ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
5398 SLAB SB 322 (file 16)

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BRAD CRISE / INSIGHT

Hunter, a critic of insurance practices, with complaints from upset consumers

ver said lawsuits charging "anticompetitive activities lacking any redeeming social benefit" have been "dismissed on McCarran-Ferguson grounds alone."

Among other voices supporting repeal is that of Robert Hunter, president of the National Insurance Consumer Organization. Hunter has been an opponent of casualty insurance management practices at least since the 1970s and explains the high premiums of insurance companies partly in terms of boom-and-bust cycles.

In one part of the cycle, he says, insurance companies compete recklessly against each other with severe price-cutting to build market share. During bull markets in stocks or during periods of double-digit interest rates, investing the premiums of customers generates returns great enough to overcome the effects of price-cutting.

"But when market breaks come," says Hunter, "one or two companies will lead the others back to inflated [Insurance Services Office] rates. When that happens you see the remarkable increases you've seen in the last few years." Hunter says that more than $63 billion in increases have been levied against insurance company customers. "They blame the higher premiums on the legal system, but the total cost of the legal system is $30 billion a year. So it's something more than that." Hunter adds that those companies that did, in fact, gain market share during the period of price-cutting several years ago, "are reaping bushels of money today."

He also questions the honesty of the financial reporting of the industry, which distributes a confusing array of revenue, earnings and other operating data that does not adhere to common accounting practices found in other industries' corporate reports. "When insurance companies report an underwriting loss in a particular year," he says, "that does not mean that they actually paid out more than they took in. It means that they estimate they will eventually pay out more than they took in that year." But after all claims against policies issued in a given year are resolved, he says, "even when there's an underwriting loss, the companies almost always take in much more than they pay out."

In addition, Hunter questions reports of profits. Last year, for example, he disputed the industry's report of $11.5 billion in net profits for 1986, an all-time high, saying they were much higher. "The industry's true profits," he says, "were $23.4 billion. One reason is accounting that recorded $2.2 billion of dividends paid to policyholders as losses. Nor did the industry include $4.5 billion in unrealized capital gains. The industry also "took a current loss for the full amount reserved to pay future claims," says Hunter. If reserves had been reduced by the investment income they were likely to earn until they were used to pay claims, "insurers' gains would have been another $5.2 billion higher."

Hunter also accuses the industry of not paying taxes. Citing the General Accounting Office, he says property and casualty insurance companies paid no federal income tax for the years 1975 through 1984, despite net gains of $75.2 billion. The reason is dual accounting. In one ledger, an insurance company invests and earns interest on premiums kept aside for claims, say for as long as eight years, a length of time associated with malpractice payments. In another ledger, says Hunter, the company deducts the entire amount for tax purposes in the first year it is received.

A fact sheet distributed by Hunter's organization says that six of the largest U.S. insurance companies (Allstate Insurance Co., Fireman's Fund Corp., Hartford Fire Insurance Co., Crum and Forster Inc., Home Beneficial Corp. and CNA Financial Corp.) paid no federal income taxes for the years 1980 through 1984, despite net gains of more than $5.2 billion after underwriting losses of $8.3 billion and investment gains of $13.5 billion.

Efforts to repeal the McCarran-Ferguson Act have not gone unanswered, of course. The Coalition of State Regulation of Insurance, whose 18 members include the most powerful industry associations, alliances and institutes, has reacted with detailed and lengthy arguments. The coalition says that the McCarran-Ferguson Act places responsibility for regulation of the insurance industry primarily in the hands of the states. That was true before enactment, it is true now and would still be true if repeal occurred, the group argues.

The coalition also says it has only limited exemption, since McCarran-Ferguson forbids boycotts, coercion and intimidation. The industry also worries over a lack of data relative to losses and underwriting not being distributed among all companies, thus crippling small companies without the resources to do in-depth research.

Supporters of repeal say that all companies will still have access to industry-wide loss data. Repeal will inhibit price-fixing, and only inefficient companies will be at a disadvantage. To the argument of the coalition members that repeal will prevent the formation of pools to insure large or specialized risk, the response is that lawful joint ventures can be formed for the tasks. Nor will big companies necessarily get bigger, as the coalition suggests. "If this were true," says Hunter, "big companies would be working to repeal the antitrust exemption."

— Christopher Elias

THE CHIROPRACTIC REPORT

An international review of professional and research issues, published bimonthly.

Editor: David Chapman-Smith, Toronto January 1988 Vol. 2 No. 2

Professional notes:

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On considerable clinical and research evidence Waddell says:

a) "The main theme of management must change from rest to rehabilitation and restoration of function".

b) There is "a fundamental antithesis between the passive and active approaches" to treatment of back pain.

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Cost Effectiveness of Chiropractic – the evidence

A. Introduction

1. In a paper entitled 'Health Economics and Chiropractic'[1] Professor John Dillon, a prominent Australian economist, studies modern health care economics and concludes:

- "Undoubtedly, in terms of economic appraisal of the current health scene ... chiropractic is in a very strong position. Compared to medical services, it is an extremely cheap avenue of health care for those who seek it. Unlike primary medical practice, it does not spiral costs into the system through ancillary and specialist services, hospitalization and pharmaceutics. On average, a dollar spent on a chiropractor's services causes no further costs".

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- "... in terms of meeting the not insignificant need felt by many members of the community to have an occasional friendly chat with a professional practitioner about their health, chiropractic beats medicine hands down".

2. In terms of cost-effectiveness a chiropractor can best be compared with a dentist. Both see the patient directly, and generally provide all necessary diagnosis and treatment themselves.

The essentials of chiropractic practice are the same worldwide. Treatment is conservative without the cost of drugs or surgery. Principal treatment approach is joint adjustment, comprising a wide range of specific manipulative techniques, with adjunctive use of remedial exercises, nutritional therapy and advice, soft tissue and pressure techniques, traction and electrotherapy. These are self-contained inexpensive approaches to care.

3. Recent government inquiries in Australia (1986)[2] and Sweden (1987)[3] have found chiropractic treatment effective and cost-effective, and recommended increased government funding for chiropractic services.

This report looks at the evidence of cost-effectiveness, emphasizing acute and chronic back pain including workers' compensation figures, neck pain/migraine/headache, and prevention.

Most talk of cost-effectiveness is at the community level – costs to insurance companies, WCBs, government and society. A final section looks at chiropractic cost-effectiveness from the patient's point of view.

B. Back Pain

4. Surveys of chiropractic practice in a number of countries confirm that approximately 90% of chiropractic patients have headache, neck and back pain as chief presenting complaints - 50-60% have acute or chronic back pain.[4,5]

5. In the western world 80% of the population will experience disabling low-back pain during their lives. At any given time 6.8% of the adult U.S. population is experiencing a bout of back pain that has been continuing for more than two weeks.[6]

30% of WCB claims by injured workers are for back pain (more than twice the percentage of any other complaint) and, because of the acknowledged poor medical management of this complaint and the huge cost of chronic cases, these 30% of claims generate 60% of total WCB compensation costs.[7]

6. In 1985 U.S. workers compensation boards disbursed $6 billion for low-back pain.[8] The estimated total annual cost of back pain in the U.K. in 1982 was £1,000 million.[9]

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8. The high cost of medical management of low-back pain is a major subject in the scientific literature in recent years, which reveals:

a) Surgery and chemonucleolysis have been subject to high failure rates and unacceptable costs, and are now used rarely, with under 1% of patients.[11]

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Gordon Waddell, in work which won the 1987 Volvo Prize for spinal clinical research.[11] (See professional notes).

c) The basic approach to treatment now recommended is on a chiropractic model – early active treatment to restore spinal function and prevent onset of illness behaviour.

C. Acute Back Pain

9. Research from chiropractic[12 13] and medicine[14 15] reports a greater than a 90% success rate with skilled specific spinal manipulation for treatment of acute back pain. There is such broad acceptance of effectiveness with acute pain that the major research effort has been directed at chronic back pain.

10. A prominent finding of great importance with respect to cost is the speed of relief. This has been confirmed by recent research in both England[16] and the United States[17]. In the U.S.study, from the University of North Carolina:

a) There were 54 patients with acute low-back pain, one group with duration of pain under two weeks, the other with pain from 2-4 weeks.

b) The purpose of the study was to compare two active forms of manual therapy – mobilization ("use of insufficient force to move the facet joints" – i.e. moving the vertebra more slowly through a lesser range of movement as commonly practised by physiotherapists) with spinal manipulation (by a medical physician, but using the controlled low-amplitude high-velocity thrust basic to chiropractic practice - the physician claimed his technique was the "one used by chiropractors").

c) Outcome was monitored by questionnaire immediately after treatment and every three days for two weeks.

d) "The vast majority" of patients in both treatment groups "improved dramatically" over the two weeks follow-up period.

However, the group that had suffered acute back pain for slightly longer – the patients with pain for 2-4 weeks – did much better with manipulation than mobilization. Speed of response was commented on particularly. The advantage of manipulation "was most striking midway through the first week" and was statistically significant.

11. Accordingly chiropractic spinal adjustive techniques are effective and, since they produce a generally quick response, are also cost-effective. This is both in terms of both direct costs (treatment) and indirect costs (compensation, lost production, lost opportunity).

D. Chronic Low-Back Pain

12. While there is no real debate concerning cost-effectiveness with acute pain, there has been concerning chiropractic treatment of chronic low-back pain. That is rapidly being laid to rest by recent research arising from the new era of cooperation between chiropractic and medicine.

13. Compelling evidence of effectiveness and cost-effectiveness comes from Kirkaldy-Willis, an orthopaedic surgeon, and Cassidy, a doctor of chiropractic, who have been researching chiropractic treatment of chronic low-back and leg pain for the past 10 years. Their striking results have been published in a number of prominent texts[18 19] and journals[20 21]. Consider the population of 171 patients examined by consulting chiropractors in a hospital setting and found to have posterior joint syndrome and/or sacroiliac joint syndrome:[20]

a) These were patients who had been *totally disabled* by chronic low-back pain ("constant severe pain") *for an average of 7.6 years*.

b) Over that period they had proved unresponsive to a wide variety of medical treatments. No details of cost are given – obviously direct and indirect costs will have been substantial.Patients were now being referred, or re-referred, to the hospital back pain clinic for further investigation with a view to initial or further surgery.

c) Following a "2-3 week regime of daily chiropractic manipulation", 87% returned *"to full function with no restrictions for work or other activities"*.

d) Importantly, that success rate was maintained at 12 months follow-up. Additionally, no patient was made worse.

Quite simply workers compensation and insurance fund managers should be swept off their feet by those figures from internationally respected researchers. They should be establishing studies in their own jurisdictions to see if they can repeat such startling success with such an intractable problem.

14. Interesting evidence is now emerging from the United States, as the health care system reacts to years of unacceptable cost increases and is producing new health care partnerships and delivery systems.

15. In a trial study[22] Silverman, a Florida chiropractor, was sent a consecutive series of 100 patients with persistent low-back or neck pain by AV-MED, a large South Florida health maintenance organization (HMO). Faced with fixed funding per patient, and prohibitive rates and costs of surgery, Dr. Herbert Davis, AV-MED's medical director, agreed to a study wherein the next 100 patients requiring hospital evaluation with a view to surgery would first be sent for chiropractic evaluation and, if appropriate, care. Comments are:

a) The patients had already been seen by 1.6 MDs on average.

b) 2% had already been hospitalized.

c) 12% had been confirmed medically as requiring surgery.

d) Chiropractic care consisted of spinal adjustment supplemented with physical therapy modalities, remedial exercise programs and advice.

e) Average number of visits per patient was 12.1, *average cost per patient $326.76*.

f) This was total cost – there were no referred costs for outside diagnostic investigations, other health care practitioners, or hospitalization.

g) No patient, including the 12 medically diagnosed as needing surgery, required surgery.

International Meetings

Cervical Spine and Upper Extremity
April 27-30, 1988
Nashville Tennessee
Contact:
ACA, Combined Council Forum
1701 Clarendon Blvd.
Arlington VA 22209
(703) 276-8800

Chiropractic USA
June 16-19, 1988
Las Vegas Nevada
Contact:
The American Chiropractor
P.O. Box 350
LEO Indiana 46765.
(219) 423-1432

International Chiropractic Congress
October 2-9, 1988
Sydney, Australia
Contact:
John Sweeney, D.C.,
Australian Chiropractors' Association
459 Great Western Highway,
Faulconbridge
N.S.W. 2776, Australia.

American Back Society: Spring Symposium
May 12-14, 1988
Orlando, Florida (Disney World)
Contact:
A.B.S.,
2647 East 14th Street, Suite #401,
Oakland, California, 94601
(415) 536-9929

Spinal Disorders 1988: Current Solutions
June 26 to July 1, 1988
Gothenburg, Sweden
Contact:
Alf L. Nachmeson, M.D.,
Department of Orthopaedics
Sahlgren Hospital
S-413 45 Gothenburg, Sweden.

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R. E. ROBERTSON (1885-1965)
M. E. MONAGLE (1902-1985)
JAMES F. CLARK
PAUL M. HOFFMAN
D. ELIZABETH CUADRA**
PAMELA FINLEY
THOMAS J. SLAGLE
MARY A. NORDALE

**ADMITTED IN WASHINGTON D.C. AND ALASKA

ALL OTHERS ADMITTED IN ALASKA

March 17, 1988

Ms. Mary Pierce, Co-Chair
Joint Labor and Management Task Force
900 Brown Street
Anchorage, Alaska 99501

Mr. Robert Anders, Co-Chair
Joint Labor and Managment Task Force
3310 West 78th Avenue
Anchorage, Alaska 99501

RE: CSSB 322

Dear Ms. Pierce and Mr. Anders:

Thank you for your letter received DHL courier, 3/11/88. On behalf of the American Insurance Association, we appreciate that the Joint Labor and Management Task Force does not support mandatory rate reductions.

As you know the bill emerged from the House Labor and Commerce Committee with numerous amendments, including a mandatory rate decrease. Testimony regarding the amendments was limited to witnesses specifically invited by the committee. The House Labor and Commerce Committee substitute includes a 6% mandatory rate decrease, and a mandatory rate rebate. The acting director of the Division of Insurance testified regarding the disaster that such mandatory language had in the State of Maine, including a withdrawal of many insurers from the state and ultimately the reinstatement of adequate rates. The mandatory rate decrease and mandatory rate rebate is a "red flag" which will discourage new companies, from entering the Alaska market place, and reduce competition. There would likely be an increase in the assigned risk pool.

We agree with the Joint Labor and Management Task Force that the need for change in the workers' compensation system is

immediate. We reaffirm our support of legislation that will not only produce a more efficient system, but also ultimately result in cost savings for management. However, we unequivocally oppose mandatory rate decreases, or rate rebates, neither of which are actuarially supported by the Millman and Robertson report.

American Insurance Association companies writing compensation in Alaska, include Industrial Indemnity of Alaska, Alaska Pacific Assurance Company (ALPAC), Providence Washington of Alaska and Fireman's Fund, accounting for approximately 50% of the direct premiums written in the state. We plan on having representatives from the Alaska Insurance Industry present to testify at the House Judiciary Committee hearings. Representatives from the AIA member companies would be delighted to meet with the Joint Labor and Management Task Force to discuss passage of this much needed workers' compensation legislation.

Sincerely,

Thomas J. Slagle

TJS:kll/8.26
Enclosures
cc: Senator Tim Kelly ✓
Representative Dave Donley
Members of the House and Senate Labor & Commerce Committees
Paul Roller, Acting Director of the Division of Insurance
Jackie McClintock, Director of the Division of Workers' Compensation
Stephen Young - AIA
Gary Purdom - Industrial Indemnity
John Flemma - Providence Washington Ins. Co. of AK., Inc.
Dave Sever - Alaska Pacific Assurance Company

506 W. 6th Avenue #9
Anchorage, Alaska 99501
(907) 272-9312

Entertaining Alaskans since 1967

February 3, 1988

Senator Kelly:

I am enclosing a copy of a workman's comp. summary which I passed out at the legislative hearings on workman's compensation in November. At that time I told the committee that the crippling 36% rate we are now paying--which will be raised to 47% in April--will put my company out of business. One quick glance at my experience modification and loss ratio, which the insurance companies insist their rates are based on magnifies the injustice to my company.

The entire problem rests with the classification 9186, carnival or circus-traveling-all employees and drivers (emphasis added). This is simply unfair. All our employees do not experience the same risk exposure.

On May 6, 1987, after five years of trying to be heard, I was granted twenty minutes before the classification board, Don Koch attending. I asked for different classifications within my business. More specifically, the classifications 9180, which positively identifies ticket sellers and game attendants, and 9016, for my shop maintenance crew. The committee denied any change. We are currently appealing this decision through the Department of Commerce, Insurance Division.

In 1987 $165,640 was payroll relating to ride erection and operation, while $213,630 went to other areas of our operational payroll; yet our insurance premium was based on all payroll and calculated using the highest classification, 9186.

For comparison, may I add that 1987 workman's compensation insurance cost my company 255% more than public liability insurance.

Senator Kelly will you please review the appeal currently in the Department of Commerce, Insurance division on behalf of my company, 200 Alaska jobs, Three Alaska State Fairs, Fur Rendezvous and Chambers of Commerce throughout the state.

Respectfully:

Claire

Claire Morton

506 W. 6th Avenue #9
Anchorage, Alaska 99501
(907) 272-9312

Entertaining Alaskans since 1967

GOLDEN WHEEL AMUSEMENT WORKMAN'S COMPENSATION

SUMMARY 1981 TO DATE

FISCAL YEAR	GROSS PAYROLL	PREMIUM	CLAIMS	LOSS RATIO
81/82	$ 80,000.00	$ 19,128.00	$ - 0 -	- 0 -
82/83	100,000.00	22,386.00	- 0 -	- 0 -
83/84	176,893.00	35,251.00	582.82	1.7%
84/85	176,117.00	30,198.00	4,334.00	14.4%
85/86	215,000.00	57,173.00	154.25	0.3%
86/87	252,000.00	70,900.00	4,002.15	5.6%
87 to date	370,107.80	132,868.70	(est) 4,000.00	3.0%
Totals	$1,370,117.80	$367,904.70	$ 13,073.22	3.6%

Current Rate: 35.90

Experience Modification: 0.90

Claire Morton, Owner • Manager

R. CLARK DAVIS, D.C.
CHIROPRACTOR
320 BAWDEN, SUITE 306 KETCHIKAN, ALASKA 99901 - (907) 225-6815

February 19, 1988

Senator Kelly
Capitol Room 101
P.O.Box V
Juneau, Alaska 99811

RE: HB 352/ SB 322

Dear Senator Kelly:

I am writing in regard to the Workman's Compensation bill. In previous correspondence I have pointed out than an arbitrary limit on treatment under proposed Workman's Compensation regulation changes (e.g. 20 visits for the first sixty days and subsequent limits) is not practical for realistic patient care. Admittedly MOST patient treatment schedules fall within the above proposed limits but the most severely injured patients will have their essential treatment being interfered with by setting limits effectively in stone. This will result in patients that are making progress under the chiropractic treatment but faced with an arbitrary cut off of treatment benefits, by third party payors, to be steered toward LESS CONSERVATIVE treatments such as SURGERY and CHEMONUCLEOLYSIS, at times unnecessarily. To prematurely force an injured worker into the above alternatives with their record of HIGH FAILURE RATES an UNACCEPTABLE costs is unreasonable at best, and unpardonable in my estimation.

Recent government inquiries in Australia (1986)[1] and Sweden (1987)[2] have found chiropractic treatment effective and cost-effective, and recommended increased government funding for chiropractic services. This report looks at the evidence of cost-effectiveness, emphasizing acute and chronic back pain including workers' Compensation figures, neck pain/migraine/headache, and prevention.

Compelling evidence of effectiveness and cost-effectiveness comes from Kirklady-Willis, an orthopaedic surgeon, and Cassidy, a doctor of chiropractic, who have been researching chiropractic treatment of chronic low-back pain for the past 10 years. Their striking results have been published in a number of prominent texts [3,4] and journals.[5,6] This included a population of 171 patients examined by consulting chiropractors in a hospital setting and found to have posterior joint syndrome

and/or sacroiliac joint syndrome[5], totally disabled by low back pain, averaging 7.6 years.

In a trial study[7] Silverman, a Florida chiropractor, was sent a consecutive series of 100 patients with persistent low-back or neck pain by AV-MED, a large South Florida health maintenace organization (HMO). Faced with fixed funding per patient, and prohibitive rates and costs of surgery, Dr. Herbert Davis, AV-MED's medical director, agreed to a study wherein the next 100 patients requiring hospital evaluation with a view to surgery would first be sent for chiropractic evaluation and, if appropriate, care.

a) The patients had already been seen by 1.6 MD's on average.

b) 2% had already been hospitalized.

c) 12% had been confirmed medically as requiring surgery.

d) Chiropractic care consisted of spinal adjustment supplemented with physical therapy modalities, remedial exercise programs and advice.

e) Chiropractic treatment was shown to be very cost-effective.

f) There were no referred costs for outside diagnostic investigations, other health care practitioners, or hospitilization.

g) No patient, including the 12 medically diagnosed as needing surgery, required surgery.

In conclusion, chiropractic treatment, unlike medical practice, does NOT increase costs through the medical system through adjunctive and specialist services, hospitalization, and pharmaceutical supplies. "Usually a dollar spent on chiropractor services causes no further costs"[8]. This cost-effectiveness is both in terms of direct costs (treatment) and indirect costs (compensation, lost production, lost opportunity). An injured workers access to chiropractic treatment should not be restricted by an arbitrary treatment limit that does not take into account the most severly injured patients. These most seriously injured patients still often successfully avoid spinal surgery and other similarly invasive and very costly procedures. I recommend ammending HB 352/ SB 322 accordingly. If it is not ammended so, I strongly recommend a negative vote.

If you have any question feel free to call.

Sincerely,

R Clark Davis, D.C.

R. Clark Davis, D.C.

References

1 Second Report (June 1986), Medicare Benefits Review Committee, C.J. Thompson, Commonwealth Government Printer, Canberra, Australia, Chapt. 10.

2 "Legitimization for Vissa Kiropraktorer" (1987). Report of Commission on Alternative Medicine, Social Departementete, Stockholm, English Summary, SOU 1987:12.

3 Kirkaldy-Willis W H (1985), "Managing Low-Back Pain" Churchill Livingston, New York and London.

4 Cassidy J.D., Kirkaldy-Willis W H and McGregor M (1985), "Spinal Manipulation for the Treatment of Low Back and Leg Pain: An Observational Study" Chapt 9 in "Empirical Approaches to the Validation of Spinal Manipulation" ed. by Bucger A A and Greenman P E , Charles C. Thomas, Springfield, Illinois.

5 Kirkaldy-Willis W H and Cassidy J D (1985)"Spinal Manipulation in the Treatment of Low-Back Pain"Can Fam Phys 31:535-540.

6 "Team Effort Between MD and DC Produces Results at Canadian University", an interview (1984), ACA J Chiro 21(7):36-48.

7 Silverman M (1983), "Study of the First 100 Patients Referred to the Silverman Chiropractic Center by AV-MED", unpublished. Personal communication (1987).

8 Chapman-Smith (Aug 1988), "The Chiropractic Report",Vol.2,No.2, Toronto.

DR. R. CLARK DAVIS
CHIROPRACTOR
320 BAWDEN, SUITE 306 KETCHIKAN, ALASKA 99901 - (907) 225-681[illegible]

January 9, 1988

Senator Kelley
Capitol Room 101
P.O.Box V
Juneau, Alaska 99811

Dear Senator Kelly:

This letter is in follow-up to my phone call of 1-8-88. I feel that the Worker's Compensation bills: HB 352 (and SB 322) are not appropiate in their present form to be passed. Unfortunately the ad hoc business and labor force that developed the "Comp Bill" did not include health care providers who must live with the system.

I suggest that several amendments of the bill be made. A copy of the amendments are enclosed. Of prime importance are Sections A.S. 23.30.095(a), A.S. 23.30.095(c), A.S. 23.30.095(f), A.S. 23.30.095(j), A.S. 23.30.095(k), A.S. 23.30.265(34), and Section 1. "Legislative Intent" subsection(b) (p.1).

In reference to "Legislative Intent": subsection (b), I can personally attest to several attempts by insurance adjusters, either by ignorance, malfeasance, or perceived monetary considerations, have tried to intimidate or otherwise convince patients to see a surgeon rather than a chiropractor for neuro-musculo-skeletal injuries that were already favorably progressing with chiropractic treatment. Our enclosed suggestions would remedy this problem for all patients and allow freedom of choice of treatment.

Please read, consider, and actively support these enclosed reasonable suggestions. I recommend that they be implimented. If they are not implemented I strongly recommend a negative vote on HB 352 (and SB 322).

If you have any questions feel free to call.

Sincerely,

R Clark Davis, D.C.

R.Clark Davis, D.C.

enc: HB 352 Amendment recommendations

RCD/kk

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 specialty without the written consent of the employer.

(2) Keep language that will be deleted (bracketed langauge 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.

(4) Add sentence to end of present section stating:

With the exception of the above, no party shall attempt to interfere with or restrict by any means the employee's right to select a physician of his or her choice.

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 that 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.

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.

95(j)?) SECTION A.S. 23.30.99(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):

> 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 party's 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 inappropriate 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.

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

> In the event of a medical dispute regarding determinations of causation, medical 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

physicians licensed in the State of Alaska or the state that treatment was rendered from a list established by, 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):

p 24

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.

First, hinging a definition of medical stability on whether or not the patient will improve disregards situations where continued treatment is necessary to prevent a diminishment of medical status, or to prolong the patient's medical status.

Second, once again the standards for masking the determination are based solely upon objective findings when modern diagnostic techniques used 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):

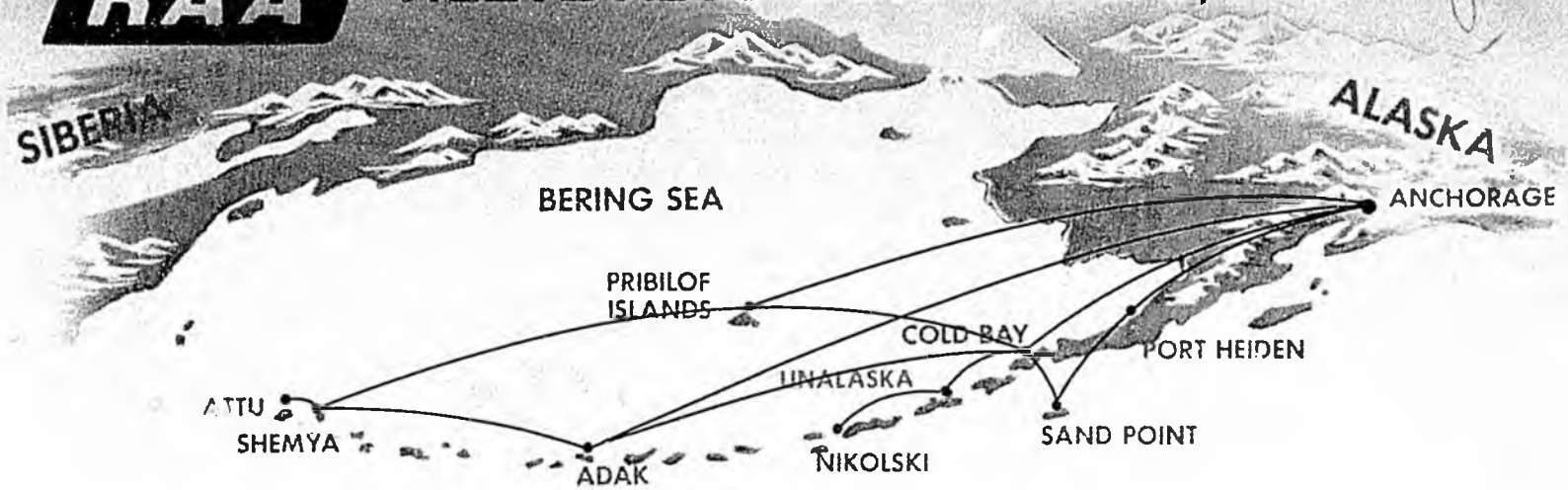
AMEND proposed language.

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 interfer 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 discrimation against the employee and subject to the provisions of A.S. 23.30.247.

RAA REEVE ALEUTIAN AIRWAYS, INC.



February 5, 1988

The Honorable Tim Kelley
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Senator Kelly:

Senate Bill 322, having to do with reform of the present Workers' Compensation laws, is a very important bill to all Alaskan employers. The premiums paid by Reeve have increased 100% in the past several years. But despite this there has been no increase in the benefits available to employees. SB 322 will help reduce the amount we employers currently pay for compensation coverage, but will not reduce the benefits to injured employees.

I urge you to vote in favor of this legislation.

Sincerely,

David A. Jensen

David A. Jensen
Vice President, Administration

4700 W. INTERNATIONAL AIRPORT RD. • ANCHORAGE, ALASKA 99502-1091

PROPOSED TASK FORCE CHANGES TO THE WORKERS' COMPENSATION PROGRAM

The major proposed changes to the Workers' Compensation program outlined below are to be divided into five categories:

1. Vocational Rehabilitation Services
2. Medical
3. Compensation
4. Benefits
5. Other

Any changes enacted by the legislature in 1988 would not take effect until **July 1, 1988.** Injuries, claims and settlements occurring before July 1, 1988 will not be affected.

Vocational Rehabilitation Services. Major proposed changes include:

- changing rehabilitative services from a mandatory to a voluntary program;
- limit vocational rehabilitation services to workers whose injury prevents them from performing their job;
- limit vocational rehabilitation programs to two years;
- cap rehabilitation plan costs to a maximum of $10,000.

Medical.

- proposed changes would allow an injured worker to change their doctor only once, thus eliminating "doctor shopping";
- limit treatments to no more than 20 visits within 60 days;
- allow for an independent medical examiner (IME) to evaluate workers with extended periods of injury.

Compensation.

- lower the maximum benefit from $1,100 to $700 a week;
- raise the minimum benefit from $110 to $154.

Benefits.

- changes the degree of disability to be based upon the American Medical Association guidelines;
- limit Temporary Total Disability payments to two years;
- limit Temporary Partial Disability payments to such time as the injured worker is deemed to have reached medical stability.

Other.

- changes would require the worker who claims mental injury to prove it resulted from extraordinary and unusual stress;
- prohibit employers from discriminating against employees who have filed a claim or received workers' compensation benefits.

Scheduled Workers' Compensation Hearing and Teleconferences*

Date	City	Time	Place
Jan. 19	Juneau	3:30 pm	Capitol Bldg. Beltz Room
Jan. 20	Juneau	3:30 pm	Capitol Bldg. Beltz Room
Jan. 29	Anchorage	9am-4pm	3111 "C" St. First Floor
Feb. 12	Anchorage	9am-4pm	3111 "C" St. First Floor

*Fairbanks, Mat-Su, Kenai, Southeast and other Teleconference sites.

TO CONTACT YOUR LEGISLATOR:

During Session address all legislator and committee mail to:

Your Legislator
P.O. Box V
Juneau, AK 99811

The Senate Labor and Commerce Committee will kickoff Senate hearings on proposed changes to workers' compensation legislation on Tuesday, January 19 in Juneau. From left, Sen. Bette Fahrenkamp, Sen. Dick Ellason, Sen Tim Kelly, Chair, and Sen. Mike Syzmanski (not pictured: Sen. Rick Uehling)

KLUKWAN FOREST PRODUCTS, INC.

P.O. Box 34659 · Juneau, Alaska 99803-4659 · 907-789-7104 · Fax: 907-789-0675

9

February 12, 1988

The Honorable
Mr. Kelly
Chairman & Senator
Department of Labor & Commerce
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Mr. Kelly

Enclosed is a copy of Klukwan Inc.'s position on SB 322. We at Klukwan Forest Product's (a wholly owned subsidiary of Klukwan, Inc.) do endorse the position taken. We would appreciate your support in passage of SB 322 in its original form.

Sincerely,

William A. Thomas, Jr.
Lobbyist

WAT:skw

CLUB
PARIS

9

February 15, 1988

Dear Senator Kelly:

I wish to add my support to the enactment into law SB222 and HB352 which addresses the problem of increasing rates in the Workman's Compensation program. It is my opinion that this legislation will be a start to curb the abuses that are now present in the current system.

I would like to solicit your support for the passage of this legislation.

Very truly yours,

Charles H. Selman

Charles H. Selman

417 WEST 5TH AVENUE, ANCHORAGE, ALASKA 99501

ANCHORAGE
SCHOOL DISTRICT

4600 DeBarr Avenue
P.O. Box 196614
Anchorage, Alaska 99519-6614
AREA CODE [907] 333-9561

February 1, 1988

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

Dear Senator Kelly:

The Anchorage School District employs over 5,000 people. Since 1979, we have self-insured our Workers' Compensation claims. While our annual outlay for claims and expenses has steadily increased, in the last three years alone, our outlay has jumped from $880,000 to $1,500,000.

As a self-insurer, we have detailed knowledge of many abuses of and inequities in the Alaska Workers' Compensation system due to ambiguities in the language of the Act and the absence of clear definitions of legislative intent, benefit durations, and compensable conditions.

Upon close scrutiny of the specific reforms proposed in Senate Bill 322 and House Bill 352, we are convinced that prompt enactment of the legislation, as written, will have a very favorable impact on employer costs in the future. In addition, this legislation will go a long way to correct the inequitable treatment of injured workers which arises under the present system by improperly enriching some claimants while under-compensating others.

The proposed legislation is a fair compromise which has been carefully worked out over the past year by a joint task force representing both employers and organized labor. It is responsive to the needs of the two partners in any Workers' Compensation system, the injured worker and the employer.

On behalf of the Anchorage School District and all its employees, I urge you to support this legislation without amendments and assist in its speedy passage.

Sincerely,

William Coats
Superintendent

wd
cc Bill Miles, School District Lobbyist

February 4, 1988

LABOR OF COMMERCE COMMITTEE
Senate
Room 101
P. O. Box "Y"
Juneau, Alaska 99811

Dear Senator Kelly:

The purpose of this letter is to express my unqualified support for the passing of Senate Bill 322/House Bill 352.

It is extremely important with the unpalatable condition of the economy that action be taken to improve our Workmen's Compensation System.

I urge you to proceed without delay on the passing of this essential legislation.

Sincerely,

D. T. Dorsey
6135 Eastwood Court
Anchorage, Alaska 99504

DTD/pml

GENERAL CONTRACTORS 6041 MACKAY ANCHORAGE, ALASKA 99518 (907) 563-3021 (ANCHORAGE)
(907) 262-5558 (SOLDOTNA)

HAP

enterprises inc

DEALERS FOR
VARCO-PRUDEN BUILDINGS
A Unit of AMCA International Corporation

9

JANUARY 26, 1988

STATE SENATE
P.O. BOX V
ROOM 101
JUNEAU, AK 99811

ATTN: TIM KELLY

RE : SENATE BILL #322

Gentlemen:

GLOOM & DOOM is the topic of conversation these days and we can attest to that.

There is an important bill that if left in-tact will be beneficial to all employers in the State. We ask that you support that important piece of Workman's Compensation legislation.

Sincerely,

H A Bing Prichard /rjc

H.A. BING PRICHARD
HAP ENTERPRISES, INC.

HAP/rjc

CC: WCCA
Lynn Phillips
2204 Cleveland Ave.
Anchorage, AK 99517

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,

Pepper Smith

ALASKA BUSINESS INSURANCE INCORPORATED

January 27, 1988

Senator Tim Kelly
Alaska State Legislature, Room 101
P.O. Box V (MS3100)
Juneau, AK 99811

Re: Senate Bill 322

Dear Senator Kelly:

We have had the opportunity to review Senate Bill 322 and we believe that this bill should be passed as proposed with minimal interference from the Legislature.

We have attended many of the meetings that preceded the writing of this bill and we know that careful consideration was given to the interests of all concerned parties. The bill, as written, is a compromise to labor, management and the insurance industry. The impact of the bill has been researched and discussed for over a year and any attempt by the legislature to rewrite it for special interests will be counterproductive and will jeopardize the compromises that have already been made.

We believe that this bill will reduce insurance costs thereby making Alaska Labor more competitive. This will result in keeping more people in the State employed and slow down the procurement of goods and services from outside.

Sincerely,

Phillip J. Bressen, Pres.

James W. Campbell, V.P.

Wayne A. Burger, V.P.

1400 Benson Blvd., Suite 410 Anchorage, Alaska 99503
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Phone: (907) 562-2260 • FAX: (907) 563-0644

9

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P.O. BOX V
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Sincerely,

Merrill K. Clark/rjc

MERRILL K. CLARK
DALTA DOOR SALES

MKC/rjc

CC: WCCA
Lynn Phillips
2204 Cleveland Ave.
Anchorage, AK 99517

MR. AND MRS. JOHN MARION
3800 STELLER DRIVE
ANCHORAGE, ALASKA 99517

8,

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

Reduced to simplest terms, passage of S.B. 322 would benefit Alaska.

With labor and management in general agreement on the fairness of the suggested legislation, some negative aspects of current legislation would be removed.

One factor that capital/business cranks into its decision making process before entering a new market is the reasonableness of prevailing workers' compensation laws. Some states have been hurt by overly generous legislation. For example, when the decision to invest was close, new business was slow to move into the state and some businesses moved out because of prohibitive penalties. Illinois and Florida are examples of two states that, a few years back, suffered.

Alaska, for several reasons, could use an infusion of new capital. Lets not risk a negative decision when it is within our power to remove one glaring obstacle.

Sincerely,

John Marion

John Marion
Retired

9

HOFFMAN CONSTRUCTION COMPANY
OF ALASKA

February 4, 1988

Alaska Senate Labor and Commerce Committee
Juneau, Alaska 99881

RE: Testimony in Favor of Workers Compensation Reform Legislation

Dear Chairman Kelly and Committee Members:

Hoffman congratulates the Labor/Management Task Force for their tireless effort over the past year in negotiating and writing House Bill #352.

One of the questions on the Senate Committees' Workers' Compensation Reform Survey is "How much have your rates increased since 1985?" Hoffman's experience is that our rates ballooned by 50% during the same period that we set a State record for General Contractors by working 484,000 hours without a Lost Time Accident at the Eklutna Water Project. Also, during this period, Hoffman and Subcontractors worked 113,000 hours at the Chugiak High School project accident free and we earned the 2nd Safety Recognition Award ever given by the Alaska Army Corps of Engineers for working 60,000 hours accident free at our Elmendorf Air Freight Terminal project.

If having the worst ever Workmans' Compensation rates at the same time as record-setting safety performance, is ironic for Hoffman, it is a disaster for Alaska. We remain in the midst of an anemic economy where both Public and Private development and construction dollars must be stretched as far as possible. Since Contractors have no alternative but to pass these costs along to consumers, too many dollars intended for construction projects actually get spent underwriting this bloated Workers' Compensation system.

The Labor/Management Task Force has done a good job of identifying and developing solutions for the most glaring problems such as:

a. streamlining vocational rehabilitation services.
b. reducing the maximum weekly compensation benefit, thereby, promoting a recuperating worker's desire to return to work.
c. indexing weekly benefits to the lower cost of living in other states thereby reducing the dollars Alaska pumps into these states when a claimant convalesces Outside.
d. structuring a medical fee scale.

3201 "C" STREET SUITE 610 ANCHORAGE, ALASKA 99503 907•561•5578

Hoffman Construction encourages this Committee to introduce and expedite passage of this bill as soon as possible to rollback premimus in the latter half of 1988.

Thank you.

Very truly yours,

E. N. Newman
President

ENN:mg
cc: J. D. Hutchison

February 5, 1988

The Honorable Tim Kelley
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Senator Kelly:

Senate Bill 322, having to do with reform of the present Workers' Compensation laws, is a very important bill to all Alaskan employers. The premiums paid by Reeve have increased 100% in the past several years. But despite this there has been no increase in the benefits available to employees. SB 322 will help reduce the amount we employers currently pay for compensation coverage, but will not reduce the benefits to injured employees.

I urge you to vote in favor of this legislation.

Sincerely,

David A. Jensen
Vice President, Administration

4700 W. INTERNATIONAL AIRPORT RD. • ANCHORAGE, ALASKA 99502-1091

9

KLUKWAN FOREST PRODUCTS, INC.

P.O. Box 34659 · Juneau, Alaska 99803-4659 · 907-789-7104 · Fax: 907-789-0675

February 12, 1988

The Honorable
Mr. Kelly
Chairman & Senator
Department of Labor & Commerce
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Mr. Kelly

Enclosed is a copy of Klukwan Inc.'s position on SB 322. We at Klukwan Forest Product's (a wholly owned subsidiary of Klukwan, Inc.) do endorse the position taken. We would appreciate your support in passage of SB 322 in its original form.

Sincerely,

William A. Thomas, Jr.
Lobbyist

WAT:skw

CLUB
PARIS

9

February 15, 1988

Dear Senator Kelly:

I wish to add my support to the enactment into law SB222 and HB352 which addresses the problem of increasing rates in the Workman's Compensation program. It is my opinion that this legislation will be a start to curb the abuses that are now present in the current system.

I would like to solicit your support for the passage of this legislation.

Very truly yours,

Charles H. Selman

Charles H. Selman

417 WEST 5TH AVENUE, ANCHORAGE, ALASKA 99501

ANCHORAGE
SCHOOL DISTRICT

4600 DeBarr Avenue
P.O. Box 196614
Anchorage, Alaska 99519-6614
AREA CODE [907] 333-9561

February 1, 1988

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

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February 4, 1988

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HAP

9

DEALERS FOR
VARCO-PRUDEN BUILDINGS
A Unit of AMCA International Corporation

JANUARY 26, 1988

STATE SENATE
P.O. BOX V
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JUNEAU, AK 99811

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Lynn Phillips
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DALTA DOOR SALES

MKC/rjc

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Lynn Phillips
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Anchorage, AK 99517

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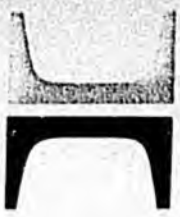
John Marion
Retired

9



HOFFMAN CONSTRUCTION COMPANY
OF ALASKA

February 4, 1988

Alaska Senate Labor and Commerce Committee
Juneau, Alaska 99881

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Dear Chairman Kelly and Committee Members:

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3201 "C" STREET SUITE 610 ANCHORAGE, ALASKA 99503 907•561•5578

Hoffman Construction encourages this Committee to introduce and expedite passage of this bill as soon as possible to rollback premimus in the latter half of 1988.

Thank you.

Very truly yours,

E. N. Newman
President

ENN:mg
cc: J. D. Hutchison

February 5, 1988

Dear Sen. Kelly:

I would ask for your support of HB 352 on the grounds that it is quite possibly the most progressive workers compensation legislation in the country. It attempts to solve many of the welfare dependency problems created with the current law, it will take better care of the more injured worker, it will require doctors and chiropractors to charge reasonable fees, it will increase minimum benefits for those receiving temporary total disability benefits, it removes the adversarial relationship between rehabilitators and workers by only allowing those who can and want to benefit from rehabilitation to be eligible for it, it takes us out of the syndrome where each side masses their own set of biased doctors on each side of a claim in favor of a streamlined system that affords the board the opportunity to use qualified specialists to settle medical disputes, it discourages doctor shopping, it will provide the community with the information to know who the effective rehabilitators really are, it requires that doctors and chiropractors who provide continuous multiple treatments to show a need for such treatment, it makes it unlawful for employers to discriminate against workers who previously received workers compensation benefits, in cases of disputes between inusrance carriers the injured worker still gets paid his or her entitled benefits, it sets minimum standards for individuals providing rehabilitation services, it sets a reasonable standard for stress claims, it reduces benefits to individuals who move out of state to areas where the cost of living is less, it reduces the amount of litigation in the system and streamlines decision making by the board, and if that is not enough, it saves money.

I have been very disappointed that those in opposition to the bill who are taking injured workers and further victimizing them by distorting the facts of the legislation and convincing them that they will be hurt by the bill. The truth is that this bill takes much better care of those truly in need. The only way we could afford to do this though was to reduce permanent partial benefits to those with minor injuries. In total though, we expect very little overall changes in benefit levels paid by employers. The real savings come in the medical, rehabilitation, and legal costs to the system.

Please support this reform package, it, I am sure, is the only jobs bill the legislature can pass that will in fact save the state money rather than cost it money.

Thank you.

Sincerely,

David Gottstein
2621 Kelsan Circle
Anchorage, Ak 99508

Senator Johne Binkley

Senate Finance Committee
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4985

Finance Committee
Co-Chairman

February 12, 1988

The Honorable Tim Kelly
Chairman, Labor & Commerce Committee
Alaska State Senate
P. O. Box V
Juneau, AK 99811

Dear Tim:

Attached please find a letter I received from Chancey Croft on the worker's compensation bill. I am sure you have received the same letter. I am curious as to the accuracy of his assertions. Can you or your staff shed some light on them for me? Thank you.

Sincerely,

Senator Johne Binkley
Yukon-Kuskokwim and
Interior Rivers

jka

Chancy Croft Law Office
738 H Street -- Suite 200
Anchorage, Alaska 99501

Janice

Chancy Croft
Michael J. Jensen

(907) 272-3508

February 5, 1988

RECEIVED FEB 0 9 1988

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

Dear Senator Binkley:

Senate Bill 322 is not going to reduce workers compensation premiums. That is what the NCCI concluded. In fact, it may cause an increase. It's hard to believe. But that is what a national insurance industry funded group just said. Why pass this bill which produces no benefits and reduces no costs? Why not consider the real problems that both injured workers and employers face with the present workers compensation system?

I'm a compensation attorney. Why should you believe me? Because the figures came from the National Council on Compensation Insurance. NCCI is the insurance industry funded group which proposes insurance rates. Its filing of 1987 produced the 25% increase in workers compensation premiums which the State Division of Insurance allowed to go into affect January 1, 1988. The NCCI says the "savings" of the proposed legislation is only 2.3%. This must be a shock to John Lewis, WCCA spokesman, who said in legislative testimony in January that the savings would be 15%-20%. Of course, Lewis conceded he was talking about soft dollars and subjective factors. About Lewis's subjective factors, the NCCI said that this would cause a savings of only four percentage points. Without that, the bill actually provides for an increase.

At the recent statewide hearings on this bill, every injured worker spoke against this legislation. Senate Bill 322 promises the first devisive and bitter fight over workers compensation in more than a decade. Such fights were common years ago. But, for the first time in the memory of legislative observers, a workers compensation bill is being proposed which will offer no benefits to either employers or employees. Stripping away the myth of premium reduction means the only reason for further legislative consideration is the strange notion that it is the legislature's job to ratify, without question or amendment, a "deal" struck by private interest groups.

Very truly yours,

Thank you for your letter of Feb 2. I would appreciate knowing if there is still a great deal of support for SB 322 once people understand that there will be no premium reduction.

CHANCY CROFT

MASON & GRIFFIN
ATTORNEYS AT LAW
550 W. 7th Avenue • Suite 285
Anchorage, Alaska 99501

Robert B. Mason
Admitted in:
Alaska, Texas
Robert L. Griffin
Andrew J. Lambert

(907) 274-5546

February 2, 1988

Senator Tim Kelly
Capitol Building, Room 101
Juneau, AK 99803

RE: Proposed Workers Compensation
Legislation

Dear Senator Kelly:

As you know, I have testified and lobbied that the joint labor management bill will reduce the volume of litigation presented to the Alaska Workers Compensation Board. The purpose of this letter is to point out some specific areas where I believe litigation will be reduced.

This law firm has been in numerous cases over the years where the sole issue was a rate increase from the minimum of $110 to a figure that would fall below the $154 proposed minimum compensation rate. This simple $44 increase in the minimum compensation rate will result in a reduction of litigation, simply because the employees that were claiming wage rate increases from $110 to something less than $154 will no longer have to file a claim, in that they will receive $154.

In regard to medical issues, I think the reliance on the AMA Guidelines to determine employee's permanent impairment, and therefore, his entitlement to permanent partial disability benefits, will reduce the amount of litigation. The AMA Guides provide an objective evaluation format, as opposed to the subjective opinion of a doctor. Even if two doctors have differing opinions, one would have to presume that if the AMA Guides were appropriately applied, they would be very close to each other. A variation of 5 percent could and would be expected, but anything more than that would suggest that one of the doctors misapplied the guidelines, or that the patient performed differently before the doctors. The difference in the demonstration of the patient's physical skills could be because of an actual change in his physical condition for a number of reasons, or because the employee is trying to enhance the value of his claim. There will be litigation over these issues, but it is not going to be as much as it is today. The use of objective standards will

reduce the amount of litigation.

The termination of temporary total disability benefits at the point the employee becomes medically stationary or upon the expiration of two years will also result in fewer cases to be litigated. Under the present system, an employee is still entitled to temporary total disability benefits during the time that the lawyers are arguing about the rehabilitation program. This often takes up to six months or a year to resolve, and it is not uncommon for rehabilitation issues to be litigated over a period far exceeding one year. With the termination of temporary total disability benefits at the end of two years or when the employee is permanent and stable, there will be a renewed emphasis on finding a suitable rehabilitation plan in the shortest period of time possible.

One of the most frequently litigated issues is the disputes over future wage earning capacity. Under the current system, for back injuries or neck injuries, the employee is compensated based on his actual loss of wage earning capacity. The wage earning capacity is established by determining what the employee could have made in the future had he not been injured, as compared to what he will make in the future after his injury. The first of these is very subjective, and the second is often subjective, as opposed to a comparison of actual numbers. When such issues are left so wide open for interpretation, attorneys often get involved. The proposed system would be to pay permanent partial disability benefits based upon the permanent impairment rating in accordance with the AMA Guidelines. This is an objective standard as noted above, and should result in a significant decrease in litigation over permanent partial disability benefits.

The last major areas where the bill will reduce litigation is in the determination of the compensation rate. The changes as proposed will make it a more objective standard, thereby eliminating the need for attorneys. I am not entirely pleased with the language as presented in the portion of the Act dealing with determination of the employee's spendable weekly wage, but it is acceptable.

Thus, it is my opinion that this bill will result in a significant decrease in litigation. I do believe that you will probably see an increase in litigation for a year or two after the bill is passed. This is typical with any major change in a system, in that both sides will want to present their arguments on how the new law is to be interpreted. After a year and a half or two years, the frequency of litigation should begin to decline.

I am not sure why I have worked so hard to make my support for this bill known. It is most definitely going to cost my law firm some business, as the decrease in litigation begins to occur. However, I do think this is the best thing for the system overall.

I do want to present you with one word of caution. The bill takes many of the incentives away for attorneys that represent injured employees. You are directly affecting their livelihood in a significant way. The same is true for vocational rehabilitation counselors and the medical profession in general, and chiropractors in particular. Because of that, I would take any of their testimony with a grain of salt, and determine whether they are testifying from a true belief, or whether they are testifying from a fear that the bill will have a negative effect on their personal income.

I would still like to meet with you in order to discuss the workers' compensation system in more detail. This may not be necessary if the bill will pass largely intact, but if you are encountering opposition, I will be able to provide you with some specific information that you can use to support the bill.

I would appreciate it if you could let my office know when the next hearing in Anchorage is going to be. I will be out of town until February 21, and hopefully, the hearing will not be until after that time. If you have a chance to spend some time with me prior to the next hearing, please let my office know so we can arrange a meeting.

In addition to the above, I have done some work determining exactly what payments would be made under the new system for PPD as opposed to the old system. If you want that information and a further breakdown on how the AMA Guidelines work, I will be glad to provide that to you as well.

Sincerely,

MASON & GRIFFIN

Robert B. Mason

RBM:mrm

MANAGEMENT/LABOR AD HOC COMMITTEE

RESPONSES TO

MEMORANDUM FOR POINTS OF DISCUSSION
DATED FEBRUARY, 5, 1988

We have examined the concerns raised in the above referenced memorandum. For ease of comparison, our replies follow the same sequence as that used in the memorandum.

1. We are also concerned about the "any evidence" standard and have asked that John Lewis provide some direction as to the standard used in other jurisdictions. The concern of both management and labor is with the overly broad interpretation the courts have applied to the "substantial evidence" standard currently in effect. We will hopefully have a recommendation by February 12.

2. Our language was drafted and reviewed by attorneys knowledgeable in the constraints imposed by the courts. It is their opinion that the language will withstand a constitutional challenge.

3. For the system to operate as designed, it must be fair to both the injured worker and the employer. Therefore, providers to the system must provide services free of bias for or against either party. It is our desire that the regulations should allow for a bias free system and providers that exhibit bias will not be allowed to provide IME's or rehabilitation services. Health care providers could still continue to operate in the system if chosen by the employee or employer even if they were not on the list of IME providers.

4. We think that the standard for knowingly making a false statement is sufficiently strict that it will be difficult to abuse by an employer. If an employee withholds information from an employer for any reason, he could be endangering himself or others since he does not know what duties might be called for on a given job. We think that this section is important to the bill.

5. We have recommended to the board that the lists be maintained on a geographical basis to remove a certain amount of the unnecessary expenditures. We are concerned however that if we deal with the concerns expressed, we are losing sight of the needs of the injured worker, and instead place the travel costs of the rehabilitation specialist above the needs of the worker.

6. Under the present system, it is estimated that approximately 90% of those that have been rehabilitated have gone back to their prior occupation. It is our belief that when this occurs, it is not necessary to rehabilitate someone for yet another job should they receive a subsequent injury. They have already received the training necessary to compete in a new occupation and we would encourage them to enter that labor market.

The concerns about the minimum threshold of 60% of pre-injury wages fail to recognize that this is the minimum threshold and it would represent an entry level wage. As skills improve, it would be anticipated that salary levels would increase.

7. Dispute resolution language was omitted by legislative drafting. We have included a rewrite of Section 041 which deals with that and other problems.

8. We have modified the time for the eligibility determination from 60 days to 90 days. The time frames are now consistent with the current statute.

9. We have attempted to remove the rehabilitation section from the litigation process To accomplish this we have put the injured worker in control of his plan, and we have given the administrator the authority to quickly resolve disputes. Since the administrator reports to the board, the board can review his performance on an ongoing basis and accordingly modify the general approach to the job when it does not conform to the guidelines of the board. We believe that this approach is in the best interests of the worker and the system.

10 Employment in this economy is a difficult standard to achieve. Employability is better in that it defines the time when the person is available and prepared to work, and it additionally puts some of the responsibility for the acquisition of a job on the worker.

11. The opposition to the labor market definition is based on misunderstandings. We have established a priority which starts with the area of residence, then the area of last employment, then the State of Alaska, and finally other states. We do not understand the concerns.

12. We have modified this section to include Certified Rehabilitation Counselors. It is the desire of the committee that these specialists be professionals in the area of vocational rehabilitation. That is not the case currently and as a result, both the employee and the employer suffer.

13. See number 6 above.

14. It is the desire of the committee to see that the employee is provided good quality medical care in a timely, efficient manner. Abuses currently exist in the system and we believe that our

language will remedy many of the problems. We think that the suggestion that we allow no more than one change within each speciality does not eliminate the problem. The treating physician can still refer the patient to specialists as necessary.

The concerns regarding the definition of treating physician are inappropriate as the concept is part of the current law and does not cause a problem.

15. See 14 above and 16 below.

16. This section of the bill requires that a treatment plan be submitted if continuing and multiple treatments are prescribed. It seems reasonable that both the employee and employer should know what the physician is intending to do and what he anticipates will happen. The limits on the number of visits was based on the recommendations of experts, but we provided a exception when needed. All the physician would need to do is document the need for additional services. Again we were attempting to deal with abuses to the system.

17. The current statute has no limits at all, therefore we have restricted the frequency of the employer IME. We have modified our recommendation to every 60 days thereafter. It should be acknowledged that the employer is restrained by the costs of such IME's which must be borne by the employer. In should also be remembered that in the case of a dispute, the board's IME will determine the outcome.

18. While no one on the committee was aware of any problems in this area, we have added language which should deal with the concerns expressed. We suggest that when medically appropriate, the IME physician should use already existing diagnostic data to make his determination.

19. Our proposal suggests the adoption of a usual and customary fee schedule. Such schedules are normal in health care plans and under the Social Security System. It does not envision a separate schedule for an employee's physician and an employer's physician.

20. This language merely gives the board the authority to administer the act by hiring experts, be they Alaskans or not.

21. We were concerned about the supreme court giving the presumption to the treating physician in cases where evidence clearly suggests that they were in error. Since the board selected IME will be independent, we believe that giving his opinions greater weight is appropriate.

22. We have added gross incompetence to the language. We do not believe that mispresentation is an appropriate standard and its inclusion will lead to litigation.

23. We do not understand the constitutionality question on this issue. We believe that this standard is legal.

24. See #1.

25. See #2.

26. See #11.

27. It is our belief tha if a person has skills which can be used in the job market, they are not a permanent total disability.

28. We have added language which will clarify our intent. We are suggesting that after two years, a person be tested to determine their degree of impairment and given a lump sum settlement.

29. It is our desire to pay more money for severe injuries and less money for less severe injuries. We have attempted to do so without increasing the overall costs of this section.

30. Medical stability in this section is essential to determine the timing and the degree of permanent impairment Medical benefits are not limited and will continue for the duration of the injury.

31. This secion currently exists as Section 210 of the Statute. We merely moved it to section 200 since it now only applies to that section.

32. We did not receive Attachment 3, so we are unclear as to their concerns.

33. Vested benefits were used to make this section manageable and to recognize that a worker have no legal right to "unvested" benefits. Vesting has nothing to do with union vs nonunion.

34. Workers' compensation was created to deal with work related injuries and should not be seen as the vehicle to address other social goals. The items outlined represent issues that are adequately addressed in other State and Federal statutes.

35. See #30 above.

OTHER ITEMS

1. Our agenda for 1988 includes a review of the Division of Workers Compensation. We are particularly interested in the timely resolution of a workers' compensation claim and will examine both the delays caused by the system and those caused by the employers or employees attorneys.

2. We believe that our proposal will include system modifications which will result in cost savings of at least 15%. We hope the insurance community will concur and ask for a rate reduction effective July 1.

3. Issues regarding the insurance industry were not addressed in this bill because of the complexity of the problem. We will be addressing these issues in 1988.

4. This problem is particularly difficult since the courts have held that the contractors insurance carrier is liable when the sole-proprietor has a work related injury The insurance company takes the position that they need to collect premiums to cover the risk and accordingly charge the contractor

5. Final billing after audit is necessary to make sure that adequate premiums are collected for the actual wage exposure. Quotes given at the initiation of the policy are based on the employers estimates of wages by classification, and if accurate will result in no additional premiums. Unless insurance companies are given the ability to audit payroll records, everyone will underestimate payroll and the system will become even more chaotic.

6. We will examine this when we examine the insurance company, but an "all states rider" does not eliminate the Alaska rates. They will be charged during the audit on the policy. We believe that the problem comes from misrepresenting and misclassifing payroll and the insurance carrier not catching the problem at audit.

7. We would have no problem with such an amendment to the unemployment law.

SUGGESTED CHANGES TO LEGISLATION

Page 2, Line 4 The department shall [may] adopt [identical]

Page 2, line 7 , and shall [may]

Page 13, Line 5 commencement of such ...

Page 13, line 24 board. When medically appropriate, the IME physician should use already existing diagnostic data to make his determination.

Page 14, Line 22 board. In no event shall the injured worker be responsible for any fees in excess of those determined by the board.

Page 15, Line 4 treatment, the ability to enter a re-employment services plan, ...

Page 15, Line 16 fraud, or gross incompentence.

Page 18, Line 29 or death [for a recipient residing in the state]

Page 19, Line 7 wages. If the employer can verify that the employees spendable weekly wage is less than $154, the employer can pay the lesser amount without board order.

Page 19, line 20 cost of living index of the state [locality]

Page 19, line 21 cost of living index of Alaska [the state]

Page 19, Line 25 if the gross [average] weekly earnings [wage]

Page 20, Line 5 for Alaska [the state] and other states [localities] ...

Page 20, line 19 the state of Alaska or the state of residence

Page 21, Line 27 percent. If an injury cannot be rated by use of the American Medical Association Guides, the Manual for Orthopedic Surgeons may be used.

Page 21, Line 28 supplemental recognized schedule.

Page 22, Line 19 stability.[, unless otherwise provided under AS 23.30.041.]

Page 27, line 4 APPLICABILITY Except for sections 5, 18, 20, and 21, this....

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 <u>total control</u> 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. <u>You are guilty until you prove yourself innocent!</u>

* *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. <u>It is highly discriminatory, and will seriously jeopardize your ability to seek health care as an injured worker.</u> 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.

Chiropractors Handout

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John —

Adrian Barber —
Chiropractor — Anch.
562-5566

please call — 9:15 —

BILL SB DELAYED - SIGNED - INPUT FROM OTHER GROUPS.

BILL WON'T SOLVE PROBLEMS

EMPLOYERS & KNOW WHAT'S GO SOMETHING SIMILAR TO PPAC ON INSURANCE COMPANIES

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.

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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

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.

P.O. BOX V, JUNEAU, AK 99811 (907) 465-3822 • P.O. BOX 210001, ANCHORAGE, AK 99521 (907) 278-3284

* 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

SAMPLES FOR POSTCARDS

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Finally, in this instance, the language should say insurance carrier or employer instead of employer. Again it is a question of avoiding delays in the process.

23.30.041 (h)

After the first sentence (after the word "approved"), add "by employee, rehabilitation specialist, and employer or insurance company."

Again, Alaska National makes a good faith effort to comply with the intent, spirit and letter of workers' compensation laws. Our claims adjusters deal with these matters daily and [illegible]. Their input into a reemployment plan is vital and will have an overall positive effect on the program.

Maybe

23.30.041 (k)

Consideration could be given to [illegible] the two year benefit period. I assume the language also implies a limit of two years on the rehabilitation plan. We have found the current 52 week limit (with extension of another 52 weeks [illegible]) to be reasonable. In practice, we have [illegible] and have voluntarily extended the period beyond [illegible] limit [illegible] nature of the case.

23.30.095 (k)

In those cases involving a medical dispute, I believe the decision process would be enhanced if the independent medical examiner consisted of a panel of three physicians.

23.30.155 (m)

Alaska National will make every effort to comply with all reporting requirements. In order to allow adequate time to change computer systems and other internal procedures, [illegible] reporting period be for calendar year [illegible] instead of March 1.

OK

Considerable effort is expended after each year end to meet current regulatory reporting requirements to the Division of Insurance, National Association of Insurance Commissioners [illegible] which also have a March 1 deadline.

23.30.175 (b)(1)

It is recognized that the cost of living adjustment, if constitutional, will produce some savings in the system. Unfortunately, it will also cause an extra administrative burden in making annual adjustments to all claimants.

One idea that we had was to pattern the out of state differential similar to the current Alaska State Employees Retirement Plan wherein a 10% bonus is paid to retirees who remain in Alaska.

A similar approach could work here by changing the percentage of the employee's spendable weekly wage from 80% to 70% and then adding a provision which would provide an additional 10% to those employees who remain in Alaska.

23.30.190

I do not care to make any specific recommendation except to point out the fact that the greatest potential for savings is here. The rate impact of a downward adjustment of the $240.00 at a greater degree of impairment to reach a 100% adjustment factor can be readily measured by an actuary and is the most likely area to result in decreased costs.

23.30.265 (15)

To prevent an unearned windfall to attorneys we suggest the following new section after section 15:

"No attorney fees will be due and owing on these benefits unless the insurance carrier fails to calculate and pay the benefits under this statute within 21 days after the wage information is presented to them."

Our current practice is to pay the minimum benefit immediately until we receive wage documentation from the employee. In those cases, we do not believe it is appropriate to pay attorney fees when an attorney unnecessarily submits the wage information to us after we have first notice of same.

As we discussed previously, Alaska National will certainly support a rate reduction which can be attributed to "easy" to file savings as determined by the actuaries. We have a problem, however, with arbitrarily attributing such savings to the essentially "easy" medical items for which no reputable actuary is willing to adjust.

I am well aware that the intent of the drafters of the bill is to produce savings from the subjective provisions. Under an ideal environment along with favorable determinations by the Board and Court system, some of the savings may be realized.

However, I refer you to pages 8, 9 and 10 of the Workman & Robertson report, which details some legitimate concerns four of which you have addressed in the Committee Substitute which could lead to an increase in costs rather than a savings.

During my visit to Juneau last week, I heard some discussion of a mandated rate reduction. Historically, it can be demonstrated that the insurance industry is notorious for bringing on its own price wars when rates become adequate. This situation occurred just a few years ago in Alaska and rates have weakened in several other lines currently. When workers compensation [illegible] to return profitably to Alaska, like night follows day, you can be sure that individual companies will utilize rate credits to get the business.

To artificially reduce rates without justification will not only adversely affect market availability, it will have a negative impact on those companies which continue to maintain a market.

In 1987, the Alaska insurance industry was assessed $[illegible] by the Alaska Insurance Guaranty Association to pay claims of insolvent carriers. This number does not include a potentially much larger assessment if the Pacific Marine Insurance Company can be liquidated. For the workers compensation line alone, we anticipate an assessment equal to the full 2% of written premium in Alaska for 1988 and many years to come.

Contrary to the opinion of some people, the insurance industry does not capriciously view its role as a cost plus concept. We are well aware that workers compensation must [illegible] to a reasonable level so that employers other lines [illegible] our service. At Alaska National we have [illegible] ultimately it must be the legislature who determines what the reasonable level should be.

Finally, these comments represent only the opinions of Alaska National, are presented to you in the belief that they may be helpful in your final evaluation of the bill, and are not intended for distribution to others or to be quoted [illegible].

If I can be of further assistance, please advise.

Yours truly,

James F. Pfeifer
President

STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : 2/22/88

REQUEST

Bill/Resolution No. : CSSB 322 (L & C)
Title : An Act relating to worker's compensation and providing for an effective date.
Sponsor : Senate Labor & Commerce
Requestor :
Date of Request :

FISCAL DETAIL

Agency Affected : Labor
BRU : workers' compensation

Components : workers' compensation

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92	FY93
PERSONAL SERVICES			0	0	0	0	0
TRAVEL							
CONTRACTUAL							
SUPPLIES							
EQUIPMENT							
LAND & STRUCTURES							
GRANTS, CLAIMS							
MISCELLANEOUS							
TOTAL OPERATING			0	0	0	0	0
CAPITAL							
REVENUE							

FUNDING : (Thousands of Dollars)

GENERAL FUND							
FEDERAL FUNDS							
OTHER							
TOTAL			0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : John Ringstad
Division : Senate Labor & Commerce Committee
Phone :
Date : 2/22/88

Approved by Commissioner :
Date :
Agency :

Distribution (by Agency preparing fiscal note) :
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

3/16/88

MEMORANDUM State of Alaska

TO: Jacque McClintock, Director
Workers' Compensation Division

DATE: February 22, 1988

FILE NO:

TELEPHONE NO: 465-4500

FROM: Chuck Caldwell, Chief
Research and Analysis

SUBJECT: Runzheimer and
Cost of Living

I have completed a review of the technical material provided by Runzheimer and Company Inc. regarding their methods of determining relative cost of living for states. Furthermore, I contacted the Bureau of Labor Statistics to determine if there were other companies providing this information.

Only two comparative cost of living data series are widely accepted. Runzheimer's and the American Chamber of Commerce Researchers Association (ACCRA) Inter-City Cost of Living Index.

Characteristic	Runzheimer	ACCRA
Coverage	Statewide with weighting by city size. This would simplify the administration of payments.	Separate indices for 264 cities, without any overall data at a statewide level.
Market Basket	No total count of items is available, but 130 are included in the goods and services category alone. The housing category is also extensive.	Sixty items in the market basket total.
State and Local Taxes	Included.	Not included.
Support in future court cases.	Will provide expert testimony in court.	Will not provide expert testimony in court.
Cost	$50,000 for the first year, and $46,000 for subsequent years.	$75 per year.

Attached is a memo which provides detail on the cost savings associated with reducing out of state Workers' Compensation payments by the relative cost of living.

MEMORANDUM State of Alaska

TO: Chuck Caldwell, Chief
Research & Analysis

Sally Saddler, Research Supervisor
Research & Analysis

FROM: Jeff Hadland, Labor Economist
Research & Analysis

DATE: February 22, 1988

FILE NO:

TELEPHONE NO: 465-4500

SUBJECT: Impact of Reducing Out-of-State Worker's Comp Payments for Cost-of-Living

Jackie McClintock requested that we analyze out-of-state worker's compensation claimant information to determine the possible savings that might accrue if out-of-state payments were reduced by a reliable interstate cost-of-living adjustment factor.

Findings

1) As of February 16, 1988 an estimated $12.35 million would have been paid to out-of-state residents that were disabled in 1985, 1986 and 1987 if payments (weekly pay rates) were capped at $700. (Note: claimants with incomplete residence information are excluded from this analysis.)

2) When the worker's compensation payments (weekly pay rates) are adjusted by an interstate cost-of-living index, the estimated total payment amount is reduced by $2.55 million (26 percent reduction for the three year period). This assumes that the weekly pay rate was capped at $700 after the cost-of-living adjustment was made.

3) An additional $137,000 savings over three years might have been achieved if the cost-of-living adjustment was applied to a weekly pay rate that was capped at $700 before applying the cost-of-living adjustment. Table 1 contains the actual estimated figures summarized above.

Procedure

Worker's compensation records used in this analysis had injury dates in 1985, 1986 and 1987, and had accurate state of residence information. A total of 2,259 individual records (payment histories) met these criteria.

The cost-of-living adjustment factors were based upon an unweighted simple arithmetic mean of the Inter-City Cost of Living Index of all cities in a given state. This information is published by the American Chamber of Commerce Researchers Association (ACCRA). The ratio of the state's cost-of-living index to Alaska's index was used to adjust the pay rates. This information is listed in Table 2.

Limitations

These data are the best interstate cost-of-living differential information available without cost at this time. Runzheimer and Company Inc. can provide cost-of-living data that are even more comprehensive, and weighted

for statewide indices. Any significant changes in the indices for Washington, Oregon and/or California will have a large impact on the cost savings estimates since those three states comprise the vast majority of out-of-state claimants.

Table 1
Total Estimated Out-of-State Worker's Compensation Payments
For Injuries in 1985, 1986 and 1987 as of 2/16/88
With and Without Interstate Cost-of-Living Adjustments

Cap Weekly Payment at $700 After
Cost-of-Living Adjustment

Year	Base Case	Cost-of-Living Adjusted	Savings
1985	$7,638,285.16	$6,020,463.00	$1,617,822.16
1986	3,590,696.77	2,837,612.86	753,083.91
1987	1,125,077.02	945,148.58	179,928.44
Total	$12,354,058.95	$9,803,224.44	$2,550,834.51

Cap Weekly Payment at $700 Before
Cost-of-Living Adjustment

Year	Base Case	Cost-of-Living Adjusted	Savings
1985	$7,638,285.16	$5,927,363.47	$1,710,921.69
1986	3,590,696.77	2,796,523.99	794,172.78
1987	1,125,077.02	941,709.12	183,367.90
Total	$12,354,058.95	$9,665,596.58	$2,688,462.37

Table 2
American Chamber of Commerce Researchers Association
Inter-City Cost-of-Living Indices [1]
and Ratio of State Index to Alaska Index

STATE	INDEX	RATIO
AL	94.80	.71
AR	91.30	.69
AZ	106.40	.80
CA	111.70	.84
CN	119.20	.90
CO	94.40	.71
CT	119.20	.90
DC	133.20	1.00
DE	102.70	.77
FL	102.30	.77
GA	98.50	.74
HA	132.60	1.00
HI	132.60	1.00
HW	132.60	1.00
IA	97.10	.73
ID	92.90	.70
IL	103.50	.78
IN	96.30	.73
KS	93.50	.71
KY	95.60	.72
LA	98.40	.74
MA	135.00	1.02
MD	105.70	.80
ME	96.90	.73
MI	102.70	.77
MN	100.90	.76
MO	92.70	.70
MS	92.10	.69
MT	97.60	.74
NB	93.00	.70
NC	99.50	.75
ND	95.80	.72
NE	93.00	.70
NJ	107.00	.81
NM	101.00	.76
NV	105.10	.79
NY	107.00	.81
OH	97.70	.74
OK	97.00	.73
OR	99.80	.75
PA	103.70	.78
SC	95.90	.72
TN	94.30	.71
TX	97.90	.74
UT	92.70	.70
VA	104.10	.79
VT	122.20	.92
WA	97.80	.74
WI	95.50	.72
WV	97.30	.73
WY	92.00	.69

[1] The state index is the unweighted simple arithmatic mean of the inter-city cost-of-living index in a given stste; published by the American Chamber of Commerce Researcher's Association (ACCRA).

ALASKA
COMPUTERIZED BUSINESS SERVICES
840 WEST 36TH AVENUE • SUITE 4 • ANCHORAGE, ALASKA 99503
PHONE (907) 561-1817

February 18, 1988

Sen. Tim Kelly
P.O. Box V
Capitol, Room 101
Juneau, Ak. 99811

Dear Sen. Kelly,

Along with the increase in Workmens Compensation rates, we have experienced a very large increase in the rates the employers' have to pay for the unemployment tax. Much of this increase is due to the unfair way the state computes their rates. At present, the state only uses the declining level of wages method of determining individual employer rates. The level of claims against an individual employer are not even considered.

Please refer to the attached copy of a letter we received as a reply to my appeal to the Division of Employment Security. My justification for the appeal has been quoted in their reply. Also, please note that we had a fifteen (15) day period from the date of their letter in which to initiate a hearing to appeal our case. The letter is dated January 19, 1988 and was received in our office on February 3, 1988. We did not even get a legal chance to appeal the decision.

I would like to add that the rate for our small company of three (3) people is 4.28% on the first $21,100.00 of wages or $903.08 per employee. This total of $2709.24 is very high. In the present economy, some months we have not been able to even pay the two (2) principal partners their salary, which results in additional declining wage rates and again a higher employer rate. These high rates just add to the present problem of staying in business. We have had as many as nine (9) employees, but never laid anyone off, we just simply did not replace them as they left.

The state could help our economy right now by funding the Unemployment Fund and giving the employers some relief in reduced rates. It would help in cutting our high operating costs and hopefully not have to lay off anyone.

Thank you for your time.

David J. Parnow
Vice-President,
Ak. Computerized Business Services, Inc.

STATE OF ALASKA

DEPARTMENT OF LABOR

DIVISION OF EMPLOYMENT SECURITY
AFFILIATED WITH U.S. EMPLOYMENT SERVICE

STEVE COWPER, GOVERNOR

P.O. BOX 3-7000
JUNEAU, ALASKA 99802-0700
PHONE: (907)465-2757
Status Unit

264-2462

January 19, 1988

Mr. David J. Parnow
Alaska Computerized Business Services
640 West Thirty-Sixth, Suite 4
Anchorage, AK 99503

Dear Mr. Parnow:

ACCOUNT #0000358045

Alaska's economy has had a bad jolt this last year. The number of people claiming unemployment benefits was very high, and the unemployment fund level became very low. Hopefully, the rebuilding process has begun and our economy will see better times. The average employer rate in Alaska increased .8 percent, and the employee share increased .1 percent.

We have received your letter dated December 14, 1987, in which you request a redetermination of your Employment Security contribution rate for 1988.

You have set forth the following reasons in support of your request:

> "Our firm only has three (3) employees and in the fourth quarter of 1986, the two (2) main employees did not receiver ANY pay during the last months of the quarter due to the economy and no cash flow.
>
> "This rate is far in excess of other employers who have a much higher turnover rate of employees. I know this for a fact, because we provide payroll services for several employers around the state. Please check your claims against our company and you will find very few. Our declines in the past are not a result of laying off employees but a reduction of salaries and bonuses. I also take leave without pay during the summer months so I can go commercial fishing, this creates another decline in two (2) quarters during the year.

Received 2-3-88

07-G7LH

> "For a small business such as ours, we will have to pay close to $3000.00 in 1988. This is a severe hardship in our present economy and might cause layoffs or contribute to the closing of the business, resulting in more expensive claims made for unemployment."

Alaska Statutes provide a formula for establishing twenty-one contribution rates based on the cost of benefits, the declining level of wages, and the solvency of the Trust Fund.

You have indicated that you understand the determination of individual rates based on experience with quarterly declines.

Neither the turnover rate, reduction of salary, failure to pay employees, nor claims against wages paid by an employer is a factor in determining an employer's assignment to one of the twenty-one rate classes.

We regret to inform you that no basis can be found to grant the relief you have requested. Therefore, your application is hereby denied.

This notice will become final unless, within 15 days from the date of this letter, you initiate a formal request to the Commissioner of Labor to be granted a reasonable opportunity for a fair hearing, stating your reasons for the appeal. The appeal may be filed by mail to the Commissioner's Hearing Officer, Box 1149, Juneau, AK 99802.

Sincerely,

Harry Sturrock

Harry Sturrock, Supervisor
Accounts and Contributions

3-16-88

Tim Kelly
p.o. box v
Juneau Ak. 99811

Dear Tim,

Thank you for your letter of 3-10-88. I guess what I really don't understand is, when a worker is injured why should that worker lose anything? After I was injured I immediatly lost approx. two hundred dollars a week in wages, I also lost all of my benefits. With that kind of a loss my wife and I had to move to Portland as we no longer could afford to live in Alaska. My Dr. had already told me that I couldn't return to my trade. While we here the first winter I almost begged for some kind of retraining but all I got was reams of reports.The follwing April I had a chance to go to work at a cold storage at Douglas Alaska and learn how to be a refrigeration engr. This position would have eventually paid close to what I was making when I got hurt. I asked the ins. co. for financial help to get there but they declined. We went ahead and took our savings to go there. I spent fifteen months trying that job but it was just to much for me phyiscally and I was let go. As that ment taking another cut in pay we again had to come back to Port.. It was a gamble that cost us $3800.00 and the ins. co. nothing! Out of all the dealings I had with nine rehab. people I went on one job interview. I personally don't believe in big pain and suffering awards but, I don't think I should have to lose anything either. It would seem to me that I'm losing a lot of rights here. If you were injured on the job would you lose a dime in wages or your benifits? I doubt it. I stand to lose hundreds of thousands of dollars between now and the time I retire and my s.s. benefits will be affected to. My crime for all of this? Working with a defective crane.

Thank you,

Pete

Pete Weyhrich
3317 S.E. 159th
Port. Or. 97236

Boyko, Davis, Dennis,
Baldwin & Breeze
Attorneys at Law

February 17, 1988

Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, AK 99811

Dear Legislators:

Once again the issue of tort reform is being raised in the Legislature and once again you will have to be making decisions regarding that issue. Therefore I would like to share some of my thoughts on this subject with you.

First it might be helpful if "tort reform" were defined. As you are aware there are many different parts to "tort reform": abolition of punitive damages, limiting attorney's fees, placing a cap on "non-economic" damages, abolition of joint and several liability and miscellaneous other provisions that have been proposed over the years. Each legislative session, "tort reform" takes on a new meaning depending on what has been proposed. This years proposals are found in SB 211.

In 1986 the Legislature accepted the proposition that tort reform should be enacted and changes to the civil justice system were made even though the opponents vigorously argued that the insurance crisis would end when the insurance industry adjusted its investment practices to be more profitable. Time has proved the opponents to "tort reform" correct. At least certain insurance lines have registered price reductions, Allstate and State Farm have reduced auto insurance premiums. In my opinion the price reduction is a result of changes within the insurance industry and the financial world, rather than with tort reform. Thus, we do not need any further "tort reform" now.

Unfortunately because the Legislature has not passed laws regulating the insurance industry and compelling accurate and regular reporting requirements, neither you nor I can state with certainty how much money the insurance industry makes or loses and where it is made or lost. I would urge you to not change the tort system until accurate reporting requirements are in place for the insurance industry, so any additional changes can be based upon facts rather than hysteria promoted by the insurance industry.

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If we study the various aspects of the tort reform legislation that are currently pending in SB 211, we see many of the same issues which were raised in 1986 and addressed by the legislature at that time. The objections to these issues are the same now as then. I believe it is worthwhile for me to address each provision of SB 211 as it is currently proposed.

The first provision of SB 211 is to place a $100,000 cap on non-economic damages. This provision effects only a few individuals out of the total number but they are the most seriously injured.

The cap idea is aimed at the concept that juries regularly lose their mind and award huge sums where there is minimal inconvenience to the injured plaintiff. This is simply not true. Judges have the power of "remittitur" to reduce verdicts which appear to be excessive and they regularly exercise this power when they feel the jury award is too high. If the trial judge fails to do so it is appealed to the Supreme Court as an excessive verdict and the Supreme Court reduces the verdict. Of course, the appeal takes years and the plaintiff receives no money during the appeal period. There is simply no need to place a cap on non-economic damage awards to bridle juries.

Another argument for a "cap" is that no amount of money can replace a person's loss of enjoyment of life or pay them for the physical and emotional distress they have suffered and any award by a jury is very subjective. That is true. So does that mean that seriously injured people are simply to suffer in silence while healthy tort feasors do not pay their bill? If that is an acceptable social balance, then we should simply abolish the tort system altogether and when someone suffers an injury they would automatically be placed on welfare for as long as they are disabled and all of their creditors, including the doctors and hospitals which provided them with health care, should be prevented from attempting to collect their "just debts".

The distinction between economic and non-economic damages could be characterized as damages necessary to pay society's debts versus damages to pay personal debts; society's debt being wages and other payments which are necessary to pay for groceries, medical services, mortgage payments and other consumer goods, and personal damages being to compensate him for physical and emotional pain and suffering, permanent disfigurement and loss of enjoyment of life. Non-economic damages could also be viewed as damages awarded to the individual to pay for the inner-hurt which he will suffer for the rest of his life.

As every single person who has suffered a personal injury can tell you these damages are no less significant damages than economic damages. This was once again pointed out to me when I was recently visiting with a physician friend of mine whose wife suffered a "soft tissue injury" (whiplash) a year ago. This lady who is about 35 years old, is the mother of two very active children. She was in good health at the time of the accident but for the last year and a half she has suffered headaches and back-aches which have limited her physical activity. She has been unable to engage in activities with the family like she had previously and she is generally depressed over the whole situation.

About 4 weeks ago the insurance adjustor called her up and offered her $5,000 to settle her claim. My friend arrived home to find his wife in tears with the frustration, pain and the insult that she felt had been perpetrated upon her. He shared her indignation. When he asked me if offering $5,000 for a case of this nature was typical of an insurance company I assured him that it was. He conceded that this experience has certainly given him a different perspective on what it is really like to be the victim of an accident and the victim of insurance company insensitivity.

All of the damages my friend was complaining about, pain and suffering, inconvenience, loss of enjoyment of life, and frustration in dealing with the insurance company are non-economic damages. But, of course SB 211 will not prevent my friend's wife from collecting her non-economic damages because her damages would not exceed $100,000, though she would probably be willing to pay more than that to have her health back.

An example of a person who would be seriously hurt by the passage of SB 211 is one of my clients. I represent a State of Alaska employee who was severely injured in December of 1983 when an air traffic controller cleared a Japan Airlines 747 tc land on the same runway where he was operating a pickup truck. As a result of the collision my client suffered horrendous injuries, including loss of body parts, severe loss of body function, permanent disability from ever working again, permanent disability from ever performing the physical activities which were so important to him, being in constant pain and having to take pain medication to cope with the pain. His marriage and family life have been stressed beyond belief though both the marriage and family still stick together.

Workers Compensation benefits pay his medical expenses, rehabilitation expenses and a portion of his living expenses. The workers compensation benefits are several hundred dollars less than his pre-accident take home pay. Because of his disabilities his living environment had to change from a cramped mobile home to a more expensive but more livable home. Furthermore at the time of the accident his wife was 8½ months pregnant and they have the added expense of a child who is now 4 years old. Though my clients' expenses increased over the last 4 years due to medical reasons and a change in his family circumstances, his workers compensation benefits which were based upon pre-injury earnings, have not. Fortunately, as a State employee, my client had selected a disability program as one of his optional state benefits. Therefore, the family does receive enough money between workers compensation and the disability program to barely make ends meet. They would be on welfare if the disability insurance program which he paid for as an employee hadn't been selected by him.

The federal government made a settlement offer that was totally inadequate (it wouldn't even cover the economic damages) one week before trial. The trial, before U.S. District Court Judge Holland, which started just about 3 years after the accident, was limited to the issue of damages and lasted approximately ten days. Because this was a claim against the Federal Government under the Federal Tort Claims Act my clients were not entitled to a jury trial. After the December 1986 trial was concluded months of delay followed. Judge Holland finally scheduled a closing argument on August 13, 1987 after doing an indepth review of all of the evidence presented in December 1986. Following the final argument a final judgment was entered by Judge Holland. He made awards as follows:

Mr. C:	
Future Medicals =	$ 606,369.51
Loss of body parts or functions =	824,680.00
Net Economic Damages =	1,066,668.76
Physical and Emotional Pain & Suffering	1,226,000.00
Loss of Enjoyment of Life (past and future)	342,500.00
Total Judgment For Mr. C	$4,066,218.27
Mrs. C:	
Nursing Services	$ 6,242.40
Loss of Consortium (past and future)	402,000.00
Total Judgment For Mrs. C	$ 408,242.40

State Of Alaska:	
Disability Payments in lieu of wages	$ 49,539.24
Permanent Partial Disability	43,320.00
Medical Costs	422,440.92
Total Judgment For State of Alaska	$ 515,300.16

The Government has now filed an appeal to the Ninth Circuit even though Judge Holland's award was less than a case with similarly serious injuries affirmed by the Alaska Supreme Court. That case Exxon v. Alvey, 690 P.2d 733 (Alaska 1984), was tried to a jury in State Court resulting in a $7 million dollar verdict which Judge Souter reduced to $5 million dollars by a remittitur because he believed it was excessive.

I anticipate that the Ninth Circuit Court of appeals in my client's case will affirm Judge Holland's decision and my clients will see the first dollars from the guilty tort feasors (the United States Government) some six years after his injury. It can be borne in mind that neither my client, I nor the state of Alaska have seen one red cent to date.

If the SB 211 cap were applicable to my clients case, Mr. C would receive $606,369.51 for future medical expenses, $1,066,668.76 for future wage loss and $100,000 for all other damages. As you can see non-economic damages for Mr. C total $2.4 million. If SB 211 is enacted placing a $100,000 cap on non-economic damages and if it were applicable to Mr. C, he would receive $100,000 for his loss of enjoyment of life, for his physical and emotional pain and suffering for his permanent disfigurement and his lack of bodily function. He would receive $100,000 for his "personal damages", for the damage to his life.

Mrs. C would receive $6,242.42 for nursing service and $100,000 for loss of consortium. This lady has been through pure hell being 8½ months pregnant at the time her husband was severely injured, not knowing whether she would be a widow or not, and maintaining a vigilance at the hospital for virtually months while Mr. C clung to life. Furthermore, she has stayed with Mr. C and will stay with him the rest of her life. Their life together is very significantly different than it would have been but for the accident. Her damage is certainly worth more than $106,000.