

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4819 HLAB HB 340 - HB 352

591

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST
 Revision Date: _____
 Title: "An Act Granting immunity ... for providing ... emergency services."
 Sponsor: Rep. Davis, etc.
 Requestor: _____

Bill Version: HB340
 Publish Date: _____
 Agency Affected: Public Safety
 BRU: Alaska State Troopers
 Components: Detachments

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY88	FY89	FY90	FY91	FY92	FY93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No increase or decrease in the level of expenditures is anticipated as a result of the passage of this legislation.

Prepared by: Francis C. Allan
 Division: Alaska State Troopers
 Approved by Commissioner: Arthur E. English / jc
 Agency: Public Safety
 Distribution: (by preparer):

Phone: 269-5651
 Date: 1/20/88
 Date: 1/20/88

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary



NATIONAL SKI PATROL SYSTEM, INC.
ALASKA DIVISION

DIVISION

TITLE

101 College Road
Fairbanks, Alaska
January 18, 1988

Representative Mike Davis
Fairbanks Legislative Delegation
Fairbanks, Alaska

Dear Representative Davis:

Re: House Bill # 340

Thank you for your interest in amending the "Good Samaritan" act in the State of Alaska.

The Ski Patrol is a volunteer organization dedicated to public service by promoting safe skiing and providing rescue services. All members are trained in emergency first aid care to the level of American Red Cross Advanced First Aid, or beyond. This bill will directly and immediately affect our position as volunteers.

As the Director of the Ski Patrol in Alaska, representing three hundred and fifty members, I strongly urge your support of Senate Bill #346 ,and request immediate action on said bill.

Thank you.

Sincerely,

Harley Adamson
DIVISION DIRECTOR
ALASKA DIVISION
NATIONAL SKI PATROL SYSTEM

SEADOGS

SOUTHEAST ALASKA DOGS
ORGANIZED FOR GROUND SEARCH

PO BOX 244

JUNEAU, ALASKA 99802

1/15/88

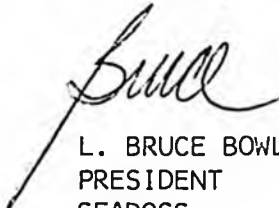
REPRESENTATIVE MIKE DAVIS
ALASKA STATE LEGISLATURE
PO BOX V
JUNEAU, AK. 99811

REPRESENTATIVE DAVIS:

I AM WRITING YOU IN SUPPORT OF HOUSE BILL 340, "AN ACT GRANTING IMMUNITY FOR VOLUNTEER EMERGENCY SERVICES". "SEADOGS" IS A STATEWIDE SEARCH AND RESCUE DOG ORGANIZATION WHICH PROVIDES TRAINED SEARCH DOGS AND HANDLERS TO THE STATE TROOPERS, COAST GUARD, AND AIRFORCE RESCUE CENTERS, AS WELL AS LOCAL LAW ENFORCEMENT AGENCIES ON A VOLUNTEER BASIS. OUR HANDLERS DEVOTE MANY HOURS OF THEIR PERSONAL TIME EVERY WEEK TRAINING FOR SEARCHES, AND THE TIME THEY SPEND IN THE FIELD SEARCHING FOR SOMEONE'S CHILD, A LOST HIKER OR HUNTER, OR SOMEONE TRAPPED IN AN AVALANCHE OR EARTHQUAKE RUBBLE IS PAID FOR OUT OF OUR OWN POCKETS. THIS BILL WOULD ALLOW TEAM MEMBERS TO OPERATE CONFIDENT IN THE KNOWLEDGE THAT ANY FIRST AID ADMINISTERED BY THEM, OR ANY ATTEMPTS TO ASSIST A LOST OR INJURED INDIVIDUAL WITHIN THE SCOPE OF OUR TRAINING, WOULD NOT BE MET BY CIVIL LIABILITY.

WE WHOLEHEARTEDLY SUPPORT THE BILL, AND REQUEST THAT YOU GIVE IT YOUR BEST EFFORTS.

SINCERELY,



L. BRUCE BOWLER
PRESIDENT
SEADOGS

MEMBER: NASAR

TELECOPY COVER SHEET

RECEIVED
JAN 18 1988

DATE: January 18, 1988

TO: Rep. Dave Donley Rm. 13

FROM: Marc Bond

RE: House Bill - 340

- 1. This telecopy contains 5 pages, including this cover sheet.
- 2. Please call at (907)279-3581 to confirm receipt of this telecopy.
- 3. No confirmation required

Additional Information: Please route as soon as possible to Rep. Donley - a hearing on House Bill 340 is scheduled for Thursday.

**National Ski Patrol System, Inc., Alaska Division**

Marc D. Bond
Winter Emergency Care Supervisor
1007 West Third Avenue # 400
Anchorage, Alaska 99501

W: (907) 279-3581
H: (907) 345-6078

January 18, 1988

Representative Dave Donley
Chairman, House Labor and Commerce Committee
Mail Stop 3100
P.O. Box V
Juneau AK 99811

Re: House Bill 340: "An Act granting immunity from civil liability for providing volunteer emergency services."

Dear Chairman Donley:

I am a volunteer ski patroller at Alyeska Resort. Virtually all ski patrollers in Alaska are members of the National Ski Patrol System, Inc., a national volunteer organization which trains and provides ski patrollers who volunteer millions of hours each year to promote ski safety and to rescue lost and injured nordic and alpine skiers.

We rigorously train our patrollers in first aid, skiing and rescue techniques. Many people in Alaska owe their lives or physical health to the swift and careful care given them by Alaska ski patrollers.

Now we are finding that our patrollers are reluctant to become involved in rescue situations. Several have quit volunteering their time to patrol activities. These patrollers would like to help, but over the course of the last several years they have become afraid of being sued because of their participation in assisting lost and injured skiers.

Unfortunately we can do little to calm their fears. It is true that ski patrollers are infrequently sued. It is also true that these suits seldom result in judgments against the patrollers. Nevertheless, statistics mean little when you find yourself on the receiving end of a summons and complaint. I enclose a story from the Riverside (California) Mountain Rescue Unit newsletter telling about a \$12 million suit initiated against the organization and several of its members by an individual they had rescued.

It seems grossly unfair that one should volunteer time, money and effort to help others, and then be sued by the very ones helped.

Representative Dave Donley
January 18, 1988
Page 2

As the late William Prosser stated, "The result of all this is that the good Samaritan who tries to help may find himself mulcted in damages, while the priest and the Levite who pass by on the other side go on their cheerful way rejoicing." W. Prosser, *The Law of Torts* @ 56, at 344 (4th ed. 1971).

Our Supreme Court has held that the existing Good Samaritan Act does not apply to individuals who have a pre-existing duty to go to the aid of others. (*Lee v. State*, 490 P.2d 1206 (Alaska 1971)). When we put on our patrol parkas and post ourselves on ski hills and trails throughout the state, we wonder if the court would hold that ski patrollers, although volunteers, have that "pre-existing duty" to rescue injured skiers. If so, we lose the protection of the Good Samaritan Act, and can be sued for real or imagined injuries received during the rescue. We do not believe that represents good public policy, for it discourages volunteers from helping others -- the opposite intent of the Good Samaritan Act.

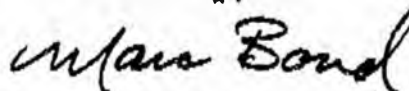
Recently Rep. Mike Davis introduced House Bill 340. I enclose a copy for your information. The Legislative Affairs Agency tells me that it has been initially referred to the Labor and Commerce Committee. Senator Fahrenkamp has introduced identical legislation in the Senate. Senate Bill 346.

House Bill 340 would remove the specter of ruinous litigation for volunteer members of rescue squads. I firmly believe it can be empirically demonstrated that enactment of this legislation would encourage many Alaskans to participate in volunteer rescue squads.

It should be noted that the bill does not attempt to eliminate liability for gross negligence or intentional acts. Such acts would provide a basis for litigation as noted in subsection (b) of AS 09.65.090. Thus, rescued individuals who are the victims of particularly abhorrent care would still be provided a forum to redress the matter.

I urge you to hold prompt hearings on House Bill 340. It is good public policy and ought to be enacted. If I can provide additional information, please let me know.

Sincerely,



Marc Bond

Enc.

cc: Harley Adamson
Tom Smith
Bob Janes

Walter
FYI . 2 Am

no other info

Wences

Riverside Mountain Rescue Unit Sued for Rescue

In October, 1983, the Riverside Mountain Rescue Unit, Riverside, California was called to help in the rescue of a stranded man on the side of Box Springs Mountain above Riverside. The terrain was too difficult for the general lally to manuever safely. Craig Fredborg, 23, was hiking with 2 friends when he slipped from a viewpoint and fell 70 feet. After Craig's friends found him, they moved him a short distance and then just waited. Thirty hours elapsed before the RMRU was called and arrived on the scene. Using the proper equipment and the proper methods, the rescue was carried out as quickly as safety for the injured and rescuers would allow.

A year later, the RMRU, along with several other organizations and individuals, finds itself on the recelying end of a twelve million dollar lawsuit filed by the young man who was rescued. Two of the individuals being sued are Walt Walker, President of RMRU (who was not even on the rescue mission) and his son, Kevin, who was a member of the rescue mission.

The Riverside Mountain Rescue Unit is one of the most active and highly respected rescue units in the country. Walt Walker, who has been with the rescue unit for 24 years, has an estimated 10,000 hours of volunteer time with the unit. He says, "To be sued by someone we voluntarily risked our own safety for is difficult, to say the least, to deal with. We wish to continue—we shall have to wait to see if we can."

Interestingly, since the lawsuit was filed, the RMRU has responded to ten calls within a few weeks, and eight people are alive because they came.

-RMRU Newsletter

HB

350

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

HAB 350
EC 68

January 11, 1988

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, secs. 18 and 23, of the Alaska Constitution, I am transmitting an Executive Order and a companion bill transferring the business license program from the Department of Revenue to the Department of Commerce and Economic Development. At the present time, businesses frequently must obtain licenses from both departments. The Executive Order will consolidate these licensing functions in one agency, making for greater administrative efficiency and, of even greater importance, better service to the public.

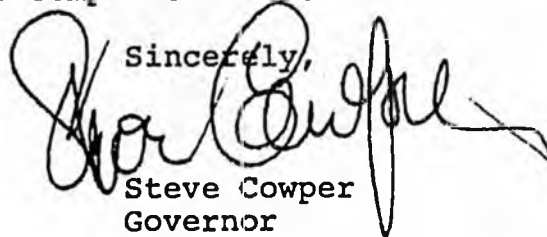
The Order simply transfers the business license program (AS 43.70) from the Department of Revenue to the Department of Commerce and Economic Development, by defining "commissioner" and "department" for purposes of that chapter as the commissioner of commerce and economic development and the Department of Commerce and Economic Development (secs. 5 and 6 of the Order), respectively, adding this authority to the duties of the Department of Commerce and Economic Development (sec. 7 of the Order), and making necessary technical changes to other statutes.

Although the functions of the business license program are reassigned by the Executive Order, I am requesting your support of the accompanying bill in order to make the program fit more easily within the current operations of the Department of Commerce and Economic Development, division of occupational licensing. Under the Order, current procedures and enforcement provisions must remain in effect. The bill will permit the division of occupational licensing to instead use the current procedures and enforcement provisions used for occupational licenses by placing the business license program under AS 08.01. Sections 1 -- 6 of the bill. The department will then issue biennial instead of annual business licenses (AS 08.01.100(a); see secs. 7, 8, and 10 of the bill), coordinated with any other licenses issued to the particular business, and use its own enforcement proce-

dures under AS 08.01.102 -- 08.01.105. Section 5 of the bill. The effective date of the bill is contingent upon the effective date of the Executive Order. Section 3 of the bill also makes an incidental correction, deleting a redundant sentence that appears in AS 08.01.065(c) due to inconsistent amendments made by sec. 1, ch. 87, SLA 1987 and sec. 5, ch. 94, SLA 1987 -- a correction also being proposed in the 1988 general revisor's bill.

The Department of Revenue presently administers a number of licensing and permitting programs in addition to the business license program. Unlike the business license program, however, each of these other programs is administered in conjunction with a particular tax. Used in this manner, licensing activities are an effective tool in tax compliance efforts. Since the 1978 repeal of the business gross receipts tax, this has not been the case for the business license program, and there is no longer any reason to retain the program in the Department of Revenue. To better serve the public and to promote administrative efficiency in operating this program, I urge your support of the Executive Order and passage of the companion bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the typed name and title.

Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Executive Order
Sponsor: Rules Committee
Requestor: Governor's Office

Agency Affected: Com. & Econ. Dev./Revenue
BRU: Business Licensing
Occupational Licensing
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		-0-	-0-	-0-	-0-	-0-
TRAVEL		-0-	-0-	-0-	-0-	-0-
CONTRACTUAL		-0-	-0-	-0-	-0-	-0-
SUPPLIES		-0-	-0-	-0-	-0-	-0-
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS		-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS		-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING		-0-*	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

*The Governor's FY 89 budget currently includes \$269,088 in general funds in the Department of Revenue. The appropriation will be transferred along with 5.5 positions to the Department of Commerce & Economic Development, Division of Occupational Licensing by budget amendment.

Prepared by: _____ Phone: 465-2505
Division: Administrative Services Date: 1/8/88

Approved by Commissioner: Lucy Bushnell Date: 1/8/88
Agency: Department of Commerce & Economic Development

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

HB

352

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3542

November 9, 1987

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Workers' Compensation Hearing

The House Labor and Commerce Committee will host a public hearing on Workers' Compensation on Thursday, November 12 from 1:30 to 5:00 p.m. in the ground floor conference room at the Anchorage LIO, 3111 C Street.

Your committee file contains copies of a House research report on workers' compensation attorney fee provisions, correspondence about workers' compensation issues, a House Labor and Commerce Committee report on legislative recommendations of the ad hoc Labor/Management workers compensation working group, and copies of testimony by Don Koch, Division of Insurance, regarding the recent rate increase for workers' compensation premiums approved by the Division.

Thursday's hearing will not be a teleconference although there will be a listen-only hookup with the Fairbanks LIO. On Friday, November 13, from 1:30 to 4:30, we will be taking testimony via teleconference on insurance and civil justice reform issues, including testimony on workers' compensation. Communities linked to the teleconference include: Anchorage, Fairbanks, Juneau, Soldotna, Wrangell, and Ketchikan.

Please call me or Ginger Baim at 561-7629 if you have any questions or need additional information.

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3842

November 6, 1987

House Labor and Commerce Committee Report
Informal Workshop on Workers' Compensation
Friday, October 30, 1987
Anchorage, Alaska

On Friday, October 30, the House Labor and Commerce Committee met in an informal workshop with the ad hoc Labor/Management Workers' Compensation Committee to receive their initial recommendations for legislation to address the soaring costs of the workers' compensation system.

House Labor and Commerce Committee members present were Representative Dave Donley, Chair, and Representatives Ellis and Furnace.

The ad hoc committee

consists of five representatives from management/employers and five from labor organizations. Members are:

LABOR

- Bob Anders - Operating Engineers, member of the Workers' Compensation Board
- Ken Weist - Business Agent/Roofers
- Ralph Mingo - Teamsters/Local 959
- Kevin Dougherty - AFLCIO
- Joe Thomas - Business Agent/Laborers Union

MANAGEMENT

- Dick Cattnach - Associated General Contractors
- Mary Pierce - Executive Director of MICA and member of Workers' Compensation Board
- David Gottstein - Carr/Gottstein Inc.
- Steve Rehnberg - Tanagusuk Corporation
- Ralph Lewis - Ketchikan Pulp & Paper

The Labor/Management working group gave a brief history of the efforts by WCCA and others to address workers' compensation issues. Mr. Cattnach said that the management arm of WCCA had gotten legislation adopted in 1982 that primarily made changes in the way benefits were calculated. He said the legislation was biased toward management/employer interests.

WCCA was relatively quiet until last October when the Division of Insurance approved a request for a sixteen percent increase in workers' compensation premiums. As a result, the Labor/Management Committee was formed to make recommendations for legislation that fairly weighed the interests of both employees and employers.

The ad hoc committee has been meeting regularly in the last year. At this time, they have reached a tentative agreement on several issues aimed at reducing the cost of the system. The committee is currently drafting legislation and both the Senate and House Labor and Commerce Committees have expressed willingness to introduce the legislation next session as a committee bill.

The recommendations of the committee fall into three categories. They are:

REHABILITATIVE SERVICES

The ad hoc committee recommends that an initial interview with an injured worker be conducted by a rehabilitative service specialist taken from a rotating roster that is not determined by either the employee or the insurance carrier.

Testimony indicated that there are about twenty qualified CIRS (Certified Insurance Rehabilitative Specialists) in Alaska and that they are in agreement with the committee's recommendation.

Under the committee's recommendation, an employee may choose to use the initial interviewer as their rehabilitative service provider if they choose. Otherwise they may choose from the next provider on the roster.

MEDICAL COSTS

Testimony indicated that thirty eight percent of the dollars in the workers' compensation system go to medical costs. The committee felt that changes to reduce costs in this area would have a significant impact on cutting overall costs of the system.

The committee recommends that legislation be adopted to require physicians and other primary health care providers to charge "usual, customary, and reasonable rates", as they are required to do under statutes governing other medical insurance programs such as medicare.

The committee also recommended that an IME (Independent Medical Exam) be conducted after every fifteen visits to the primary physician in order to cut down on what could be unnecessary visits. If the IME determines that the client has reached medical stability, and the personal physician

disagrees, the client will be referred to a third IME. The Board will make their determination in each case after weighing the opinions of the three medical providers.

Throughout this discussion, the committee members expressed concern that medical treatment not be impaired by any attempts to reduce costs and that injured employees are not coerced into accepting medical providers they do not want.

Committee members testified that medical costs tripled in the last three-year period even though the number of workers in the labor force decreased. Therefore the costs are distributed among fewer workers.

Discussion followed about whether the third IME physician should be exempt from malpractice claims in order to assure an unbiased opinion. The third IME will not be a treating physician, their purpose is to judge whether the patient is medical stable (i.e. whether further treatment will improve the workers condition).

The committee said that no consensus had been reached among their members on the malpractice exemption provision. Representative Donley suggested that they consider setting a very high legal standard as opposed to absolute immunity from liability.

The committee recommended that back and neck injuries be scheduled in the same way other injury/disabilities are.

The committee recommended that Temporary Disability (TD) payments be limited to two years.

DETERMINING BENEFITS/AVERAGE WEEKLY WAGE

The committee recommended that when an injured worker has moved out of Alaska, their monthly workers' compensation payments be adjusted by the cost of living index of the area they reside in.

The committee agreed that vested rights to pension and other benefit packages be included for determining a workers' wage rate, in keeping with the Supreme Court decision in Ragland v. M-K Inc.. The trade-off was that workers' compensation benefits will be offset by retirement benefits.

The committee discussed the current method for determining the average weekly wage for the purpose of establishing benefit levels. They made the following recommendations:

- Establish a new method for determining exceptions (when the average weekly wage cannot be fairly determined under the "regular" system) because twenty-five percent of the

litigation results from disputes over determining an accurate and fair average weekly wage.

- Adjust the minimum/maximum average weekly wage to increase the minimum and decrease the maximum. The committee felt that the current system rewards lesser injuries while limiting rewards for more severe injuries. Since the greatest percentage of cases are in the lower spectrum, the committee felt this change would help workers by more fairly distributing benefits, encourage business, and help reduce overall costs.

The committee recommended that a "payment under reservation of rights" method be used in "last injurious exposure" cases whereby the last employer provides benefits while claims are being controverted and the employer who is ultimately determined to be liable is responsible for reimbursement.

OTHER ISSUES AND RECOMMENDATIONS

The committee discussed several issues that they were not able to reach a consensus on except to agree that the issues should be addressed.

The committee discussed the question of whether independent contractors who are sole proprietorships and not obligated to carry workers' compensation coverage on themselves, are eligible for workers' compensation benefits under a prime contractors policy.

There is considerable confusion over the definition used to determine whether a person is an independent contractor or an employee. Several local business have been billed retroactively for coverage on workers they hired as independent contractors because their carrier argued that these workers would have been found to be employees if they had been injured and went to court.

Testimony indicated that, as a result, contractors want proof that sub or specialty contractors carry workers' compensation insurance before they will enter into a contractual arrangement with them. The cost for a sole proprietorship to purchase workers' compensation coverage is a minimum of \$1,000 and could be as much as \$6,000, depending on the trade and type of work.

The committee felt the definition for determining whether a person was an employee or contractor should be adjusted but did not feel they would be able to reach a consensus on how to go about it.

The committee discussed problems with the current system of assigned risk pools (with surcharges up to 33 percent) saying

that small employers don't benefit from this system and that it can have a tendency to encourage a callous attitude toward safety.

The committee felt that questions about occupational illnesses such as heart attacks and stress related injuries should be addressed in a manner that is fair to both employees and employers.

The committee felt that the administration of claims in dispute took far too long and that the length of time greatly increased costs and that definite timelines should be set to expedite the claims settlement process.

* * * * *

The House Labor and Commerce Committee will host a public hearing on workers' compensation issues on Thursday, November 12, from 1:30 to 5:00 p.m. in the Anchorage Legislative Information ground floor conference room at 3111 C Street.

The ad hoc Labor/Management committee recommendations will be discussed along with public comment on a whole range of issues affecting the Alaska Workers' Compensation system.

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX 11, JUNEAU 99811

October 30, 1987

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Notes for Friday's Workers' Compensation workshop

On Friday, October 30, 1987, the House Labor and Commerce Committee will host an informal workshop on workers' compensation issues at the Anchorage LIO building, 3111 C street, ground floor conference room at 1:30 p.m.

The purpose of the workshop is two fold:

1. To discuss the workers' compensation system in Alaska and to bring committee members up to speed on current issues and terminology.
2. To receive a preliminary report from the ad hoc Labor/Management Workers' Compensation committee about the issues they have been working on and about any proposed legislation.

This is an informal worksession and members of the ad hoc committee have been specifically invited. They are: Bob Anders, Ralph Mingo, Kevin Dougherty and Ken Weist on the Labor side of the team, and Mary Pierce, Dick Gattanach, Steve Rehnberg, and David Gottstein, on the management side. Senator Tim Kelly, Chairman of the Senate Labor and Commerce Committee will also attend.

Members of the public or any other interested party are welcome to attend although we would like to keep the group down to a manageable size in order to have a productive discussion. The House Labor and Commerce Committee will host a formal public hearing on workers' compensation issues on Thursday, November 12, again at the Anchorage LIO conference room.

Your Committee file includes news articles about workers' compensation, a statement from Don Koke from the Division of Insurance about the recent rise in premium rates, and a copy of a law article by Chancy Croft on rehabilitative services.

STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE
P. O. BOX D
JUNEAU, ALASKA 99811

Opening Comments for Public Meeting Concerning Revised
Workers' Compensation Insurance Rates to be Effective
January 1, 1988.

Good afternoon. My name is Don Koch. I am a special Deputy for the Alaska Division of Insurance. This is not a hearing in the usual sense. This is a public informational meeting or forum designed to give you an opportunity to hear how the worker's compensation rate filing effective on January 1, 1988 was constructed. Hopefully an insight and understanding as to how that process developed.

With me today are two representatives of the National Council on Compensation Insurance, Mr. Stan Sparks and Mr. Mark Mulvanney.

My opening remarks borrow freely from an Order I wrote last December concerning a rate filing that was under consideration at that time. Much is unchanged from that time to this.

The the National Council on Compensation Insurance is a national rating organization licensed by the State of Alaska. The members and subscribers of the the National Council on Compensation Insurance are insurance companies writing worker's compensation insurance in the various states. The the National Council on Compensation Insurance does statistical compilation of data, including premium, payroll, loss and expense data, on behalf of its member and subscriber insurance companies. It makes rate and policy form filings with the State of Alaska on behalf of its member and subscriber insurers.

On October 16, 1987, the the National Council on Compensation Insurance filed a rate change for worker's compensation insurance on behalf of its member and subscriber companies to be effective January 1, 1988 on new and renewal policies. The overall statewide premium level increase resulting from implementation of that filing is 25.1%. The components of the increase are:

- increase due to experience..... +22.1%
- increase due to change in trending +01.3%
- reduction to reflect anticipated decrease in the state
 average weekly wage..... -00.01%
- increase for tax to reflect Guaranty Fund Assessments.. -01.1%

The overall average of 25.1% is further broken down into four (4) major industry groupings, each with a different impact from the filing reflecting that groups' contribution to the loss level. The industry groups are manufacturing, contracting, oil & gas, and all other. Within the groups, individual classifications can move an additional $\pm 25\%$ from the group overall indication, further reflecting the particular experience of the individual classification. The four groups, the indicated rate change by group, and the range of rate movement for classifications in each group are:

<u>GROUP</u>	<u>IMPACT</u>	<u>RANGE of IMPACT</u>
Manufacturing	+10.5%	-14.0% to +36.0%
Contracting	+29.0%	+4.0% to +54.0%
Oil & Gas	+43.0%	+18.0% to +68.0%
All Other	+17.6%	-7.0% to +43.0%

These impacts are distributed to individual classifications. There are a total of 546 classifications used in the the National Council on Compensation Insurance classification manual. Of the 546 classifications, 434 classifications had some payroll for the period used to determine classification relativity in Alaska. Of that 434 classifications, about 116 classifications had more than \$10 million of payroll over a three year period in Alaska. The total numbers of classifications in the manual by industry group are:

<u>GROUP</u>	<u>TOTAL NCCI CLASSES</u>	<u>SOME ALASKA PAYROLL</u>	<u>+10 MILLION ALASKA PAYROLL</u>
Manufacturing	294.	102.	7
Contracting	67.	63.	27
Oil & Gas	11.	11.	7
All Other	174.	158.	75

The current filing is not unusual in terms of the review process that led to its filing with the Division of Insurance. Much of the methodology utilized tracks with filing methods that have been used in the past in this state and found to be acceptable in past reviews. It is, in a sense, routine, though its impact is not.

Since 1974, Market Surveillance Section of the Division of Insurance, has closely monitored workers' compensation insurance experience of insurers writing that line of insurance in Alaska. The purpose was to measure competition and to develop an independent base with which to gauge the proposals of the National Council on Compensation Insurance. By applying Division of Insurance devised formulas and tests to this base information, which is limited in its sophistication, the Division of Insurance has generally been able to predict rate changes within two or five percent of the actual proposal and to do so about six months before a filing is proposed. In other words, it gets us in the ball park concerning what to expect. Since this approach does lack sophistication and is not accurate to the degree desirable for ratemaking purposes, the results of these tests have not been widely publicized. One concern is that the tests done by the Division of Insurance should not be available for potential use by insurers as part of the support for rate change proposals.

Utilizing this process, I noted in June 1986 that there was a likelihood of a significant filing to be effective on January 1, 1987. At that time the Market Surveillance Section concluded that a 21.5% overall premium level increase would be needed and that due to data anomalies the true need was probably closer to 30%. The data anomalies referred to, are the impacts of reserve strengthening attributable to prior years.

Using a similar process this year, I concluded that a filing in the range of 33% would be needed for 1988. I also noted that certain tests applied by insurance commissioners across the country suggested that the majority of insurance companies writing worker's compensation insurance have substantial reserve deficiencies based on the latest filings of annual reports. This, if anything tends to suggest that the need is even greater than our tests indicate that it is. Again there are data anomalies that, given an adequate data base and sufficient sophistication, are subject to fine tuning and development of a believable rate indication, albeit unpopular.

Typically, the Division of Insurance looks at losses in relation to the premium accompanying the losses. Recently, I had occasion to look at losses isolated from the premium and I had a bit of a shock. In 1983 worker's compensation losses were \$70,678,000; in 1984, they were \$89,789,000; in 1985 they were \$124,447,000; and in 1986 they were \$150,294,000. That is more than doubled in a four year period and with a decreasing payroll base to boot.

When the Division of Insurance receives an insurance rate filing from an insurance company or a rating organization such as the National Council on Compensation Insurance, it does so under standards found in AS 21.39.030 which provide that the rates shall not be excessive, shall not be inadequate, and shall not be unfairly discriminatory.

The documentation provided with the filing supports the contention that the current rate structure is inadequate. Independent data developed by the Division of Insurance suggests that the proposed level requested does meet the statutory tests.

The standards set forth in the rate law (AS 21.39) do not provide, nor should it provide, for the application of political or economic considerations when reviewing a rate filing. The law was specifically designed to avoid just that occurrence. Viewing it from these considerations, this filing could not have come at a worse time. The economy has been devastated by factors with which you are all familiar. These place pressures on such a filing which while recognized, can not be considered under the law.

The Division of Insurance does not influence the benefits available under the Alaska Workers' Compensation Act. Those are established by the legislature and administered by the Alaska Workers' Compensation Board. The Alaska Worker's Compensation Board generally becomes involved only with the specific request of the claimant, but the Division of Insurance can not. There is one additional party regularly appearing on the scene, again via the claimant, and that is the court system.

The Division of Insurance does not deal with individual consumer complaints involving workers' compensation insurance. These are the jurisdiction of the Alaska Worker's Compensation Board.

When the Legislature addresses an issue relating to workers' compensation insurance, the role of the Division of Insurance is to attempt, through the National Council on Compensation Insurance, to determine the price impact of the proposed legislation. The Division of Insurance does not and should not take an advocacy posture as respects changes to the benefit structure in the Alaska Workers' Compensation Act.

The Division of Insurance does have a strong role in the efficiency of operation of the rating systems utilized by insurers writing workers' compensation insurance. It has a strong interest in factors that affect the data base from which rates are derived. It is concerned with issues that can influence the accuracy of the data base underlying the rate structure. Because of these interests and concerns, the Division of Insurance wants to:

- assure the proper reporting and gathering of payroll data;
- assure the proper and equitable application of the filed classification system; and,
- assure the proper conduct of persons writing coverage for an employers workers' compensation liability.

During the public hearing held last year, witnesses testified to some of the frustrations experienced. In many cases, the Division of Insurance does not have jurisdiction to address the kinds of problem described. Numerous issues were discussed in the hearing and more in correspondence and in telephonic communications. Many times, the extent of recognition of these

problems is the stereotypical comment, "it's not my job." While to a great extent that may be true of the issues witnesses have brought to us in the hearing last year, we did commit to at least describe the issues for the benefit of those who may be in a position to address them or to dismiss them. This was done via the Order issued last December. The issues brought to our attention include:

- questions of jurisdiction;
- trying to determine whether an individual is an independent contractor or will be held to be an employee;
- trying to have something done about a claimant who is known to the employer to be malingering or abusing the system;
- dramatic change in cost with short notice;
- dealing with fraud;
- rate disparity between Alaska and other jurisdictions;
- subsidy within classifications;
- overpopulation of the assigned risk plan;
- the perception that board or court decisions are too liberal;
- the increasing cost of medical;
- the growth of the legal expenses in the system;
- the problems with the rehabilitation portion of the act;
- perception that the act is not enforced; and
- more.

When a rate increase such as this goes into effect, it applies to new and renewal business as has already been noted. This fact itself offers both pain for some and relief for others depending on when the particular employers' policy expires and whether the change is an increase or a decrease. It impacts the cost effectiveness of an employer depending at what point he is bidding a job and whether his workers' compensation insurance costs for the period bid are known when bidding. With that in mind, this proceeding today is the most notice that has ever been seen for a January 1 rate filing. In the future, this procedure will be used for experience based filings. You will have 60 days advance notice that a change is eminent. That is not a lot, but it is a significant advance over past practice.

Reform Alaska's workers' compensation system

By STEVE HAAG

Alaskan jobs and businesses will be threatened more than ever this winter by skyrocketing costs for workers' compensation insurance, and that's a very real threat to every employer and employee in this state.

The workers' compensation system began in the United States in the early 1900s. It was based on a belief that an employee should be entitled to wage compensation and hospital-medical cost coverage for injuries that occurred on the job.

Workers' compensation insurance coverage is now mandatory for every employer in the United States. Alaska has one of the most generous benefits and compensation packages in the country.

In 1987, Alaskan workers' compensation rates increased an average of 14.3 percent with some industries shouldering increases as high as 40 percent. That increase added \$20 million to the \$155 million statewide that employers were paying annually for coverage. It's expected that a 25 percent average increase will take effect in 1988.

The potential results are obvious. Businesses already hard hit by a faltering economy will be dealt a death blow by higher premiums. Jobs will be lost by the hundreds.

The problem is not that the system is being abused in large part, but rather that the system has gone far beyond what it was ever intended to accomplish. The goal of workers' compensation should be to help an injured worker

recover and to return to gainful employment. During the time of disability, the worker should be fairly compensated at a level comparable to the income that would be generated if the worker was on the job at which the injury occurred.

However, the basic premise of workers' compensation has been altered in Alaska. Under our system there is little or no incentive to return to work.

Why is Alaska's system so expensive? There are numerous reasons. Alaska is one of only two states which provide that benefits paid to an injured worker will be based on 200 percent of the statewide average weekly wage. This can result in a weekly compensation wage of more than \$1,000, tax free, while the salary an employee may have been earning while on the job was significantly less.

To make matters worse, a worker injured in Alaska may choose to move to another state with a substantially lower cost of living, yet be compensated at the rate determined in Alaska.

Compensation is based on a worker's income for the past two years. Under Alaska law a person can work on the North Slope earning \$40,000, then switch to a job paying half that, become injured on the new job and be compensated at a rate based almost totally on the prior job. As a result, that person would earn more from workers' compensation than from working.

Unlike many states, Alaska has no provision for per-

odic reviews of standards for treatment of injured workers by medical or rehabilitation providers, nor any guidelines for fees.

Many other factors have driven up the cost of coverage including runaway medical costs, the failure of occupational rehabilitation legislation passed in 1982, a lack of limits on benefits and a lack of fraud investigation.

Alaskan employees are being excluded from Alaskan jobs because Outside companies can bid on those jobs using an all-states endorsement, which allows payment of workers' compensation based on the home-state rate, even though the job is in Alaska. As a result, Alaska companies paying premiums based on Alaskan experience cannot compete for those jobs.

To remedy these and dozens of other faults with the system, the Workers' Compensation Committee of Alaska, a statewide organization, is reviewing every aspect of the law. WCCA hopes to present a legislative package negotiated by labor and management to the legislature in 1988.

While employers are the only group that pays premiums, this is both a management and labor issue. As premiums rise, businesses will fold, taking needed jobs with them. It is in everyone's interest to make the system work as it was originally intended.

Steve Haag is president of Workers' Compensation Committee of Alaska.



KANNER

Robert B. Atwood
President and Publisher

Elaine Atwood
Assistant Publisher

William J. Tobin
Vice-President, Editor-in-Chief

Relief for businesses

THERE IS hope on the horizon on the workmen's compensation front, we are pleased to report.

This past Monday, in comments in these columns, we took alarmed note of the fact that workmen's comp insurance rates assessed against employers in Alaska are scheduled to skyrocket an average of 25 percent the first of January.

And nothing, we said, was being done about it — and the certain prospect that such an increase would drive any number of businesses into bankruptcy and throw more Alaskans out of work.

But that's not the case, says Senate President Jan Faiks.

Thank heavens.

IN AN address Tuesday before the Anchorage Rotary Club, the Republican Senate leader disclosed that behind-the-scenes work indeed has been going on and that she felt confident one of the early acts of the 1988 legislative session would be to address the workmen's comp problem.

In this case, addressing the issue means, she said, rolling back the enormous rate increases in order to save jobs and save businesses.

What changes will be

made — or proposed, at least — in the workmen's compensation program were not detailed.

But Sen. Faiks said both management and labor were working in tandem to deal with the frightening prospect of financial ruin that potentially could put thousands of Alaskans out of work.

MEANWHILE, in the private sector, a number of major Alaska employers have joined together to form the Workers' Compensation Committee of Alaska, Inc., an organization campaigning for a reduction in the soaring insurance rates. We trust this group is working with legislators to achieve a reasonable solution to the problem.

The proposed increases, resulting from the state's extremely liberal rules and regulations under workmen's comp, are simply outrageous.

A commitment by the members of both the House and the Senate to take corrective action early in January is essential to stemming an even further precipitous plunge in Alaska's economic recession.

Sen. Faiks' comments this week were encouraging for all concerned.

RECEIVED
OCT 23 1987

Scout from
Pat Sullivan
Wash. County District

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AN ACT
Relating to workers' compensation.

* Section 1. AS 23.30.230 is repealed and reenacted to read:
Sec. 23.30.230. PERSONS NOT COVERED. (a) The following persons
are not covered by this chapter:

- (1) part-time baby-sitters;
 - (2) cleaning persons;
 - (3) harvest help and similar part-time or transient help;
- and
- (4) persons employed as entertainers on a contractual basis.

(b) The exclusion of certain persons under (a) of this section, may not be construed to require inclusion of other persons as employees for purposes of compensation under this chapter.

* Sec. 2. AS 23.30 is amended by adding a new section to read:
Sec. 23.30.239. SOLE PROPRIETORS AND PARTNERS AS EMPLOYEES. (a)

A person who is a sole proprietor, or a member of a partnership, may elect coverage as an employee under this chapter by making written application to an insurer. The insurer may accept the application and fix an assumed monthly wage at which the person shall be carried on the payroll for purposes of this chapter.

(b) When the application is accepted, the person is subject to the provisions and entitled to the benefits of this chapter. The person shall promptly notify the insurer whenever there is a change in

May 11, 1987

Tim Lamb
Bangs & Lamb, Inc.
2825 Rose St., Suite 202
Anchorage, Alaska 99508

RECEIVED MAY 13 1987

RE: Pac West Laminate
TY 881-7513

Dear Tim:

The Alaska Supreme Court has established six criteria to use in determining whether a worker is an employee or an independent contractor. I will outline these six factors and describe how Pac West's installers fit into the picture.

1. The degree of skill involved in the claimant's work. There are some skills required to install the cabinets, flooring and countertops which the insured sells. This tends to support the independent contractor status.
2. The degree to which the work is a separate calling or business. I was unable to locate any of the insured's installers in the yellow pages so they do not advertise their services, which indicates an employee status. However, since most are insured (general liability only), this would support the independent contractor status.
3. The extent to which the claimant can be expected to carry his own accident burden. I would expect that installers could be expected to carry their own Workers Compensation insurance coverage, however, the cost may prevent them from doing so. This would be difficult to call but I would say that this indicates employee status.
4. The extent to which the claimant's work is a regular part of the employer's work. This test supports the employee status since Pac West is in the business of selling (installed) furnishings. The insured sells the complete package. If the installation were inadequate, the customer would go to Pac West not the installer.
5. Whether the claimant's work is continuous or intermittent. Several of the installers worked throughout the policy period, one had annual earnings from Pac West of \$40,000, supporting the employee status.

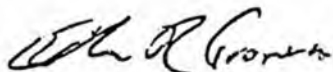
Tim Lamb
May 11, 1987
Page 2

6. Whether the duration of the work is sufficient to amount to the hiring of continuous services as opposed to contracting for the completion of a particular job. Installation is an ongoing part of the insured's operations, with many of the installers being paid regularly for their services. Again, the employee status is apparent.

Overall, the installers meet the test of being employees. We would end up with claims on the installers and, therefore, we bill premiums to cover that exposure. I disagree with the contention that insuring these exposures (without the benefit of any premium) is considered "a cost of doing business".

I hope this explains the factors involved in the employee vs. independent contractor issue. If you have further questions, please call or stop by the office and we can discuss this further.

Sincerely,



Edwin R. Grove, III
Premium Audit Manager

ERG:njm

cc: Don Koch

JOHN C. PHARR
COUNSELLOR AT LAW
3900 ARCTIC BLVD.
SUITE 202 A
ANCHORAGE, ALASKA 99503

19071 502-1995

May 21, 1987

Paula
Bill and Peggy Westhusing
8240 Hartzell Road, #2
Anchorage, AK 99507

Dear Bill and *Paula* Peggy:

I looked up the list of factors in independent contractor versus employee and found that there are actually 10. They are as follows:

(1) A servant [employee] is a person employed to perform services in the affairs of another and who with respect to the physical conduct in the performance of the services is subject to the other's control or right to control.

(2) In determining whether one acting for another is a servant or an independent contractor, the following matters of fact, among others, are considered:

(a) the extent of control which, by the agreement, the master may exercise over the details of the work;

(b) whether or not the one employed is engaged in a distinct occupational business;

(c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;

(d) the skill required in the particular occupation;

7) 349-1681
Arztzell Rd. # 2
Alaska 99507

Mr. & Mrs. Westhusing
May 21, 1987
Page Two

(e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;

(f) the length of time for which the person is employed;

(g) the method of payment, whether by the time or by the job;

(h) whether or not the work is a part of the regular business of the employer;

(i) whether or not the parties believe they are creating the relation of master and servant; and

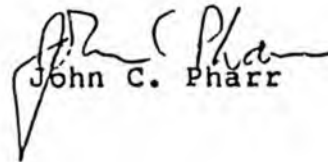
(j) whether the principal is or is not in business.

As I mentioned, I would also look at the policy itself to see how it defines "employee."

If you want to draft a letter, I will be happy to review it.

Very truly yours,

LAW OFFICES OF
JOHN C. PHARR


John C. Pharr

JCP/js



Pac West, Inc.

Industrial Indemnity
4341 B St.
Anchorage, AK 99503

May 31, 1987

Re: Pac-West Workmen's Comp
TTY 881-7513

Attn: Edwin R. Grove

Dear Mr. Grove:

In referencing your letter to Tim Lamb dated May 11, 1987, we would like to take the opportunity to contest and evaluate each of the criteria outlined in establishing status as an independent contractor.

Enclosed is a copy of a letter from our attorney who outlined ten criteria established by the Alaska Supreme Court. We will be addressing these ten issues in our evaluation.

First of all, the subcontractors in question are listed on pages 6 and 7 on your workmen's compensation audit under "Casual Labor". In actuality, only \$1,042.00 of the \$85,330.00 total is casual labor. The remainder of the so-called "casual labor" are bonafide independent subcontractors, whose services are contracted for cabinet and floorcovering installations.

The following nine contractors are acting as independent contractors and workmen's compensation coverage was inappropriately charged:

1. Lee Weise, Jr. dba Interior Woodworks
2. F. Michael Singer dba Wooden Joint Mfg
3. Walter Liedke dba Anchorage Joinery
4. Jon Mousel dba Falcon Cabinetry
5. Gary Fidino dba GF Builders
6. Frank Stevens dba Stevens Custom Floors
7. Bernie Ruzicka dba Debco Trim
8. Paul Smith dba None Finer Flooring
9. Scott McPherson dba McPherson Floors

- a. The extent of control which, by the agreement, the master may exercise over the details of work:

Pac-West does not supervise on site any work performed by the second tier subcontractors. They are solely responsible for the quality and standards expected of any legitimate installer or manufacturer.

At job completion, Bill does a walk-through and notes any flaws in workmanship that he feels may be picked up by the architect and "punch-listed". At that time, we make the second tier sub aware of the potential problem and he would make the effort to correct his shortcomings if he wished to continue contracting from Pac-West.

We always expect premium quality workmanship from our subs as the general expects from us. Sub-standard work is not accepted by anyone in the trade.

- b. Whether or not the one employed is engaged in a distinct occupational business:

Pac-West, Inc. is an architectural supply. Our primary function is to buy and sell products, such as Monitor casework, floorcovering, ceramic tile and accoustical ceilings. As a service, we include in our bids the installation of these products.

For these installations, we hired the subcontractors in question who specialize in these fields.

- c. The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision:

As noted in "a", no representative of Pac-West is on site or supervising and instructing second tier subs.

- d. The skills required in the particular occupation:

All skills of each subcontractor are specialized and most require at least a five-year apprenticeship. In addition, we rely on the expertise of the subcontractors in the installation of products of which we are not capable of performing. Our primary function is to coordinate the project and see that there is an acceptable finished product.

- e. Whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work:

The majority of all work performed by the nine subcontractors was done in the field, where they would supply all tools necessary to complete the installation.

f. The length of time for which the person is employed:

All independent contractors worked under written contract. Each contract had a definite start-up date and approximate completion date.

g. The method of payment, whether by the time or by the job:

All payment is by the job.

h. Whether or not the work is a part of the regular business of the employer:

As noted in "b", we are an architectural supply and manufacture custom mill work to complete our architectural package. Installation of these products is standard in conventional contract bidding.

i. Whether or not the parties believe they are creating the relation of master and servant:

We, at no time, expect any subcontractor to drop their current contracts with any other shops to start up one of our projects. All work and contracts are pre-scheduled and based on the finish schedules provided by the general contractors.

We do expect the subs to act responsibly in completing their contract as the general contractor requires the same of all subs.

j. Whether the principal is or is not in business:

All of the subcontractors in question are sole proprietors and principal owners of the businesses. They have no workmen's comp policies in force because they have no employees and perform all work themselves.

349-1681
Tzell Rd. #2
Alaska 99507

1071 349-1681
Hartzell Rd. #2
Alaska 99507

In summarizing these ten issues there is no question in establishing the status of the nine subcontractors in question as independent contractors. We feel very strongly that your company has made a gross error in classifying them as casual labor.

If you are basing that classification solely on the fact that there were no workmen's comp policies in force, you are blindly overlooking the strong points which prove them to be independent contractors.

None of the contractors in question have workmen's comp policies because they have no employees. As I understand workmen's compensation was just recently made available to sole proprietors as an option, the middle of last year. Why then if they did not optionally elect to cover themselves with workmen's comp, are we being charged when we have not optionally agreed to it.

In checking with the other four insurance companies in the pool, INA, Providence-Washington, Alaska National, and Employees of Wausau, all of them stated down the line, that subcontractors with current certificates of insurance but no workmen's comp coverage, would not be charged for workmen's comp coverage.

On the quarterly payroll reports, only names of employees were ever listed. We never expected Industrial Indemnity to cover private subcontractors with workmen's compensation.

Following is an adjustment to our final audit as we most firmly see it.

CLASS	DESCRIPTION OF WORK DONE	TOTAL EARNINGS	RATE	PREMIUM
2812	Cabinet Works-Power	21,535.00	8.04	1,731.00
9521	House Furnish-Inst.	* 14,401.00	5.64	812.00
	Sub-total			2,543.00
	Increased Limits .0100			25.00
	Expense Constant			85.00
	Standard Premium			2,653.00
	Plus Assigned Risk Surcharge .10			265.00
	Total Premium			2,918.00
	Less Previously Invoiced Including Deposit			<3,334.00
	Less Premium Discount .031			<228.00
	Credit Due			644.00

*Adjustment to this figure. Your audit stated total for this category \$98,689.00. Total amount paid to subcontractors was \$84,288.00 leaving balance at \$14,401.00

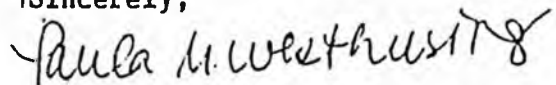
(907) 349-1681
O Hartzell Rd. #2
Age, Alaska 99507

This is only an evaluation of our policy from 11/26/85 thru 11/26/86 and does not include our pre-paid estimate for workmen's comp coverage for payroll in 1987.

If you cancel our policy 6-7-87, we will at that time total our payroll to date and compare it with our annual estimate. We will take legal action to recoup our estimate credit and also our credit due from our '86 audit as we feel most adamantly that we have been wrongfully and unfairly charged.

Please review this letter. We await your response as we wish to clear up this matter.

Sincerely,



Paula M. Westhusing
Vice-President

cc: John Pharr
Tim Lamb

Enclosure

June 25, 1987

Paula M. Westhusing
Pac West Laminate Design
8240 Hartzell Road, Suite 2
Anchorage, Alaska 99507

RE: Workers Compensation Policy Number TY 881-7513

Dear Mrs. Westhusing:

I have further researched the subcontractors which we included in our audit of January 14, 1987. I found that we carried the workers compensation coverage on two of the subcontractors, Gary Fidino and Frank Stevens. Your final billing invoice will be amended to delete the premium charges for those individuals.

As far as the other contractors are concerned, we require that they provide you with certificates of insurance showing proof of workers compensation coverage. These certificates are required since they and their employees would be considered employees in the event of injury.

I would be happy to meet with you to discuss this further if you wish.

Sincerely,



Edwin R. Grove, III
Premium Audit Manager

ERG:dms

cc: Tim Lamb, Bangs & Lamb

Industrial Indemnity
a Crum and Forster organization

Anchorage Division
4341 B Street
Anchorage, Alaska 99503
Mailing address P.O. Box 307
Anchorage, Alaska 99510
(907) 561-6000

October 6, 1987



Helen Workman
ACCI
620 S.W. 5th Ave., Suite 1110
Portland, Oregon 99204-1496

RE: Pac West Laminate Design or Pac West, Inc.
TY 881-7513 11-26-85 to 11-26-86
TY 882-7780 11-26-86 to 6-7-87

Dear Helen:

Industrial Indemnity Co. of Alaska is now petitioning the Alaska Assigned Risk Insurance Pool to cancel or suspend the current workers compensation coverage of Pac West, Inc. due to uncollectible monies owed to Industrial Indemnity as follows:

1.	TY 881-7513	11-26-85 to 11-26-86	Amount Due	\$3,720
2.	TY 882-7780	11-26-86 to 6-7-87	Amount Due	<u>1,860</u>
		Total Due as of 10-2-87 is		\$5,580

Industrial Indemnity has attempted to resolve these overdue balances through negotiation, without success. We, therefore, have no choice but to ask that Pac West's current coverage be cancelled until all prior policies are paid in full. In the meantime, we have referred this matter to our collection department.

Please call if there are any questions or if you need additional information.

Best regards,

 Jay Hite
Workers Compensation Underwriter

JH:njm

cc: Pac West, Inc.
Bangs & Lamb, Inc.

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3502

PRESS RELEASE

NOVEMBER 3, 1987

TO: Mary Pat Murphy
The Anchorage Times

FOR IMMEDIATE RELEASE

ANCHORAGE, AK--A hearing on Workers' Compensation will be held by the House Labor and Commerce Committee on Thursday, November 12, 1987. Meeting time is 1:30 p. m. until 5:00 p.m. in the Anchorage Legislative Information Office, ground floor conference room at 3111 C Street.

The hearing is being hosted by Representative Dave Donley and Senator Tim Kelly, chairmen of the House and Senate Labor and Commerce Committees.

Senator Kelly and Representative Donley have joined in a bipartisan effort to address the current problem of soaring workers' compensation insurance premiums. Workers' Compensation has recently received attention because of the dramatic increase in rates. Public testimony will be taken on this issue, as well as on; workers' compensation complaints, employee problems, the insurance industry's perspective and employers problems. Other issues to discuss include; workers' compensation liability and who is covered, alternatives to workers' compensation and cost saving proposals. A presentation of legislative suggestions will be made by the ad hoc labor-management committee on workers' compensation.

For further information contact Ginger Baim at 561-7629, or Ruth Packard at 561-7612.

--30--

For more information call Ginger Baim 561-7629.

B6

PACIFIC

CONSTRUCTION SYSTEMS

RECEIVED
NOV 4 1987

October 29, 1987

Representative Dave Doneley
Chairman of House Labor and
Commerce Committee
3111 "C" Street
Anchorage, AK 99503

Attn: Ginger

Re: Workmen's Compensation
Insurance Rates

Dear Ginger:

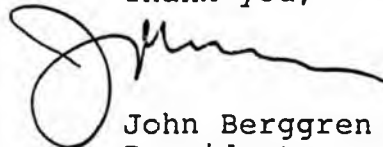
Pacific Construction Systems of Alaska, Inc. strongly supports placing the revisions of the state Workmen's Compensation Laws before the 1988 legislative session. This is very important to us as a small business in Alaska. We have suffered over a 42% increase in 1987 and are looking at an additional 25% increase in 1988. We must roll back these enormous rate increases in order to save jobs and businesses. These increases appear to be a result of entirely too liberal action by the Workmen's Compensation Review Board. The current laws encourage the use of Workmen's Compensation versus other avenues available in many cases. This is all at the expense of work force and ultimately all of us. Corrective action must be taken to stem an even further precipitous plunge in Alaska's economy.

Pacific Construction Systems has bid jobs well in advance of these rate increases, with no way to know what would be charged. The result now is that any hope of a "bottom line" is a risk (if not an overall loss, and to date there appears to be nothing we can do about it. We need your help!

Please roll back rates and tighten up on benefits!

If you have any questions regarding this matter, please feel free to contact me at (907) 563-4188.

Thank you,



John Berggren
President

JB/ab

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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

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September 2, 1987

MEMORANDUM

TO: Representative Dave Donley

FROM: Karen Oakley *ko*
Legislative Analyst

RE: Workers' Compensation: Attorney Fees Provisions and Time Taken to
Settle Controverted Claims
Research Request 88.022

You raised several questions concerning workers' compensation programs in Alaska and other states, specifically:

- What limits do Alaska and other states place on the amount that can be paid to attorneys that represent injured workers?
- Why are no limits placed on the amount that insurance companies pay attorneys in defending themselves, and does this lack of limits give the insurer an advantage over the injured worker in the adjudication process? and,
- How long does it take, on average, to settle controverted claims?

Background

Workers' compensation is a mandatory program that requires employers to pay medical costs and part of lost wages to employees who are injured or become ill because of work conditions. Workers' compensation also pays benefits to the dependents of workers that are killed on the job. In turn, the law relieves employers of liability from common law suits involving negligence.

Prior to the advent of workers' compensation, disputes over workplace injuries were settled through tort adjudication--an often lengthy process that could result in extremely large settlements or no settlement at all. Workers' compensation laws were enacted to take the concept of fault out of on-the-job injury claims and thereby meet the following objectives:

- 1) provide sure, prompt and reasonable income and medical benefits;
- 2) reduce personal injury litigation;
- 3) relieve public and private charities of pressure to serve uncompensated claims;
- 4) maximize employer interest in safety and rehabilitation;
- 5) promote the frank study of causes of accidents; and,
- 6) eliminate attorney and witness payments.¹

Attorney Fees Provisions

When workplace injuries were treated as torts and settled through the courts, attorney fees could take a large portion of any settlement. Thus, the workers' compensation process was created and structured to avoid the need for attorneys; in its most idealized form, compensation administration would provide automatic relief to the injured worker. However, the modern actuality is that most claimants employ an attorney.

Because the system was designed to avoid the need for attorneys, there is a lack of agreement over the role that attorneys should play in compensation administration. Opponents of attorney involvement argue that claimants can do just as well without an attorney and that having an attorney just reduces the net award. Attorneys argue that compensation practice is rife with complex issues of evidence and proof and that claimants will receive higher awards and have greater success if they hire an attorney. The limits placed on attorney fees in workers' compensation cases reflect an attempt to ensure that injured workers retain the bulk of their awards. Ideally, the limits are set high enough to attract competent counsel to the field but low enough to forestall frivolous cases.

All states have provisions for subjecting the claimant's attorney fees to the supervision of the commission or court handling compensation administration. In 21 states, the maximum amount that a claimant attorney can receive is specified in statute (see Attachment A). Generally, the maximum amount is expressed as a percentage of the amount awarded--the range is 10 to 25 percent. Often, the percentage will vary depending upon the amount awarded; for example, the attorney may receive 25 percent of the the first \$1,000 and 10 percent of any additional amount awarded. In several states,

¹United States Chamber of Commerce, Analysis of Workers' Compensation Laws: 1987, p. vii.

the maximum fee is a specified dollar amount. Four states, including Alaska, allow "reasonable fees."

An important feature of the attorney fees provisions is whether the fees are paid by the employer in addition to the compensation awarded or are paid by the insurer from the compensation. In 35 states and in the District of Columbia, claimant attorney fees are added on to the award and paid by the employer if the claimant prevails.

No state supervises or sets limits on the amount that the employer or its insurance company can spend on attorneys, presumably because the marketplace will act to keep the fees down. Larson, in his workers' compensation treatise, states:

"The fees of the employer's or insurer's counsel, since they have no immediate impact on net benefits, are not ordinarily supervised or limited. The only limitation--which is more effective than many people realize--is the insurance attorney's ever-present concern that, if his charges get out of line, his big insurance client will take away his business altogether, which in some cases would be disastrous to a law office."²

Attorney Fees in Alaska

Statutory Provisions. Alaska Statute 23.30.145 specifies how claimant attorney fees are to be handled (Attachment B). This statute contains the following key provisions:

- All fees must be approved by the Workers' Compensation Board;
- The fees may not be less than 25 percent of the first \$1,000 of compensation and 10 percent of all sums in excess of \$1,000 of compensation; and
- If the insurer controverts the claim, the board may direct that the insurer pay the attorney fees of the claimant in addition to any compensation awarded.

In specifying a minimum amount for claimant attorney fees, Alaska is unique; most states specify a maximum. This section of the statute

²Larson, Arthur, "The Law of Workmen's Compensation," Matthew Bender, Volume 3, pp. 15 - 684, 1983.

reflects the intent that attorneys in compensation proceedings be reasonably compensated for their services and thereby ensures that claimants can find counsel to argue their claims.

Judicial Interpretations. In several cases before the Alaska Supreme Court, insurer's counsel have argued that the minimum fees provided for in the AS 23.30.145 are much too high; the court has ruled that the minimum fees have been set by the legislature, and it is up to the legislature to change them if they are too high. In one case, the court noted that:

" . . . It is debatable whether a percentage attorney fee of essentially 10 percent is generally too high. Our Civil Rule 82 grants virtually the same fee to the successful litigant in a contested court case. The 10 percent fee in workers' compensation cases is contingent. The most common contingent fee in court actions is 33 1/3 percent. . ."³

However, in a later case, the court noted that the legislature might wish to examine whether the minimum fee resulted in excessive fees:

"Alaska Statute 23.30.145 seeks to insure that attorney's fee awards in compensation cases are sufficient to compensate counsel for work performed. Otherwise, workers will have difficulty finding counsel willing to argue their claims. Also, high awards for successful claims may be necessary for an adequate overall rate of compensation, when counsel's work on unsuccessful claims is considered. Taking into account these factors, however, we are still concerned that, in some cases, application of AS 23.30.145(a) results in a fee award that is "out of all proportion to the services performed." Haile v. Pan American World Airways, Inc., 505 P. 2d 838, 840 (Alaska 1973). The remedy for this is statutory change by the legislature, not "interpretation by the courts." The legislature may wish to examine whether the formula in AS 23.30.145(a) sometimes results in excessive fee awards, awards higher than are necessary to attract counsel into the compensation area."⁴

In Whaley v. Alaska Workers' Compensation Board, the Alaska Supreme Court ruled on a workers' compensation case in which the lower court had granted attorneys' fees to the insurer under Appellate Rule 508(e).⁵ This rule

³Alaska Interstate v. Houston, 586 P. 2d 618 (1978).

⁴Wein Air Alaska v. Arant, 592 P. 2d 353 (Alaska 1979).

⁵648 P. 2d 955 (Alaska 1982).

grants a reviewing court the discretion to award attorneys' fees to a successful party, and it applies to appeals to the Superior Court by administrative agencies such as the Workers' Compensation Board. However, the court ruled that to allow an appellate court to routinely grant attorneys' fees to the prevailing employer would undermine the purposes of the workers' compensation act. They noted that:

"The statute is designed to provide the most efficient, dignified and certain means of determining benefits for workers sustaining work-connected injuries, and is to be liberally construed in favor of the employee. In particular, AS 23.30.145 is unique in its generosity to claimants and their counsel. . . A routine grant of attorneys' fees to employer-defendants would undermine the purposes of the statute and severely limit a claimant's ability to seek appellate relief."

Thus, the court concluded that to grant attorneys' fees to an employer-defendant under Rule 508(e), a finding that the claimant's appeal was frivolous, unreasonable, or brought in bad faith must be made. The Pennsylvania Supreme Court ruled similarly in a similar case.⁶

Actual Fees Paid. Alaska Statute 23.30.155(m) requires insurers to report to the board several kinds of benefits paid, including fees paid to claimant attorneys and to their own attorneys. Jan Hansen, Chief of Adjudications for the Workers' Compensation Board, analyzed reports of attorneys fees made by insurer for injuries that occurred on or after January 1, 1982 through October 10, 1985. She found 118 cases during this period where the insurers reported the fees they paid to both the insurer and claimant attorneys. On average, the claimant's attorneys were paid \$4,549 per case, and the insurer's attorneys were paid \$5,162 per case. Ms. Hansen indicated that these data must be viewed with some skepticism, however, because of under-reporting, particularly of fees paid to employer/insurer attorneys. She notes that insurers must pay and report payment of claimant attorney fees soon after the case is settled, but that fees paid to their own attorneys may be paid much later. Thus, it is likely that the actual fees paid to employers attorneys are somewhat higher than the data for the 1982 - 1985 period show.

Discussion. Relative to other states, Alaska statutes are generous to attorneys representing claimants in workers' compensation cases. Attorneys for successful claimants are assured of receiving reasonable compensation for their work. Except in rare cases, the general rule that the losing

⁶United States Steel v. Workmen's Compensation Appeal Board, 457 A. 2d (PA Commonwealth, 1983).

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side pays the attorney fees of the winner does not apply to claimants. Thus, insurers must pay their own attorneys, win or lose, and they must pay the attorney fees of successful claimants. These conditions should force insurers to be prudent in deciding whether to controvert a claim and should act to balance the strength of parties in the adjudication process. While it appears that insurers pay more to attorneys than claimants do, the disparity is slight, suggesting that claimants are being adequately represented.

Time Required to Settle Controverted Claims

Within 21 days of learning of an injury, the employer/insurer in Alaska must begin compensation payments or deny the claim by filing a notice of controversion. If a claim is controverted, the case will be scheduled for a hearing before the workers' compensation board. In Alaska, the average time between the filing of a notice of controversion and settlement of the case by the board has typically been 60 to 70 days.⁷ In comparison to other jurisdictions, Alaska is one of the speediest: The average amount of time taken to adjudicate controverted cases (n=40,244 cases) in 15 western states and provinces, including Alaska, in 1984 was 330 days.⁸ Thus, controverted cases in Alaska are currently handled much faster than elsewhere.

Although controverted cases are handled promptly in Alaska, the workers' compensation board has noted an increase in the number of appealed cases within the last year, and the docket has become increasingly crowded. Cases controverted now (in September) could not be scheduled for a hearing before the board until December or January, thus, the average time to settle cases will likely increase.

I hope this information is useful. If you need any additional information, please let me know.

Attachments

⁷Jan Hansen, Chief of Adjudications, Alaska Workers' Compensation Board, Personal communication.

⁸Ibid.

ATTACHMENT A
Attorney Fees in Workers' Compensation

Table 18B

ATTORNEY FEES IN WORKERS' COMPENSATION¹

State	Attorney fees established by statute, rule, operating policy or on individual case basis	Determined by	Statutory provision whereby attorney fees are added to award in certain cases	Statutory provision making unlawful acceptance of unapproved fees	Laypersons permitted to represent claimants	Attorney fees, upon approval, become liens against awards
Alaska	25% minimum on first \$1,000; 10% on balance, statute	Agency	Yes	Yes	Yes	No
Alabama	15%, statute	Court	None	None	No	No
Arizona	25%, statute	Agency	None	None	No	No
Arkansas	30% first \$1,000; 20% next \$2,000; 10% on balance, statute	Agency	Yes	None	Yes	No
California	1% rule	Agency	Yes	None	Yes	Yes
Colorado	Individual case basis	Agency	None	None	No	Yes
Connecticut	Individual case basis	Agency	Yes	None	Yes	No
Delaware	30% or \$2,250, whichever is smaller, statute	Agency	Yes	None	No	No
District of Columbia	Individual case basis	Agency	Yes	Yes	Yes	Yes
Florida	25% first \$5,000; 20% second \$5,000; 15% on balance, statute	Agency	Yes	Yes	No	Yes
Georgia	25% to 33 1/3%, rule	Agency	Yes	Yes	No	No
Hawaii	Individual case basis	Agency	Yes	Yes	Yes	Yes
Idaho	Individual case basis	Agency	Yes	None	Yes	No
Illinois	20%, statute	Agency	Yes	None	No	No
Indiana	20% first \$5,000; 15% next \$5,000; 10% balance, rule	Agency	Yes	None	No	No
Iowa	Individual case basis	Agency	None	None	No	Yes
Kansas	25%, statute	Agency	None	None	No	Yes
Kentucky	20% first \$25,000; 15% next \$10,000; 5% balance, \$6,500 maximum, statute	Agency	Yes	No	No	No
Louisiana	20% first \$10,000; 10% on balance, statute	Court	Yes	Yes	No	Yes
Maine	Individual case basis	Agency	Yes	Yes	No	No
Maryland	20% first \$7,000; 15% next \$18,000; 10% balance, policy	Agency	Yes	None	No	Yes
Massachusetts	20% on lump sum settlement, individual case basis, statute	Agency	Yes	None	No	Yes
Michigan	30%, rule; up to time of trial; plus 15% on redemption settlements	Agency	None	None	No	No
Minnesota	15% first \$4,000; 10% next \$27,500, statute	Agency	Yes	Yes	No	Yes

¹ This table refers only to attorney fees for claimants. Attorney fees of employers and insurance carriers are not regulated by State statutes or regulations.

Table 18B—Continued

State	Attorney fees established by statute, rule, operating policy or on individual case basis	Determined by	Statutory provision whereby attorney fees are added to award in certain cases	Statutory provision making unlawful acceptance of unapproved fees	Laypersons permitted to represent claimants	Attorney fees, upon approval, become liens against awards
Mississippi	252 before Commission; 33 1/32 in Court, statute	Agency	None	Yes	No	Yes
Missouri	252, policy	Agency	None	None	No	Yes
Montana	252 - 402, policy	Agency	None	None	Yes	Yes
Nebraska	202 - 252, policy	Court	Yes	None	No	Yes
Nevada	No provision		Yes		Yes	
New Hampshire	202 - 252, policy	Agency	Yes	None	No	No
New Jersey	202, statute	Agency	Yes	Yes	No	Yes
New Mexico	102, if no proceedings are filed invoking the jurisdiction of the Court, statute; individual case basis if Court's jurisdiction is invoked	Court	Yes	Yes	No	No
New York	Individual case basis	Agency	None	Yes	Yes	Yes
North Carolina	Individual case basis	Agency	Yes	Yes	No	No
North Dakota	\$50 per hour, maximum, rule	Agency	Yes	None	No	No
Ohio	Individual case basis	Agency	None	None	No	No
Oklahoma	102 TTD; 202 other types, statute	Court	None	None	No	Yes
Oregon	252 not to exceed \$3,000, rule	Agency	Yes	None	Yes	Yes
Pennsylvania	202, statute	Agency	Yes	None	No	Yes
Puerto Rico	Individual case basis	Agency	Yes	None	Yes	No
Rhode Island	Individual case basis	Agency	Yes	None	No	No
South Carolina	Individual case basis	Agency	Yes	Yes	No	No
South Dakota	Individual case basis	Agency	Yes	None	Yes	No
Tennessee	202, statute	Court	None	Yes	No	Yes
Texas	252, statute	Agency	Yes	None	Yes	Yes
Utah	202 first \$15,000; 152 next \$15,000; 102 balance, maximum \$9,051, rule	Agency	None	None	Yes	No
Vermont	202 maximum \$3,000, policy	Agency	Yes	None	No	Yes
Virginia	Individual case basis	Agency	Yes	None	No	No
Washington	301, statute	Agency	Yes	Yes	Yes	No
West Virginia	202, 208 week limit, statute	Agency	None	Yes	No	No
Wisconsin	202 in dispute cases, statute	Agency	None	Yes	Yes	No
Wyoming	Individual case basis	Court	Yes	Yes	Yes	No

Source: Larsen, Arthur, "The Law of Workers' Compensation," Matthew Bender, 1983.

SECTIONAL ANALYSIS OF WORKERS' COMPENSATION
TASK FORCE SB 322 AND HB 352

Section 1. Parts A and B:

This intent language is meant to give a clear message to the courts that they are not to construe workers' compensation laws in favor of any party but to be fair and to decide cases upon their merit and always within the confines of the written statute. It is also intended that the Board possess the weight of fact-finding authority and that its decision, if supported by evidence, is conclusive.

Part C:

Further, it is the legislature's intent to address the Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264 (Alaska 1984), decision and constitutionality of the cost of living between claimants receiving benefits in Alaska and living elsewhere in the United States.

Section 2. This section gives the Department the authority to establish and maintain a roster of rehabilitation specialists or physicians that are needed for dispute resolutions under two other sections: AS 23.30.041 (vocational rehabilitation) and AS 23.30.095 (medical benefits).

Section 3. This section mandates the department to adopt new regulations if one is declared invalid by the supreme court.

It is our intention to insure that any new regulations adopted under this section have retroactive as well as prospective application, so that everyone is treated equally. We question whether the legislative drafter's language fulfills this intent, and request that a definitive answer be obtained.

Section 4. This section provides the employer with protection against an employee who falsely represents his/her physical condition, and the employer relies upon knowledge of his/her physical condition for job placement, and the employee is then injured. The intent of this section is to uphold the Board's decision in Robinett v. Enserch Alaska Construction, AWCB No. 870210 (September 4, 1987), and is a contract of hire issue.

Sectional Analysis of SB 322 and HB 352

Section 5. This section is a minor change made by the administration to provide more timely payments to the Second Injury Fund.

Section 6. In this section we have completely revised the vocational rehabilitation statute.

Parts A and B:

This subsection defines a reemployment services administrator and his duties. This reemployment services administrator is selected by the Board and serves to perform several functions, some of which include enforcing regulations, recommending regulations, establishing performance and reporting criteria to be adopted by the Board, enforcing the reemployment benefits provided under AS 23.30.041, and reviewing on an annual basis the performance of the rehabilitation specialists. The reemployment services administrator is also charged with submitting to the Department a variety of reports relating to vocational rehabilitation statistics.

Part C:

This is a guide to the employee's opportunity to enter into a voluntary rehabilitation program. This sets forward an eligibility evaluation to establish the employee's eligibility for future vocational rehabilitation services. It is important to note here that either an employee or an employer may request the eligibility evaluation. The rehabilitation specialist that is chosen to do the eligibility evaluation comes from a roster maintained by the reemployment services administrator. This system should provide for a fair evaluation to each employee without any bias toward a specific rehabilitation specialist. Unfortunately the dispute resolution process for eligibility disputes was omitted during the drafting of the bill.

Part D:

If found eligible for rehabilitation benefits the employee is responsible to request in writing his/her desire to enter into a vocational rehabilitation program. Part D also sets out the criteria under which an employee will be found eligible for such a program.

Part E:

This section specifically speaks to an employee's ineligibility for reemployment benefits. If the employer offers employment that is within the employee's physical capacities at a wage equivalent to 60% of the worker's gross hourly wages at the time of the injury and that new employment allows the employee to be employable in other jobs that exist in the labor market, then the employee is not eligible for reemployment benefits. If the employee has been previously rehabilitated in a former workers' compensation claim and then proceeded to return to work in the same or similar occupation, the new employer is not responsible for further rehabilitation. This criteria should be an incentive for employers to return to work an injured employee, if possible.

Part F:

This part outlines the choice of reemployment specialist and the employee's and employer's involvement in that choice. It also outlines the goals of the reemployment plan and the criteria that must be met.

Part G:

This part lists the various outcomes of a reemployment program. These must be achieved in the shortest possible time and insure remunerative employability but not remunerative employment. This is meant to discourage elaborate rehabilitation plans and encourage an injured worker to return to the work force.

Part H:

This discusses who are parties to this contract.

Part I:

This part addresses non-cooperation by the injured worker. Not included here, although it should be, is the resolution process we propose in a situation where there is non-cooperation.

Part J.

This part outlines time limits in the reemployment benefits process. Time limits are: (1) benefits may

not extend past two years from the date of plan acceptance at the discretion of the employer; (2) the employee, if electing reemployment benefits, must do so within 60 days of the employers notice of injury. (If the employee is in fact unable to make this selection because of an unusual physical injury perhaps in a coma or in the hospital with severe injuries, then there is an exception to this 60-day limitation); (3) the chosen rehabilitation specialist has 30 days to determine the employee's eligibility for reemployment benefits (if there are unusual or extenuating circumstances the reemployment services administrator may grant additional time); (4) the employee and employer have 10 days to select a rehabilitation specialist; (5) the plan must be developed and submitted within 90 days of the determination of eligibility; (6) is to caution against employees that would not be physically able to engage in the plan and allow them to do so upon their physician's approval. All of these time lines are intended to assist the employee in a speedy rehabilitation plan and not to prolong an employee's entrance back into the work force. This section also sets forth various disputes and resolution processes with final decision-making power by the Board.

Part K:

This discusses costs of the plan and compensation to the employee while in the plan. The total cost of the plan shall not exceed \$10,000.00. In order to encourage the employee to complete the plan, the employee's temporary total disability benefits cease after he/she reaches medical stability. But if these benefits cease before the plan is complete, we have established a mechanism whereby the permanent impairment benefits will then be paid at the temporary total disability rate. In order to further protect the employee if the permanent impairment benefits are exhausted, the employee will continue to be paid at a rate of wages equal to 60% of the employee's spendable weekly wages not exceeding \$525.00. Any remaining permanent impairment benefits after the employee has completed the plan will be paid in a single lump sum. The purpose of this section is to provide the employee with the necessary money to enable for self-support during the rehabilitation program.

Part L:

In this part of the vocational rehabilitation statute we are trying to establish some professional standards regarding who is allowed to complete eligibility evaluations.

Part M:

In this part we have included several definitions specific to vocational rehabilitation.

(1) Employability is defined to mean an employee has the ability to engage in employment but he/she hasn't necessarily achieved employment. (2) Labor markets have been expanded to include geographical areas outside of the State or in a different part of the State. (3) Further, there are definitions of physical capacity and physical demands. (4) A rehabilitation specialist is defined as a Certified Insurance Rehabilitation Specialist. (5) Remunerative employability is defined in this section also.

Note on Section 6:

As part of the legislative process we moved quickly from a work draft to a bill. There are certain sections of the vocational rehabilitation statute, AS 23.30.041, that are erroneous, and items not included in the bill. It is our intent to request the opportunity to look at this section and recommend some changes consistent with our intent. This is applicable only to AS 23.30.041.

Section 7. This section was amended to add the additional protection for an employer whose employee's claim is barred under AS 23.30.020(b) (false representation as to physical condition) from being sued in a court action. (See Section 4.)

Sections 8, 9, 10, 11, 12, and 13 all speak to medical benefits as provided under the Workers' Compensation Act. Our intent was first to try and curb abuses that have occurred under this system and the cost of those abuses. Currently Alaska, with medical costs at 38%, has the highest medical costs of any state in the nation (percentage of total costs of workers' compensation).

Section 8. The employee in this section still has the opportunity to choose a physician but is limited to a single change of a treating physician. An additional change can be made only with written consent of the employer. We are not intending to hamper an employee's attending physician from referring that employee to a specialist when necessary.

Sectional Analysis of SB 322 and HB 352

- Section 9. 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.
- Section 10. This section allows the employer to check on the reasonableness of treatment without discontinuing the employee's medical treatment by controversy. This section also sets forth a process of dispute resolution by providing the employer with the right to a separate evaluation.
- Section 11. This section adds language establishing a medical fee standard as usual, customary, and reasonable. The intent was for fees to be paid using HIAA (Health Insurance Association of America) as a standard for what is usual, customary and reasonable. We allow the Board to determine what is used as the standard because in subsequent years HIAA may not be considered to be the best choice of a standard. (HIAA is a national service which provides medical fees by zip code). Physicians are familiar with this standard as it is normal for usual, customary, and reasonable fees to be paid in non-occupational benefits. Also, our intent is that in no case would an employee be charged for any medical services. The physician will be paid at 100% of the HIAA's usual, customary and reasonable fee.
- Section 12. 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 13. This new subsection gives the Board the opportunity to select a physician to resolve a medical dispute from a list established and maintained by the Board. It is presumed that greater weight be given to the opinion of that independent medical examiner, and he will be presumed to be correct unless there is absolutely clear and convincing objective evidence to the contrary. Also, this section provides some protection to the selected physician in the rendering of his opinion. We felt it was very important to provide a dispute resolution process in the new statute to resolve medical issues by medical experts.
- Section 14. This section codifies the board's interpretation of the meaning of compensation for statute of limita-

tion purposes under AS 23.30.105. It also 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 15. 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 23.30.165(17) found in section 32.
- Section 16. This new subsection enforces findings by the Board to be conclusive if supported by any evidence. This is a message to the higher courts.
- Section 17. 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 14.
- Section 18. This section reflects changes consistent with the repeal and reenactment of AS 23.30.155(m) found in section 20, concerning the reduction of reporting penalties.
- Section 19. This section was amended to assure that an employee continues to receive benefits if his/her claim is controverted solely on the grounds that one or more employer is liable. We were concerned about cases where an employee had a legitimate claim but was not receiving benefits because two insurers were fighting over who should pay. We have added a penalty in the form of attorney's fees and costs and interest as a further disincentive.
- Section 20. 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.

Because of the insurers' past reporting record, we will also be recommending changes that will include a penalty provision for failure to file an annual report.

Section 21. The intent here is to limit the weekly compensation rate for recipients residing inside or outside the state to a maximum of \$700. The bill unfortunately doesn't address the maximum "outside the state" and needs to be corrected. It also allows for an employee who can document wages to receive a minimum of the lesser of his spendable weekly wage or \$154 per week. An employee who does not document his wages will receive no less than \$110 per week.

In Part B of Section 21 the weekly rate of compensation is adjusted based upon the cost of living of the locality in which the recipient resides compared to the cost of living of the State of Alaska. This section addresses the constitutionality under Alaska Pacific Assurance Co. v. Brown, 637 P.2d 107 (Alaska 1984). It allows the Board the opportunity to pick what shall be used as the standard for cost of living indexes.

Four corrections that need to be made in this section are deletion of the statement "for a recipient residing in the state" at line 29, and insert "average" before cost of living in lines 20 and 21 on page 19, and line 5 on page 20. Substitute the term "gross" for average and "earnings" for wage in line 25 and "are" for is in line 26.

Sectional Analysis of SB 322 and HB 352

- Section 22. This section was amended to conform AS 23.30.041's definition of a labor market and to broaden the market for the employee's service in determining permanent total disability.
- Section 23. This is a new section that further clarifies that a failure to satisfy the remunerative employability definition as a wage goal as defined in AS 23.30.041 does not mean that an employee is automatically permanently totally disabled.
- Section 24. This section defines when permanent impairment benefits begin. In no case will temporary total disability benefits be paid beyond the date of medical stability, and temporary total disability benefits may not be paid for more than two years regardless of the continuance of the disability. Our intent here was to disallow the continuance of temporary total disability benefits as it is under the current system and also to conform with the limitation as provided in AS 23.30.041 where a reemployment plan may not exceed two years.
- Section 25. This section was repealed and reenacted. In this section permanent partial impairment payments are based upon the "whole man" concept as set out in the American Medical Association's Guides to the Evaluation of Permanent Impairment. Compensation paid to claimants under this section is based upon total disability of \$240,000 multiplied by the claimant's percentage of net permanent impairment. Impairment levels below 30% are further adjusted by a factor less than one, but in no case is the impairment compensation less than \$250. The intent of this section was to redistribute benefits so that those employees who have a greater percentage of injury receive awards commensurate with their injuries whereas those with minor injuries receive a proportionately less amount of compensation.
- Section 26. 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 14. It also reduces the maximum period for paying temporary partial disability benefits from five to two years.

In the last sentence of this section the statement "unless otherwise provided under AS 23.30.041" should be deleted.

Sectional Analysis of SB 322 and HB 352

- Section 27. This is a new subsection intended to further define what the wage-earning capacity of an injured employee is. It also allows the Board to fix the wage-earning capacity based upon reasonable regard for the nature of the injury, degree of physical impairment, usual employment, and other factors and circumstances.
- Section 23. This section was amended to define what will be used to compute the spendable weekly wage of an employee. Specifically, we were addressing several Supreme Court decisions which fixed spendable weekly wage on future earnings. These cases, such as Johnson v. RCA-OMS, 681 P.2d 905 (Alaska 1984), and its progeny, have made the determination of spendable weekly wage impossible because it is based on the predictability of what someone might be making at some future point in time. We intend to clearly base the determination of spendable weekly wage on the employees' past earnings history except under some very specific cases listed in AS 23.30.220(a)(2) and (3). We believe this change will markedly decrease the amount of litigation over determination of spendable weekly wage.
- Section 29. This section is an offset for a future section, section #31, which defines what gross earnings are. This section allows the employer to offset those contributions made to a qualified pension or profit sharing plan that have in fact been paid or are payable to an injured worker under the plan for any week or weeks during which compensation benefits are also available.
- Section 30. This section addresses and prohibits discrimination by an employer in hiring, promoting, or firing an employee just because they have filed a workers' compensation claim. This does not prevent an employer from basing his hiring, firing, or promotion practices or policies on the consideration of safety and safe practices. It also allows the employer to require a prospective employee to fill out a pre-employment questionnaire and to use that questionnaire as documentation for the Second Injury Fund or to determine if the employee has the physical or medical capacity to meet the documented physical or medical demands of a particular job.
- Section 31. This section amends the definition of employee 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

Sectional Analysis of SB 322 and HB 352

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 Bagland v. Morrison-Knudsen Co., Inc., 71 P.2d 377 (Alaska 1986).

- Section 32. This section amends the definition of injury by providing specific language concerning mental injury caused by mental stress. This section is meant to address the ever increasing possibility of stress-related workers' compensation claims. Such a claim is Wade v. Anchorage School District, 741 P.2d 834 (Alaska 1987). In the Wade case the employee perceived that work stress caused him to have a mental injury and therefore he was injured. Under this amendment work stress does not cause a mental injury unless the work stress was extraordinary and unusual in the profession and a predominant cause. The burden, unlike other injuries, is placed on the employee to prove the mental injury is work connected.
- Section 33. This section adds a new paragraph to define what is meant by medical stability. This is consistent with changes made in Sections 3, 24, and 26. This is in direct opposition to current legislation where temporary disability benefits are paid until employment or release for employment regardless of medical stability.
- Section 34. This section repeals provisions that are unnecessary or inconsistent with the repeal and reenactment of AS 23.30.200(b) found in section 17.
- Section 35. This section is an administrative section amended to require employers to file a annual rather than an anniversary report. The purpose of this section was to allow us to have future opportunity to have correct and complete reporting information which we have not had in the past.
- Section 36. This section specifically mandates that only future injuries sustained after July 1, 1988 will come under the jurisdiction of this proposed legislation. This legislation will not be considered retrospective in any way except for the changes in reporting requirements. (See Sections 3, 11, 16 and 35).
- Section 37. This section provides that the Act takes effect July 1, 1986.

It may be necessary to change the effective date for some section of this bill.

January 14, 1988

Senator Tim Kelly, Chairman
Senate Labor and Commerce Committee
Representative Dave Donley, Chairman
House Labor and Commerce Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Kelly, Representative Donley and members of your committees:

As Co-chairmen of the Management/Labor ad hoc committee we are pleased to present our proposal for changes to the current workers' compensation act. Our proposals represent the culmination of more than a years effort by hundreds of professionals from many different walks of life. It is not intended to be a final solution to the high cost of workers' compensation in Alaska, but represents instead our most recent step in our ongoing effort to improve the benefit levels for injured workers while at the same time reducing the cost that must be borne by Alaskan employers.

BACKGROUND

PRE AD HOC COMMITTEE

In 1968, the Alaska weekly maximum workers' compensation benefit was \$113. By 1974, the maximum weekly compensation rate rose to \$175. During this period of time, Congress established the National Commission of State Worker's Compensation Laws to "undertake a comprehensive study and evaluation of State workmen's compensation laws, in order to determine if such laws provide an adequate, prompt and equitable system of compensation."

In a pro-labor atmosphere and in reaction to some of the National Commission's findings, the Alaska legislature in 1975 amended the Alaska Workers' Compensation Act (Act) by providing a gradual phase-in of the 200% of state average weekly wage maximum, doubling the scheduled permanent partial disability maximum in the Act, and eliminating the \$50,000 limit on unscheduled permanent partial disability.

Management bitterly contested the 1975 labor-sponsored amendments. As a result, little thought was given by labor management or the legislature to workers' compensation as an effective delivery system. Only a portion of the 1972 Commission's recommendations were enacted, but due to the changes that were adopted, workers' compensation insurance premiums increased 35.2% in 1975, 13.0% in 1975, and 5% in 1977.

In 1977, management successfully sponsored legislation reimposing a limit on "unscheduled" permanent partial disability -- this time at \$60,000. Other meaningful changes were impossible to achieve and in 1979, a pro-management group, the Alaska Conference of Employers (ACE), was established to study the problems and recommend legislative changes necessary to reduce the high cost of workers' compensation in Alaska. The employers also created another group, the Workers' Compensation Committee of Alaska (WCCA) and charged that group with the task of placing the recommendations of the ACE study into legislation. The pressure of these two management groups led to the creation of the 1980 Legislative task force to study the Alaska workers' compensation system and recommend changes. The committee, co-chaired by Senator Terry Stimson and Representative Brian Rogers, included representatives from labor, management, and the insurance industry. Ultimately the joint effort failed at the close of the 1981 legislative session and no corrective legislation was recommended.

At that time, WCCA commissioned a study by Daryl Cody and Associates on the problems with workers' compensation in Alaska and their recommendations for changes. This study was presented to Representative Terry Martin in January, 1980 with the recommendation that the suggested changes be incorporated into legislation.

With the Cody study, the opportunity for the classic management vs labor confrontation on workers' compensation presented itself. This time however, logic prevailed. Labor, represented by the AFL-CIO, and management, represented by WCCA, called for a joint public meeting for the purpose of selecting representatives to sit on an "ad hoc committee" to recommend changes to the Alaska workers' compensation statutes.

THE LABOR/MANAGEMENT AD HOC COMMITTEE

The first order of business for the new ad hoc committee was to formulate the objectives of the group. The following were adopted at the first meeting:

1. Provide an effective system for the delivery of benefits and services.
2. Discourage fraudulent claims and fraudulent statements to obtain or deny workers' compensation benefits.

3. Provide an effective deterrent for those employers failing to provide required workers' compensation insurance;
4. Increase incentives and decrease disincentives for returning to work after an injury;
5. Encourage safety;
6. Provide for effective rehabilitation of an injured worker;
7. Redistribute dollars from those workers not severely injured to those seriously injured workers who have lost the ability to be gainfully employed as a result of their injury;
8. Reduce or minimize the impact of workers' compensation premiums on the employer;
9. Continue to study the Alaska workers' compensation system to identify problems and recommend solutions, and,
10. Stabilize the atmosphere for discussing proposed changes to the Alaska Workers' Compensation Act.

Due to time problems, the Ad Hoc committee agreed to limit its initial efforts to:

1. Providing for the early identification of injured workers who potentially need rehabilitation;
2. Providing for the early return to direct employment;
3. Providing incentives to return to work and reduce disincentives to return to work;
4. Providing for appropriate criminal penalties for willful misrepresentation of facts for the purpose of obtaining or denying benefits; and,
5. Providing a mechanism for cease and desist orders to be issued against uninsured employers.

The Ad Hoc committee was successful in having its legislation agenda passed in 1982 and 1983.

Since 1983, the Ad Hoc committee has continued to meet to work on problems that became apparent or problems that were created by the court system in their interpretation of the statute. For

the most part, however, the committee dealt primarily on relatively minor problems and had not undertaken an in-depth review of the system and its evolution since the legislation passed in 1982 and 1983.

CURRENT EFFORTS OF THE AD HOC COMMITTEE

The cost increase for workers compensation announced in November of 1986 caused the ad hoc committee to reexamine the problems with the system and the need for changes. It was apparent that the system had deteriorated significantly since the last major modifications in 1983. The quality of service to the injured worker had decreased and the cost to the employer had increased. In fact, from 1983 to 1986, the incurred cost of workers' compensation increased from \$70.2 million to \$150.1 million while employment in the state decreased. Since the incidence rate of injuries remained relatively constant during this period, it was apparent that the cost per claim had more than doubled.

In this setting, the ad hoc committee decided that the best approach was a complete examination of the current statute. In order to establish priorities, both management and labor met with their respective constituents and developed a list of issues that needed attention. These lists were then compared, merged and a plan of action developed. Since the problems were complex, it was decided to concentrate on the issues of vocational rehabilitation, medical services, compensation and benefits in 1987 and defer other items until 1988.

The current members of the ad hoc committee are:

Robert Anders - Co-chair and labor member of the Workers' Compensation Board; business agent - Operating Engineers

Mary Pierce - Co-chair and management member of the Workers' Compensation Board; Executive Director, Medical Indemnity Corporation of Alaska

Richard Cattanach - Vice President, Finance, Unit Company

Kevin Dougherty - AFL-CIO

David Gottstein - Director of Distribution, Carr Gottstein, Inc.

Ralph Lewis - Vice President - Ketchikan Pulp and Paper

Ralph Mingo - Safety Engineer, Teamsters Local 99

Stephen Rennberg, MA - Vice President, Finance, Tanadgusik Corporation

Joseph Thomas - Business Agent, Laborers Union

Kenneth Weist - Business Agent, Roofers

During the past year, the ad hoc committee met weekly in an attempt to define the various problems and explore potential solutions. The advice and suggestions of hundreds of professionals were sought. Medical doctors, chiropractors, vocational rehabilitation providers, lawyers, and others knowledgeable in workers' compensation were consulted and provided input to either the ad hoc committee or a WCCA study committee. During the entire process, the committee sought the advice and counsel of the Division of Workers' Compensation and at least one member of the division was in attendance at all the committee meetings.

Briefly, the proposed legislative changes for 1988 can be outlined as follows:

Vocational Rehabilitation

1. Change the current system from being mandatory to voluntary;
2. Limit the program to those injured workers prevented from performing the duties of their profession;
3. Limit rehabilitation programs to two years;
4. Limit rehabilitation plan costs to \$10,000;
5. Pay a permanent partial disability or a total permanent disability at the total temporary disability rate until plan completion or termination. The remainder, if any, is to be paid in a lump sum;
6. Establish employability, not employment, as the goal of rehabilitation;

Medical

1. Subject medical payments to the usual, customary and reasonable fees charged in an area;
2. Allow the injured worker to make one change in treating physician before seeking the consent of the employer;
3. Limit treatment plans to no more than 90 visits within 90 days;
4. In the case of a dispute, allow the board to appoint an independent medical examiner whose opinion shall, in the absence of clear and convincing objective evidence to the contrary, be presumed to be correct;

Compensation

1. Change the maximum weekly benefit from \$100 to \$150 and increase the minimum from \$10 to \$15;
2. Allow an employee's vested pension contributions to be considered in determining the weekly rate;
3. Limit the controversy in the determination of weekly earnings by clarifying the process for such determinations;
4. Adjust the weekly compensation benefits for differences in the cost of living for claimants residing outside Alaska;

Benefits

1. Schedule all injuries and base disability payments on the "whole man" concept;
2. Increase the permanent partial disability benefit for the more severely injured worker;
3. Limit temporary total disability payments to two years.

Other

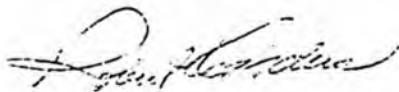
1. Provide legislative intent language for the courts and future legislatures;
2. Bar workers' compensation claims if the employee falsified his application and the falsification contributed to a subsequent injury;
3. Establish criteria for stress claims;
4. Prohibit discrimination of an employee who files a workers' compensation claim;
5. Assure the maintenance of workers' compensation payments to employees when questions arise as to the ultimate responsibility for liability.

It is the belief of the ad hoc committee that the changes recommended should lead to an improved delivery system for workers' compensation at a lower cost to Alaskan employers. We believe that the savings will come primarily from a reduction in the amount of litigation, a reduction in the number of injured workers entering vocational rehabilitation programs, and a reduction in expenditures for medical services. These reductions

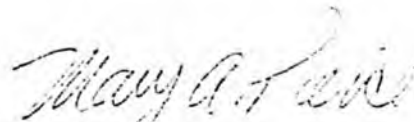
should not however negatively impact the quality or quantity of services available to an injured worker. Rather, it is our belief that the injured worker will be able to avail themselves of better services in a more timely manner.

Determining the cost impact of the proposed changes will be difficult and will require a certain amount of faith. An evaluation of the cost savings due to a reduction in litigation, the impact of a voluntary vocational rehabilitation system, the acceptance of a usual, customary, and reasonable limit on medical expenses, the limitation on medical utilization, scheduling base injuries that are currently unscheduled, and other stated items will be difficult if not impossible. Quantification and estimation necessary for a precise actuarial determination of the impact of these recommendations is not possible and accordingly will require assumptions as to what "might be". The net result will only be as good as the assumptions that were used to determine what "might be". It may be necessary for the legislature to accept, as management and labor has, that the changes should logically lead to lower costs in the system with no adverse impact on the injured worker. If the legislature can make this commitment of faith, we would like to see them join us as we measure the actual results of our changes and work with us to continue to make modification when and where warranted.

Sincerely,



Robert Anders



Mary Pierce

WCCA

Worker's Compensation Committee of Alaska, Inc., 11401 Olive, Anchorage, AK 99515

Rep. Dave Donley and Sen. Tim Kelly
House and Senate Labor and Commerce Committee Chairs
Juneau, Ak.

Gentlemen:

I want to take this opportunity to thank you both for the tremendous support you two have shown in the recent months and reiterate our support for the task force. I have been asked many times whether the WCCA would have a separate agenda for the session. The answer is emphatically, no.

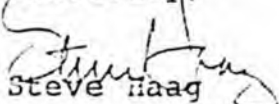
The efforts of the very best people we could find in Alaska from the ranks of management and organized labor have contributed to our effort. The WCCA believes that effort has produced an impressively thorough, first look at the major cost components of the Alaska worker's compensation system.

In our legislation you will find answers to the problems of soaring unregulated medical costs, unrealistic Alaska benefits and the failure of private vocational rehabilitation. It attempts to look at the history and the future of worker's compensation in Alaska in addressing the intent of the law and the new frontier of claims -- stress. Underlying all of the features of this bill is the effort to reduce the needless dispute and litigation that seems to haunt the system. But perhaps its most redeeming quality is that it represents the thoughts, hard work and aspirations of the two most important parties in the system: those who pay and those who benefit.

We were warned we should not leave the bill at the doorstep of State agencies. We took that message to heart and produced a piece of legislation without a single fiscal note attached that will significantly reduce the cost of worker's compensation insurance for all Alaska employers.

My constituency anxiously awaits the outcome of your efforts in Juneau and trusts you will help us honor the agreement between labor and management that produced this extraordinary document.

Sincerely,


Steve Haag



SKILL
RESPONSIBILITY
INTEGRITY

THE ALASKA CHAPTER
**ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, INC.**

BOX 92500 • ANCHORAGE, ALASKA 99509
TELEPHONE (907) 561-5354



3201 SPENARD ROAD
ANCHORAGE
WILLIAM E. SCHNEIDER
EXECUTIVE DIRECTOR

January 15, 1988

Representative Dave Donley
Chairman, House Labor & Commerce Committee
Alaska State Legislature
P.O. Box V (M.S. 3100)
Juneau, AK 99811

Dear Representative Donley:

On behalf of the membership of the Associated General Contractors of Alaska, we strongly support the recommendations of the Management/Labor ADHOC Committee For Workers' Compensation Reform.

Your efforts in this critical area are appreciated by all of those individuals who make their living in the construction industry.

We encourage you and your fellow representatives to expeditiously pass this legislation.

Sincerely,

ASSOCIATED GENERAL
CONTRACTORS OF ALASKA

William E. Schneider
Executive Director



SKILL
RESPONSIBILITY
INTEGRITY

THE ALASKA CHAPTER
**ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, INC.**

BOX 92500 • ANCHORAGE, ALASKA 99509
TELEPHONE (907) 561-5354



1201 SPENARD ROAD
ANCHORAGE
WILLIAM E. SCHNEIDER
EXECUTIVE DIRECTOR

January 15, 1988

Senator Tim Kelly
Chairman, Senate Labor & Commerce Committee
Alaska State Legislature
P.O. Box V (M.S. 3100)
Juneau, AK 99811

Dear Senator Kelly:

On behalf of the membership of the Associated General Contractors of Alaska, we strongly support the recommendations of the Management/Labor ADHOC Committee For Workers' Compensation Reform.

Your efforts in this critical area are appreciated by all of those individuals who make their living in the construction industry.

We encourage you and your fellow senators to expeditiously pass this legislation.

Sincerely,

ASSOCIATED GENERAL
CONTRACTORS OF ALASKA

William E. Schneider
Executive Director

ALASKA STATE AFL-CIO

2501 Commercial Dr.
Anchorage, Alaska 99501
(907) 258-6284



801 1st Ave.
Fairbanks, Alaska 99701
(907) 458-2030

MANO FREY
Executive President

TO: ALL HOUSE AND SENATE MEMBERS
FROM: MANO FREY, EXECUTIVE PRESIDENT
RE: WORKER'S COMPENSATION

The Joint Labor-Management Task Force has worked for more than a year negotiating changes to the current Worker's Compensation Law that would result in premium reductions to the employer; and, at the same time, maintain fairness in compensating the injured worker.

The legislation now being considered is a result of the task forces' efforts. It certainly does not attempt to address every complaint or concern regarding the current worker's compensation statute, but it does accomplish the stated goal of providing some necessary relief to the employer while providing benefit safeguards for the employee. In addition, reforms are included to several areas of the law that caused abuse and hardship to the employees in the past.

I strongly urge your support for this bill.



JIM CARROLL
President

**FAIRBANKS BUILDING
& CONSTRUCTION TRADES COUNCIL
AFL-CIO**

North of the 63rd Parallel
315 5th Avenue
Fairbanks, Alaska 99701-4688
(907) 466-4248
(907) 458-1208



JOHN GIUCHICI
Secretary/Treasurer

January 14, 1988

Bob Anders
Labor and Management Ad Hoc Committee

Dear Bob,

The Fairbanks Building and Construction Trades Council voted to endorse your workers compensation bill. We have some concerns about some areas of the bill but, feel in the long run it will be beneficial to lowering the high insurance rates.

Fraternally Yours

J.N. Carroll

President

WESTERN ALASKA BUILDING and CONSTRUCTION TRADES COUNCIL

AFFILIATED WITH

A.F.L. - C.I.O.

BUILDING AND CONSTRUCTION TRADES DEPARTMENT

Phillip A. Thingstad

PRESIDENT

407 Denali Street

ADDRESS

ANCHORAGE, ALASKA 99501

January 14, 1988

SECRETARY

407 Denali Street

ADDRESS

ANCHORAGE, ALASKA 99501

Alaska State Legislators

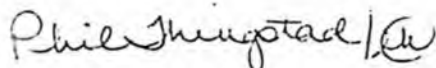
Dear Ladies and Gentlemen.

This letter accompanies a proposed piece of legislation, one in which a lot of time and effort was put into by both Labor and Management in an attempt to help close the loopholes and solve many of the problems of the Workers Compensation Law.

The Bi-partisan work put into this proposal was extensive and a very good product was the result, one in which all appear to be happy with as it will help the workers as well as the employers. The only people who oppose such legislation are the "Out of State" insurance companies and the lawyers, both of whom make a great deal of money off the current ambiguous law.

The Western Alaska Building and Construction Trades supports, with great enthusiasm, this possible revamping of the Workers Compensation Law.

Sincerely,



Phil Thingstad
President
Western Alaska Building
and Construction Trades

PT/ik
Attachment

**GUIDE TO
INSURANCE REHABILITATION SPECIALISTS
CERTIFICATION**

CERTIFICATION OF INSURANCE REHABILITATION SPECIALISTS COMMISSION

A DIVISION OF

BOARD FOR REHABILITATION CERTIFICATION

**1156 SHURE DRIVE, SUITE 350
ARLINGTON HEIGHTS, ILLINOIS 60004**

SECTION 3. CRITERIA FOR ELIGIBILITY:

To be eligible to sit for the CIRS examination, an applicant must meet ALL requirements in ONE of the categories listed below. Education and employment experience requirements must have been fully satisfied by the application deadline date (JANUARY 1, OR JULY 1). Applications not meeting the eligibility criteria of one of the following categories at the application deadline date will be referred to the Credentials Committee for review to determine eligibility. Please be reminded, the application processing fee is non-refundable. Read categories carefully. CIRSC will charge a \$20.00 handling fee for any check returned for non-sufficient funds.

CATEGORY ONE

Degree or Certification or License:

Current Registered Nurse (RN)
Valid Certified Rehabilitation Counselor (CRC)

or

Master's degree or Doctorate degree in:

Rehabilitation Counseling, Rehabilitation Administration, Work Adjustment, Vocational Rehabilitation, Job Placement, or Psychology.

Acceptable Employment Experience Required:
(See definition Section 4)

A minimum of two years full-time (or the equivalent) employment providing direct or indirect rehabilitation services to a disabled population receiving benefits from a disability compensation system.

CATEGORY TWO

Degree Required:

Bachelor's, Master's, or Doctorate in any other discipline.

Acceptable Employment Experience Required:
(See definition Section 4)

A minimum of four years of full-time (or the equivalent) employment providing direct or indirect services to a disabled population receiving benefits from a disability compensation system.

JOHN H. LEWIS
Post Office Box 33055C
Coconut Grove, Florida 33233
(305) 443-8111

Education: B.S.B.A., University of Florida, 1963
J.D., Duke University School of Law, 1967

Experience: Assistant to Dr. Arthur Larson
Larson's The Law of Workmen's Compensation
1965-1974

Instructor In Law
University of Miami School of Law
1973

Chief Counsel and Associate Executive
Director, National Commission on State Workmen's
Compensation Laws, 1971-1972

Florida Governor's Task Force on Workmen's
Compensation, Vice-Chairman, 1972-1973

Florida Workmen's Compensation Advisory
Council, Chairman, 1974-1977, Vice-Chairman,
1977-1980

Legal Advisor, Florida Self-Insurance Rules
Advisory Committee, 1976-1977

Research Analyst, Interdepartmental Workers'
Compensation Task Force, 1975-1976

Consultant: U.S. Senate, U.S. Department of
Labor, Alaska State Legislature,
Pennsylvania State Legislature, Alaska
Workers' Compensation Board, Rhode Island
Department of Business Regulation, Delaware
State Chamber of Commerce, Louisiana
Association of Business and Industry, Alaska
State A.F.L.-C.I.O, California Workers'
Compensation Institute, Office of the

Governor-State of Rhode Island,
Massachusetts House of Representatives,
Kentucky Legislative Research Commission,
Maryland State Chamber of Commerce, California
State Senate, National Conference of State
Legislatures, The Government of the Territory
of American Samoa, Oregon Workers' Compensation
Department, Michigan Department of Labor-
Department of Commerce, Office of Inspector
General-U.S. Department of Labor, Minnesota
Department of Labor and Industry, Maine Bureau
of Insurance, United States General Accounting
Office, Office of the Governor-State of
Illinois.

Practice of law, 1967-80, with emphasis on civil
litigation and workers compensation matters.

Reports and Articles:

A Workmen's Restoration System, Supplemental
Studies for the National Commission on State
Workmen's Compensation Laws, 1972.

An Analysis of State Workers' Compensation
Agency Activities, Report for the
Interdepartmental Workers' Compensation Task
Force, 1977.

An Analysis of the Alaska Workers' Compensation
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1982.

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Compensation System: An Analysis of Cases, Costs
and Law, 1984.

The Alaska Workers' Compensation Law:
Fact-Finding, Appellate Review, and the
Presumption of Compensability, Alaska Law
Review, Volume 2, June 1985, Number 1 (With
Arthur Larson).

Permanent Partial Disability Benefit Recipients
In The Kentucky Workers' Compensation System,
Report for the Kentucky Legislative Research
Commission, 1985.

Major Issues In The Oregon Workers' Compensation
System, Report for the Oregon Workers'
Compensation Department, 1987.

WCCA CONTRIBUTORS

A & B Tool
Acme Fence
Alaska Airlines
Alaska Business Insurance
Alaska Cleaners
Alaska National Insurance
Alaska Oil Marketers Association
Alaska Pulp
Alaska Sales and Service
Alaska State Medical Association
Alaska Timber Insurance Exchange
Alyeska Air Service
Anchorage Refuse
Anglo Alaska Petroleum
ARCO
Arctic Foundations
Arctic Slope Region, Inc.
ARECA Insurance Management
Associated General Contractors - Alaska Chapter
Bailey's Rent All
Carr Gottstein
Collins & Associates
Central Plumbing and Heating
Cimarron Holdings
Comprehensive Rehabilitation Services
D.J.'S Alaska Rentals
Doyon Drilling
Enserch
Estar
CCI
Hickel Investment
Holland America
K & L Distributors

Kenai Penninsula Borough
Klukwan
Lynden
Marathon Oil
Mark Air
Mechanical Contractors of Fairbanks
Midas Muffler
Municipality of Anchorage
National Bank of Alaska
Newberry Alaska
Northern Adjustors
Northern Air Cargo
Pacific Movers
Professional Trust Administrators
R G & B Contractors
Rain Proof Roofing
Reeve Aleutian
Rental Association of Alaska
Saupe Enterprises
Smyth Moving
Spenard Building Supply
Standard Alaska Production
Steel Fabricators
TOTE
Udelhoven
Universal Motors, Inc.
UNCCAL
Usibelli Coal
VECO

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

*Joint House & Senate
Labor and Commerce Committee*

Jan. 19, 1988

Jan. 21, 1988

Jan. 29, 1988

WCCA

TESTIFYING BEFORE COMMITTEE

State your name and company name.

Plan to keep your comments to 5 minutes.

If you have written testimony, provide copies for legislators if possible. 12 copies.

Topics to cover in testimony:

The type of business your in.

How workers' comp rates affect your company.

How much do you pay

How do the 1998 rates increase your costs.

How do the rates effect your business...is the cost passed on to the customer, have you laid off employees, will rates cause you to possibly shutdown.

Urge the committee to pass the LABOR/MANAGEMENT TASK FORCE BILL with few amendments. You might note that passage of the bill would be one of the best things the Legislature could do for business.

If you are not intimately familiar with the bill simply state that you support the legislation based on the fact it has been agreed to by both employers and employee groups.

You may be asked some questions which would relate to your business. Most likely the committee will not ask questions. In general you need to convey that this legislation is important to your business and that it should pass quickly. You could also mention that you support the general concept of workers' comp but that the current system in Alaska is not beneficial to either the injured worker or the employer.



**Risk and
Insurance
Management
Society, Inc.**

Alaska Chapter

President January 26, 1988

HOWARD P. CUTTER
1835 South Bragaw, MS 512
Anchorage, Alaska 99512
(907) 265-3172

Vice President
MIKE KLAWITTER
Risk Manager
North Slope Borough
P.O. Box 69
Barrow, Alaska 99723
(907) 852-2611

TO: Senator Tim Kelly
SUBJECT: Comments on Workers' Compensation

Secretary
GAIL J. JONES

Sr. Insurance Specialist
Alyeska Pipeline Service Co.
1835 South Bragaw, MS 512
Anchorage, Alaska 99512
(907) 265-8798

Treasurer
IKE CHARLTON
Risk Manager
University of Alaska
Bunnell Building
Fairbanks, Alaska 99775-5580
(907) 474-7428

Society Director
VICTORIA RATCHYE
Risk Manager
Star Natural Gas Co.
P.O. Box 190288
Anchorage, Alaska 99519-0288
(907) 264-3753

Dear Sir:

Thank you for giving me a few minutes of your time. My name is Howard Cutter and I am President of the Alaska Chapter of Risk and Insurance Management Society. Our organization represents about twenty of the largest employers in the State of Alaska, such as State of Alaska, Municipality of Anchorage, Alascom, Enstar, North Slope Borough, Sealaska, and Alyeska Pipeline Service Company. Employers who are members of RIMS employ more than 32,000 people in the state.

Workers' compensation rate increases during the past three years have significantly impacted the cost of doing business in the state, whether it be private or public entity. A couple of examples are that oil and gas pipeline operations have jumped from \$3.09 to \$10.83 in 1988, or 251%. Drilling operations have gone from \$11.93 to \$30.26, or 153%. I will not dwell on this as you are well aware of the insurance costs.

I co-chaired the Rehabilitation Subcommittee for the W.C.C.A. during the past year. Therefore, I would like to address that subject.

1. Due to the lack of regulations for the past five years, everyone seems to have their own idea on what Section 041 really means and how it should be functioning.
2. Vocational rehabilitation has become an "add on benefit" that duplicates the purposes of permanent disability payments.
3. Delays in referral of the injured employee to rehabilitation makes the benefit less immediate.
4. Increased involvement of attorneys have introduced an adversary aspect into what is -- or should be -- an agreed, cooperative process.
5. The delivery of the vocational rehabilitation benefit is too often dominated by paper and not services.

January 26, 1988
Page Two

6. Last, but not least, the cost/benefit ratio is almost nil. On the attached sheet I have listed ten claims from various members with the costs and end result. You will observe the results have been anything but satisfactory. I will not take your time to review each one but submit them for your review.

In summary, the Board of Directors of the Alaska Chapter of RIMS highly endorses the work of the W.C.C.A. and the Labor/Management ADHOC Committee. We recommend passages of SB-322 and HB352 without major changes.

Thank you for your time.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Howard Cutter", with a long horizontal flourish extending to the right.

H. P. Cutter, President
Alaska Chapter of RIMS

<u>Case No.</u>	<u>Rehab Costs</u>	<u>Results</u>
1.	\$ 6,264	Employee refused further rehab and retired.
2.	23,586	Employee returned to work for a short period, then decided to stay home.
3.	21,180	Employee refused job that she was trained for and went to work with her family.
4.	15,680	Employee refused further rehab as "a waste of time and money."
5.	4,860	Employee returned to previous job.
6.	9,060	Changed vocational plans and now going to college.
7.	19,643	Changed goals in rehab -- accepted C&R settlement.
8.	15,233	Retrained as para legal, didn't like work; is now on T.T.D.
9.	33,207	Trained as PBX installer, no work available, settled C&R.
10.	<u>8,849</u>	Employee settled C&R.
Total	\$157,540	Results: Nil

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3892



HB 352/SB 322 - Relating to Workers' Compensation

WHAT'S IN IT FOR WORKERS?

THE BIG THREE:

1. Significant raise in payments for permanent, partial disability with a system that assures substantial payments to workers with the most serious injuries.
2. Raise in weekly benefits for workers at the bottom end of the scale and lowering the maximum benefit. This statute change will raise benefits for the majority of injured workers since less than five percent are near the maximum benefit level.
3. Requires that pension and benefits be included in calculating a workers average weekly wage for the purposes of determining workers' compensation benefit levels (this is in response to the Hagland case).

AND A FEW MORE

4. Assures that an injured worker will immediately receive benefits when there is argument about which carrier is obligated to pay. Currently an injured worker may go months with no benefits because of a technical squabble among carriers.
5. Prohibits discrimination against a workers who has filed a workers' compensation claim.
6. Makes rehabilitation services voluntary instead of mandatory so that workers aren't forced to participate in a program they don't want and probably can't benefit from as a condition of receiving benefits.

Prepared by Representative Dave Donley, Chair
House Labor and Commerce Committee
January 20, 1988

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

Chairman - Representative Dave Donley

(907) 465-3892



March 7, 1988

M E M O R A N D U M:

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Proposed CS for CS SB 322 (L&C) - Workers'
Compensation Legislation

In response to testimony offered during the numerous public hearings we have hosted on workers' compensation legislation and on the basis of the work of the House Labor and Commerce subcommittee on HB 352/SB322, I've asked legal services to prepare a proposed committee substitute for your consideration with the following changes from the version of the measure that passed the Senate:

1. Include a mandated rate decrease for workers' compensation premiums of no less than 10%, effective July 1, 1988 through January 1, 1990. (Attachment #1)
2. Add intent language under Section 1 recognizing that prevention of on-the-job injuries is a primary goal of the Legislature and that the workers' compensation should include incentives for improving workplace safety.

Add a new Section mandating that insurers shall offer a rebate of not less than 5% of the annual premium costs to any employer that had no safety violations during the year covered by the premium.

3. Amend penalties under AS 23.30.075 (b) to require a mandatory fine of \$10,000 for failure to carry workers' compensation insurance, in addition to any other fines, penalties or liabilities authorized under law.
4. Amend language governing the contents of the annual report to the Division of Workers' Compensation by insurers to include the number of claims filed and the percent of claims controverted during the year for which the annual report was submitted.

Include language to require the Board (in addition to assessing any penalties under AS 23.30.155 (f), to notify the Division of Insurance when they determine that a carrier's controversions are excessive, frivolous, or designed to unfairly deny employees benefits that are due them. Upon receipt of a notice from the Board, the Division of Insurance will initiate an investigation of the carrier for violation of the unfair claims settlement act.