

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

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ANCHORAGE FRACTURE AND ORTHOPEDIC CLINIC

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January 18, 1988

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Senator Tim Kelly
P.O. Box V
Juneau, Alaska 99811

Dear Senator Kelly:

I'm taking this opportunity to respond in a letter to your questionnaire dated January 7, 1988. I'm not sure whether I have what you would call an expertise in Workmen's Compensation, however, I've certainly had a great deal of experience treating patients affected by it and because of that have some definite opinions. I'd like to address several issues mentioned in your questionnaire and then move on to some more general thoughts.

With respect to the length of time a person is unable to work before being considered permanently disabled, I think there ought to be perhaps a set limit of about two years but a mechanism for reviewing cases after that time such as is done with the V.A. Many patients who are unable to work at two years do in fact become employable subsequent to that time.

Regarding the number of visits to a doctor or a chiropractic I would think that if a patient saw a physician approximately once a week for two months on the average that would be more than sufficient. However, I'm not sure whether your question refers to physical therapy treatments as those often are recommended two to three times a week over an extended time period and on some occasions perhaps even on a daily basis. That is to say, I would suggest that the number of visits to a physician or chiropractor to be roughly once a week whereas treatments for physical therapy perhaps should have a greater number of visits or else be considered in a separate category.

I would agree that Compensation should be reduced if a person moves to an area with a lower cost of living. I'm not at all sure how one assesses the actual cost of living in a fair and equitable manner but the concept of reduced payments seems reasonable.

It has long been my observation that the mandatory rehabilitative service clause in the Workmen's Comp Act is quite costly. Many patients are quite capable of making their own alternate plans and actually resent the interference by the rehabilitative people whom they feel are simply agents of the insurance carrier. What I have seen happen all too often is that the rehab counselor will meet with the patient, develop a spectrum of unrealistic expectations based on testing, then lead the patient to believe that these

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Senator Tim Kelly
P.O. Box 4
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plans are feasible. The patient will then begin to make arrangements to pursue these at which point a conference occurs between the rehabilitative counselor and the funding insurance company and it becomes apparent that the insurance company has no intention of spending the money needed to complete the rehabilitation at which point the patient is markedly disillusioned and the rehab person becomes ineffective as they have lost their client's trust. I certainly think that rehab services are inappropriate in any instance where the patient has a reasonable chance of returning to the original employment however long that might take. I would also agree that \$10,000 on a rehab plan seems generous.

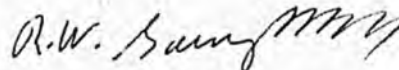
Now addressing your medical proposals, I would say that they sound reasonable. I'd like to suggest that in many instances patients will progress from practitioner to practitioner on the basis of referrals. I would hope that the policy on changing practitioners would not apply in that case. What I'm referring to is the instance in which a family practitioner or a chiropractor might refer a patient to an orthopedic surgeon who might then later refer the patient on to a neurosurgeon or perhaps a rehabilitative specialist. I would agree however that doctor shopping is a frequent and undesirable occurrence and is often occasioned by attorneys who are advising their patient to find a physician who is willing to maximize the injury and thus the ultimate award rather than cure the underlying problem.

Thank you so much for allowing me to express my opinion at length. I'm not sure what your stand is or has been on tort reform but I would like to suggest that a significant portion of my overhead as a medical practitioner is medical malpractice insurance. I hope you are willing to support meaningful tort reform including collateral source disclosure, contingency fee limitation and each and several liability as another way to help reduce the overall cost of medical care.

As I suggested at the start of my letter, I'm not an expert on Workmen's Compensation but have had considerable experience with it. If my further involvement or consideration of the Workmen's Compensation program would be of assistance to you, please contact me.

Best wishes for a Happy New Year.

Yours respectfully,



R. W. Garner, M.D.

RWG:mck

cc: Senator Dick Eliason
cc: Senator Bettye Fahrenkamp
cc: Senator Rick Uehling
cc: Senator Mike Szymanski

337-6619 ~~XXXXXXXXXX~~

SUBMITTED BY:
CHARLES KRICHBAUM D.
AS TESTIMONY BEFORE
JT. LABOR + COMMERCE
COMM. HEARING
1/29/88

WCCA BILL

SECTION A.S. 23.30.095(a):

- (1) DELETE underlined passage beginning page 12, line 7 through line 11, starting with "The employee".

RATIONALE: This passage is objectionable for several reasons:

- (a) because there is an insufficient definition of "attending physician";
- (b) because there is an insufficient definition of "specialist";
- (c) because there is no indication of when a physician becomes an "attending" physician as opposed to an examining or consulting physician; and,
- (d) because there is no real indication of how a choice of a different specialty is treated. For instance, if employee's attending physician is a GP and he has a broken leg and decides that a orthopedist would be better able to treat him, does that decision count as a change? Or, the employee has a lower back injury, choses to try an osteopath or a chiropractor instead of his GP, does that decision count as a change when he is not merely changing from one doctor to another but is actually seeking a different type of treatment?

If the passage must remain in, here is a suggested change:

The employee may not make more than one change of attending physician within the employee's attending physician's discipline or speciality without the written consent of the employer.

We would suggest that A.S. 23.30.265 be amended to include the following definitions.

An attending physician is the physician of the patient's choice responsible for the provisions of primary health care.

A specialist is a physician to whom the patient is referred by the attending physician for the provision of secondary care and/or consultation.

- (2) Keep language that will be deleted (bracketed language on page 12, line 11 through line 13). There does not appear to be any justification for taking away the boards authority to make exceptions to this rule in the appropriate cases.
- (3) Amend the language in the next sentence, page 12, line 13, starting "Upon procuring" to read:

Upon procuring the services of an attending physician, etc.

SECTION A.S. 23.30.095(c):

- (1) DELETE the added language (underlined and appearing on page 13, line 2 through line 13).

RATIONALE: This passage is ill considered:

- (a) because there is no definition of what is considered "continuing and multiple treatments" and health care providers must necessarily guess;
- (b) because there is no designation of who will approve the plan and what standards will be employed and upon what facts or basis the review will rest;
- (c) because the process of review will occur simultaneously with the provision of treatment and, according to the current language, the health care provider must bear the financial risk of disapproval;

- (d) because there are no provisions for amendment of the plan should the need arise; and,
- (e) because the provision imposes maximum limits arbitrarily.

Generally, it appears to us that these provisions will probably result in an increase in litigation and resulting costs rather than a decrease since so much is left unstated.

If the reason for this amendment is to guard against unreasonable or unnecessary treatment, there are already regulations in place and the employer can, with most health care professions, submit perceived abuses to the appropriate peer review committees.

If the reason for this provision is, as some of our members strongly suspect, an indirect attack on Chiropractic, it is not in fact cost effective and is, to say the least, discriminatory.

SECTION A.S. 23.30.95(e): ~~DELETE ADDED LANGUAGE~~ (UNDERLINED AND APPEARING ON
LEAVE OLD LANGUAGE Pg 13 LINES 8 AND 21-24)

- (1) Proposed amendment deleting requirement that examining physician be authorized to practice is inappropriate and suspect. Therefore, bracketed section on page 13, line 18 through line 19, should be RETAINED.

How is either the Board or the employee able to rely upon the competence of a report or examination if there is no requirement that the physician doing the examining be appropriately licensed? Does the legislature really intend to require that the employee must submit to an examination by someone who may not be capable of meeting license requirements?

- (2) The creation of a presumption of reasonableness of requiring examinations every 30 days appears to be irrational. It seems obvious that the added language could easily be used by the employer to harass an employee in cases where either (1) the condition is stable enough that monthly examinations are unnecessary, and/or the examination technique used is painful and the likelihood of substantial changes in condition would not, in the absence of an adversary relationship, be normally considered justified. In addition, should the employee not be able to work at his/her old job, a requirement for monthly examinations by the former employer's doctor may well interfere with the ability of the employee to secure other employment.

- (3) Although there are fairly draconian provisions within this section for employee non-cooperation, there are no provisions for (i) advance (reasonable) notice requirement by the employer; or, (ii) a means by which the employee can contest the necessity and/or reasonableness of the monthly examinations prior to their imposition.

SECTION A.S. 23.30.95(f):

DELETE (UNDERLINED) changes.

AMEND LANGUAGE

RATIONALE: The present section, prior to amendment, limited fees charged for medical treatment and services to charges that generally prevailed in the community. (See bracketed section, page 14, lines 18 through 19). The new section (underlined, page 14, line 20 through line 22) adds to the Board's responsibility the necessity to determine whether or not the charge, which may well be customary in the community, is reasonable (underlined).

That being true, the phrase that the Board may regulate fees and charges contained within this section would become a reality since the Board would have authority under this section to override free market considerations, including local economics and the effects of local competition and declare that charges that were in fact usual and customary but, in the Board's opinion, unreasonable.

The proposed change is actually unnecessary since normal free enterprise processes supply reasonableness of price through market place competition.

The purposes behind this section are two-fold. First, the legislature is rightly concerned over the incurring costs of workmens' compensation insurance to employers. Second, paying inappropriately high charges to a physician will encourage bias that inevitably leads to increased litigation. Assuming that these provisions are laudatory, the measure only goes half way in treating the problems. The other half of the costs associated with workmens' compensation cases arises from the physician retained by the employers to examine the employees. The costs associated with those physicians contribute to the burgeoning costs of insurance in the same manner as those of the employer's physician. Additionally, the issues of bias for over compensated physicians are not confined to either side.

Finally, the present language limits comparison to an obviously vague and confusing standard of "treatment of injured persons of "like standard of being". That portion should have the confusing language removed. Therefore, we suggest that the language of A.S. 23.30.095(f) be as follows:

All fees and charges for treatment, service or examinations by physicians for either party should be limited to charges that prevail in the same community for similar treatment, services or examination of injured persons and shall be subject to regulation by the Board.

SECTION A.S. 23.30.95(j):

DELETE changes. AMEND CURRENT LANGUAGE.

The most offensive of the added language is contained on page 14, lines 25 through 26, which allows for an out-of-state organization to advise the Board on the appropriateness and necessity for and costs of medical treatment of Alaskan workmen by Alaskan physicians. A host of questions arise by this wording. If an out-of-state organization is appointed, how well qualified are they to judge these issues? Could they pass the relevant Alaska boards? Are they in fact licensed physicians/health care providers? Are they anything more than claim adjusters? How is an out-of-state organization going to determine appropriateness of treatment without recourse to examining the patient or taking additional xrays or additional studies? Why is an out-of-state organization needed when there are peer review committees set up within the various disciplines for these purposes now?

Regarding costs, once again, how is an out-of-state organization going to determine appropriate levels of costs? If for instance, the person making the determination on appropriateness of costs lives in and is familiar with medical costs in some small town in Illinois, will that familiarity influence the advice he gives to the Board on treatment rendered in Alaska where the cost of everything is higher?

Based upon the recommendations that are made to the Board, the Board will be determining whether an employer should pay a bill for services that have already been rendered. Because it has the power to approve of the withholding of payment, the employee and the local physician in Alaska rendering treatment to him is at a distinct disadvantage in challenging the advice of an out-of-state organization.

If the advice is unsound, but because of economics, remains unchallenged, the Board's decision will eventually begin to influence the manner in which Alaskan physicians treat injured workmen since their choices will essentially be to either adopt an approved (but unsound) procedure or to refuse to treat the injured workman. Additionally, injured employees may not seek appropriate treatment since they might end up having to pay for it themselves, which will either add to the term of the injury or begin to increase costs of employee medical insurance plans.

We suggest the following language REPLACE Section (j):

Practicing
The board may appoint a medical services review board consisting of physicians licensed in the state and employer and employee representatives to assist and advise the Board in matters involving the costs of health care services. The medical services advisory board shall conduct anonymous : surveys biannually to determine usual and customary costs of treatment and procedures, and in the case of unusual situations, may conduct special surveys to determine usual and customary costs for treatment of procedures not normally encountered. If the Board shall determine that a physician or health care provider has inappropriately or unnecessarily provided treatment, or has habitually and substantially exceeded the usual and customary charges in the community in which treatment was rendered, the committee shall refer the matter to the peer review committee of the health care provider's discipline and advise the Board to disapprove the charges in question.

SECTION A.S.23:30.095(k):

(1) AMEND proposed language.

RATIONALE: The clear import of this section is to provide the Board with an independent source to turn to when a dispute arises between the parties' experts. Unfortunately, the proposed section as it's presently worded does not go far enough to insure the independence of the source. Additionally, it fails to guard against "apples and oranges" comparisons that so often create or increase litigation before the Board. Finally, the proposed section creates an inappropriately limited standard of review which is inconsistent with current diagnostic techniques.

First, in order to insure the independence of the review, the selection of a physician or health care provider should be from a rotating list so that there can be no question as to impartiality in the selection process.

Second, both parties should have the right to object to one selection within a reasonable time period so that questions of bias may be minimized.

Third, the lists that are resorted to by the Board should be kept by discipline and specialty and the selection made should conform to the discipline or specialty of the health care provider of the employee. Otherwise, there is every likelihood that the Board will become embroiled in jurisdictional disputes between disciplines and specialties that will provide no meaningful comparison.

Fourth, limiting the standard required to overcome the presumption to objective evidence deselects critical subjective findings that often times form the backbone of a valid diagnosis.

Fifth, although shielding the independent physician from liability for ordinary negligence is a good idea, making his liability dependent upon proving fraud goes too far. As a result, it is our feeling that the limits of liability should extend to fraud's cousin, misrepresentation, and to gross negligence in order to ensure an appropriate level of reliability in the findings of the independent physicians.

We would suggest the following language be substituted for the proposed language:

In the event of a dispute regarding determinations of causation, stability, degree of impairment, functional capacity, the amount and efficacy of the continuance of or necessity of treatment, or compensability between the employee's attending physician and the employer's medical evaluation, an independent medical evaluation shall be conducted by a physician or physicians of the same discipline and specialty of the employee's attending physician.

Such physicians shall be licensed in the State of Alaska or the state that treatment was rendered and selected from a list established with the aid and advice of the medical advisory board, and maintained by the Board. Both the employee and employer shall have the right to challenge one

appointment. In the event of a challenge, the next physician on the list will be appointed. The contents of the list and the order of its contents shall be kept confidential by the Board. The report of the independent medical examiner shall be furnished to the Board and both parties within 14 days after the examination is concluded. The opinion of the independent medical examiner shall, in the absence of clear and convincing evidence to the contrary, be presumed to be correct. A person may not seek damages from an independent medical examiner caused by the rendering of an opinion or providing testimony under this subsection, except in the case of fraud, misrepresentation or gross negligence.

SECTION A.S. 23.30.155(c):

DELETE Added language.

RATIONALE: As will be explained more fully when Subsection (m) is discussed, the exception being grafted onto this section is, in essence, gutting the penalty provisions by allowing an employer to escape the penalties by simply performing once a year ministerial acts that have nothing to do with the merits of a particular controversion, or for that matter, to do with a habitual practice of unjustifiably controverting employee claims. As a result, it is our suggestion that the amenditory language be deleted.

SECTION A.S. 23.30.155(m):

DELETE changes.

RATIONALE: This section as it is proposed, essentially vacates the penalty provisions in subsection (c) by allowing an employer to avoid penalties for failure to timely notify the employee and the board of changes it unilaterally makes to the employee's compensation, or whether or not the employer intends to controvert at all. In essence this provision allows, on a sliding scale, an employer to escape substantial penalties if it performs the ministerial acts that, under the present and proposed statute, it must perform.

For the employee who is caught within the exception's parameters, however, there is little relief. If the filing requirements did not incorporate notifications to the employee and were, in fact, only ministerial, there might be

some justification for the proposal, although it is not readily apparent even in that situation. However, the reports do require notification to the employee and, in the absence of receiving timely reports, the employee may well make decisions that he might not should he receive a timely notification that the employer was either going to controvert, suspend or terminate his compensation. In essence then, the employer is, according to this section, allowed to escape penalties for failing to comply with the employee notification provisions in Subsection (c).

SECTIONS A.S. 23.30.185, A.S. 23.30.200:

DELETE proposed language unless the term medical stability is changed as noted below.

RATIONALE: Obviously, the employers and their carriers are seeking to place a limit upon TTD and TPD payments. However, they are basing the proposed limit upon an unrealistic and unfair standard, "medical stability". As will be demonstrated below, the definition for the term "medical stability" is suspect.

SECTION A.S. 23.30.265 (34):

AMEND proposed language.

RATIONALE: According to the proposed language, an employee's medical condition is "stable" after the date that no further objectively measurable improvement is reasonably expected to result from additional medical care or treatment. This definition has several flaws.

The section is used in conjunction with two other sections, AS 23.30.185 and AS 23.30.200 which deal with payments for temporary disability records to those sections, payments will be cut off once medical stability is reached. Therefore, for both parties the definition of medical stability becomes paramount. However, under AS 23.30.265(34) the definition is highly suspect. According to the proposed language, medical stability is measured solely upon the question of whether further care or treatments will result in improvement and specifically disallows consideration of improvement generated by the natural healing process of time. Therefore, it is

easily conceivable that an injured employee who is temporarily disabled and unable to be gainfully employed, and who will get better over time, would lose his temporary benefits because the health care providers could not provide treatment or care that would improve upon the natural healing process. In essence, the injured employee would be penalized because of the impotence of current science to help him.

Second, once again the standards for making the determination based solely upon objective findings when modern diagnostic techniques use a combination of objective and subjective techniques. As a result, the employee and all of the physicians coming into contact with him are artificially limited to decision making that bears no relationship to how medical decisions are normally made.

SECTION ENTITLED LEGISLATIVE INTENT, SUBSECTION (b): :

AMEND proposed language.

RATIONALE: In decreeing that the Board has increased powers, there must be some authority for decision making concerning his medical treatment left to the injured employee. Therefore, there should be some provision contained within the statute that it is not the legislature's intent that the employee's right to chose who his health care provider will be will not be restricted unreasonably.

We suggest that the following language be added to subsection (b):

With the exception of the provisions contained in A.S. 23.30.095(a), nothing contained within this section shall empower either the board or any party to interfere with or infringe upon the employee's right to select the type of health care and the person to provide it for the treatment of his injuries. Any employer or its representative that violates this section is guilty of practicing discrimination against the employee and subject to the provisions of A.S. 23.30.247.

Miscellaneous: I didn't have a chance yet to gratf in some changes that will try to limit what the employer/insurance carriers pay for their expert. I also need to go through the IME language dealing with the experts hired directly by the employers to perform examinations and try to exclude references to that process as an IME since the employer's experts are no more "independent" than the employee's experts. I'll try to complete those tasks by tomorrow.

I didn't do a cheat sheet yet but will be prepared to verbally discuss the manner in which the testimony will be presented at our meeting and, if it is felt that a sheet would be helpful, I'll prepare and deliver one to you.

PLD

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 1958, 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 1976, and 3% 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 Darvi 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, 1982 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 170 million to 180 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, Hunt Company

Kevin Dougherty - AFL-CIO

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

Ralph Lewis - Vice President - Kenai-Kanai Pulp and Paper

Ralph Mingo - Safety Manager, Teamsters Local 109

Stephen Hennberg, MA - Vice President, Finance, Taidquist 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 30 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 wage;
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 exist as to the ultimate responsibility for liability;

It is the belief of the subcommittee 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 savings

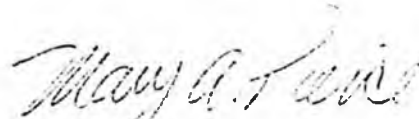
should not however negatively impact the quality or quantity of services available to an injured worker. Rather, it is our belief that the injured worker will be able to avail themselves of better services in a more timely manner.

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, reducing those injuries that are currently unscheduled, and other similar 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 best 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 tell us as we measure the actual results of our changes and ask them us to continue to make modification when and where necessary.

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.

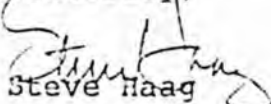
The efforts of the very best people we could find in Alaska from the ranks of management and organized labor have contributed to our effort. The WCCA believes that effort has produced an impressively thorough, first look at the major cost components of the Alaska worker's compensation system.

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



501 1st Ave.
Fairbanks, Alaska 99701
(907) 456-2050

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) 466-1208



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. M. 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

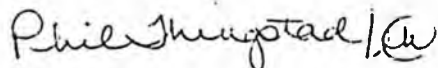
Dear Ladies and Gentlemen.

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 330550
Coconut Grove, Florida 33233
(305) 443-8111

Educ: n: 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
System, Report for the Alaska State Legislature,
1982.

Cost Implications of the Hawaii Workers'
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
Enstar
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
Tulhove
Universal Motors, Inc.
UNCCAL
Usibelli Coal
VECO

ALASKA STATE SENATE



SENATOR TIM KELLY
ANCHORAGE/EAGLE RIVER
CHAIRMAN

SENATOR DICK ELIASON
SITKA
VICE CHAIRMAN

LABOR AND COMMERCE COMMITTEE

MEMBERS
SENATOR BETTYE FAHRENKAMP
FAIRBANKS

SENATOR RICK UEHLING
ANCHORAGE

SENATOR MIKE SZYMANSKI
ANCHORAGE

February 1, 1988

MEMORANDUM:

To: All Legislators

From: Sen. Tim Kelly *TDK*

My office has been receiving postcards in opposition to the proposed worker's compensation bill. This campaign has been organized by some of the chiropractors within Alaska and some misinformation is being distributed as shown by the attached fliers. I've enclosed a copy of my reply for your information.

Please keep in mind that the organized labor - management task force that developed this proposal was not just concerned with cutting overall costs, but are attempting to cut back on excessive services and litigation while getting more of the program dollars into the hands of the more substantially injured.

ALASKA STATE SENATE

SENATOR TIM KELLY
ANCHORAGE/EAGLE RIVER
CHAIRMAN



MEMBERS
SENATOR BETTYE FAHRENKAMP
FAIRBANKS

SENATOR DICK ELIASON
SITKA
VICE CHAIRMAN

LABOR AND COMMERCE COMMITTEE

SENATOR RICK UEHLING
ANCHORAGE

SENATOR MIKE SZYMANSKI
ANCHORAGE

January 28, 1988

Scott McVey
7340 Hillside Way
Anchorage, Ak. 99516

Dear Scott,

I appreciate you taking the time to send me a card with your thoughts on the worker's compensation bill before us.

After receiving a number of cards, we have reviewed the flier suggesting the postcards and making comments about the legislation. I am somewhat disappointed to see that a good portion of the information given you about the legislation is inaccurate. To clarify the situation, I want to give you some additional information.

This bill was developed by a task force made up of 5 representatives of organized labor and 5 representatives of management. Both groups realized that a solution to the current problem needed to be found and that an agreement had to be negotiated. After several months of work, this agreement was reached and the same bill was introduced in both the House and the Senate to use as a starting point.

First let me highlight a few points that the bill does for Alaskan workers.

- * There is a significant increase in the payment for permanent partial disabilities. This assures that the more substantially injured workers receive greater benefits.
- * The minimum weekly benefit is being raised and the maximum weekly benefit is being reduced. Only about 3 percent of the cases will be effected by the reduction and a much larger number of workers will get increased benefits. This section will actually increase in dollar amounts, the overall wage benefits to injured workers.
- * The bill requires that pensions and benefits be included in calculating a workers' average weekly wage instead of just wages and salaries.

- * An injured worker will immediately receive benefits if an argument breaks out over which carrier will be responsible. Currently a worker can go for months without benefits.
- * Vocational rehabilitation will become voluntary under the bill. The injured worker has a choice of whether or not to enter a vocational rehabilitation program, and will no longer be forced to "play the game" just to continue receiving benefits.
- * Discrimination against a worker who has filed a worker's compensation claim will be prohibited under this new law.

There has been some other misunderstandings that need to be clarified. It has been said that the cost of vocational rehabilitation can't exceed \$10,000. In truth, only the cost of the plan for rehabilitation can't exceed that amount. There isn't a cap on the cost of the rehabilitation itself.

It is not the insurance company who must approve additional changes of doctors, but the worker's employer. Referrals to other doctors by a primary physician don't count as a change of doctors. Additional changes of doctors can be made if the worker's employer approves.

The area of only allowing 20 visits in 60 days has also been mis-stated. After the 60 day period 4 visits per month are allowed. If more than the 20 are needed, they are allowed if they are justified in the written plan.

Under the current system, less than 40 cents out of every dollar paid in worker's compensation premiums actually goes to the injured worker. The bill being worked on is designed to give more of the money to the injured workers and less money to the people in the middle. The idea behind worker's compensation is to provide a system to ensure that an injured worker gets the appropriate care and compensation. It is my intention to support a bill that is fair to both the injured worker and the employer, after all, that's who the system was designed to protect in the first place.

Hopefully, I have cleared up some of your concerns. Please be assured that I won't support a bill that I feel is unfair to injured workers.

Best Regards

TIM KELLY
State Senator

**BIG NEWS ABOUT THE NEW WORKER'S COMPENSATION BILL
RECENTLY INTRODUCED! FOLLOWING
ARE A FEW OF THE HIGH POINTS:...**

- * An insurance rehabilitation specialist will have total control over your rehabilitation. You will have almost no say. Also, you can only be rehabilitated once in your life, regardless of how many injuries you suffer. And it can't cost more than \$ 10,000.00.
- * You can only receive 20 treatments in 60 days, regardless of how extensively you are injured!
- * After 14 days, the insurance company can make you go to their doctor, even if you are happy with your doctor, regardless of your wishes.
- * The insurance company can use "lower 48" companies to determine fees, making you responsible for the difference!
- * Permanent disability benefits will have a limit, no matter how extensively you are injured.
- * Once you have stopped improving, or if your condition is expected to get worse without continued care, you can receive no additional medical care, regardless of how extensively you are injured, unless you prove it to the Board, which could take months, or longer.
- * Your doctor has 1 week to submit his treatment schedule to the insurance company, and they have 2 weeks to accept or deny it. Therefore, if they do not like you, your doctor, or his plan of treatment, they can deny the entire claim without penalty.
- * You can only change doctors once without written approval from the insurance company.
- * If there is a dispute between you and the insurance company, they can stop all benefits to you, regardless of your condition, until you take it to a Board hearing. You are guilty until you prove yourself innocent!
- * Independent Medical Examinations (IME) performed on chiropractic patients can be done by orthopedic surgeons biased against chiropractors. The IME doctor is not held liable for his report.

For all of this (and more), the insurance companies are not required to report how much they set aside in reserves, how much is spent on injuries, or how much was collected in premiums. Therefore, they can charge whatever they want, regardless of how it may strangle our economy.

We urge you to phone your representatives and strongly oppose this Bill. It is highly discriminatory, and will seriously jeopardize your ability to seek health care as an injured worker. Employers, demand that the insurance companies justify these exorbitant rates which they charge us. This is Alaska. We all live and work here. LET'S MAKE IT SAFE, AND FAIR.

SAMPLES FOR POSTCARDS

1. I have seen House Bill (H.B.) 352 concerning the workers' compensation. I feel it severely compromises the injured worker's rights. Please do not pass this bill in its present form.
2. House Bill (H.B.) 352 benefits only the insurance carrier. I am strongly opposed to the passage of this bill the way it currently is.
3. I have seen House Bill (H.B.) 352. I don't support it. Please don't pass it.
4. I believe the new workers compensation bill is unfair to the injured worker and takes away his freedom of choice. Please don't pass this bill.

WHAT YOU SHOULD KNOW ABOUT THE PROPOSED WORKERS' COMPENSATION LEGISLATION

The proposed law now before the legislature came about as a result of a year long effort conducted by a statewide labor- management task force.

If passed, the new law would do the following:

1. Increase disability benefits for seriously injured workers.
2. Increase temporary total disability benefits for workers employed in low-paying jobs to match at least minimum wage.
3. Provide for voluntary rehabilitation for workers who want to prepare for future employment.
4. Encourage cooperation between injured workers and rehabilitation counselors.
5. Establish minimum qualification standards for rehabilitation counselors, and offer a referral service to workers and employers.
6. Allow physicians to charge only "reasonable" fees for specific services.
7. Provide for unbiased and cost-effective settlements in medical disputes.
8. Encourage patients to seek quality medical care that promotes recovery rather than dependency.
9. Require health-care providers to show cause for continuous multiple treatments. It does not, however, limit treatment if it can be proven to promote recovery.
10. Make it unlawful for an employer to discriminate against a job applicant who has previously filed for workers' comp benefits.
11. Protect workers from loss or delay of benefits in the event of a dispute where an insurance carrier is ultimately liable.
12. Allow for the reduction of benefits for workers who relocate to an area with a lower cost of living.
13. Set a standard under which stress claims may be judged valid.
14. Allocate a greater portion of worker compensation dollars directly to injured employees.
15. Provide for a cost-effective, equitable program that provides incentives to injured workers to return to work.

We are representative of the companies and organizations that support this legislation because it is fair to injured workers, cost effective for employers and will save jobs in Alaska.

SCOTT WETZEL SERVICES
 ALASKA AIRLINES
 WESTMARK HOTELS
 ANGLO ALASKA PETROLEUM
 CARR-GOTTSTEIN
 CIMARRON HOLDINGS
 NORTHERN ADJUSTORS
 ALASKA STATE MEDICAL ASSN
 HOLLAND AMERICA
 NORTHERN AIR CARGO
 ALASCOM
 TOTEM OCEAN TRAILER EXPRESS
 ANCHORAGE REFUSE
 ALASKA CLEANERS
 KLUKWAN, INC.

HICK INVESTMENT
 REEVE ALEUTIAN
 NATIONAL BANK OF ALASKA
 GCI
 CENTRAL PLUMBING AND HEATING
 SPENARD BUILDING SUPPLY
 SAUGE ENTERPRISES
 ALASKA OIL MARKETERS ASSN
 ALASKA PULP CORPORATION
 RAIN PROOF ROOFING
 USIBELLI COAL MINE
 ALASKA STATE CHAMBER OF COMMERCE
 RESOURCE DEVELOPMENT COUNCIL
 ACME FENCE
 PACIFIC MOVERS

SMYTH MOVING SERVICES
 BAILEY'S RENT ALL
 MIDAS RIFLER
 ALASKA PIPELINE SERVICE COMPANY
 ALASKA CHAPTER OF RISK AND INSURANCE
 MANAGEMENT SOCIETY
 ALASKA SALES AND SERVICE
 PETER KIEWIT AND SONS
 ASSOCIATED GENERAL CONTRACTORS
 ALASKA STATE HOMEBUILDERS
 BARRATT INN
 BUILDING INDUSTRY ASSOCIATION
 OF ANCHORAGE
 WILDER CONSTRUCTION COMPANY INC
 HOFFMAN CONSTRUCTION COMPANY
 OF ALASKA

ALASKA STATE AFL-CIO
 WESTERN ALASKA BUILDING AND CONSTRUCTION
 TRADES COUNCIL
 FAIRBANKS BUILDING AND CONSTRUCTION TRADES COUNCIL
 CARPENTERS LOCAL 1162
 CARPENTERS LOCAL 1281
 PUBLIC EMPLOYEES UNION LOCAL 71
 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
 LOCAL 1547
 LAUNDRY AND DRYCLEANING LOCAL 333
 LABORERS INTERNATIONAL UNION LOCAL 341

LABORERS INTERNATIONAL UNION LOCAL 942
 PAINTERS AND ALLIED TRADES LOCAL 1140
 PAINTERS AND ALLIED TRADES LOCAL 1555
 INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 302
 UNITED TRANSPORTATION UNION LOCAL 1920
 UNITED FOOD AND COMMERCIAL WORKERS LOCAL 1496
 ROOFERS AND WATERPROOFERS LOCAL 140
 TEAMSTERS UNION LOCAL 459
 SHIELTAL WORKERS LOCAL 23
 THEEIGHTERS LOCAL 1264
 DRILLERS LOCAL 1



81

*Alaska Cabaret, Hotel,
Restaurant & Retailers Association*

P.O. Box 104839 • Anchorage, Alaska 99510
225 Cordova, Building B, Suite 305 • (907) 272-8133

February 11, 1988

The Honorable Senator Tim Kelly,

The Alaska Cabaret, Hotel, Restaurant and Retailers Association (CHARR), would like to extend its support to the passage of SB222 and HB352, the Workmen's Compensation legislation. We feel that this legislation will go far in correcting the inequities in the present system.

Charlie Selman
President



H. C. PRICE
CONSTRUCTION CO.

2/1

471 W. 36th, Suite 201, Anchorage, Alaska 99503
Telephone (907) 561-4400, Telecopy (907) 563-3255
Telex 090-25370

February 10, 1988

Senator Tim Kelly
Senate Labor and Commerce Committee
Room 101, Capitol
P. O. Box V
Juneau, AK 99811

Subject: Senate Bill No. 322
Workers' Compensation Reform

Dear Senator Kelly:

I would like to express my support for the passage of the subject bill without modification. As an employer of hundreds of Alaskan construction workers, and as a member of WCCA who helped define employers' concerns to the Ad Hoc Committee, I can affirm my belief that passage of this bill into law will reduce my Workers' Compensation costs by at least 15%.

While Workers' Compensation is a necessary safety net for all workers, the ambiguities and loopholes in the current law make it difficult for the injured worker who truly needs it and easy for the free-loader who wants to take advantage of the system.

Very truly yours,

Wesley P. Nason
Vice President and
General Manager

WPN:cmb

cc: WCCA
Lynn Phillips
2204 Cleveland
Anchorage, AK 99517

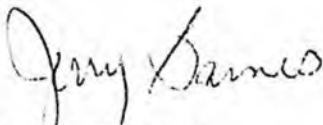
February 5, 1988

Dear Senator Kelly:

I am sick and tired of hearing complaints from chiropractors and lawyers on why we shouldn't change dramatically our workers compensation laws. The current law costs way too much and does not even do a good job of rehabilitating injured workers and getting them back to work. In fact, it creates a dependency on welfare and discourages people from working. The legislation you have in front of you, as I understand it, will reduce costs to employers while at the same time it takes better care of the more seriously injured workers, and provides incentives to go back to work. Anybody who opposes that kind of reform must either profit from the current system or should have their head examined.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Jerry Barnes".

Jerry Barnes
14727 Park Hills Circle
Anchorage, AK 99516

February 5, 1988

Senator Tim Kelley, Chairman
Senate Labor and Commerce Committee
Alaska State Legislature
P.O. Box V (M.S. 3100)
Juneau, Ak. 99811

Dear Senator Kelley:

Re: S.B. 322

I strongly support the recommendations of the Management/
Labor ADHOC Committee for Workers' Compensation Reform.

I encourage you and your fellow senators to pass S.B. 322.

Sincerely,



Jack Holland

Swanson General

CONTRACTORS, INC.

February 10, 1988

Alaska State Senate
Labor and Commerce Committee
P.O. Box V Room 101
Juneau, Alaska 99811

Attention: Senator Tim Kelly, Chairman

Reference: Senate Bill 322

Our company has performed as a general and electrical contractor in the State of Alaska since 1974. We deal almost exclusively in remote site projects for various agencies of the State and Federal Governments.

Although we have experienced relatively few Workers Compensation claims over the years, we have seen our rates climb dramatically, especially in the past two years.

I have read House Bill #352 which amends the Workers Compensation laws now in effect and I feel that it would produce some very real cost savings to employers as well as establishing a more equitable system for employees with work related injuries and illnesses.

Having attended one public hearing on the bill I am aware of its shortcomings and am confident the legislative process will fine tune the bill before signing it into law. !

The bottom line is that we must have a Workers Compensation reform bill with some teeth in it passed during this legislature. The small businesses of Alaska are struggling to stay afloat now without the added burden of repeated insurance rate increases of 20% a year or more.

While we're at it, let's get some legislation moving on tort reform so General Liability Insurance rates can be brought back to a reasonable level.

Sincerely,



Valerie Maxim
Administrator

8,

The logo for Lynden Incorporated features a stylized 'L' composed of horizontal bars on the left, followed by the words 'LYNDEN' and 'INCORPORATED' in a bold, sans-serif font.

3027 Rampart Drive
Anchorage, Alaska 99501
(907) 279-7501

February 9, 1988

Senator Tim Kelly
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

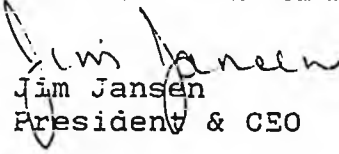
Dear Senator Kelly:

Lynden has experienced the same sky-rocketing Workmens' Compensation premiums as have other Alaska businesses within the past two years. These spiraling costs are crippling the Lynden companies and threatens the livelihood of our employees.

We would like to strongly encourage your support of SB 322 as a first step in correcting the serious deficiencies in which exist in the present program. Your support in getting this Bill passed will be greatly appreciated by Lynden

Very truly yours,

LYNDEN INCORPORATED


Jim Jansen
President & CEO

JJ:am

February 5, 1988

Dear Senator Kelly:

You have before you an important piece of legislation regarding workers compensation. If it passes it will go a long way in reducing costs and taking more appropriate care of our injured workers instead of all the doctors, lawyers, chiropractors, and rehabilitators the current system is designed to reward. I would strongly urge you to support HB 352 in an effort to stem the losing tide of worker compensation premium costs in Alaska. It has the broad support of management and labor, and even though not everybody is happy with it, I believe it will do the job we want our comp system to do for us.

Please support the effort put forth by labor and management, and help our economy at the same time.

Thank you.

Respectfully,



Larry Peck
3136 Doil Drive
Anchorage, Alaska 99507

February 5, 1988

Dear Senator Kelly:

I am writing in strong support of the workers compensation reform package you are currently considering. I understand that a labor and management group has developed a progressive reform bill that cuts away a lot of abuse on both sides and reduces the amounts going to lawyers, doctors, chiropractors, and rehabilitators. Hurray..

The firm I work for has escalating workers compensation costs that I know it cannot afford. I hope you can do something about this. If not, I know a lot of businesses such as ours will continue to suffer a continuation of these high costs that it cannot afford. Please do not give in to the special interest groups on this one. Our economy cannot afford that anymore.

Thank you.

Most Sincerely,



Sam Deakin
12641 Foster Road
SRA Box 2385-D
Anchorage, Ak 99507

February 5, 1988

Senator Tim Kelley, Chairman
Senate Labor and Commerce Committee
Alaska State Legislature
P.O. Box V (M.S. 3100)
Juneau, Ak. 99811

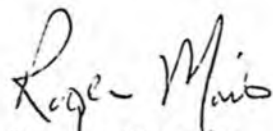
Dear Senator Kelley:

Re: S.B. 322

I strongly support the recommendations of the Management/
Labor ADHOC Committee for Workers' Compensation Reform.

I encourage you and your fellow senators to pass S.B. 322.

Sincerely,

A handwritten signature in cursive script that reads "Roger Morris". The signature is written in dark ink and is positioned above the printed name.

Roger Morris

February 4, 1988

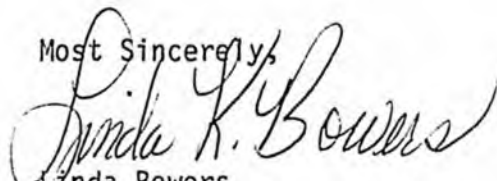
Dear Senator Kelly:

I understand that there is currently legislation under review to revamp our workers compensation laws. I cannot think of anything else the state could do to help our economy that won't cost the state one red cent. In fact I bet the state will save money along with every other business in the state. From what I know the bills in the Senate and House Labor and Commerce committees will cut costs, and do a better job of taking care of the more injured workers while giving them an incentive to go back to work. Those who argue against the bill must not either understand it or probably make money on it.

Please take a strong stand in support of this legislation and don't give in to those few who want to profit at the expense of the many.

Thank you.

Most Sincerely,

A handwritten signature in cursive script that reads "Linda K. Bowers". The signature is written in dark ink and is positioned above the typed name and address.

Linda Bowers
3441 Wiley Post Loop
Anchorage, Ak 99503

JL



FEBRUARY 9, 1988

DOROTHEA J. LOVEJOY
OWNER

STATE HOUSE LABOR & COMMERCE
P. O. BOX V
JUNEAU, ALASKA 99811

371 OLD SEWARD HIGHWAY
ANCHORAGE, ALASKA 99518
3071 244-8635

ATTENTION: TIM KELLY

DEAR MR. KELLY:

AS A SMALL BUSINESS OWNER IN ANCHORAGE, ALASKA, PROVIDING A NECESSARY COMMUNITY SERVICE, AND HAVING THE DISTINCTION OF BEING AN ESTABLISHED BUSINESS SINCE 1956, WE ARE VITALLY CONCERNED ABOUT THE MAJOR ISSUE OF WORKERS COMPENSATION INSURANCE AND THE SKYROCKETING INSURANCE RATES THAT SERIOUSLY AFFECT OUR OPERATIONAL ABILITY.

THIS LETTER IS A SINCERE EFFORT TO URGE YOU TO APPROVE AND PASS HOUSE/SENATE BILL NO.322 AS IT HAS BEEN AGREED UPON BY THE LABOR MANAGEMENT TASK FORCE.

THANK YOU FOR YOUR EFFORTS AND YOUR CONSIDERATION IN THIS MATTER.

SINCERELY,
BAILEY'S RENT-ALL, INC.

Dorothea J. Lovejoy

DOROTHEA J. LOVEJOY
OWNER

DJL:S



February 9, 1988

Senator Tim Kelley, Chairman
Senate Labor and Commerce Committee
Alaska State Legislature
P.O. Box V (M.S. 3100)
Juneau, Ak. 99811

Dear Senator Kelley:

Re: S.B. 322

I strongly support the changes to the workers' compensation statutes as outlined in Senate Bill No. 322.

I hope you will agree and provide the necessary support for passage of this important legislation.

Sincerely,


Leonard Jablonski

OLSEN LOGGING COMPANY

P.O. BOX 950
PETERSBURG, ALASKA 99833

S

(907) 772-3148

TO

DATE February 8, 1988

All Legislators
Pouch V
Juneau, Ak. 99811

SUBJECT Reform Worker's Compensation

— Dear Sirs,

We urge you to support the worker's comp : reform legislation as proposed by the labor- management task force. Any major changes will kill the bill this session and every business in Alaska needs that bill to pass for both the benifit of the employers and employees. Save jobs !

Olsen & Sons Logging Ltd.

Olsen Logging Company

By: *Alfred M. Olsen*

February 4, 1988

Dear Senator Kelly:

I work for a company that has seen its workers compensation costs go up year after year. If you can do anything about it, I wish you would. I have heard that our compensation system is one of the worst in the country. I believe it.

Please do what you can.

Thank you.

Sincerely,

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

Mary Jean Anderson
4725 Mills Drive
Anchorage, AK 99508

February 9, 1988

Senator Tim Kelley, Chairman
Senate Labor and Commerce Committee
Alaska State Legislature
P.O. Box V (M.S. 3100)
Juneau, Ak. 99811

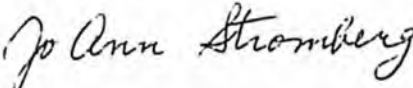
Dear Senator Kelley:

Re: S.B. 322

I strongly support the changes to the workers' compensation statutes as outlined in Senate Bill No. 322.

I hope you will agree and provide the necessary support for passage of this important legislation.

Sincerely,


Jo Ann Stromberg

Taylor

CONSTRUCTION SERVICES, INC.

DESIGN • REMODELS • ADDITIONS

Senator Kelly
P.O. Box V
Juneau, Alaska 99811

Feb. 15, 1988

Dear Senator Kelly:

I'm writing as a small business person who is trying to stay alive in these tough economic times. While we are able to bring most of the overhead cost for our business under control the one that needs to be brought back to a reasonable cost can only be corrected with your help of legislative action.

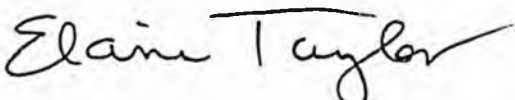
Workers Compensation Rate for construction has risen over 50% in the last two years - while the construction industry has been the hardest hit industry in the State's recession. It is literally forcing companies to get rid of any employees and use only subcontractors.

On top of the rising cost, in my business I have been able to watch the devastating results of a bogus claim by an employee who was hurt on the weekend working on his own home. He made more than any of the carpenters which I had working because of the tough economic times. Tell me, what incentive did he have to go back to work. Especially when he moved back to North Dakota and lived comfortably on the income from workers compensation paid at the Alaska level. After a settlement in March because he can never work as a carpenter again, I recently got word that he is framing in Oregon now. So take the 50% increase of workers compensation for carpentry and add a modification factor of 1.39 because of the incidence above.

I understand that the major opposition to the compromise bill negotiated between labor and management is coming from the chiropractor community and the claimants attorneys. I can certainly see why they have an interest in the bill as the people whose pockets are affected but what about those who are paying for the cost and are being forced out of business for this large contingency at the feeding trough. I would love to have someone pay for me to see a chiropractor every week. It is a real addiction that makes one feel relaxed.

I urge you to take quick action to protect Alaskan jobs and businesses by swift action on the labor-management workers compensation reform bill.

Sincerely,



Elaine Taylor 2028 OTTER • ANCHORAGE, ALASKA 99504 • (907) 349-7564

LARRY BUCHHOLZ DBA I.D.E.A.
Injured or Displaced Employees of Alaska
801 West Fireweed Lane, Suite 200-B
Anchorage, Alaska 99503
(907) 273-3730

February 19, 1988

Dear Friend:

The attorneys who represent injured workers for workers' compensation claims in Alaska have asked me to contact you to inform you of how proposed legislation amending the Alaska Workers' Compensation Act will affect your interests.

The proposed legislation reduces all the wrong things -- it reduces your medical benefits, your time loss benefits and your vocational rehabilitation benefits.

Please complete the enclosed card and mail today. Time is of the essence, because introduction of the proposed legislation in the Alaska Legislature is scheduled to occur on February 26.

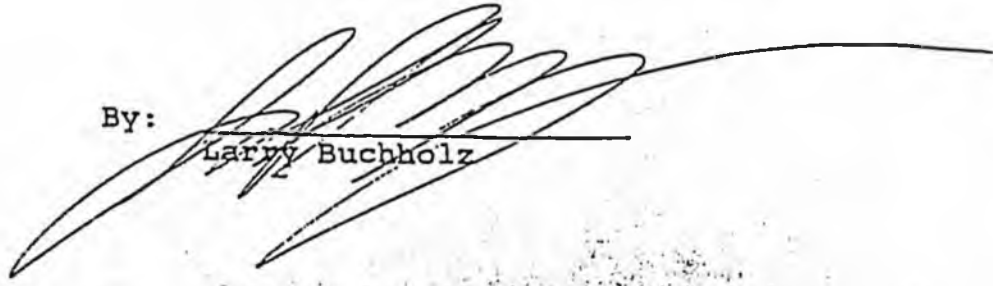
You may also object to particular aspects of the proposed legislation by telephoning the Legislative Affairs Office (phone number 561-7007) and dictating a free public opinion message to any or all legislators and the governor.

By protecting the interests of injured workers, you will protect yourself. Thank you.

Very truly,

I. D. E. A.

By:


Larry Buchholz

LB/jce

Dear Representatives and Senators:

H.B. 352/S.B. 322 effectively destroy the protection afforded injured workers by the Alaska Workers' Compensation Act. This no fault system of private insurance is shifting the burden onto injured workers and social welfare programs by reducing time loss benefits, virtually eliminating vocational rehabilitation and restricting medical coverage.

Please reconsider your support and I would appreciate your conveying my concerns to my local legislators by sending them a copy of this card.

Thank you.

Name

Signature

Address

Date of Injury:

Senate Labor & Commerce Committee
House Labor & Commerce Committee
P.O. Box V
Juneau, AK 99811

Historic Preservation USA 14



VECO INTERNATIONAL, INC.
5151 Fairbanks Avenue
Anchorage, Alaska 99502

February 16, 1988

Honorable Tim Kelly, Senator
Chairman Senate Labor and Commerce Committee
Alaska State Senate
Pouch Y
Juneau, Alaska 99811

Dear Senator Kelly,

This firm has been watching with great interest the activities of the Legislature, the Governor and the Governor's Oversight Committee and the several employer and employee interest groups that have been actively involved in either drafting or commenting upon the legislation to modify the Workers' Compensation Act, Senate Bill 322 and House Bill 352.

Veco is a large employer and, because of the nature of its work, is one of the largest payors of workers' compensation benefits in the state. We have watched with alarm the cost of our workers' compensation premium and the cost of our claims rise steadily and significantly, despite a continuing decline in the number of injuries sustained by our workforce. Accordingly, although we have remained relatively uninvolved in the process leading to the proposal of the subject legislation, Veco is and will remain vitally interested in the outcome.

Although we have taken a less visible role in the drafting of proposals to your committee, we have been carefully monitoring the legislative hearings, the work of the Oversight Committee and the work of WCCA. We have also been engaged in independent review of the bill in order to determine the impact the proposals are likely to have on our specific claims.

As a result, and because you are now about to begin mark-up of the bill, we wish you to consider our very serious concerns.

First, it is the position of our company that, as a general proposition, the bill provides a framework for meaningful improvement in the way the compensation benefits are delivered. We do like many aspects of the bill. We do find, however, that some of the most important provisions have been drafted in such a way as to create more ambiguity, and thus foster more litigation, than is warranted by the expected savings from a change in concept or definition of benefit.

Secondly, we are alarmed to learn from work done by two actuarial firms, the rating bureau used by the insurance industry and an independent actuarial firm hired by the State, that the bill will not only not save any significant cost, but could end up costing employers more. Such a finding makes the bill totally unacceptable, even if there are concepts that are desirable.

Our inquiries lead us to believe that the current system has been subjected to substantial increase in cost for three principle reasons:

1. Unwarranted utilization of the rehabilitation benefits driving up both rehabilitation costs and extending the times for payment of lost time benefits;
2. ambiguities in the current law which give rise to litigation, particularly in such areas as calculation of average wages;
3. Increases in permanent partial disability awards, particularly for unscheduled injuries (backs and necks).

The bill you have before you makes a good faith attempt to address these issues and in many ways does a good job.

We believe there are three principle areas where the bill is deficient and which have to be changed if the bill is to be adopted.

1. The language in the intent section is drafted as to not cure the problem which the intent language was written to address.

Our view is that the language has to more clearly specify that the courts should strictly construe the interpretations of the law such that the benefits are not increased except by specific act of the legislature. On the other hand, factual questions ought to be decided based on the weight of the evidence, but, if there is reasonable disagreement on the weight of the evidence to favor the employee.

We have enclosed alternative proposed language for the intent section.

2. It is incomprehensible that the legislature would even consider this bill unless changes are made which, according to responsible actuarial indications will save some money for employers. We have ~~targeted~~ an overall ~~hard dollar savings of 15%~~ as our goal for any meaningful legislation.

It is our understanding that the firm of Milliman and Robertson, the firm hired by the State and reporting to the Governor's Oversight Committee, is currently working on a proposed revision to the permanent partial impairment section of the bill, the section that revises 23.30.190, such that an overall savings of 15% could be realized. We urge you to include their recommendations in your bill when they become available. We understand that their work will be transmitted to Alaska in the next day or so.

3. The rehabilitation provisions, while being the area of most concern from both a cost and administrative viewpoint, is also the area where we believe inartful drafting leaves the way open to unnecessary litigation.

We have included with this letter, a proposed alternative draft of 23.30.041.

Its salient differences from the current draft are as follows:

a. Our proposal clarifies and ~~limits the authority of the rehabilitation administrator.~~ We do not believe it is necessary or appropriate that an essentially independent structure for rehabilitation be created in the division of workers' compensation. The rehabilitation aspects of a claim should be handled to the greatest extent possible in the context of the existing administrative adjudicatory structure, yet permitting use of specialists in the rehabilitation disciplines.

b. The procedure for obtaining initial eligibility determinations is greatly simplified. Our review indicates that the basic eligibility test in the proposed bill is a good one, but ~~the procedure for determining the eligibility is unnecessarily complex.~~

c. It is vital that the formal and full evaluation process allow for the rehabilitation specialist to find that a plan may not be appropriate. Our draft includes a procedure for finding that no plan is warranted, even for those found preliminarily eligible, if the plan would not accomplish anything for the employee.

d. Another principle change deals with the process for resolving disputes over the rehabilitation plan. We are deeply concerned that the bill includes a provision giving the rehabilitation administrator absolute and non-reviewable authority to make decisions. The hearing officers who decide far more consequential issues do not have such authority.

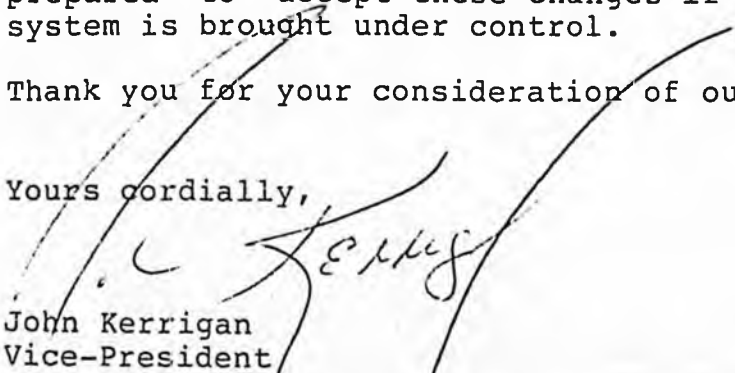
4. There is in the bill a much improved control over the medical delivery aspects of the workers' compensation system. We believe, however, that the independent medical examiner called for in the newly added 23.30.095(k) must be a medical doctor. We support the proposition that alternative health care providers should be allowed and paid for by the system to the extent they are efficacious, but the IME is called upon to make judgements that we believe ought not to be made by any of the several health care provider professionals that come under the act's definition of "physician". This one section should limit IME participation to "Doctor of Medicine".

Senator Kelly, there are several parts of the bill which we do not comment on because they are acceptable to us. In fact some are very important and if they were to be taken out would cause us to rethink our posture on the bill; the limit on stress claims, the two year limit on temporary benefits and the limits on medical costs and services are all important.

There are several changes favoring employees in the bill which were negotiated by the Ad Hoc Task Force and we are prepared to accept these changes if the overall cost of the system is brought under control.

Thank you for your consideration of our views.

Yours cordially,


John Kerrigan
Vice-President

PROPOSED CHANGES TO INTENT LANGUAGE OF
HB 352/SB322

Section 1 (b)

It is the specific intent of the legislature that the definition of rights and obligations under this act be strictly construed in accordance with the clear and unambiguous language of this act. If there is any ambiguity, it is the intent of the legislature that the act be interpreted so that there shall not be any change, extension or broadening of rights of the employees or obligations of the employers except by act of the legislature.

It is further the intent of the legislature that the system, including the process of administrative hearings for resolving factual disputes, be fair and afford due process, but expidiciously settle factual differences. Accordingly, unless specifically provided otherwise in the act, ~~factual disputes that cannot be resolved by the weight of the evidence, should be resolved by according favor to the position of the injured worker.~~

PROPOSED CHANGES TO 23.30.041

23.30.041 (a) The department shall select and employ a rehabilitation administrator, who shall be a part of the Division of Workers' Compensation and who shall have such additional staff as required to carry out the purposes of this section. The rehabilitation administrator is in the partially exempt service under AS 39.25.120.

(b) The rehabilitation administrator shall implement the provisions of this section, and study the issue of rehabilitation, both physical and vocational, on a continuing basis.

(c) If an employee suffers a compensable injury that may permanently preclude an employee's return to the employee's job at the time of injury, the employee or employer may request the treating doctor of medicine or independent medical examiner selected pursuant to AS 23.30.xxx to determine what the physical capacities of the employee will be when the employee reaches medical stability. The only capacities which may be determined pursuant to this paragraph are those required to make the determinations under paragraph (d).

(d) An employee shall be eligible for a full evaluation pursuant to paragraph (f) of this section if the capacities of the employee at medical stability determined pursuant to paragraph (c) are found to be less than the physical demands as described in the United States Department of Labor's "Selected Characteristics of Occupations defined in the Dictionary of Occupational Titles" for:

- (1) the employee's occupation at the time of injury; and
- (2) other occupations that exist in the labor market that the employee has held within 10 years before the injury; and
- (3) occupations that the employee has held following the injury for a period long enough to acquire the vocational preparation required for those occupations as specified in the "Selected Characteristics of Occupations defined in the Dictionary of Occupational Titles".

(e) An employee is not eligible for an evaluation pursuant to paragraph (f) if:

- (1) the employer offers, or obtains for, employee remunerative employment the physical demands of which are not more than the physical capacities of the employee determined to exist at medical stability and the employment is in an occupation that generally exists in the labor market; or

44-373
1051792

(2) the employee has received rehabilitation benefits in connection with a prior industrial injury under this or any similar section of a Workers' Compensation Act, but, following the receipt of the benefits, was employed at the same or similar occupation as the occupation at the time of the prior injury. *included*

~~(3) the employee has been paid any or all of his permanent impairment award pursuant to AS 23.30.190.~~

(f) When an employee is found eligible for and desires to have a full evaluation for rehabilitation the employee shall so notify the employer and the employee and the employer jointly shall select a rehabilitation specialist who shall provide a full re-employment evaluation, and, if appropriate, a complete re-employment service plan. If the employee and the employer cannot agree on a rehabilitation specialist, but not before thirty days after the employee notifies employer of his desire to have an elibility for an evaluation, either party may request the rehabilitation administrator to assign a rehabilitation specialist. The employer and the employee each have the right to reject the assignment by the rehabilitation administrator for cause and shall have the right to one pre-emptive rejection.

(g) The full evaluation and rehabilitation service plan must include the following:

(1) an inventory of the employee's technical skills, physical capacities, intellectual capacity, academic achievement, emotional condition and familial support.

(2) a determination of the occupation which the plan establishes as the goal.

(3) a finding that:

i. the occupation established as the goal for the plan is one for which adequate employment opportunity exists the labor market; and

all
ii. the employee's technical skills, physical capacities, intellectual capacity, academic achievement, emotional condition and familial support at commencement of the plan are such that the employee can reasonably be expected to satisfactorily complete the plan and perform in the new occupation; and,

all
iii. the plan can be completed within the time an cost limitations imposed by this section.

all
(4) a detailed description and schedule of the plan.

(5) the cost estimate of the plan including provider fees, the amount of tuition, books, tools, supplies, transportation, temporary lodging or job modification devices.

(6) the date the plan will commence.

(7) the time that the employee will be medically stable as determined by the treating doctor of medicine or independent medical examiner.

(h) [(g) in the bill as currently drafted.]

(i) If the rehabilitation specialist finds that any one of the required findings in subsection (g) (3) is not true, then the employee shall not be entitled to a re-employment plan and the rehabilitation specialist shall provide a report to the employee and the employer stating that fact including the reasons and information upon which such finding is made.

(j) [same as (i) in current draft of the bill.]

(k) The following time limitations shall apply to the entitlements and the obligations of this section:

(1) The reemployment plan must be scheduled so that it can be completed and the occupational goal achieved within two years from date of plan approval.

(2)-(6) [same as (2)-(6) in current draft of bill except change "reemployment services administrator" to "rehabilitation administrator" so that consistent terms are used throughout.]

(7) If the report or plan of the rehabilitation specialist is not approved by either the employer or the employee, either may petition the rehabilitation administrator for a modification of the report or plan in a manner set forth in the petition. If no petition is filed within ten days of submission of the report or plan to the employee and employer, the report or plan is deemed approved. If a petition is filed, the non filing party shall have ten days to file a response. The administrator shall conduct a pre-hearing conference with the parties to resolve differences. If the approval of both parties cannot be obtained at the pre-hearing conference, then the administrator shall prepare a report within ten days following the conference with a recommendation as to the report or plan that ought to be approved. The petition, response and report of the administrator shall be deemed the filing of a claim and notice of claim referred to in AS 23.30.110(a) and (b). The Board shall notice a hearing as provided in AS

23.30.110(c) and proceed pursuant to AS 23.30.110 to resolve the matter.

(1)-(m) [as (k)-(1) in the current bill.]

(m) In this section:

(1) [as (1) in current bill.]

*WARRANTY
MORE EASY*

(2) "labor market" means the geographic areas where the employee lived and where the employee worked at the time of injury, unless, subsequent to the date of injury, the employee permanently changed residence from Alaska to outside the state, in which case the labor market is also anywhere in the state of new residence.

(3) "physical capacities" and "physical demands" means the physical capacities and physical demands as those terms are used in the Department of Labor "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles".

(4) [included with (3).]

(5)-(7) [as (5)-(7) in the current bill.]

(8) "occupation" means the generic classification of work as described in the Dictionary of Occupational Titles.



COMMUNITY CHIROPRACTIC CLINIC

550 EAST TUDOR ROAD
ANCHORAGE, ALASKA 99503
TELEPHONE (907) 582-5368



Senator Jan Faiks
Alaska State Legislature
Pouch V (MS 3100)
Juneau, Alaska 99881

RE: Proposed Workers' Compensation Law

Dear Senator Faiks:

I am forwarding additional information regarding the proposed Workers' Compensation bill. I was surprised that you have not been fully informed on this issue when we discussed the bill at Mr. Neil Berg's home. Mr. Mitch Gravo, our lobbyist, confirmed he had not discussed the issue with you from our view-point.

There are numerous provisions in the new bill we feel would be detrimental to the intent of the Workers' Compensation Law, as well as unfair to the injured worker when it comes to the management of the patient's injury. The employer will also incur an increased potential for litigation which will ultimately increase Workers' Compensation cost.

Senator Kelly and the group supporting him simply are not telling the whole story. The Senator has repeatedly demonstrated he is not interested in what the public or anyone else thinks about this bill. I guess he feels he has the huge financial power-brokers of this state behind him and he does not need to concern himself with the general public's view.

The chiropractic profession, nor anyone else I know are against some changes in the Workers' Compensation Law. Appropriate changes would be beneficial to the system. What we are emphatically stating is; this "proposed bill is a "bad bill" in many respects (see attached material). Most

important, the bill will not accomplish the initial intent that started this legislation, "Cost Reduction".

Senator Kelly should not be allowed to co-chair the Free Conference Committee on this legislation as he is clearly not open to good suggested changes. I respectfully request you to reconsider Senator Kelly's appointment to this committee.

I have enclosed documents and letters to further inform you on a different point of view. Please give your immediate attention to this matter.

If you have further questions, please contact Mr. Mitch Gravo in Juneau or myself at 562-5366. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Adrian G. Barber, D.C.", written in dark ink.

Adrian G. Barber, D.C.
AGB/jc

enclosures:

cc: Governor Steve Cowper
Senator Tim Kelly
House Judicial Committee
House Labor and Commerce Committee

Bill would cut employee insurance coverage costs

By LARRY PERSILY
The Associated Press

JUNEAU — Employers are expected to save millions of dollars in premiums and insurance companies may save millions of dollars in claims under a rewrite of workers' compensation laws passed Thursday by the Senate.

The measure is intended to reduce the increasing cost of workers' compensation coverage, while also providing some help to injured workers.

The bill (SB322) passed the

Senate 15-0 and now moves to the House.

Alaska employers paid \$153 million in workers' compensation premiums in 1986, said Don Koch, special deputy for the state Division of Insurance. That cost increased in 1987, he said, but an exact figure is not available.

Insurance companies paid out more than \$150 million in claims in 1986, Koch said.

Anchorage pays out \$2 million to \$3 million a year in claims, said Harry Sjoberg,

the municipality's risk manager. He said the city expects in time to save more than \$500,000 a year if the bill becomes law.

"There could be less litigation because of it," he said, and stress-related claims and vocational rehabilitation costs to employers would be reduced under the bill.

The municipality covers its own employee claims up to \$500,000, and buys insurance to handle claims over that amount, Sjoberg said.

In passing the bill, senators approved a letter of intent asking the Division of Insurance to request insurance companies to adjust their rates to reflect changes in the law.

The letter of intent, which does not have the force of law and only expresses the wishes of legislators, said the bill is expected to reduce workers' compensation costs at least 2 percent.

The bill would prevent workers' compensation bene-

fits for stress unless it was "extraordinary and unusual in comparison to pressures and tensions experienced by individuals in a comparable work environment."

Stress-related claims were cited at legislative committee hearings as a growing problem. "Workers' compensation was not designed to deal with stress," an attorney told lawmakers last month. He said stress may be pre-existing or caused by factors outside the work place.

Briefcase

Alaska job-related injuries drop

Job-related injury and illness rates in Alaska dropped nearly five percent in 1986, according to the U.S. Bureau of Labor Statistics. Latest statistics also show the rate of injuries and illnesses for the nation remained unchanged from last year. The rate in Alaska declined from 10.7 to 10.2 percent in 1986. The incidence rates represent the annual number of recordable private sector occupational injuries and illnesses per 100 full-time workers. About one out of every 10 workers in Alaska suffered an on-the-job injury or illness during 1986.

DISCUSSION DRAFT

COST ANALYSIS OF THE ALASKA WORKERS' COMPENSATION PROGRAM

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

1. To provide a breakdown of current costs of the Alaska workers' compensation program.
2. To identify those elements driving the recent large rate increase indications.
3. To review and comment on SB322/HB352 as it pertains to the costs of the Alaska workers' compensation program.
4. To analyze local Alaskan data relevant to estimating the likely cost impact of SB322/HB352, the major source of this data being the Alaskan Workers' Compensation Information Handling System (WCIHS).
5. To review the National Council on Compensation Insurance (NCCI) preliminary evaluation of SB322/HB352 and where appropriate, modify the NCCI estimate using relevant local data.
6. To provide a likely cost estimate of the impact of SB322/HB352.

This report summarizes our findings.

1: BREAKDOWN OF CURRENT COSTS

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

NCCI Definitional and System Change Estimates

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

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

Claimants Living Out of State

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

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

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

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

We estimate the following impact on costs:

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

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

1. If the proposed permanent partial award maximum were reduced to \$200,000, we estimate there would likely be little overall change in permanent partial award costs from present levels, and overall costs of the program would be reduced by about 6%.
2. We believe we have implicitly factored into our estimates all aspects of SB322/HB352 identified earlier as impacting costs.
3. The estimates above anticipate strict adherence to the provisions of SB322/HB352.
4. We again stress that the proposed reform of permanent

Letters to the Editor
Anchorage, Times
P.O. BX. 40
Anchorage, AK. 99510

March 8, 1988

Dear Editor:

I would like to respond to Mr. Larry Taylor's letter regarding the pending Workers' Compensation legislation. I believe he has not had an opportunity to clearly evaluate the facts of this bill. I personally have been involved in this particular legislation and feel it is grossly unfair to the injured worker. Most importantly, though, is the fact that the injured worker is guilty until proven innocent. If there is a dispute between the employee and the employer, all benefits can be legally stopped (or controverted) until the Board can decide. This can leave the injured worker without any financial support for months (or longer) until he can get a board hearing. I have literally seen legitimately injured workers lose all their savings, their cars, and their homes waiting for a board hearing. So, let us look at who stands to benefit the most from this bill. If you think the injured worker will benefit from this bill, you are wrong. Sure, the minimum benefits have been raised to meet minimum wage, but the maximums have been decreased way out of proportion. Choice of physicians has been decreased, amount of treatment has been limited and must be approved by the insurance company, insurance companies can use out of state organizations to determine fees (making the worker responsible for the difference), and the list goes on. The injured worker cannot by any stretch of the imagination benefit from this legislation as a whole. How about the provider? You made mention that the chiropractors and the claimants' attorneys are the ones making such wonderful livings from the Workers' Compensation system. I cannot speak for the attorneys, but I can tell you that approximately 11% of our practice is Workers' Compensation patients, and we have one of the largest clinics in Alaska. It is not by any means the major portion of our business. Nor do I appreciate the implication that we as a class are anything less than ethical regarding injured workmen. Our fees are our fees, and they are no different if you were hurt on the job or carrying out the garbage. As a matter of fact, studies from around the country have shown that chiropractic is twice as effective as medical care for work related injuries, and many foreign governments have come to the same conclusions, finding chiropractic both effective and cost effective. In a study yet to be released by the

Italian Medical Community, that spanned two years and 17,142 patients, they found that chiropractic care saved 75.55% of days absent from work and 83.6% of hospital admissions. Any implication that chiropractic is not effective or would not save the employer valuable time lost from work can only be based on ignorance of the facts and bias.

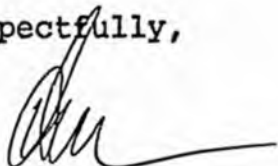
So, let us turn our attention to the employer. Unfortunately, the employer does not stand to gain from this legislation either. As your letter implies, the emphasis is on containing your costs. Will that really be accomplished? Neither of the two actuarial studies performed showed any significant cost savings, and during a teleconference held in Anchorage, an unidentified insurance representative stated that there would be no cost savings. This could actually increase costs due to litigation, and therefore increased premiums.

Let us finally consider the insurance industry, and I include the self-insureds. In my opinion, these are the ones who stand to gain the most. In 1945, the United States legislature passed the McCarran-Ferguson Act, which gave the insurance industry legal ability to monopolize. This has made it difficult if not impossible for state regulatory agencies (ie-Division of Insurance) to obtain accurate information by which to base rates. Therefore, insurance consumers (you and I) are forced to pay rates that are determined by a what-the-market-can-bear attitude. In this proposed legislation, fines for late payments to injured workers can even be avoided by simply providing custodial reports on time (which are already required by law). And the self-insureds are no better. Because of their status, they can avoid some of the laws that apply to the insurance companies, while also avoiding payment of the premium tax which insurance companies are required to pay. That means they enjoy the benefits of the Workers' Compensation system while providing absolutely no support for it.

Mr. Taylor, I have to admit that I empathize with you. I also pay Worker's Compensation premiums for my employees. It is the law. But what is so frustrating is to be forced to buy insurance and having absolutely no input as to its cost. I agree that there needs to be changes to the current law, but not necessarily the ones proposed. We have been led to believe that the "insurance crunch" is our own fault and that we need to do something about it, but I really think this is the smoke from another fire. Nowhere in this bill does it say anything about mandating a premium reduction. If insurance coverage is to be required by law, maybe they should be regulated similar to the public utilities. It is your responsibility (and mine) to demand justification for these outrageous premiums, and not just "costs are going up". Insurance companies are getting rich thanks to you and me, and we should have some input into the

process (other than paying into it). I simply do not think the injured worker should be left holding the bag. I hope you will take a second look at the proposed legislation with a more objective eye. I am not opposed to it because it will affect my practice. The impact will be minimal. I am opposed to it because it is arbitrary, it is restrictive to the injured worker, and because it is wrong.

Respectfully,



David J. Mulholland, D.C.
Community Chiropractic Clinic, Inc.

cc: Governor Steve Cowper
Dr. Trevor Ireland, D.C.
Dr. Charles Krichbaum
Alaska State Legislature, et al

*Chiropractor's
Recommendations
for changes to
the original
WCRA Bill*

SECTION A.S. 23.30.095(a):

- (1) DELETE underlined passage beginning page 12, line 7 through line 11, starting with "The employee".

RATIONALE: This passage is objectionable for several reasons:

- (a) because there is an insufficient definition of "attending physician";
- (b) because there is an insufficient definition of "specialist";
- (c) because there is no indication of when a physician becomes an "attending" physician as opposed to an examining or consulting physician; and,
- (d) because there is no real indication of how a choice of a different specialty is treated. For instance, if employee's attending physician is a GP and he has a broken leg and decides that a orthopedist would be better able to treat him, does that decision count as a change? Or, the employee has a lower back injury, choses to try an osteopath or a chiropractor instead of his GP, does that decision count as a change when he is not merely changing from one doctor to another but is actually seeking a different type of treatment?

If the passage must remain in, here is a suggested change:

The employee may not make more than one change of attending physician within the employee's attending physician's discipline or speciality without the written consent of the employer.

We would suggest that A.S. 23.30.265 be amended to include the following definitions.

An attending physician is the physician of the patient's choice responsible for the provisions of primary health care.

A specialist is a physician to whom the patient is referred by the attending physician for the provision of secondary care and/or consultation.

- (2) Keep language that will be deleted (bracketed language on page 12, line 11 through line 13). There does not appear to be any justification for taking away the boards authority to make exceptions to this rule in the appropriate cases.
- (3) Amend the language in the next sentence, page 12, line 13, starting "Upon procuring" to read:

Upon procuring the services of an attending physician, etc.

SECTION A.S. 23.30.095(c):

- (1) DELETE the added language (underlined and appearing on page 13, line 2 through line 13).

RATIONALE: This passage is ill considered:

- (a) because there is no definition of what is considered "continuing and multiple treatments" and health care providers must necessarily guess;
- (b) because there is no designation of who will approve the plan and what standards will be employed and upon what facts or basis the review will rest;
- (c) because the process of review will occur simultaneously with the provision of treatment and, according to the current language, the health care provider must bear the financial risk of disapproval;

- (d) because there are no provisions for amendment of the plan should the need arise; and,
- (e) because the provision imposes maximum limits arbitrarily.

Generally, it appears to us that these provisions will probably result in an increase in litigation and resulting costs rather than a decrease since so much is left unstated.

If the reason for this amendment is to guard against unreasonable or unnecessary treatment, there are already regulations in place and the employer can, with most health care professions, submit perceived abuses to the appropriate peer review committees.

If the reason for this provision is, as some of our members strongly suspect, an indirect attack on Chiropractic, it is not in fact cost effective and is, to say the least, discriminatory.

SECTION A.S. 23.30.95(e):

- (1) Proposed amendment deleting requirement that examining physician be authorized to practice is inappropriate and suspect. Therefore, bracketed section on page 13, line 18 through line 19, should be RETAINED.

How is either the Board or the employee able to rely upon the competence of a report or examination if there is no requirement that the physician doing the examining be appropriately licensed? Does the legislature really intend to require that the employee must submit to an examination by someone who may not be capable of meeting license requirements?

- (2) The creation of a presumption of reasonableness of requiring examinations every 30 days appears to be irrational. It seems obvious that the added language could easily be used by the employer to harass an employee in cases where either (1) the condition is stable enough that monthly examinations are unnecessary, and/or the examination technique used is painful and the likelihood of substantial changes in condition would not, in the absence of an adversary relationship, be normally considered justified. In addition, should the employee not be able to work at his/her old job, a requirement for monthly examinations by the former employer's doctor may well interfere with the ability of the employee to secure other employment.

- (3) Although there are fairly draconian provisions within this section for employee non-cooperation, there are no provisions for (i) advance (reasonable) notice requirement by the employer; or, (ii) a means by which the employee can contest the necessity and/or reasonableness of the monthly examinations prior to their imposition.

SECTION A.S. 23.30.95(f):

DELETE (UNDERLINED) changes.

AMEND LANGUAGE

RATIONALE: The present section, prior to amendment, limited fees charged for medical treatment and services to charges that generally prevailed in the community. (See bracketed section, page 14, lines 18 through 19). The new section (underlined, page 14, line 20 through line 22) adds to the Board's responsibility the necessity to determine whether or not the charge, which may well be customary in the community, is reasonable (underlined).

That being true, the phrase that the Board may regulate fees and charges contained within this section would become a reality since the Board would have authority under this section to override free market considerations, including local economics and the effects of local competition and declare that charges that were in fact usual and customary but, in the Board's opinion, unreasonable.

The proposed change is actually unnecessary since normal free enterprise processes supply reasonableness of price through market place competition.

The purposes behind this section are two-fold. First, the legislature is rightly concerned over the incurring costs of workmens' compensation insurance to employers. Second, paying inappropriately high charges to a physician will encourage bias that inevitably leads to increased litigation. Assuming that these provisions are laudatory, the measure only goes half way in treating the problems. The other half of the costs associated with workmens' compensation cases arises from the physician retained by the employers to examine the employees. The costs associated with those physicians contribute to the burgeoning costs of insurance in the same manner as those of the employer's physician. Additionally, the issues of bias for over compensated physicians are not confined to either side.

Finally, the present language limits comparison to an obviously vague and confusing standard of "treatment of injured persons of "like standard of being". That portion should have the confusing language removed. Therefore, we suggest that the language of A.S. 23.30.095(f) be as follows:

All fees and charges for treatment, service or examinations by physicians for either party should be limited to charges that prevail in the same community for similar treatment, services or examination of injured persons and shall be subject to regulation by the Board.

SECTION A.S. 23.30.95(1):

DELETE changes. AMEND CURRENT LANGUAGE.

The most offensive of the added language is contained on page 14, lines 25 through 26, which allows for an out-of-state organization to advise the Board on the appropriateness and necessity for and costs of medical treatment of Alaskan workmen by Alaskan physicians. A host of questions arise by this wording. If an out-of-state organization is appointed, how well qualified are they to judge these issues? Could they pass the relevant Alaska boards? Are they in fact licensed physicians/health care providers? Are they anything more than claim adjusters? How is an out-of-state organization going to determine appropriateness of treatment without recourse to examining the patient or taking additional xrays or additional studies? Why is an out-of-state organization needed when there are peer review committees set up within the various disciplines for these purposes now?

Regarding costs, once again, how is an out-of-state organization going to determine appropriate levels of costs? If for instance, the person making the determination on appropriateness of costs lives in and is familiar with medical costs in some small town in Illinois, will that familiarity influence the advice he gives to the Board on treatment rendered in Alaska where the cost of everything is higher?

Based upon the recommendations that are made to the Board, the Board will be determining whether an employer should pay a bill for services that have already been rendered. Because it has the power to approve of the withholding of payment, the employee and the local physician in Alaska rendering treatment to him is at a distinct disadvantage in challenging the advice of an out-of-state organization.

If the advice is unsound, but because of economics, remains unchallenged, the Board's decision will eventually begin to influence the manner in which Alaskan physicians treat injured workmen since their choices will essentially be to either adopt an approved (but unsound) procedure or to refuse to treat the injured workman. Additionally, injured employees may not seek appropriate treatment since they might end up having to pay for it themselves, which will either add to the term of the injury or begin to increase costs of employee medical insurance plans.

We suggest the following language REPLACE Section (j):

The board may appoint a medical services review board consisting of physicians licensed in the state and employer and employee representatives to assist and advise the Board in matters involving the costs of health care services. The medical services advisory board shall conduct anonymous surveys biannually to determine usual and customary costs of treatment and procedures, and in the case of unusual situations, may conduct special surveys to determine usual and customary costs for treatment of procedures not normally encountered. If the Board shall determine that a physician or health care provider has inappropriately or unnecessarily provided treatment, or has habitually and substantially exceeded the usual and customary charges in the community in which treatment was rendered, the committee shall refer the matter to the peer review committee of the health care provider's discipline and advise the Board to disapprove the charges in question.

SECTION A.S.23:30.095(k):

(1) AMEND proposed language.

RATIONALE: The clear import of this section is to provide the Board with an independent source to turn to when a dispute arises between the parties' experts. Unfortunately, the proposed section as it's presently worded does not go far enough to insure the independence of the source. Additionally, it fails to guard against "apples and oranges" comparisons that so often create or increase litigation before the Board. Finally, the proposed section creates an inappropriately limited standard of review which is inconsistent with current diagnostic techniques.

First, in order to insure the independence of the review, the selection of a physician or health care provider should be from a rotating list so that there can be no question as to impartiality in the selection process.

Second, both parties should have the right to object to one selection within a reasonable time period so that questions of bias may be minimized.

Third, the lists that are resorted to by the Board should be kept by discipline and specialty and the selection made should conform to the discipline or specialty of the health care provider of the employee. Otherwise, there is every likelihood that the Board will become embroiled in jurisdictional disputes between disciplines and specialties that will provide no meaningful comparison.

Fourth, limiting the standard required to overcome the presumption to objective evidence deselects critical subjective findings that often times form the backbone of a valid diagnosis.

Fifth, although shielding the independent physician from liability for ordinary negligence is a good idea, making his liability dependent upon proving fraud goes too far. As a result, it is our feeling that the limits of liability should extend to fraud's cousin, misrepresentation, and to gross negligence in order to ensure an appropriate level of reliability in the findings of the independent physicians.

We would suggest the following language be substituted for the proposed language:

In the event of a dispute regarding determinations of causation, stability, degree of impairment, functional capacity, the amount and efficacy of the continuance of or necessity of treatment, or compensability between the employee's attending physician and the employer's medical evaluation, an independent medical evaluation shall be conducted by a physician or physicians of the same discipline and specialty of the employee's attending physician.

Such physicians shall be licensed in the State of Alaska or the state that treatment was rendered and selected from a list established with the aid and advice of the medical advisory board, and maintained by the Board. Both the employee and employer shall have the right to challenge one

appointment. In the event of a challenge, the next physician on the list will be appointed. The contents of the list and the order of its contents shall be kept confidential by the Board. The report of the independent medical examiner shall be furnished to the Board and both parties within 14 days after the examination is concluded. The opinion of the independent medical examiner shall, in the absence of clear and convincing evidence to the contrary, be presumed to be correct. A person may not seek damages from an independent medical examiner caused by the rendering of an opinion or providing testimony under this subsection, except in the case of fraud, misrepresentation or gross negligence.

SECTION A.S. 23.30.155(c):

DELETE Added language.

RATIONALE: As will be explained more fully when Subsection (m) is discussed, the exception being grafted onto this section is, in essence, gutting the penalty provisions by allowing an employer to escape the penalties by simply performing once a year ministerial acts that have nothing to do with the merits of a particular controversion, or for that matter, to do with a habitual practice of unjustifiably controverting employee claims. As a result, it is our suggestion that the amenditory language be deleted.

SECTION A.S. 23.30.155(m):

DELETE changes.

RATIONALE: This section as it is proposed, essentially vacates the penalty provisions in subsection (c) by allowing an employer to avoid penalties for failure to timely notify the employee and the board of changes it unilaterally makes to the employee's compensation, or whether or not the employer intends to controvert at all. In essence this provision allows, on a sliding scale, an employer to escape substantial penalties if it performs the ministerial acts that, under the present and proposed statute, it must perform.

For the employee who is caught within the exception's parameters, however, there is little relief. If the filing requirements did not incorporate notifications to the employee and were, in fact, only ministerial, there might be

some justification for the proposal, although it is not readily apparent even in that situation. However, the reports do require notification to the employee and, in the absence of receiving timely reports, the employee may well make decisions that he might not should he receive a timely notification that the employer was either going to controvert, suspend or terminate his compensation. In essence then, the employer is, according to this section, allowed to escape penalties for failing to comply with the employee notification provisions in Subsection (c).

SECTIONS A.S. 23.30.185, A.S. 23.30.200:

DELETE proposed language unless the term medical stability is changed as noted below.

RATIONALE: Obviously, the employers and their carriers are seeking to place a limit upon TTD and TPD payments. However, they are basing the proposed limit upon an unrealistic and unfair standard, "medical stability". As will be demonstrated below, the definition for the term "medical stability" is suspect.

SECTION A.S. 23.30.265 (34):

AMEND proposed language.

RATIONALE: According to the proposed language, an employee's medical condition is "stable" after the date that no further objectively measurable improvement is reasonably expected to result from additional medical care or treatment. This definition has several flaws.

The section is used in conjunction with two other sections, AS 23.30.185 and AS 23.30.200 which deal with payments for temporary disability records to those sections, payments will be cut off once medical stability is reached. Therefore, for both parties the definition of medical stability becomes paramount. However, under AS 23.30.265(34) the definition is highly suspect. According to the proposed language, medical stability is measured solely upon the question of whether further care or treatments will result in improvement and specifically disallows consideration of improvement generated by the natural healing process of time. Therefore, it is

easily conceivable that an injured employee who is temporarily disabled and unable to be gainfully employed, and who will get better over time, would lose his temporary benefits because the health care providers could not provide treatment or care that would improve upon the natural healing process. In essence, the injured employee would be penalized because of the impotence of current science to help him.

Second, once again the standards for making the determination based solely upon objective findings when modern diagnostic techniques use a combination of objective and subjective techniques. As a result, the employee and all of the physicians coming into contact with him are artificially limited to decision making that bears no relationship to how medical decisions are normally made.

SECTION ENTITLED LEGISLATIVE INTENT, SUBSECTION (b):

AMEND proposed language.

RATIONALE: In decreeing that the Board has increased powers, there must be some authority for decision making concerning his medical treatment left to the injured employee. Therefore, there should be some provision contained within the statute that it is not the legislature's intent that the employee's right to chose who his health care provider will be will not be restricted unreasonably.

We suggest that the following language be added to subsection (b):

With the exception of the provisions contained in A.S. 23.30.095(a), nothing contained within this section shall empower either the board or any party to interfere with or infringe upon the employee's right to select the type of health care and the person to provide it for the treatment of his injuries. Any employer or its representative that violates this section is guilty of practicing discrimination against the employee and subject to the provisions of A.S. 23.30.247.

Miscellaneous: I didn't have a chance yet to draft in some changes that will try to limit what the employer/insurance carriers pay for their expert. I also need to go through the IME language dealing with the experts hired directly by the employers to perform examinations and try to exclude references to that process as an IME since the employer's experts are no more "independent" than the employee's experts. I'll try to complete those tasks by tomorrow.

I didn't do a cheat sheet yet but will be prepared to verbally discuss the manner in which the testimony will be presented at our meeting and, if it is felt that a sheet would be helpful, I'll prepare and deliver one to you.

PLD

Insured Against Full Competition

SUMMARY: Premiums for personal and commercial insurance coverage have increased at double-digit rates for a number of years. Now comes a sustained effort by a large coalition of bankers and consumers to strip the industry of the monopolistic control handed to it by a 1945 act of Congress. Pending in Congress is a bill that would subject insurers to the same antitrust laws that govern other businesses.

Millions of Americans are acquainted with the practices. The insurance agent says premiums have risen again, then refuses to sell personal umbrella coverage unless the customer buys a package of insurance that includes a homeowners policy and insurance covering all the family cars. Some agents even insist on auto liability coverage far above that of established state minimums. It does little good to go to another agent. Insurance agents legally can collude, deny insurance coverage and charge identical prices without fear of antitrust prosecution that could lead to jail terms. Besides all that, their commissions are identical.

Elsewhere, among uncounted commercial enterprises ranging in size from a local candy store to a nuclear power plant operator, among professionals such as doctors and among political subdivisions of all sizes, liability insurance premiums rise so high that businessmen flee their trades and professionals abandon their practices. Among communities that are unable to afford or are denied insurance, a public swimming pool is closed, athletic events are canceled and policemen are not hired out of fear of uninsured liability.

There is nothing new about the high price of casualty insurance and refusals of coverage. Premiums for both personal and commercial coverage have rocketed at double-digit rates for a number of years. In 1986, for example, the net premiums of property and casualty insurance companies rose to \$176.5 billion, up 22.4 percent from the \$144.1 billion of 1985, according to the Insurance Information Institute. An increase of similar magnitude occurred the year before.

What is new about the insurance crisis, a term used by critics as well as insurance spokesmen, is a sustained effort by a large and unusual coalition that includes the American Bankers Association and the Consumers Union of the United States, to strip the insurance industry of legal monopoly power handed to it in 1945 with passage of the McCarran-Ferguson Act. The act exempts the insurance industry from prosecution under antitrust law, which forbids such practices as price-fixing, raising prices in concert and denying coverage.

In a real sense, the act was passed as a favor. Before its passage, the states were the exclusive regulators of insurance, chiefly because insurance was not considered commerce. But in 1944, the Supreme Court ruled that insurance was in fact commerce. That meant it could be regulated by Congress as well as the states, which in turn meant the industry was subject to antitrust



Edwards: The industry fixes rates.

law. Congress saw the decision as threatening the traditional power of the states to regulate insurance and feared that the uniform pricing permitted by states would bump up against the strictures of the Sherman Antitrust Act. An insurance company obeying a state order could be found guilty

of antitrust violation, went the reasoning. The result was McCarran-Ferguson.

Today, however, critics say that the act's purpose has been subverted. Where a state plays no role in pricing, as in California (where State Farm Mutual Automobile Insurance Co. and Allstate Insurance Co. exchange rating data), the McCarran-Ferguson Act. "intended to protect state regulation from antitrust laws," protects "the unregulated from those laws," says John K. Van de Kamp, California's attorney general.

After a number of attempts during the last decade or more, attempts easily held off by the insurance industry, McCarran-Ferguson has come under serious and lasting attack. One of the attacks is led by Rep. Don Edwards, a member of the Judiciary Subcommittee on Monopolies and Commercial Law. The California Democrat wants to repeal the exemption with his proposed Fairness in Insurance Act of 1987, leaving the states to regulate insurance and thus subjecting insurance companies to antitrust law. Currently, a mere cameo appearance by a state insurance official confers immunity on decisions that would be deemed anticompetitive in other industries. Nor is there any appeal possible, since the shield of antitrust immunity prevents customers of insurance companies from going to court for relief.

Edwards says his bill, which wound its way through a series of subcommittee hearings last year, "would restore the application of the federal antitrust laws." He says, "The insurance industry can legally fix prices, allocate markets, limit or deny certain types of coverages at will and engage in a host of other activities that would be criminal offenses for other businesses. The time has come for Congress to heed the call of consumers and



For Insurance Companies the Money Piles Up

Property / Casualty Profits
(In billions of dollars)

	1986	1985	1984
Premiums Earned	\$166.3	\$133.3	\$115
Net Underwriting Gain (Loss)	(15.9)	(24.7)	(21.4)
Net Investment Income	21.9	19.5	17.8
Operating Earnings (Losses) After Taxes	6.8	(3.3)	(2.1)

SOURCE: A.M. Best Co. Inc.

the states to repeal this \$400 billion industry's antitrust exemption."

On the floor of the House, Edwards charged, "The insurance industry does legally engage in price-fixing. Tying arrangements — tying coverage in unprofitable lines to a required purchase of coverage in a profitable line — are legally used. Coverage is limited or denied at will. Customers and territories are divided up with impunity and rates openly shared among competitors."

Within the industry and among its watchdogs, Edwards's bill and a similar one introduced in the Senate by Ohio Democrat Howard M. Metzenbaum have energized a debate over an issue that has been raised before without much success, even as other major financial service industries lost antitrust exemptions and were thrust kicking and screaming into a competitive world. Just a few years ago commercial banking was deregulated (and now wants permission to sell casualty insurance).

In 1975, the New York Stock Exchange reluctantly gave up the right to fix brokers' commissions. The fierce price competition that followed spawned an industry of discount brokers. During President Ford's tenure, some administration members concluded that price competition in the insurance industry would be beneficial to consumers, and a national commission suggested to President Carter that broad antitrust immunity for the insurance industry should be repealed.

Repeat this time around is still uncertain, though Edwards believes his bill "has a very good chance of passage." His proposal has attracted supporters with clout that for the first time may match the legendary political clout of the insurance industry. Rep. Peter W. Rodino Jr., for example, a New Jersey Democrat and chairman of the Judiciary Committee, weighed in with supporting words when Edwards introduced his bill last year.

In New Jersey, where personal and commercial insurance premiums are among the highest, and both no-fault and tort (fault) systems apply in auto accident liability, hundreds of thousands of the state's 4 million automobiles are uninsured, despite state law requiring coverage. Among the reasons is high cost. At the same time, the owners of 2 million autos, rejected by the industry for a mixed bag of reasons, buy



Appraiser inspects damaged car; some rates are far above state minimums.

especially expensive insurance from a Joint Underwriting Association composed of reluctant insurance companies and forced into being by the Legislature. The association is underfunded by \$1 billion, and the state is levying a surcharge on auto owners who do buy insurance to bridge the \$1 billion gap. Conceivably, with repeal of McCarran-Ferguson, both the insurance companies and the state could be targets of lawsuits by insurance buyers.

The Edwards bill also has attracted the support of the National Association of State Legislatures and the National Association of State Attorneys General. The Justice Department, though opposing exemptions generally, is unsure about supporting repeal, says Kenneth G. Starling, deputy assistant attorney general of antitrust. Repeal may benefit consumers, he says, but he worries over tearing away an antitrust shield "that's grown up intertwined with a lot of state regulation."

Among the states, the National Association of Insurance Commissioners opposes repeal, but opposition is not unanimous. In New Jersey, Commissioner Kenneth D. Merin says, "We don't oppose repeal, but we feel that it doesn't approach the problems of affordability and availability that have surfaced in the past few years." In California, Michael J. Strumwasser, special assistant attorney general, says the

state "strongly support repeal. The act . . . is an accident of history, adopted when people didn't understand the relationship between antitrust and business. This is an industry beset by excessive cooperation, with lemminglike behavior which can be tracked to a culture of collusion."

California's insurance commissioner, in fact, recently prohibited the Insurance Services Office, the industry-owned rate-making body, "from promulgating final rates," though the state will permit distribution of data used in the organization's rate-making computations. "We think there will be a diversity in price," says Strumwasser. Most of the organization's critics say it uses operational costs of the most inefficient companies as a base for arriving at its "advisory" prices. This soaks up 40 to 50 cents of every premium dollar formulated. The advisory prices also include estimates of inflation, litigiousness, fees of the industry's defense lawyers, general expense, profit and contingencies.

Within the Reagan administration, Federal Trade Commission Chairman Daniel Oliver, an opponent of "trade restraints" of all kinds, has attacked the reasoning that leads to creating any legal monopoly: a trade-off permitting monopolistic behavior in exchange for some sort of redeeming social benefit. In a speech last year before the Reinsurance Association of America, whose members insure insurers' risks, Oli-