an adjustment based on actual cost of living may pass constitutional muster.

Section 30. **PERMANENT TOTAL DISABILITY**
Page 25, Line 9

This section provides that if an employee is paid a permanent partial disability award and it is subsequently determined that the employee is permanently totally disabled, the permanent total disability benefits must be reduced by the permanent partial disability award, adjusted for inflation, as determined by the board.

This section also establishes a labor market for an injured worker's services that must be considered when determining whether the worker is permanently totally disabled. This section clarifies that not

only the worker's area of residence, which may have little or no employment opportunities, but the area of last employment or the state will be considered as a labor market for his/her services. The purpose of this section is to make it clear that an employee not be classified as permanently totally disabled because he chooses to live in a small or isolated community with fewer employment opportunities.

Section 31. **PERMANENT TOTAL DISABILITY**
Page 25, Line 27

This section clarifies that failure to satisfy the remunerative employability definition as defined in AS 23.30.041(p)(2) does not mean that an employee is automatically permanently totally disabled.

Note: This section needs a technical amendment as the present cite is incorrect. It now reads "AS 23.30.041(m)(7)" and should read "AS 23.31.041(p)(2)."

Section 32. **TEMPORARY TOTAL DISABILITY (TTD)**
Page 26, Line 2

This section imposes a cap on temporary total disability by payment of benefits only up to the time of medical stability, as defined in AS 23.30 .265(34) found in section 41, but in no case longer than two years from the date of disability. This is consistent with the concept that temporary total disability be paid during the healing period. Following medical stability, the worker is paid permanent partial impairment benefits as reflected in section 33.

Section 33. **PERMANENT PARTIAL DISABILITY (PPD)**
Page 26, Line 11

This section repeals prior law and reenacts a totally new concept in permanent partial disabilities. All payments for permanent partial impairment will be based on a whole person concept in accordance with the American Medical Guides to Evaluation of Permanent Impairment Compensation. Under the Guides the impairment of any body part is computed as to how it affects total body functioning. Compensation is computed by multiplying the employee's actual degree of impairment by the appropriate adjustment factor by the maximum compensation rate of $240,000, but no permanent partial impairment payment may be less than $250. The section also provides that an impairment rating be reduced by a pre-existing permanent impairment; however, the prior rating will not negate a finding of permanent total disability.

Current law provides maximum schedules for fourteen various body parts, ranging from $2,800 to $59,000, plus a maximum unscheduled benefit of $60,000 based on loss of earning capacity for back and neck injuries. This section represents a redistribution of benefits to those workers who have more significant injuries and disabilities from those with lesser impairments.

Note: This section does not work in practice as the Labor-Management Task Force intended. PPD payments at the lower impairments are considerably lower than under present law. See the payment chart in the backup file under "Task Force."

Section 34. **TEMPORARY PARTIAL DISABILITY (TPD)**
Page 28, Line 12

This section provides for payment of temporary partial disability benefits only up to the time of medical stability, consistent with the amendment to AS 23.30.185 found in section 32. It also reduces the maximum period for paying temporary partial disability benefits from five to two years.

Section 35. **TEMPORARY PARTIAL DISABILITY**
Page 28, Line 22

This section reenacts language necessary to determine an employee's wage-earning capacity for purposes of temporary partial disability. This language, which was previously found in AS 23.30.210 and is now repealed in section 42, pertains only to the payment of temporary partial benefits. It is consistent with the changes made in AS 23.30.190 found in section 33.

Section 36. **WEEKLY WAGE DETERMINATION**
Page 29, Line 4

This section amends AS 23.30.220(a) to narrow the instances where an employee's gross weekly earnings cannot be computed under AS 23.30.220(a)(1) based upon past earnings. Only in those cases in which the employee had no earnings or was voluntarily absent from the labor market for 18 months or more during the two calendar years before injury will the gross weekly earnings be calculated under AS 23.30.220(a)(2). The board is then mandated to consider the nature of the employee's work and work

history in determining the gross weekly earnings for calculating compensation, but in no event can the compensation exceed the employee's earnings at the time of injury.

This amendment overrides a long line of supreme court rulings in which the board was ordered to establish the gross weekly earning and therefore the compensation rate by speculating on an employee's future earnings. (See Johnson v. RCA-OMS, Inc., 681 P.2d 905 (Alaska 1984), and its progeny.) The board has consistently found that an employee's past earnings record is the best predictor of an employee's loss of earnings during the period of disability. Thus, except for the exceptions stated, the purpose of this section is to require that gross weekly earnings be computed by dividing by 100 into the employee's gross earnings in the two calendar years immediately proceding the injury.

Section 37. **PENSION PLAN OFFSET**
Page 30, Line 9

This section provides that if contributions to a qualified pension or profit sharing plan have been included in an employee's gross earnings, as reflected in AS 23.30.265(15) found in section 39, the employer may offset compensation benefits by a like amount when the employee receives pension or profit sharing payments.

Section 38. **DISCRIMINATION PROHIBITED**
Page 30, Line 20

This section enacts a new provision that prohibits an employer from discriminating in the hiring, promotion or retention of an employee who has in good faith filed a claim for or received compensation benefits. An employer who violates this section is liable for damages assessed by the court in a private civil action.

This section does not prohibit consideration of an employee's safety practices or physical and mental abilities nor does it prohibit inquiry into the employee's prior health or disability history for second injury fund reimbursement or determination of physical or mental capacities to meet the demands of employment.

Section 39. **PENSION OR PROFIT SHARING PLAN CONTRIBUTIONS**
Page 31, Line 10

This section amends the definition of an employee's gross earnings to include total contributions by an employer to a qualified pension or profit sharing plan for the two prior years multiplied by the percentage of vested interest at the time of injury. This change is consistent with the board's interpretation of the Supreme Court's ruling in Ragland v. Morrison-Knudsen Co., Inc., 724 P.2d 579 (Alaska 1986).

Section 40. **STRESS CLAIMS LIMITATION**
Page 31, Line 27

This section amends the definition of injury by providing specific language that the term does not include mental injury caused by mental stress unless

the work stress was extraordinary and unusual in the profession and the work stress was the predominant cause of the mental injury. Specifically excluded are those mental injuries that result from disciplinary actions or changes in job status taken in good faith by the employer. Unlike all other types of injuries, it further places the burden on the employee to provide work-connection. See the proposed amendment to AS 23.30 .120 found in Section 21.

This change is consistent with prior board rulings in which the employee's stress had to be greater than all employees in the profession must experience to be compensable. This section is intended to override the Alaska Supreme Court rulings in Wade v. Anchorage School District, 741 P.2d 634 (Alaska 1987), and Fox v. Alascom, 718 P.2d 977 (Alaska 1986).

Section 41. **MEDICAL STABILITY CONCEPT**
Page 32, Line 17

This section adds a new definition which provides that medical stability means the date after which no further measurable improvement is expected to result from additional medical treatment or care. This codifies the meaning of the healing period during which time temporary total or temporary partial disability benefits are paid, and is consistent with the changes made in sections 10, 32 and 34. Currently, temporary disability benefits are paid until economic or employment stability regardless of time factors or the status of the employee's medical condition.

Section 42. **TPD REPEALER**
Page 32, Line 27

This section repeals provisions that are unnecessary or inconsistent with the repeal and reenactment of AS 23.30.200(b) found in section 35.

Section 43. **TRANSITION FOR REPORTING REQUIREMENTS**
Page 32, Line 28

This section contains transitional language necessary to change reporting from an anniversary to an annual system. It specifically provides that each employer is subject to this change for all claims existing as of December 31, 1988.

Section 44. **MANDATED RATE REDUCTION**
Page 33, Line 7

This section mandates a rate decrease for workers' compensation premiums of no less than 6%, effective July 1, 1988 through January 1, 1990.

Section 45. **VOC REHAB SPECIALIST CERTIFICATION TRANSITION**
Page 33, Line 12

This section contains transitional language to include a grandparent clause to allow current rehabilitation specialists who do not have the credentials required under AS 23.30.041(p)(6) to continue to practice for one year after adoption of this bill, at which time they must have gained the required credentials or be barred from further practice as a rehabilitation specialist in the workers' compensation system.

Section 46. **APPLICABILITY**
Page 33, Line 18

This section delineates the amendments to the Act that apply only to injuries sustained on or after July 1, 1988.

Section 47. **EFFECTIVE DATE**
Page 33, Line 21

This section provides that the amendment to the Act under section 40 applies to injuries sustained on or after the effective date of section 40.

Section 48. **EFFECTIVE DATE**
Page 33, Line 23

This section provides that sections 40 and 47 of this Act takes effect immediately under AS 01.10 070(c).

Section 49. **EFFECTIVE DATE**
Page 33, Line 25

This section provides that sections 1-39, and 41-46 of this Act take effect July 1, 1988.

March 17, 1988

Representative John Sund
State Legislature
Juneau, Alaska 99811

Dear Representative Sund:

As you know the House Labor & Commerce Committee recently passed their version of the workers' compensation reform package. Although the labor management task force that made most of the recommendations endorses the bulk of the legislation, we strongly feel there now exists some significant limitations and deficiencies in the legislation in the form it now takes. We would like to address those with you and ask that you strongly consider curing the problems.

Our first concern is with Sec. 2 21.89.015. This section attempts to give benefit to those who have safety programs in place. We feel this is an admirable idea, but that the legislation as currently drafted, will have little or no real effect. For this program to work, it will require that every employer with a safety program be audited for a conforming safety program, and a thorough enforcement program be in place. Not only is this likely to be an expensive item for the state and insurance companies, it is unrealistic to think that the state can add a safety audit program for every single insured employer in the state each year. This would be required in order to insure all employers have an opportunity for the refund. You are talking about tens of thousands of audits. Fortunately there already exists incentives for employers to provide safe work places as safety practices ultimately reduce costs and are reflected in experience modes. Perhaps other things are possible, but we feel this section should be deleted and more thought given to it before it is included in some subsequent legislation.

We are most concerned about changes to Section 18 23.30.095 (k) as it corrupts our attempts to install an effective IME process that results in an informed board making informed decisions. We feel it is critical that the board have wide latitude in obtaining outside expertise in critical medical information. This section, as passed by Labor & Commerce in an attempt to satisfy the chiropractic community, requires that the boards chosen IME be of the same specialty as the attending physician unless the board unanimously determines otherwise. There are several significant problems that are inherent with this approach. First of all the board, generally all being non-medical professionals, often asks that a panel of experts of varied professions, including medical doctors, orthopedic surgeons, psychiatrists, chiropractors, etc., counsel them on the physical and mental status of individuals. Limiting them to only specialties of the attending physician greatly limits their ability to gain the widest possible perspective in making decisions in complicated

areas outside of their own expertise. The Labor & Commerce approach would suggest that less information is better than more. We don't see how this could possibly be to the benefit of the injured worker. Why, for example would you want to limit counsel in a case where surgery is recommended, to advice from only another surgeon. Most surgeons only know how to treat through surgery, when in fact other treatments may be appropriate.

Secondly, for anyone familiar with professional people, there is a reluctance to challenge brother professionals. By limiting only to an attending physicians specialty negates a large portion of the effective review process the task force had in mind. We all felt strongly that a medical provider would take greater care in evaluating a patients needs if they knew there was the potential for scrutiny down the road by a non "club" member. It was felt the board needed the flexibility to select, on a case by case basis, the profession, or professions, it felt it needed help from in order to make informed decisions. Our approach does not limit the board from using the same profession as the attending physician for its IME, it just expands it. The critical thing to remember about the IME process as envisioned by the task force was that IME would only advise on the physical and mental condition of a patient, and the appropriate medical treatment to be pursued, so that the board would be informed about matters at hand. It is not the boards responsibility to admonish a medical provider for a prior course of treatment.

Finally it seems odd to us that if the Labor & Commerce Committee felt that the attending physician should be protected from outside scrutiny, which we think is off the mark from the issue at hand, that it do so by requiring a unanimous vote on behalf of the board to change professions. First it points to a weakness certain professions must feel about their own positions if they need a unanimous vote to allow for objective review. Secondly, and perhaps a bit philosophically, if you think of it, where else in our democracy do we require a unanimous vote, with no opportunity for challenge. Not in making changes to our constitution, not in setting death as that penalty for certain crimes, not in deciding that in certain circumstances children should be taken from their mothers, not even in going to war. Not in anything but whether a workers compensation board has the authority to expand the scope of information it has available to it in trying to make its determinations, if the House Labor & Commerce committee has its way. We would strongly recommend that consideration be given to changing the language so that it is consistent with the Senate version of the bill.

We can't express any stronger reservations about any section of the proposed bill but with this section. We have no confidence that the goal of providing the board with sufficient information to make good decisions regarding medical disputes will happen as the bill is currently written.

One of the stated goals of the reform movement was to lower costs. This new language will make it even more difficult to achieve those goals.

Just one minor technical change is recommended. In section 10 23.30.041 (f) I the words "of injury" are used twice in the sentence and is confusing and unnecessary. The second usage should be deleted.

We would greatly appreciate any consideration you can give to the issues described herein, and would hope that you would allow us to work with you on any other changes members of the Judiciary Committee have in mind. We look forward to working with you on this important matter and make ourselves available to answer any questions and to explain our reasoning behind our recommendations.

Sincerely,

Mary Pierce
Co-Chairman
Labor Management
Task Force

Robert Anders
Co-Chairman
Labor Management
Task Force

cc: Mano Frey

COLUMN 2 IS THE AMOUNT AD HOC COMMITTEE INTENDED; COLUMN 1 IS THE AMOUNT KCD THOUGHT WAS INTENDED.

HCS CSSB 322 (L+C)

ARM

Rating		Workman %		Factor			Difference (1)-(2)	(1)	(2)
10 %	=	6 %	×	.060	×	240,000	3456 =	864.00	432
20	=	12	×	.362	×	"	8,899 =	19,541.00	19,4
30	=	18	×	.585	×	"	11,016 =	25,272.00	36,2
40	=	24	×	.709	×	"	17,050 =	40,550.00	57,6
50	=	30	×	.840	×	"	11,520 =	60,480.00	72,0
60	=	36	×	1.000	×	"	Same =	86,400.00	86,4
70	=	42	×	1.000	×	"	" =	100,800.00	100,8
80	=	48	×	1.000	×	"	" =	115,200.00	115,2
90	=	54	×	1.000	×	"	" =	129,600.00	129,6
100	=	60	×	1.000	×	"	" =	144,000.00	144,0

Lee

10 %	=	4 %	×	0			2,630 =	2.50.00	2,880
20	=	8	×	.180	×	240,000	9504 =	3,456.00	12,960
30	=	12	×	.366	×	"	13,651 =	10,541.00	24,192
40	=	16	×	.495	×	"	19,392 =	19,008.00	38,400
50	=	20	×	.675	×	"	15,600 =	32,400.00	48,000
60	=	24	×	.709	×	"	17,050 =	40,550.00	57,600
70	=	28	×	.790	×	"	14,112 =	53,088.00	67,200
80	=	32	×	.910	×	"	6,912 =	69,888.00	76,800
90	=	36	×	1.000	×	"	Same =	86,400.00	86,400
100	=	40	×	1.000	×	"	Same =	96,000.00	96,000

Workman

10 %	×	.200	×	240,000	=	7,200.00	Same
20	×	.675	×	"	=	32,400.00	"
30	×	.840	×	"	=	69,480.00	"
40	×	1.000	×	"	=	96,000.00	"
50	×	1.000	×	"	=	120,000.00	"
60	×	1.000	×	"	=	144,000.00	"
70	×	1.000	×	"	=	168,000.00	"
80	×	1.000	×	"	=	192,000.00	"
90	×	1.000	×	"	=	216,000.00	"
100	×	1.000	×	"	=	240,000.00	"

Farm — 280 weeks — $59,000 maximum

Weekly Comp Rate	$200	$300	$400	$500	$600	$700	% of Withdrawal
10%							
Cesar	5,900	5,900	5,900	5,900	5,900	5,900	
Grant	5,600	8,400	11,200	14,000	16,800	19,600	
HCS CSSB 322 (LHC)	4,320 / 864	4,320 / 864	4,320 / 864	4,320 / 864	4,320 / 864	4,320 / 864	6%
20%							
Cesar	11,800	11,800	11,800	11,800	11,800	11,800	
Grant	11,200	16,800	22,400	28,000	33,600	39,200	
HCS CSSB 322 (LHC)	19,440 / 10,541	19,440 / 10,541	19,440 / 10,541	19,440 / 10,541	19,440 / 10,541	19,440 / 10,541	12%
30%							
Cesar	17,700	17,700	17,700	17,700	17,700	17,700	
Grant	16,800	25,200	33,600	42,000	50,400	58,800	
HCS CSSB 322 (LHC)	36,288 / 25,272	36,288 / 25,272	36,288 / 25,272	36,288 / 25,272	36,288 / 25,272	36,288 / 25,272	18%
40%							
Cesar	23,600	23,600	23,600	23,600	23,600	23,600	
Grant	22,400	33,600	44,800	56,000	59,000	59,000	
HCS CSSB 322 (LHC)	57,600 / 40,550	57,600 / 40,550	57,600 / 40,550	57,600 / 40,550	57,600 / 40,550	57,600 / 40,550	24%
50%							
Cesar	29,500	29,500	29,500	29,500	29,500	29,500	
Grant	28,000	42,000	56,000	59,000	59,000	59,000	
HCS CSSB 322 (LHC)	72,000 / 60,480	72,000 / 60,480	72,000 / 60,480	72,000 / 60,480	72,000 / 60,480	72,000 / 60,480	30%
60%							
Cesar	35,400	35,400	35,400	35,400	35,400	35,400	
Grant	33,600	50,400	59,000	59,000	59,000	59,000	
HCS CSSB 322 (LHC)	same / 86,400	same / 86,400	same / 86,400	same / 86,400	same / 86,400	same / 86,400	36%

Larg — 248 weeks — $54,400 maximum

	$200	$300	$400	$500	$600	$700	% of Withdrawal
Cesar	5,440	5,440	5,440	5,440	5,440	5,440	
Grant	4,960	7,440	9,920	12,400	14,880	17,360	
HCS CSSB 322 (LHC)	3,880 / 250	2,880 / 250	2,880 / 250	2,880 / 250	2,880 / 250	2,880 / 250	4%
Cesar	10,880	10,880	10,880	10,880	10,880	10,880	
Grant	9,920	14,880	19,840	24,800	29,760	34,720	
HCS CSSB 322 (LHC)	12,960 / 3,456	12,960 / 3,456	12,960 / 3,456	12,960 / 3,456	12,960 / 3,456	12,960 / 3,456	8%
Cesar	16,320	16,320	16,320	16,320	16,320	16,320	
Grant	14,880	22,320	29,760	37,200	44,640	52,080	
HCS CSSB 322 (LHC)	24,192 / 10,541	24,192 / 10,541	24,192 / 10,541	24,192 / 10,541	24,192 / 10,541	24,192 / 10,541	12%
Cesar	21,760	21,760	21,760	21,760	21,760	21,760	
Grant	19,840	29,760	39,680	49,600	54,400	54,400	
HCS CSSB 322 (LHC)	38,400 / 19,008	38,400 / 19,008	38,400 / 19,008	38,400 / 19,008	38,400 / 19,008	38,400 / 19,008	16%
Cesar	27,200	27,200	27,200	27,200	27,200	27,200	
Grant	24,800	37,200	49,600	54,400	54,400	54,400	
HCS CSSB 322 (LHC)	48,000 / 32,400	48,000 / 32,400	48,000 / 32,400	48,000 / 32,400	48,000 / 32,400	48,000 / 32,400	20%
Cesar	32,640	32,640	32,640	32,640	32,640	32,640	
Grant	29,760	44,640	54,400	54,400	54,400	54,400	
HCS CSSB 322 (LHC)	57,600 / 40,550	57,600 / 40,550	57,600 / 40,550	57,600 / 40,550	57,600 / 40,550	57,600 / 40,550	24%

TOP NO. IN HCS CSSB 322(LHC) LINE IS THE AMOUNT ADHOC COMMITTEE INTENDED; BOTTOM NO. IS THE AMOUNT WCO THOUGHT YOU INTENDED.

	Wkly Comp Pay	$ 300	$ 500	$ 400	$ 500	$ 600	$ 700	% of Coverage
70%	CESAR	41,300	41,300	41,300	41,300	41,300	41,300	
	GRANT	58,800	58,800	59,000	59,000	59,000	59,000	
	HCS CSSB 322 (LOC)	same 100,800	same 100,800	same 100,800	same 100,800	same 100,800	same 100,800	42%
80%	CESAR	47,200	47,200	47,200	47,200	47,200	47,200	
	GRANT	44,800	59,000	59,000	59,000	59,000	59,000	
	HCS CSSB 322 (LOC)	same 115,200	same 115,200	same 115,200	same 115,200	same 115,200	same 115,200	48%
90%	CESAR	53,100	53,100	53,100	53,100	53,100	53,100	
	GRANT	50,400	59,000	59,000	59,000	59,000	59,000	
	HCS CSSB 322 (LOC)	same 129,600	same 129,600	same 129,600	same 129,600	same 129,600	same 129,600	54%
100%	CESAR	59,000	59,000	59,000	59,000	59,000	59,000	
	GRANT	56,000	59,000	59,000	59,000	59,000	59,000	
	HCS CSSB 322 (LOC)	same 144,000	same 144,000	same 144,000	same 144,000	same 144,000	same 144,000	60%

	$ 200	$ 300	$ 400	$ 500	$ 600	$ 700	% of Coverage
CESAR	38,080	38,080	38,080	38,080	38,080	38,080	
GRANT	34,120	52,080	54,400	54,400	54,400	54,400	
HCS CSSB 322 (LOC)	67,200 53,088	67,200 53,088	67,200 53,088	67,200 53,088	67,200 53,088	67,200 53,088	28%
CESAR	43,520	43,520	43,520	43,520	43,520	43,520	
GRANT	39,680	54,400	54,400	54,400	54,400	54,400	
HCS CSSB 322 (LOC)	76,800 69,888	76,800 69,888	76,800 69,888	76,800 69,888	76,800 69,888	76,800 69,888	32%
CESAR	48,960	48,960	48,960	48,960	48,960	48,960	
GRANT	44,640	54,400	54,400	54,400	54,400	54,400	
HCS CSSB 322 (LOC)	same 86,400	same 86,400	same 86,400	same 86,400	same 96,400	same 86,400	36%
CESAR	54,400	54,400	54,400	54,400	54,400	54,400	
GRANT	47,600	54,400	54,400	54,400	54,400	54,400	
HCS CSSB 322 (LOC)	same 96,000	same 96,000	same 96,000	same 96,000	same 96,000	same 96,000	46%

ALASKA SERVICING CARRIER ASSIGNMENT SURVEY 1/1/87 thru 12/31/87

SERVICING CARRIER	# OF RISKS	%	PREMIUM ASSIGNED	%	AV. SZ. OF RISK	QUOTA BUDGET
ALASKA NATIONAL	290	17.23%	$1,174,286	17.91%	$4,049	16.66%
ALASKA PACIFIC	291	17.29%	$1,420,027	21.66%	$4,880	16.66%
EMPLOYERS OF WAUSAU	264	15.69%	$730,653	11.14%	$2,768	16.66%
FIREMAN'S FUND	284	16.87%	$993,354	15.15%	$3,498	16.66%
INDUSTRIAL INDEMNITY	260	15.45%	$1,141,176	17.41%	$4,389	16.66%
PROVIDENCE WASHINGTON	294	17.47%	$1,097,039	16.73%	$3,731	16.66%
TOTAL	1,683	100.00%	$6,556,535	100.00%	$3,896	99.96%

NCCI National Council on Compensation Insurance

RESIDUAL MARKET OPERATIONS

SAFETY NET

POLICY YEAR BY STATE
3RD QUARTER 1987

STATE	POLICY YEAR	POLICY YEAR WRITTEN PREMIUM (000)	POLICY YEAR EARNED PREMIUM (000)	POLICY YEAR INCURRED LOSSES (000)	LOSS RATIO	POLICY YEAR NET UNDERWRITING GAIN (LOSS) (000)
ALASKA	'82 1982	7,005 7,005	7,005	5,293 5,293	.756 0.756	1,097 (1,097)
	'83 1983	4,765 4,765	4,765	5,621 5,621	1.180 1.180	3,126 (3,126)
	'84 1984	5,009 5,009	5,009	3,835 3,835	.774 0.774	644 (644)
	'85 1985	16,733 16,733	16,733	12,679 12,679	.758 0.758	1,656 (1,656)
	'86 1986	19,993 19,993	19,375 19,375	17,515 17,515	.904 0.904	4,527 (4,527)
	'87 1987	10,227 10,227	4,244 4,244	5,208 5,208	1.227 1.227	4,166 (4,166)
QTR-TO-DATE	'86 1986	10,318 10,318	4,394 4,394	5,427 5,427	1.235 1.235	4,413 (4,413)
QTR-TO-DATE	'87 1987	10,227 10,227	4,244 4,244	5,208 5,208	1.227 1.227	4,166 (4,166)

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The first set of figures represents new admissions into the Pool, while the second table includes new and renewals. Thus, the total written premium for the Alaska Pool as of the 3rd quarter 1987 was $10,227,000. the $6,556,535 figure represents new admissions to the Pool during the period 1/1/87 through 12/31/87.

THE SECOND INJURY FUND

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INTRODUCTION

Despite its benevolent intentions, a workers' compensation program can be a double-edged sword. Soon after the passage of the first state workers' compensation programs, employers realized it could become very expensive to employe workers with permanent impairments, due to the impact their conditions might have on the cost of subsequent on the job injuries. For example, under Alaska law a worker who loses an arm in a compensable accident becomes entitled to 220 weeks of permanent partial disability benefits. However, if that person had already suffered a relatively serious injury, such as the total loss of use of the other arm, the resulting benefit status would most likely be permanent total disability, with weekly benefits payable for life. The potential impact of this type of situation was indicated in testimony presented to Congress in 1923, in which it was reported that immediately after an Oklahoma state court decision which affirmed a similar rule of law, seven to eight thousand workers with serious permanent disabilities were fired.

There are a number of ways to minimize or eliminate this adverse influence of the workers' compensation system. The three most prominent are:

1. Pay permanent disability benefits for previously

impaired workers solely on the basis of the subsequent injury , without consideration of the added effects of the prior condition.

2. Pay full disability benefits to such workers, but relieve the individual employer/carrier from the cost of those benefits not attributable to the second injury considered alone.

3. Apply the rule set forth in (2), but only in those instances in which the employee was hired or maintained in employment with the employer's actual knowledge of the pre-existing condition.

Alaska has chosen the third alternative, and in doing so has indicated that the primary goal of this aspect of the law is not the furnishing of financial assistance to employers, which could more easily be accomplished through the use of option (2), but instead is to help in the removal of barriers to the hiring of the permanently impaired. The decision is of great significance, as will be shown later in this report.

THE SECOND INJURY FUND

To implement this choice, the Legislature established the Second Injury Fund. based on a model drafted by the Council of State Governments. Stripped of some of its detail, the Fund operate as follows. An injured employee receives the full amount of benefits

to which the combined effects of the injury and pre-existing condition entitle him under the workers' compensation law. However, the employer\carrier responsible for providing these benefits has the right to receive partial reimbursement from the Fund, if certain conditions have been met. Once the right to reimbursement is established, the employer/carrier continues to provide statutory benefits to the injured employer, but is reimbursed for all weekly compensation paid after the first 104 weeks.

The first condition which must be met is that the employee have, prior to the second injury, a permanent physical impairment, from virtually any cause, which is serious enough to constitute a hindrance or obstacle to obtaining or retaining employment. Next, the disability resulting from the combined effects of the pre-existing and subsequent permanencies must be substantially greater than that which would have resulted from the second injury alone. For example, in the case of an individual already suffering from the loss of an arm, the loss of the remaining arm causes significantly greater disability, from the standpoint of ability to work, than would have resulted from the loss of a single arm. However, if the same individual suffered a spinal cord injury resulting in quadraplegia, the resulting disability would not be increased as the result of the prior loss of an arm. The individual would have been totally disabled from the

subsequent injury, no matter what the pre-existing condition had been. Therefor, the employer has paid no "excess" compensation as a result of hiring a permanently impaired individual, and receives no reimbursement from the Fund. Finally, the employer must establish from written records that it had knowledge of the pre-existing condition prior to the subsequent injury, and that the employee was hired or retained in employment after such knowledge was acquired.

The Fund is financed primarily through an assessment equal to up to 6% of the weekly compensation benefits paid by each insurance carrier and self insurer, although there are also several other relatively minor sources of income. This level of funding has not been sufficient to meet the Fund's obligations, and in 1981 $600,000.00 was appropriated from general revenues to help make up the shortfall. Even this substantial amount of assistance has not been enough, and the Fund is currently running approximately one year behind in making reimbursements. Although it is anticipated that the shortfall will be eliminated in a few years, this prediction may be of questionable validity, as the result of recent developments.

Since most of its financing comes from the assessment just described, there exists in some quarters the belief that the Fund merely redistributes the pool of benefit dollars, and is of no

real concern to the system as a whole, or to the general public. This is not the case. As has already been seen, general revenues have been used, in effect subsidizing the compensation system, and as will be shown later, it is entirely possible that the existence of the Fund, as presently structured, results in increased costs for the compensation system and those who pay for it.

Even without consideration of the assistance received through the use of public funds, the effect of the Fund on the system are not as neutral as might be imagined. An explanation of its potential impact on an individual carrier or employer will show why. For a self insured employer, an accident in 1984 which is subject to Fund reimbursement will result in an actual financial obligation of 104 weeks of compensation benefits, and then, beginning in 1986, or later if the Fund is having difficulty meeting its obligations, reimbursement will be made for all additional payments. If the employer is insured, the accident will result in a reserve (estimate of future liability) based upon 104 weeks of benefits, rather than the full amount of weekly benefits which the employee will receive. If the employer is experience rated, its rating will be more favorable than in the absence of the Fund, resulting in lower premiums in future years. In addition, the losses attributable to the injury which are reported for rate-making purposes will be less, possibly lowering the premium

rate in future years. For the carrier, the decreased benefit payments will mean lower loss costs, although some of the savings may be shared with employers through dividend plans. At least two additional factors must be added to this equation. The first is that as a result of delays in reimbursement, without interest being paid on late payments, self insured employers and carriers are losing investment income. Second, if the assessment, which is included in the insurance rate base as well as in self insurors' compensation costs remains at the maximum rate of 6%, an individual carrier or employer will not experience an increase in annual assessment costs as the result of dumping a large number of cases into the Fund.

Taking these factors into consideration, it is clear that the Fund's existence can result in a substantial redistribution of workers' compensation costs. First, if it is possible (and it is) for the Fund to be legally manipulated, in the sense that cases which really should not be the subject of Fund reimbursement are given its benefits, an employer or carrier that is in this respect more aggressive than others will have shifted some of its obligations to the rest of the system.

Secondly, another possibility seems to have become a reality in Alaska. Since the cost of an injury will not impact on the Fund until several years after the date of accident, the assessment to

pay these costs will be based on benefit payment levels at this later date. If an employer or carrier has greatly reduced its volume of business in the intervening years, or perhaps is no longer doing any business within the State, its total dollar assessment will not truely reflect the activity and obligations of the year of injury. This appears to have happened in Alaska when a major self insurer, desiring to close its pipeline books, compromised and released a great number of claims which were the subject of Fund reimbursement, saddling the Fund with substantial obligations. When the assessments were made to pay these obligations, the self insurer was operating at lower employment levels, its annual benefit payments were lower, and its assessment dollars reduced, thereby placing a greater share of the burden for its Fund cases on others in the system. While this analysis ignores many complicating factors, such as changes in assessment rates and methods, the fact remains that the operation of the Fund can have a significant effect on individual employers and carriers, as well as on the general revenues of the state.

DOES THE FUND WORK?

Assuming that the purpose of the Fund is to eliminate or reduce barriers to the employment of those with permanent impairments, there is lttle evidence that this is actually occurring in the Alaska labor market. While it would take a detailed study of

employer attitudes and actions to reach a documented conclusion, discussions with employer representatives and other individuals active in the Alaska workers' compensation system indicate a consensus of opinion, to the effect that the Fund is not currently fulfilling that role. In fact, its only contribution may be in preventing knowledgable insurance carriers from advising their insureds not to hire permanently impaired individuals. The reasons for this pessimism are a belief that most employers are simply not knowledgable enough about the workers' compensation law to understand and appreciate the operation of the Fund, and may, in many cases, not trust the system even when they do understand it.

A review of the cases presently being paid by the Fund may provide some clues as to whether the it is accomplishing anything in the area of employment. Based upon the available records, the prior permanencies involved were for the most part quite severe, and likely, under normal circumstances, to make it difficult for the individual involved to obtain employment. 65% involved serious back problems, 13% had amputations of major members, 13% had significant cardiac conditions, 4% serious vision defects and only 4% had what might be considered minor disabilities. This gives the initial impression that the Fund is at least assisting in providing employment opportunities for some people. However, in the majority of the cases reviewed, the available information

concerning the subsequent injuries, the ways in which the employers obtained written knowledge of the pre-existing conditions, the job market at the time of hiring, the jobs obtained, and the numbers of employers involved give the distinct impression that in many cases hiring would have taken place even in the absence of the Fund, and that its use was limited to well-planned efforts on the part of a few sophisticated employers and carriers to limit their compensation exposure. There is nothing particularly devious or reprehensable about this, but it does seem to support the thesis that the Fund is not a major factor in assisting the permanently impaired in obtaining employment.

CURRENT PROBLEMS

In addition to the obvious financial difficulties of the Fund, there are operational problems which require resolution. The major problem which must be confronted in that of the Fund's inability to defend itself to the extent necessary to properly conserve its assets. This may not be apparent, since the Fund does present an active defense against some reimbursement claims, and in fact is at times successful in its efforts. However, there remains the need for the Fund to provide defenses on other issues, although presently there is no such activity, and probably no real ability to provide it. The impact on the Fund, and on compensation costs in general may be significant. The

following examples show why.

In the overwhelming majority of cases, once it has been determined that the Fund is responsible for payments, one of two things happens. The claimant and the employer/carrier may stipulate to the degree of permanent disability, resulting in either a compromise and release settlement, or the entry of an agreed order without the termination of the claimant's right to future compensation benefits. Or, the case may go on to litigation, with the Board determining the extent of permanent disability, and the resulting benefits. In either case, the employer/carrier will be responsible only for the first 104 weeks of compensation. Given this fact, what real incentive exists to present a tough, and perhaps expensive defense, or to refuse to pay whatever additional sums may be demanded by a claimant to compromise and release a claim, thereby relieving the employer/carrier of future liabilities? This is not to say that all employers and carriers ignore what may be at least an implied obligation to treat these cases as if the Fund did not exist. However, it is probably asking too much of a system in which major incentives are based upon financial considerations. A review of open Fund cases, as well as interviews with people familiar with the Alaska compensation system, gives the strong impression that many cases were treated differently than if they had been the total financial responsibility of the

employer/carrier. If this is true, then the system as a whole experiences increased costs, beyond those actually warranted by the facts of a given case, because it is the Fund that is at risk, and not an individiual employer or carrier. Although this may not always be the intended result, it seems quite clear that if does occur.

Of course it can be argued that the Fund should simply take a more active role in cases in which it has a financial interest. However, despite language in the law which might indicate that the Fund does have the authority to litigate all issues which might affect it, there is also language to the contrary, and under the best of interpretations the supportive provisions are confusing, unclear and of dubious value. Most importantly, if the Fund was to undertake a major change in policy and attempted to play a more active role as a litigant, serious questions would be raised over issues such as budget, procedure, and the propriety and constitutionality of an employee of the Commissioner of Labor becoming a real litigant in proceedings before the Board, which the Commissioner chairs, in matters which could affect the amount of dollars payable to individual claimants.

THE FUND AND THE COURTS

Once again assuming that the Fund's primary, if not only purpose

is to reduce barriers to employment, there now exists a major threat to the Fund and its objectives, resulting from a number of court decisions. While it is not the purpose of this document to critique the decisions of the Alaska courts, they do have a powerful impact on the operation and well-being of the Fund, and cannot be ignored.

The benchmark case is Employers Commercial Insurance Group v. Christ, 513 P.2d 1090 (Alaska 1973), which attempted to set forth the philosophy of the Fund, as well as make critical decisions as to how it should operate. Unfortunately, it appears that the Supreme Court was not and has not been made aware of the source of the Fund's structure and philosophy, the Council of State Governments model. Both the model and the Alaska law state that for purposes of Fund reimbursement, no pre-existing condition can be considered a "permanent physical impairment" unless it is one of 27 conditions listed in the law, or would otherwise support a rating of at least 200 weeks of compensation. The Supreme Court has taken this negative restriction and turned it into a positive, by stating that if a condition is on the list, it qualifies automatically as a "permanent physical impairment" without consideration of another test contained in the same law, which requires that the condition also be serious enough to constitute an obstacle to employment. This interpretation is contrary to the intent of the drafters. As stated by one of them,

Dr. Arthur Larson, at page 10-442 of his treatise The Law Of Workmen's Compensation, it was the intent of the Council to provide a specific list of conditions which could possibly qualify for reimbursement, but only after proof of seriousness. The significance of this distinction is about to become quite apparent in Alaska.

Several of the items on the list, such as arthritis and varicose veins, are conditions not necessarily of great significance, and may have virtually no impact on employment possibilities. In Gadberry v. Fluor Alaska, Case No. 100178 (A.W.C.B. 1983), the Board dealt with a case in which the pre-existing condition consisted of spinal lipping, a minor form of arthritis found in most individuals over the age of 40. Faced with the Christ decision, the Board had no choice but to reluctantly order reimbursement, since arthritis is one of the conditions on the list. If upheld, this type of decision could lead to literally every worker over the age of 40 becoming a potential fund case. Admittedly the effects of this decision can be mitigated by a heavy reliance on the requirement that the pre-existing disability interact with the subsequent disability to produce substantially greater disability than would have resulted from the second injury alone, but will mean increased litigation, and further disruption of the plan established by the the Council and adopted by the Alaska legislature.

This erosion of a coherent program, where each word in the statute serves a purpose, is further demonstrated in the Superior Court decision of Kaupp v. Alaska Sausage Company, Sup. Ct., Case No. 3 AN 81-2430 Civil, September 9, 1982. As previously noted, the statute requires that the employer establish knowledge of the employees's pre-existing condition through written records. The reason for this requirement is that in states which only require proof of "actual" knowledge, there is a tendancy for the fund to become a vehicle not to encourage hiring, but instead to limit liability after the fact, by inviting the development of "proof" of knowledge such as "of course we knew he had arthritis, he always complained about his back". However, the Kaupp court, possibly with the help of an admission on behalf of the the Fund, held that the written notice requirement is a mere technicality which can be ignored, opening the way for a further weakening of the Fund's ability to do its job if the decision is applied in other cases.

In addition to these possible inroads on the Funds's return to solvency, another recent court decision may have a potentially harmful impact on the Fund's operation. In Land & Marine Rental Company v. Rawls, No. 2777, January 27, 1984,___P.2d___ (Alaska 1984), the Supreme Court held that even in the absence of specific statutory authority, basic rules of law and equity

require the payment of interest on "past due" installments of compensation benefits. While there are obvious differences between weekly compensation benefits payable to a claimant and reimbursement due an employer/carrier from the Second Injury Fund, the possibility exists that an insurance carrier or self insurer will tire of waiting for reimbursement, seek help from the courts, and obtain a ruling requiring the payment of interest on reimbursement payments, adding to the Fund's financial problems.

ALTERNATIVES

Since every state workers' compensation system contains a second injury fund, and each utilizes its own unique combination of requirements and operations, there should be an extensive body of experience and example which can be used to improve the Alaska system. However, most second injury funds are not as broad and as inherently expensive as Alaska's, and among those that are, there are far more similarities than differences, and little in the way of successes.

With regard to the financing of the Fund's obligations, it should be obvious that there are no magical solutions. The Fund cannot meet its obligations on a current basis because the heavy drain on its resources, particularly from cases which came into the

Fund several years ago, has simply outstripped the funds made available through an assessment capped at 6%. Assuming that some of the potential problems just discussed are avoided, and the predictions of future Fund solvency hold true, financial concerns should focus on preventing fund obligations from once again exceeding resources. The only way to guarantee this is to remove the assessment cap entirely, as has been done in a number of states. While this could conceivably result in substantial increases in Fund utilization, other reforms should help prevent such an occurence, and assessment increases should, to the extent they are caused by new cases, be at least partially offset by decreased direct loss costs. Also, it must be remembered that any cap, no matter how high, can result in a shortfall under a given set of circumstances, once again causing the delays which are currently a source of concern.

In addition to this possibly drastic alternative, there are a number of additional examples which may be of interest to the Alaska workers' compensation community. In order to avoid even temporary shortfalls, Michigan, Georgia and New Jersey utilize assessment formulas which assume that there will be annual increases in the dollar volume of fund activity, and set each year's assessment at levels greater than the prior year's expenditures, with a safety valve provision in the event the fund balance becomes greater than necessary. This provision, and most

other assessment formulas, are often coupled with once a year payment provisions, so that each carrier and self insurer pays its assessment in the early portion of the current calendar year, based upon the experience of the prior calendar year.

A more serious and difficult question is how to obtain greater utilization of the Fund, not in the sense of encouraging efforts to obtain reimbursement, but rather as it relates to employers' hiring considerations. Increased educational efforts, higher levels of reimbursement from the second injury fund, and even direct subsidization of second injury costs by general revenue funding have been attempted and are currently being utilized in some states. As is the case in Alaska, there is no direct evidence that they have been successful, and discussions with workers' compensation professionals from all aspects of the system and from many states reveal a general belief that second injury funds, no matter how constituted, are usually of little significance in the rehabilitation and hiring processes. However, there are at least two exceptions to this pessimism, involving Michigan and Minnesota.

In each state, many of those closely involved with the workers' compensation program strongly believe that the second injury fund works well, due primarily to the utilization of a certification process. In both, employers hiring permanently disabled workers

who might qualify for protection under the second injury fund register this fact with the fund, prior to the occurence of any second injury. As a result, employers are directly informed as to the reimbursement they will receive, most of the major entitlement questions can be resolved prior to the occurence of an injury, and more certainty is brought into all aspects of the process.

The remaining major issue is how to prevent actions and decisions which affect the Fund's financial condition from being made without its participation in the legal process. This is accomplished in other states in one of two ways. The first involves the utilization of a double claim process, which requires the injured worker to pursue one claim against the employer/carrier, for benefits due to the second injury considered by itself, and another claim against the fund, for the remaining benefits due under the second injury law. This process may be both burdensome and cumbersome, and requires that the fund play the role of an insurance carrier, actively investigating the claim, defending when necessary, and paying periodic benefits.

Another alternative is to maintain the reimbursement process, as utilized in Alaska, but also provide through statute and rule that no action which affects the fund can be taken without prior notice, or without providing it with the right to be heard. This

does not require that the fund participate to the same extent as it would if it had to act as a carrier. It does offer the opportunity for the fund to protect its position before the adjudicator takes some action which might adversely affect it. There is language in the Alaska workers' compensation statute which indicates such an intent, but it is neither clear enough nor comprehensive enough to accomplish this result.

Even with the necessary statutory authority, this procedure may not presently be acceptable in Alaska, due to the possible conflict of interest inherent in the relationship among the Fund, the Board, and the Commissioner of Labor. However, examples such as those found in New York and Michigan may provide a desirable solution. Those states have taken steps to separate the second injury fund from the adjudication function, so as to minimize conflicts of interest. This separation can run the gamut from a mere change in location within the overall agency structure to the establishment of the fund as a trust, run by appointed representatives of the employer and carrier communities. To the extent permitted by state constitutional and statutory law, the fund can have minimal contacts with state government, establish operations and policies to meet changing circumstances, hire and direct the necessary employees, and even provide first level adjudication in matters not affecting the rights of injured workers.

CONCLUSION

Although there are certainly other, more extreme options which might be discussed, such as paying employers to hire permanently impaired individuals, or totally protecting cooperating employers from all liability for second injuries, they are for the most part beyond the bounds of the compensation system and more properly the subject of broader societal concerns about rehabilitation and reemployment. From the standpoint of the workers' compensation system, as well as practicality, the potentially useful alternatives are few in number. In summary, they are the following:

1. Modify existing statutory law, to strenghten those provisions adversly affected by court decisions, and to clarify those provisions which may be the subject of future court action.

2. Modify the existing financing mechanism, to provide adequate financing with a minimum of administrative burdens on both the state and the employer/carrier community.

3. Provide a certification process which will enable employers to place greater reliance on the Second Injury Fund in making hiring decisions, utilizing certification as either an absolute requirement for Fund reimbursement, or to create strong presumptions in its favor.

4. To the extent permitted by the constraints of constitutional law and the political process, separate the Fund from the Department of Labor, and provide it with the authority to defend itself from unwarranted demands on its assets.

National
Council
on Compensation
Insurance

Stanley V. Sparks
Director
Government, Consumer
and Industry Affairs

April 5, 1988

APR 5 1988

Honorable Paul Roller
Director of Insurance
State of Alaska
Department of Commerce and Economic Development
Division of Insurance
State Office Building - 9th Floor
Pouch D
Juneau, Alaska 99811

Re: Senate Bill 322

Dear Director Roller:

The Alaska Classification and Rating Committee met via telephone conference call on April 4, 1988 to discuss the progress of the workers compensation insurance reform legislation which is pending in Juneau. By unanimous decision the Committee in effect acknowledged that the potential overall cost savings contained in the existing version of SB 322 amounted to 5.7 percent. Accordingly, if the bill is enacted in its present form, the Committee will direct NCCI to file a law amendment rate filing in Alaska which provides for an overall rate decrease of 5.7 percent on new, renewal and outstanding policies effective as of July 1, 1988.

The Committee wishes to make it clear that such a mid-term rate adjustment would not in any way interfere or preclude the normal review of Alaska experience and the making of an appropriate 1/1/89 rate filing based upon that experience.

Sincerely,

Stanley V. Sparks
Director
Government, Consumer
and Industry Affairs

SVS/gls

cc: Alaska Classification and Rating Committee
Don Koch
R. Fein
M. Mulvaney

Suite 850, One S.W. Columbia Street
Portland, Oregon 97258, Tel. (503) 228-4173

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STUART A. ROBERTSON, F.S.A.
CHAIRMAN EMERITUS

January 29, 1988

The Honorable John George
Director of Insurance,
STATE OF ALASKA
Department of Commerce
and Economic Development
Division of Insurance
State Office Building,
9th Floor, Pouch "D"
Juneau, Alaska 99811

Dear Director George:

This letter discusses our progress so far on our assignment. Please understand these conclusions represent very preliminary findings, and that we are continuing our analysis. We have not yet received the National Council on Compensation Insurance (NCCI) evaluation of the proposed law change and so have no comments on this evaluation.

We have the following observations regarding the factors underlying the recent rate increases and our initial assessment of the cost saving potential of the proposed amendments to the Alaska workers' compensation law.

Recent Rate Level Increases

Using the NCCI rate filing dated October 16, 1987 as our data source, we have identified two primary reasons for the most recent rate increase:

i. Medical cost trends.

ii. Increasing loss development factors for indemnity.

The assumed annual increase in the medical cost component of the workers' compensation rates was about 8% in the last rate filing. This appears to be supported by actual experience. We also note that the medical component of the CPI for Anchorage increased by about 12% per annum between mid-1985 and mid-1987. Thus, while the medical trend is causing workers' compensation costs to increase substantially, the magnitude is not surprising.

temporary benefits preceding an award. If this is so, the new rules regarding rehabilitation may be beneficial. Both of the above will impact claim severity and we believe may be subject to quantification.

The proposed law does not appear to directly address the problem of the frequency of major permanent partial cases. It would seem likely that at least some of the recent increase in frequency may be due to increased liberalization of benefit entitlement standards. It is possible that the tone of the new law may encourage a change of attitude in the system and reduce the number of future awards. At this time, we do not believe it is possible to quantify this possible effect.

Despite the cost saving potential previously discussed, we are very concerned that the new law may actually increase major permanent partial costs. Specifically, the new higher maximum on permanent partial benefits and the proposal for benefits to be payable in a lump sum appear to make these benefits more attractive to claimants, and thus have the potential to further increase frequency and severity.

We are also concerned that the incremental adjustment factors used to compute benefits may lead to "impairment rating inflation" and increases in minor permanent partial costs. For example, a claimant judged 10% impaired will receive $4,800 (= $240,000 x 0.1 x 0.2), while a claimant judged 11% impaired will receive $10,560 (= $240,000 x 0.11 x 0.4).

The new law may result in some savings of medical costs. However, due to external economic pressures, short of radical revision to benefit entitlements, we believe savings in this area will be difficult to sustain in the long run.

The proposed maximum of $700 per week on benefits can, of course, be expected to reduce costs of fatal, permanent total, and temporary total benefits. However, since these benefits account for only about 20% of total benefit costs, the potential for really significant savings is limited. There are other aspects of the law, for example, the rules relating to out-of-state claimants, which may have a beneficial effect. However, again we would not expect these changes to have a major impact on overall costs of the program.

In summary, the proposed law amendments <u>may</u> have a beneficial impact on the some aspects of the Alaska workers' compensation system. However, we are not yet convinced that the proposed law will result in significant overall cost reductions and are concerned that it may even increase costs. We are attempting to at least partially quantify the impact on costs.

* We are not yet sure that the current NCCI promulgated rate levels fully reflect the increased frequency of major permanent partial awards under the existing law. If this is true, there will be further upward rate level indications necessary in the future just to bring the rating structure in line with the current Alaska workers' compensation law.

We hope that these preliminary observations are useful to you.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

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January 29, 1988

The Honorable John George
Director of Insurance,
STATE OF ALASKA
Department of Commerce
and Economic Development
Division of Insurance
State Office Building,
9th Floor, Pouch "D"
Juneau, Alaska 99811

Dear Director George:

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Of greater significance are the loss development factors for the indemnity cost component. By loss development factors, we mean the amount the cumulative paid indemnity benefits (including plaintiffs attorney's fees and vocational rehabilitation expenses) increase as each policy year ages.

Relative to the factors used to generate the rates effective January 1, 1987, the paid indemnity development factors for the January 1, 1988 rates are 20% higher. Since indemnity accounts for about 64% (see below) of the total Alaska benefit costs, this change added approximately 13% to the indicated rate level.

A cursory review of the underlying loss development data specific to Alaska does indicate that this increase in the indemnity development factors was warranted.

In order to identify reasons for the deterioration in indemnity loss development, we have analyzed claim count and severity data by injury type. This analysis indicated a significant increase in the relative frequency of major permanent partial cases beginning in policy year 1982. This increase appears to affect all industry groups. There are also indications of large increases in average payments to major permanent partial claimants and to claimants between the time of injury and time of award.

Potential to Reduce Costs

In its rate filing, the NCCI provided the following breakdown of benefit costs:

Fatal	4%
Permanent Total	8
Major Permanent Partial	41
Minor Permanent Partial	4
Temporary Total	7
Medical	36
Total	100%

As discussed earlier, only the major permanent partial injury category is experiencing unusual developments of a significant magnitude. Therefore, this category of workers' compensation costs appears to be the one area that must be addressed if overall costs are to be reduced or contained while leaving the benefit structure substantially intact. If, for example, major permanent partial costs could be reduced 25%, a rate level decrease of 10% would be indicated.

In our opinion, the proposed changes in the law that were sent to us by the Division of Workers' Compensation do offer some possibility of reducing costs in this area.

Specifically, the time limitations of temporary benefits may encourage the earlier awarding of permanent partial awards and consequent reduction in temporary benefits. The rehabilitation process may also have contributed to the indicated increase in

temporary benefits preceding an award. If this is so, the new rules regarding rehabilitation may be beneficial. Both of the above will impact claim severity and we believe may be subject to quantification.

The proposed law does not appear to directly address the problem of the frequency of major permanent partial cases. It would seem likely that at least some of the recent increase in frequency may be due to increased liberalization of benefit entitlement standards. It is possible that the tone of the new law may encourage a change of attitude in the system and reduce the number of future awards. At this time, we do not believe it is possible to quantify this possible effect.

Despite the cost saving potential previously discussed, we are very concerned that the new law may actually increase major permanent partial costs. Specifically, the new higher maximum on permanent partial benefits and the proposal for benefits to be payable in a lump sum appear to make these benefits more attractive to claimants, and thus have the potential to further increase frequency and severity.

We are also concerned that the incremental adjustment factors used to compute benefits may lead to "impairment rating inflation" and increases in minor permanent partial costs. For example, a claimant judged 10% impaired will receive $4,800 (= $240,000 x 0.1 x 0.2), while a claimant judged 11% impaired will receive $10,560 (= $240,000 x 0.11 x 0.4).

The new law may result in some savings of medical costs. However, due to external economic pressures, short of radical revision to benefit entitlements, we believe savings in this area will be difficult to sustain in the long run.

The proposed maximum of $700 per week on benefits can, of course, be expected to reduce costs of fatal, permanent total, and temporary total benefits. However, since these benefits account for only about 20% of total benefit costs, the potential for really significant savings is limited. There are other aspects of the law, for example, the rules relating to out-of-state claimants, which may have a beneficial effect. However, again we would not expect these changes to have a major impact on overall costs of the program.

In summary, the proposed law amendments may have a beneficial impact on the some aspects of the Alaska workers' compensation system. However, we are not yet convinced that the proposed law will result in significant overall cost reductions and are concerned that it may even increase costs. We are attempting to at least partially quantify the impact on costs.

* We are not yet sure that the current NCCI promulgated rate levels fully reflect the increased frequency of major permanent partial awards under the existing law. If this is true, there will be further upward rate level indications necessary in the future just to bring the rating structure in line with the current Alaska workers' compensation law.

We hope that these preliminary observations are useful to you.

We are, of course, continuing with the study and hope to be able to provide more quantitative findings soon.

Please contact us if you have any questions.

Best regards,

Michael A. McMurray

Michael A. McMurray

MAM:cap

cc: Paul Roller
Don Koch
Mark Crawshaw

DISCUSSION DRAFT

COST ANALYSIS OF THE ALASKA WORKERS' COMPENSATION PROGRAM

Milliman & Robertson, Inc. (M&R) was retained by the Alaska Division of Insurance to perform the following tasks:

1. To provide a breakdown of current costs of the Alaska workers' compensation program.

2. To identify those elements driving the recent large rate increase indications.

3. To review and comment on SB322/HB352 as it pertains to the costs of the Alaska workers' compensation program.

4. To analyze local Alaskan data relevant to estimating the likely cost impact of SB322/HB352, the major source of this data being the Alaskan Workers' Compensation Information Handling System (WCIHS).

5. To review the National Council on Compensation Insurance (NCCI) preliminary evaluation of SB322/HB352 and where appropriate, modify the NCCI estimate using relevant local data.

6. To provide a likely cost estimate of the impact of SB322/HB352.

This report summarizes our findings.

1: BREAKDOWN OF CURRENT COSTS

In its most recent rate filing, the NCCI provides the following breakdown of the "average" premium dollar in Alaska:

Table 1: Breakdown of Current Costs

Benefit Cost:	69.1%
Claim Adjustment:	8.6
Production Expense:	9.6
General Expense:	5.8
Taxes:	4.4
Profit:	2.5
Total	100.0%

It must be appreciated that the above table is an average breakdown and that the breakdown for any particular insured may differ depending on the type of rating plan, premium size, etc.

It should also be noted that claim adjustment and production expenses as well as taxes and profit are essentially variable costs. Thus, if it is possible to reduce the total amount of benefit dollars, there will be corresponding savings of these costs. In contrast, general expense is largely a fixed cost, and total dollars consumed by this item are unlikely to be significantly altered by changes in benefit levels.

In their recent evaluation of the proposed law change, the NCCI provides a breakdown of total benefit costs by type of injury as follows:

Table 2: Breakdown of Benefit Costs

Fatal	3.0%
Permanent Total	13.4
Permanent Partial	50.2
Temporary Total	5.1
Indemnity	71.7
Medical	28.3
Total	100.0%

We understand that this breakdown of benefit costs is based on unit statistical plan data for Alaska. We have reviewed the unit statistical plan data and believe the NCCI breakdown of costs is reasonable.

The benefit cost breakdown is relative to the final injury type of the claimant. Thus, for example, permanent partial includes all temporary total benefits, rehabilitation and legal expense, paid to, or on behalf of, permanent partial awardees.

It should also be noted that the component "temporary total" includes only those temporary total claimants who receive benefits for less than 52 weeks. Temporary total claimants who receive benefits for more than 52 weeks are classified as permanent partial.

2: RECENT RATE LEVEL INCREASES

Using the NCCI rate filing dated October 16, 1987 as our data source, we identified two primary reasons for the most recent rate increase:

1. Medical cost trends.

2. Increasing loss development factors for indemnity.

The assumed annual increase in the medical cost component of the workers' compensation rates was about 8% in the last rate filing. This appears to be supported by actual experience. We also note that the medical component of the CPI for Anchorage increased by about 12% per annum between mid-1985 and mid-1987. Thus, while the medical trend is causing workers' compensation

costs to increase substantially, the magnitude is not surprising.

Of greater significance are the loss development factors for the indemnity cost component. By loss development factors, we mean the amount the cumulative paid indemnity benefits (including plaintiffs attorney's fees and vocational rehabilitation expenses) increase as each policy year ages.

Relative to the factors used to generate the rates effective January 1, 1987, the paid indemnity development factors for the January 1, 1988 rates are 20% higher. Since indemnity accounts for about 70% of total Alaska benefit costs, this change adds approximately 14% to the indicated rate level.

A cursory review of the underlying loss development data specific to Alaska does indicate that this increase in the indemnity development factors was warranted.

In order to identify reasons for the deterioration in indemnity loss development, we analyzed claim count and severity data by injury type. This analysis indicated a significant increase in the relative frequency of major permanent partial cases beginning in policy year 1982. This increase appears to affect all industry groups. There are also indications of large increases in average payments to major permanent partial claimants and to claimants between the time of injury and time of award.

Since permanent partial cases account for about half the total benefit dollars and are experiencing unfavorable development, this appears to be one area that must be addressed if overall costs are to be reduced or contained while leaving the benefit structure substantially intact.

We also note that we suspect the current NCCI promulgated rate levels for Alaska do not fully reflect the increased cost of permanent partial cases under existing law. If this is true, there will be further upward rate level indications in the future just to bring the rating structure in line with current Alaska workers' compensation law.

3: REVIEW AND COMMENTS ON SB322/HB352

The following outlines our understanding of the major provisions of SB322/HB352, which relate to the costs of the Alaskan Workers' Compensation System.

Compensation for Permanent Partial Benefits

Under current law, permanent partial benefits are either scheduled or unscheduled. The unscheduled benefit is subject to a maximum of $60,000. Benefits may be paid in weekly installments. However, we understand that many cases are settled with a lump sum payment as part of a compromise and release agreement.

Under the proposed law, "all determination of the existence and degree of impairment shall be made strictly and solely under the whole person determination as set out in the American Medical Association (AMA) Guides". Benefits are to be calculated by multiplying the new maximum benefit amount of $240,000 by the AMA impairment rating and an adjustment factor. The benefit is to be paid in a lump sum, without the need for a compromise and release agreement.

We understand that the drafters of the proposed law intended that the change in permanent partial benefit determination produce no overall change in the total amount of benefits, although there may be changes in benefits received for any particular injury type.

We further understand that the proposed change in benefit determination is an attempt to increase the objectivity of benefit determinations and to reduce the potential for litigation. The change in the method of benefit determination essentially shifts the emphasis to medical rather than vocational considerations (e.g., loss of earning capacity).

Maximum Limitation on Weekly Benefits

Under current law, weekly benefits for fatal, permanent total, and temporary total are subject to a maximum of 200% of the state average weekly wage. This amount is currently about $1,000.

Under the proposed law, the maximum weekly benefit will be $700.

Claimants Living Out of State

The new law provides for reintroduction of a reduction in benefits for those claimants living out of state. The reduction recognizes higher living costs and correspondingly higher benefit levels in Alaska as compared to other states.

Rehabilitation Program Reform

Under present law, vocational rehabilitation services may generally be provided for a period of up to 37 weeks. Temporary

disability benefits are paid throughout the rehabilitation process.

Under the proposed law, vocational rehabilitation services may be provided for a period of up to two years. Temporary disability benefits are not paid automatically throughout the rehabilitation process. Rather, temporary total benefits are to cease once a claimant's medical condition stabilizes. From this time, permanent impairment benefits shall be available to support the claimant throughout the rehabilitation process. If permanent impairment benefits become exhausted before the rehabilitation process is complete, additional benefits are available to the claimant.

The proposed law also provides for closer supervision and oversight of all aspects of the rehabilitation process.

It is our understanding that the intent of the new law is to provide for the possibility of longer periods of vocational rehabilitation where warranted, and to attempt to curb perceived abuses in the current system.

Limitation on the Duration of Temporary Benefits

Under current law, there is no limit on the duration of temporary total disability benefits and a five-year limit on the duration of temporary partial benefits.

Under the proposed law, both temporary total and temporary partial disability benefits become subject to a duration limit of two years.

Miscellaneous

There are many other aspects of the proposed law with the potential to impact costs. For example, there is an attempt to exclude certain mental injuries, to define medical stability, to restrict the number of physicians used by the claimant, etc.

In addition, the tone of the new law may affect the attitudes of administrators of the workers' compensation program and consequently impact costs of the program.

Comments

In general, we believe that the proposed revisions to the Alaska workers' compensation law will improve the benefit delivery system. Changes such as the proposed reduction in the average weekly benefit maximum, reduction of benefits for out of state claimants, and limits on durations of temporary benefits will almost certainly reduce costs, and we have attempted to quantify their impact.

In addition, strict adherence to the letter and spirit of the administrative provisions of the proposed law, successful implementation of the "independent medical evaluation" concept, and effective implementation of the more stringent controls on the vocational rehabilitation program should result in additional efficiencies. However, it is not possible for us to quantify the impact of such changes.

We do believe that there are other aspects of the bill that could have negative implications for containing and controlling workers' compensation costs. These are summarized below:

1. The proposed change to permanent partial benefits represents a radical change in the benefit structure. If the change is implemented, economic incentives in the system will change dramatically, and consequently, any cost estimates are subject to substantial inherent variability. Thus, from a cost standpoint, the impact of the proposed revision to the permanent partial benefit structure is extremely difficult to anticipate.

2. The proposed law dramatically changes permanent partial benefits by injury type, with some injury types receiving large benefit cuts while others receive large benefit increases. From a cost standpoint, it is notable that the benefits for more serious back cases are substantially increased. For example, a claimant judged to be 40% impaired would receive an award of $96,000 under the proposed law, which is 60% above the maximum award of $60,000 possible under current law.

3. It is proposed that permanent partial benefits for less serious injuries be computed using an adjustment factor. This factor leads to discontinuities in benefit amounts. For example, a claimant judged to be 10% impaired would receive $4,800, while a claimant judged 11% impaired would receive $10,560. This situation potentially encourages the exaggeration of injuries, creates difficulties in administering the program, and increases variability of cost projections.

4. Under present law, it is our understanding that many permanent partial claimants settle with a lump sum and a

compromise and release agreement. Under the proposed law, permanent partial cases are to be automatically settled with a lump sum without a need for a compromise and release agreement. It appears that under the new law there is the potential for greater numbers of reopenings.

5. Under the proposed law, economic incentives will change. For example, permanently disabled claimants may be induced to seek permanent partial rather than permanent total awards, for in this way, possibly greater benefits could be obtained. Similarly, a claimant whose disability results from a combination of vocational and medical conditions may be inclined to seek a permanent total rather than a permanent partial award since, under the proposed law, vocational evidence is not considered for permanent partial disability. The impact of the change in economic incentives will depend, to a large extent, on the administration of the program.

4: M&R ANALYSIS OF LOCAL ALASKA DATA

This section discusses our analysis of data specific to Alaska. Due to its crucial importance, most of our analysis concentrated on permanent partial cases.

Data Sources

Two primary sources of data were utilized:

1. Unit statistical plan data for Alaska.
2. Information from the Alaska Workers' Compensation

Information Handling System (WCIHS).

All the data was accepted for analysis without audit.

Average Permanent Partial Claim Payments

Exhibit 1 shows the total average incurred cost on permanent partial claims as reported in the unit statistical reports for Alaska for policy years 1979 through 1984. As can be seen on the exhibit, during the period 1987 to 1984 the average cost of a permanent partial case more than doubled.

After consideration of the above and other factors affecting costs, we estimate the average cost for a permanent partial case in Alaska under current law to be over $50,000, in policy year 1988. We note this is significantly greater than the amount of $38,000 utilized by the NCCI in their evaluation of the proposed law.

Breakdown of Average Permanent Partial Benefit Costs

As a first approximation, payments to permanent partial claimants under current law can be broken down into two components:

1. Temporary disability (including healing, rehabilitation)

2. Permanent partial award

Exhibit 2 shows average temporary disability benefit durations for identified permanent partial claims in the WCIHS data base. As can be seen on this exhibit, the average temporary disability duration for injury years 1983 and 1984 is currently about 400 days. Since the average duration is likely to increase until

all open claims are settled, we believe 400 days represents a lower bound on the likely duration of temporary benefits under current law, and we judgmentally estimate an average duration of 425 days for policy year 1988. This duration is considerably greater than the 340 day duration implied in the NCCI evaluation of the proposed law change.

In their evaluation of the law change, the NCCI estimates the average temporary disability payment to be about $328 per week. We estimate the average temporary disability payment on a permanent partial claim to be about $20,000 ($\simeq$ $328 x 425/7).

We thus estimate the following breakdown of average permanent partial costs under current law:

Temporary Disability Benefits:	$20,000
Permanent Partial Award:	30,000
Total	$50,000

Because of data limitations, we were not able to estimate the dollar amounts of payments to claimant's attorneys or to rehabilitation providers. In our discussion we implicitly assume that these costs are in addition to the average claim cost of $50,000 above.

Attorney Involvement in Permanent Partial Cases

As can be seen on Exhibit 2, approximately 30% of all permanent partial cases have some attorney involvement, either on behalf of the employee or the employer/insurer. This percentage appears to be relatively consistent from year to year.

Permanent partial cases with attorney involvement involve on

average 50% - 60% more days of temporary disability than does the average permanent partial claim.

Rehabilitation Benefits and Permanent Partial Cases

As can be seen on Exhibit 2, based on WCIHS data, vocational rehabilitation benefits are provided to about 25% - 30% of all permanent partial cases.

Permanent partial cases involving rehabilitation involve on average 75% - 100% more days of temporary disability than does the average permanent partial claim.

Permanent Partial Distribution by Injury

Exhibit 3 shows the distribution of injuries by body part as indicated by WCIHS data for permanent partial cases. We note that although back injuries account for 27% of all cases, they account for 57% of all cases involving attorneys and 47% of all cases involving rehabilitation.

Exhibit 4 provides a comparison of the injury distribution indicated by the WCIHS data and that implicit in the NCCI law evaluation for permanent partial cases. It is notable that the WCIHS data indicates significantly greater numbers of back injuries in Alaska than does the NCCI analysis. Similarly, there are indications of greater numbers of knee and shoulder injuries than anticipated in the NCCI analysis. We note that these types of injuries are generally those with the potential for greatly increased benefit awards under the proposed law.

We acknowledge that discrepancies in the injury distribution

may partially be due to the problems in identifying permanent partial cases in the WCIHS data base.

Exhibit 5 shows the relative average duration of temporary benefits by type of injury. We note that back injuries have an average duration of temporary benefits that is 60% - 80% greater than average.

Distribution of the Duration of Temporary Benefits to Permanent Partial Claimants

Exhibit 6 shows the distribution of the length of durations of closed permanent partial claims with injury dates from 1982 through 1984. As can be seen on this exhibit, if all durations were limited to two years, as would be the case under a strict interpretation of the proposed law, the average duration would be reduced by 78%.

Distribution of Claimants by ZIP Code

Exhibit 7 shows the distribution of claimants by ZIP code as recorded in the WCIHS data base.

It is notable that of claimants currently receiving fatal, permanent total, or temporary total benefits, approximately 30% are residing outside of Alaska.

Notes on the Workers' Compensation Information Handling System (WCIHS) Data Base

We were provided with a tape of the WCIHS. We understand that it contains records of all workers' compensation claims in Alaska beginning from January 1, 1982.

In our analysis we built a data base consisting of permanent partial claims. Due to limitations in the data base and difficulties associated with the identification of the type of award for those claims settled with a compromise and release, we identified a permanent partial claim as follows:

1. A claim with a payment code PPD (i.e., scheduled permanent partial).

2. A claim with a payment code UPD (i.e., unscheduled permanent partial)

3. A claim with a payment code MLT (i.e, multiple payment) and a body part code 420 (i.e., Back).

We are advised by personnel at the Workers' Compensation Division that these criteria would fairly accurately identify permanent partial cases.

We note that the data base described above contained about 800 claims for each year, while unit statistical data indicates about 1,200 permanent claims per year. Possible reasons for the discrepancy in counts include the broad definition of permanent partial used in the unit statistical plan, and the difficulty of identifying lump sum settlements as permanent partial cases. in the WCIHS data base.

5: REVIEW OF NCCI PRELIMINARY EVALUATION OF SB322/HB352

In their preliminary evaluation of SB322/HB352, the NCCI estimated the following impact on costs:

Table 3: NCCI Preliminary Evaluation of SB322/HB352

Type of Injury	% of Loss	Effect
Fatal	3.0	-0.4%
Permanent Total	13.4	-0.1
Permanent Partial	50.2	-3.7
Temporary Total	5.1	-0.5
Medical	28.3	0.0
		1.8
Definitional and System Changes		-4.0
Total Combined Impact		-2.3%

NCCI Fatal, Permanent Total, and Temporary Total Estimates

The NCCI estimated cost reductions for fatal, permanent total, and temporary total reflect the impact of the reduction in the maximum weekly benefit limitation. The essential steps in the calculation of the estimated impact on costs were:

(1) Development of an assumed distribution of wage levels using countrywide data and adjusting to the actual wage level in Alaska.

(2) Use of countrywide data to obtain assumed distributions of the number of survivors in fatal cases.

(3) Calculation of total benefit costs under current law and under SB322/HB352 using (1) and (2).

We believe this approach provides a reasonable estimate of the impact of the change in the maximum benefit limit. In any case, overall cost savings from this change are so small that any variations from the assumptions of the calculation are likely to have very little impact on overall cost estimates.

NCCI Permanent Partial Estimates

The NCCI estimated cost reductions for permanent partial reflect the impact of changing the basis for calculating benefits from the current scheduled/unscheduled method to the medical impairment method. The estimate does not reflect possible changes in temporary and rehabilitation benefits paid to permanent partial claimants. These latter changes are presumably included as part of the -4% "Definitional and System Change" adjustment.

The NCCI analysis indicates the following changes in permanent partial award costs for different types of injury:

Table 4: NCCI Estimated Permanent Partial Award Cost Change by Injury Type

Injury Type Under Current Law	NCCI Estimated Cost Change
Minor - Scheduled	-69%
Minor - Unscheduled	-65
Major - Scheduled	+4
Major - Unscheduled	+52

Thus, although the NCCI analysis indicates very little overall change in costs, there are large changes by type of injury.

The essential steps in the NCCI calculation of the estimated impact on costs were:

1. Developing an assumed distribution of "major" injuries and their healing periods using countrywide data.

2. Developing an assumed distribution of "minor" injuries and their healing periods using countrywide data.

3. Assuming that all "major" injuries receive 37 weeks of

rehabilitation while "minor" injuries receive more.

4. Assuming that healing periods in Alaska are double the countrywide periods.

5. Estimating total benefit costs under current and proposed laws on the basis of 1 through 4 for "major" and "minor" injuries separately.

6. Combining the estimates for "major" and "minor" injuries so that the resulting average permanent partial claim cost under current law balances to the estimated actual average permanent partial claim cost in Alaska. This step has the effect of modifying the countrywide distributions to more closely reflect actual conditions in Alaska.

Aside from problems in actually estimating benefits for a particular injury under the current and proposed laws, the indicated cost change calculated by the NCCI methodology is very sensitive to both the assumed length of healing period and the assumed current average permanent partial claim cost. The following table illustrates this sensitivity:

Table 5: Increase in Permanent Partial Costs Indicated by NCCI Methodology Under Various Assumptions

Assumed Current Average Claim Cost	Assumed Average Healing Periods as % of Countrywide Averages		
	150%	200%*	250%
38,000*	+6.5%	+3.7%*	+1.4%
45,000	+10.9	+8.3	6.1
55,000	+15.5	+13.0	+10.8

NOTE:
1. (*) Utilized by NCCI in their preliminary evaluation of SB322/HB352.

The average claim cost and healing period assumptions are closely related to the distribution of claims by injury type. Thus, the sensitivity in the NCCI methodology largely results from the fact that the new law produces radically different cost changes depending on the type of injury.

Our analysis of data from the Alaska Workers' Compensation Information Handling System (WCIHS) and from the unit statistical reports for Alaska enabled us to examine if and how the key assumptions in the NCCI analysis concerning permanent partial cases differ from the actual situation in Alaska. In particular, we believe the actual average amount of a permanent partial case, the average healing period, and the distribution of injuries are all more unfavorable than assumed in the NCCI analysis, and point to the conclusion that the NCCI analysis understates the likely impact of the proposed law on permanent partial cases.

We estimate a likely increase of 11% instead of 3.7%, by using the NCCI method and a $50,000 average claim assumption. We utilized $50,000 rather than a higher value indicated by the data in order to judgmentally recognize the perception that many claims with low impairment ratings currently receive large awards. Had we used a higher value, a higher cost indication would have resulted. Thus, without considering any changes except the proposed revision to the calculation of permanent partial awards, we estimate the following impact on average costs:

	Law: Current	Proposed	
Temporary Disability:	$20,000	$20,000	
Permanent Partial Award:	30,000	35,500	+18%
Total	$50,000	$55,500	+11%

Hence, we estimate the new law will increase permanent partial award costs by 18% (excluding temporary benefits). If it were desired to produce no overall increase in award costs, the proposed maximum for permanent partial awards should be reduced from $240,000 to $200,000.

In their preliminary analysis, the NCCI did not explicitly consider the impact of the proposed limit of two years on temporary disability payments. As discussed earlier, we estimate that this limit, strictly applied, would reduce temporary total disability payments to permanent partial claimants in the WCIHS data base by 22%.

Additional factors that may affect the costs of permanent partial cases include:

1. Attorney Involvement Under the current law, about 30% of cases involve attorneys. The proposed law, which bases determinations of disability strictly on medical evidence, may result in less litigation. However, the new law may also lead to less compromise and release agreements and litigation may increase due to increased potential for reopenings.

2. Rehabilitation The reform of the rehabilitation process may lead to cost savings. However, these savings may be

offset by increasing the limit on vocational programs from 37 weeks to two years.

3. Administration The cost implications of the new law depend significantly on its administration and the extent to which strict adherence to its time limits, definitions etc. are possible.

4. Unit Statistical Plan Definition As noted earlier, not all cases classified in unit statistical reports as permanent partial involve permanent partial awards, and also, loss amounts include certain attorney fees and payments to rehabilitation providers, etc. This fact is implicitly recognized in our selection of an average claim cost of $50,000 rather than higher values indicated by the data.

Considering these and other factors, we estimate the proposed law will decrease temporary benefit costs for permanent partial claims by 20%. To summarize, we estimate the following overall impact on average permanent partial costs:

	Law: Current	Proposed	
Temporary Disability:	$20,000	$16,000	-20%
Permanent Partial Award:	30,000	35,500	+18%
Total	$50,000	$51,500	+3%

We note that if the maximum permanent partial award amount were reduced to $200,000 so that there was no net indicated increase in the cost of permanent partial awards, there would be a net indicated decrease in permanent partial costs of about 8%.

NCCI Definitional and System Change Estimates

In their preliminary evaluation, the NCCI included an adjustment of -4% to account for aspects of the proposed law not explicitly evaluated. We understand the -4% was selected by judgment.

Using data from the WCIHS, we were able to provide some quantitative measure of the impact on the provisions of the new law relating to claimants living out of state.

Claimants Living Out of State

As discussed earlier, based on the distribution of claimant's ZIP codes in the WCIHS data base, approximately 30% of claimants now receiving temporary total, fatal, or permanent partial benefits reside out of state.

We judgmentally estimate that benefits for out of state claimants are reduced by 25% under the proposed law and that 20% of all claimants are affected. This implied a 5% (= 20% x .25) reduction in temporary total, fatal, and permanent total benefit costs.

The assumption that 20% of claimants will receive reduced benefits rather than 30% as indicated by the WCIHS data is to recognize that if the new law is implemented, the percentage of out of state claimants is likely to drop as claimants lose an incentive to leave Alaska.

6: M&R ESTIMATED COST IMPACT OF SB322/HB352

We estimate the following impact on costs:

	Fatal	Permanent Total	Permanent Partial Temporary	Permanent Partial Award	Temporary Total	Medical	Total
A: Cost Under Current Law	3.0%	13.4%	20.1%	30.1%	5.1%	28.3%	100.0%
Proposed Law Change							
B: Revision To PP Award	1.000	1.000	1.000	1.180	1.000	1.000	
C: Weekly Benefit Maximum	0.996	0.999	0.950	1.000	0.995	1.000	
D: Out of State Claimants	0.950	0.950	1.000	1.000	0.950	1.000	
E: Duration of Temporary Benefits	1.000	1.000	0.800	1.000	1.000	1.000	
F: Overall Impact (AxBxCxD)	0.946	0.949	0.760	1.18	0.945	1.000	
G: Cost Under Proposed Law (AxF)	2.8%	12.7%	15.3%	35.5%	4.8%	28.3%	99.4%

We thus believe the proposed law is likely to have little overall impact on total costs. We note the following:

1. If the proposed permanent partial award maximum were reduced to $200,000, we estimate there would likely be little overall change in permanent partial award costs from present levels, and overall costs of the program would be reduced by about 6%.

2. We believe we have implicitly factored into our estimates all aspects of SB322/HB352 identified earlier as impacting costs.

3. The estimates above anticipate strict adherence to the provisons of SB322/HB352.

4. We again stress that the proposed reform of permanent

partial benefits is difficult to estimate accurately and we believe there is considerable risk that significant variances from our projections exist.

5. It must be recognized that there is significant variability in any actuarial estimate of future workers' compensation costs, and that variations from estimates presented in this report are likely.

Acknowledgements

We would like to take this opportunity to express our thanks to Mses. Hansen and McClintock of the Alaska Workers' Compensation Division, and the NCCI for their cooperation provided throughout this analysis.

We welcome the opportunity to discuss this analysis in greater detail as the need arises.

Milliman & Robertson, Inc.
February 10, 1988

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COMPASS Article
Workers' Comp Reform
Labor Perspective

by Robert Anders

Workers' Comp Reform: An Employee's Perspective

Workers' compensation should be exactly what those two words describe. It is not lawyer, doctor, chiropractor or vocational rehabilitation compensation. The system was designed to compensate an injured worker for lost time and wages and to help return an employee back to productive work. In Alaska, that system is failing.

Realizing that Alaskan employers pay an extremely high rate for workers' comp coverage, labor representatives worked cooperatively with management to search for ways to lower the cost of insurance for employers while improving the system for injured workers. The proposed bill before the legislature accomplishes that goal.

The process followed in preparing the current proposal was one of give and take. Both sides brought their specific goals and issues to the table and negotiations over very sensitive issues became strained at points.

The end result has proven what the real meaning of labor-management cooperation is all about. Working together to solve problems and improve the system for both in the process has truly resulted in a win-win situation for labor and management.

- more -

From labor's perspective the bill provides many benefits. The minimum weekly benefit will be raised from $110 to $154 while the maximum will be dropped from $1100 to $700. Labor feels this is necessary to better provide for individuals at the low end of the scale.

Out of 365 permanent partial disability cases in 1985, only 11 were able to claim over $700 per week. The vast majority of cases come at the low end. By raising minimums we will be able to provide assistance for those who most need it. The bill will also authorize vested pension and profit sharing benefits to be included when determining an average weekly wage.

The changes proposed in the permanent partial disability rating structure will significantly increase payments to the more severly injured workers while putting reasonable time limits on the length of time some benefits may be paid.

Employer disputes over who is responsible to pay claims can cost an employee their life savings, home and possessions. The proposed legislation would reduce the effects of those disputes on the worker by requiring the last employer of a worker to pay claims until a dispute is resolved. This will ensure worker's that they are quickly and adequately compensated.

The bill would prohibit discrimination against workers who have filed workers' compensation claims.

Vocational rehabilitation was an area labor and management both felt was necessary to change. The bill would make acceptance of rehabilitation services voluntary rather than mandatory.

First, under the present system it's estimated that many of those who enter a rehabilitation plan return to their prior occupation or an occupation of their choosing as is evidenced by the fact that 90 percent of all compromise and release agreements waive vocational rehabilitation.

Second, when carriers control a mandatory rehabilitation system that's tied to the claims process, as is done now, there are abuses on both sides and a lack of trust which results in program failure.

Labor supports a voluntary program which takes service provider selection away from the carriers and removes it from the claims process. The end result should be more cooperation from the injured worker and those providing rehabilitation services, less litigation and lower costs.

The injured worker will have control over the rehabilitation plan along with a quick method to resolve disputes over how the plan is carried out.

Labor agreed with management that language to prevent an avalanche of stress claims is necessary. This bill would provide adequate guidelines necessary to make these determinations. Without this preventative measure, we're going to see the floodgates to stress claims open causing further rate hikes and lost jobs.

Labor also supports denial of benefits to an employee who knowingly misrepresents his physical condition prior to employment. If an employee withholds information, he could be endangering himself or others since it's not known what duties that employee may be required to perform.

Labor's belief in supporting these and other changes is that a greater portion of worker compensation dollars will be directly allocated to injured workers while providing for a cost effective, equitable program which provides incentive for injured workers to return to work.

As expected, some attorneys and members of the medical profession have criticized our efforts because we focused our concerns on the litigation and disputes that are presently built into the system. I would hope that reasonable minds would put concerns for injured workers ahead of vested financial interests such as those which are held by the critics of our efforts.

In proposing the changes now before legislators, both labor and management realized some major issues are yet to be addressed. Both parties agree the process to reform the current system must continue. The complexity of the issue will require our cooperative, ongoing effort in the years ahead but we are off to a positive beginning.

# # # #

National Council on Compensation Insurance

RESIDUAL MARKET RATE DIFFERENTIAL

The loss experience of the reinsurance pools has been higher than voluntary market for many years in almost every state. This is as would be expected since, on average, company underwriters are able to identify the better insureds.

The assigned risk plan operated by NCCI provides a mechanism for all employers to obtain workers compensation insurance. The reinsurance pools have been developed for carriers to spread the average loss experience to each carrier equally. Carriers writing 99.9% of the workers compensation insurance in Pool states are in the National Reinsurance Pool. A comparison of the loss ratio (incurred losses ÷ standard premium) of the reinsurance pools to the voluntary market loss ratio consistently shows the assigned risks have higher loss ratios.

An assigned risk in Alaska is currently surcharged 10% above the rate for workers compensation as a voluntary risk (15% for aircraft classifications). This surcharge does not fully compensate for the increased losses; therefore the voluntary risks are subsidizing the assigned risks' losses. The residual market rate differential is intended to more accurately distribute the workers compensation losses among the voluntary and residual markets. This is accomplished through the use of a selected differential of 20%. The increase in premium due to the change from a 10% surcharge to a 20% differential is 9.1%, (1.091 = 1.200 ÷ 1.100). The actual indication in Alaska is 37%. The countrywide indication is a 50% differential. In addition to reducing the subsidy of the residual market by the voluntary market, the residual market rate differential will allow substandard risks to be written voluntarily at a rate between the voluntary rate and the residual market rate. This will reduce the number of assigned risks.

The volume and loss ratio of the residual market tend to fluctuate over time. However, the residual market rate differential is intended to remain constant over time. The selected value of 20%, lower than the indication in almost every state, will be proposed to be in effect until further notice. The voluntary rates will be lowered to reflect the effect of the differential. The reduction in voluntary rates depends on the approved residual market rate differential and the projected residual market premium share. The projected residual market premium share is 6.6%. This is the largest residual market premium share of the latest four policy years. The selection of the largest market share is intended to reflect the recent growth in the number of assigned risks. However, this program is expected to reduce the number of assigned risks. Therefore, as experience under this program accumulates, the average market share will replace the above estimate in the determination of the voluntary rate reduction.

For the current Alaska filing, the voluntary rate offset is .994 (-0.6%). Therefore, the voluntary market premium level change needed is +13.8% (1.138 = 1.145 x .994). The residual market premium level change need is +24.2% (1.242 = 1.138 x 1.091).

National Council on Compensation Insurance

Attached are the following exhibits:

1. Alaska Indicated Differential
2. Countrywide Indicated Differential
3. Calculation of the Voluntary Rate Offset

NCCI National Council on Compensation Insurance

Exhibit 1

ALASKA

Assigned Risk Experience Compared with Voluntary Experience

Policy Years 1981 through 1984 as of December 31, 1985

(Undeveloped)

	Earned Premiums	
	Amount	% of Voluntary
All Risks	523,164,193	-
Assigned Risks	23,121,787	4.62%
Voluntary Risks	500,042,406	100.00%

	Losses Incurred	
	Amount	% of Voluntary
All Risks	280,814,743	-
Assigned Risks	16,714,082	6.33%
Voluntary Risks	264,100,661	100.00%

Indicated Differential for Assigned Risks

1	Assigned Risk Losses as a Percent of Voluntary	6.33%
2.	Assigned Risk Premiums as a Percent of Voluntary	4.62%
3.	Indicated Differential (1)/(2)	1.37
4.	National Council State # Indicated Differential (From Exhibit 2)	1.50
5.	Formula Indication (See Note)	1.44
6.	Selected Differential	1.20

Note:

Formula = State Indicated Differential * Z + (1-Z) * National Council States # Indicated Differential

where $Z = \frac{\text{State Assigned Risk Premium (millions)}}{\text{State Assigned Risk Premium (millions)} + 25.0}$

Excludes states with State Funds and Open Competition states.

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National Council on Compensation Insurance

Exhibit 2

Countrywide*

Residual Market Experience Compared with Voluntary Experience

Policy Years 1981 through 1983 valued as of December 31, 1984

(Undeveloped)

	Standard Earned Premiums	
	Amount (000)	Percent of Voluntary
Countrywide	12,143,967	
Residual Market	845,638	7.48%
Voluntary	11,298,329	100.00%

	Incurred Losses	
	Amount (000)	Percent of Voluntary
Countrywide	7,536,907	
Residual Market	761,812	11.24%
Voluntary	6,775,095	100.00%

Indicated Differential for Residual Market Experience

1.	Residual Market Losses as Percent of Voluntary	11.24%
2.	Residual Market Premiums as Percent of Voluntary	7.48%
3.	Indicated Differential (1)÷(2)	1.50

* Excludes: States with State Funds
States with Competitive Rating Laws
States not in the National Reinsurance Pool

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