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WCCA

For Release October 14, 1987

Contact: Steve Haag
344-1577

ALASKAN BUSINESSES FACE 25 PERCENT INCREASE IN WORKERS' COMPENSATION INSURANCE RATES

Alaskan businesses will be faced with an average 25 percent rate increase in the cost of workers' compensation insurance effective January 1, 1988, according to the director of the state Division of Insurance, John George. George made the announcement at a recent seminar sponsored by the Workers' Compensation Committee of Alaska.

Employers are required by law to carry workers' compensation insurance to pay for the medical costs and lost wages incurred by employees who are injured on the job. Employees do not contribute toward the cost of the insurance.

"Based on the paid loss method of determining what the workers' compensation rate increase will be effective January 1, 1988, the average will be an increase of 25.1 percent. That's not good news," George said.

The 1988 average rate is almost double the 1987 rate increase of 14.3 percent. In 1987 industries such as construction, manufacturing and oil and gas experienced increases of almost 40 percent. George says the continuing increases are founded in losses via claims incurred by insurance companies.

- more -

"Payrolls have been going down in Alaska for the last few years. One would expect that the losses incurred by carriers would also be going down," George said. The opposite is true.

George noted that workers' compensation claims totalled \$70 million in 1983, \$89 million in 1984, \$124 million in 1985 and \$150 million in 1986 despite a decreasing payroll base.

He said the rate hike this coming year could have been even higher since one method of calculating rates showed Alaska facing a 58 percent increase. "We insisted the national rating company use the method that came up with the lowest increase," George stated.

He added that the Division of Insurance ran its own calculations and predicted a 25-30 percent rate hike was legitimate. "We're fairly confident that the 25.1 percent is a legitimate number. It is an unfortunate number," George said.

Steve Haag, President of the Workers' Compensation Committee of Alaska, said the rate increase is bad news for Alaskan businesses already impacted by slow economic growth. "Without a doubt I can say some of the businesses here today will not be here several months from now and the skyrocketing insurance rates will be a major cause of that," Haag said.

George agreed that the rate hikes will have a negative impact on Alaskan employers and employees. "We recognize the problem it is causing employers and employees. We recognize it makes Alaskan employers non-competitive with employers in other states who come up and do the work with an all-states endorsement on their policy," George stated.

George encouraged employers and employees to examine the factors that affect rates to determine if the benefits are appropriate and if employers can legitimately afford to pay the cost of those benefits.

"I don't think anyone wants to deprive a truly injured worker of his due benefits," George stated, "Yet we're getting to a point where employers just can't afford to keep paying, insurers can't afford to keep selling insurance if they can't charge an adequate rate and we end up at a place where you can't have a business in Alaska employing people."

WCCA reorganized last winter after the 1987 rate increases were announced. The organization is currently examining all aspects of workers' compensation law in an effort to prepare a reform package for the legislature in 1988.

"I think this group is doing a good job of looking at the things that go into making up the losses to see if there are appropriate adjustments," George said. "I think it's outstanding that we finally have gotten the employers and employees together to do this."

George said the Division of Insurance would hold two public hearings in Anchorage on the rate increases. They will be at the Loussac library from 1-4 p.m. and 7-10 p.m. Friday, October 23.

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WCCA

For Release
October 23, 1987

Contact: Steve Haag
344-1577

1988 Workers' Compensation Increases Hardest on Oil and Gas Industry

The oil and gas industry can expect workers' compensation insurance premium increases of as much as 68 percent beginning January 1, 1988 according to State Division of Insurance Deputy Director Don Koch. Koch unveiled the official increases during two public presentations Thursday in Anchorage.

The average rate increase for all businesses will be about 25 percent with ranges depending on the specific type of business. Rates are broken into four general classes with the following average and range increases:

	Average	Range
Oil and Gas	43%	18% to 68%
Contracting	29%	4% to 54%
Manufacturing	10.5%	-14% to +36%
All Other	17.6%	-7% to +43%

The rate hikes will mean Alaskan businesses will pay about \$38 million more in 1988 for workers' compensation insurance.

"This filing could not have come at a worse time," Koch said while warning there may be more bad news in future years if the system remains unchanged. "I have a suspicion these rates will still be somewhat inadequate. The filing we had last year was absolutely deficient."

Koch referred to the fact that workers' compensation losses have more than doubled in the past four years, from \$71 million in 1983 to over \$150 million in 1986 despite a drop in overall state payroll to pre-1982 levels.

The rate increase is the result of an analysis conducted by the National Council on Compensation Insurance, an organization responsible for analyzing insurance rates in 32 states. NCCI actuary Mark Mulvanney explained that much of the rate increase came from workers' compensation claim experience in the past few years.

Between 1979 and 1986 wages in Alaska rose about 30 percent while hospital costs escalated 80 percent and other medical service costs skyrocketed 90 percent. The most recent year analyzed, 1986, showed medical costs inflated by 6.8% while indemnity payments showed an inflation rate of 30.2%. Indemnity costs include payment of wages while recovering from an injury.

"The new experience figures that came in were a lot worse than past years. We are seeing basically the same numbers and types injuries but paying more for lost time and wages. A lot of that has to do with the change in the economy in 1986," Mulvanney explained.

While not formally adopted by the Division of Insurance, Koch said he recommended that the Director of Insurance accept the rates as adequate and not excessive nor discriminatory.

Koch explained the Division only reviews the rates to determine if they are adequate under the current benefit system which is administered by the Division of Workers' Compensation. The House of Representatives Labor and Commerce Committee has planned a public hearing in Anchorage for November 12 to review the entire workers' compensation system and statutes. # # #

WCCA

THE WORKERS' COMPENSATION COMMITTEE OF ALASKA, INC.

The Workers' Compensation Committee of Alaska, Inc. is an organization of business persons who are determined to reduce the budget-breaking costs of workers' compensation insurance.

Compensation rates will increase as much as 65 percent in 1988.

Even while business volumes and numbers of employees drop, many businesses are experiencing insurance rate increases. In a shrinking economy, these increased costs can no longer be passed on as part of overhead and are threatening the viability of Alaskan jobs and businesses.

WCCA includes representatives from:

Arco
Standard Alaska
Associated General Contractors, Anchorage Chapter
The Municipality of Anchorage
Klukwan Inc,
Northern Air Cargo
Hickel Investments
Enserch
GCI
Alaska Airlines
Totem Ocean Trailer Express
Anchorage Refuse
North Slope Contractors
Building Industry of Alaska - Anchorage
Alaska Timber Insurance Exchange
Alaska Support Industry Alliance
Carr-Gottstein Enterprises
VECO
Anglo Alaska Petroleum Services
Dimond Alaska Coal
Robinhood, Inc.and many others!

WCCA committees are researching the following areas of concern:

- * The proportion of funds paid to injured workers, to medical care, vocational rehabilitation and other service providers.
- * Rate setting and classification.
- * Formulas for compensating loss of wages.
- * Pitfalls of state funds.

- * Effectiveness of vocational rehabilitation.
- * Making all injuries "scheduled" instead of some being allowed to run open-ended.
- * Usefulness of the Second Injury Fund.
- * Payments to injured workers who have left Alaska for other states with lower costs of living.
- * Prosecution of fraudulent claims.

TIMETABLE

WCCA is formulating legislative proposals in coordination with labor representatives. Efforts are being made to reach agreements on which areas will be addressed. Specific proposals will be presented to legislators prior to the 1988 legislative session.

WCCA's major goal is to see workers' compensation statutes overhauled during the 1988 legislative session. WCCA will continue to work until the cost of workers' compensation insurance is reduced by at least 33 percent.

BUDGET

WCCA has set a budget of \$100,000 to cover activity necessary through the 1988 session. The 1988 budget includes the cost of professional lobbying services.

WCCA

Statement to House Labor and Commerce Committee
by Steve Haag, President
Workers' Compensation Committee of Alaska
November 12, 1987

My name is Steve Haag. I am President of the Workers' Compensation Committee of Alaska and I appreciate the House Labor and Commerce Committee's holding this public hearing today on a topic which I believe will be at the forefront of issues you will face during the next legislative session.

While several members of the committee have met with WCCA recently I would like to take this opportunity to briefly outline for the committee and those listening to this hearing what WCCA is doing and why there is a pressing need to address the issue of workers' comp.

As you are aware, workers' comp insurance is required of every employer in Alaska to pay for health care, lost wages and rehabilitation of a worker injured on the job. The concept of workers' comp which has been around since 1912 is fine. The workers' compensation system began in the United States and was based on a belief that an employee should be entitled to wage compensation and hospital-medical cost coverage for injuries which occurred on-the-job.

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

In practice, the method and system by which workers' compensation has run amok. As a result neither the employer nor the employee are benefitting and the cost of the system is threatening the very existence of many businesses in Alaska.

The problem is not that the system is being abused in large part, but rather that the system has gone far beyond what it was ever intended to accomplish. The goal of workers' compensation should be to help an injured worker recover and to return to gainful employment. During the time of disability, the worker should be fairly compensated at a level comparable to the income which would be generated if the worker was on the job at which the injury occurred.

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

Why is Alaska's system so expensive? There are numerous reasons. Alaska is one of only two states which provide that benefits paid to an injured worker will be based on 200 percent of the statewide average weekly wage. This can result in a weekly compensation wage of more than \$1,100, tax free, while the salary an employee may have been earning while on the job was significantly less.

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

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

Unlike many states Alaska has no provision for periodic reviews of standards for treatment of injured workers by medical or rehabilitation providers, nor any guidelines for fees.

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

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

One year ago workers' comp insurance premiums jumped by an average 14.3% with many industries seeing rate hikes of 30-40 percent. 3 weeks ago the 1988 rates were announced and called for an additional 25% average rate hike with specific industries, such as oil and gas, facing an increase of 68%.

To put recent increases into perspective..look at these numbers. Workers' compensation claims totalled \$70 million in 1983, \$89 million in 1984, \$124 million in 1985 and \$150 million in 1986 despite a payroll base which has dropped below 1982 levels.

Alaskan businesses in 1988 will pay almost 38 million dollars more for workers' comp insurance than they paid this year.

No one needs to repeat to you the economic downturn Alaska is experiencing. Many businesses are struggling to get by. Many will not be able to afford the increases coming in 1988. For those that remain, a 1989 increase is guaranteed without a reform of the current system.

WCCA has been around since about 1979 but until a year ago was somewhat inactive. Following the announcement of the 1987 rate hikes, WCCA was revitalized with interest from throughout the state. Our membership is comprised of employers large and small from Ketchikan to Barrow who desire to see the current system reformed.

Knowing that any meaningful changes to the current system would require the involvement of labor, WCCA approached a number of organized labor groups to see if they would be interested in changing the system. They were...because they realize that as workers' comp premiums continue to rise, there will be less business and fewer jobs.

We agreed to form a 10 member labor-management task force to hammer out compromises and to bring issues to the table which concerned both sides. This task force has been meeting all year and has been examining 3 major areas to be addressed in 1988.

Neither labor nor management has every issue its wants addressed on the table..but there has been enough common ground for productive meetings. The result has been negotiation and compromise which will hopefully result in a legislative package which will have substantial labor and management support prior to introduction in the 1988 legislature.

The areas examined are summarized in our November newsletter which is included in a packet of materials I have provided to committee members today. To briefly summarize:

In the area of Vocational Rehabilitation, there are many recommendations but generally... the task force has established a goal of making the rehabilitation program voluntary rather than mandatory as it currently exists. Eligibility for service would be determined objectively. Selection of a reemployment preparation benefit provider would be arrived at mutually by employee and employer and a specific plan would be signed off by a qualified rehabilitation professional, and the recipient.

The length of a plan would be specifically determined. What constitutes non-cooperation with the plan would be clearly defined so that benefits would end for non-cooperation. Extensions to an agreed upon plan would require good cause and the maximum time for a reemployment preparation plan would be two years rather than open ended.

A maximum amount would be designated for tuition and supply costs.

In the area of compensation and benefits, the task force will propose a redefinition of gross earnings which restricts some fringe benefits.

Vested interests in a qualified pension or profit sharing plan will be allowed toward determination of gross earnings. Weekly compensation would then be reduced if the claimant is paid by the pension or profit sharing plan.

In the question of a dispute over which employer is liable for the injury, the last employer will be held liable to pay workers' comp until a specific liability determination is made. This is to ensure an injured worker is compensated even if disputes arise between employers as to who should actually pay.

We have also been reviewing language to tie compensation rates to the area in which the recipient lives. This would allow recalculation of benefits if a claimant moves to a region with a lower cost of living.

WCCA's medical committee made several proposals to the task force to reduce medical costs. As a side note, just 4 years ago about 25 cents of every workers' comp dollar went to medical care. Today that cost is 38 cent of every dollar.

We are seeking changes which will include: 1. Placing a limit on the number of times an injured worker can change primary physicians.

2. Imposing some limit on what doctors can claim from workers' comp recipients. WCCA suggests imposing the standard of "reasonable and customary fees" at the 90th percentile as scheduled by the Health Insurance Association of America. Right now there are no guidelines for what fees can be charged as there are under normal health insurance.

3. Establishment of a system to handle disputes between employer and employee over medical stability, the degree of disability and when an employee can return to work. Currently the Board typically gives more weight to recommendations made by the claimant's attending physician. WCCA wants to establish a system which would allow an evaluation by an independent medical examiner whose findings would then carry predominant weight in disputes.

4. WCCA also wants to establish a limit on how many medical visits a claimant may make to doctors before an independent medical evaluation is made.

These are just some of the issues we have been examining. There are many others which are complex and long term. It is the intention of WCCA and the task force to draft our recommendations into bill form and present them to you prior to the 1988 session. WCCA will retain noted national expert John Lewis to prepare the legislation. His credentials are highly respected among both management and labor and I expect you will be hearing more from him during the session.

In conclusion let me make these final points:

There is no issue more critical to address for business and the economy in Alaska than workers' comp. very simply, unless the system is changed in 1988, there will be fewer jobs and businesses in Alaska in the very near future..and we cannot afford that.

The legislation we will eventually place before you will be the result of a year's work by both management and labor. It will represent a consensus and an agreement and we strongly hope that will be what this committee begins to review.

In no way is this reform intended to deny any benefits to truly injured workers. In fact this reform will help injured workers by seeing more of the workers comp dollar goes to compensate lost wages or to provide rehabilitation. The system is not benefitting employees as it should now and it is putting employers out of business. Reform will benefit both.

I would like to urge, in closing, that if anyone is unfamiliar with WCCA and would like to become involved in our effort, we have newsletters available here today with the address of the organization...and we'd be more than happy to provide additional information to anyone who is interested.

Thank you.

TESTIMONY OF JEFF PARKER
BEFORE THE LABOR COMMITTEE
OF THE ALASKA HOUSE OF REPRESENTATIVES

November 12, 1987

My name is Jeff Parker. I am an attorney in Anchorage and practice workers' compensation law on behalf of injured workers. I am here to testify on their behalf and for attorneys and others who represent injured workers.

The Alaska Legislature is being asked to amend the Alaska Workers' Compensation Act. You will receive suggestions from representatives of injured workers and the insurance industry. Many suggestions from the insurance industry will be based on cost containment. "Runaway" costs are symptoms of the problems present in the system, but they are not "the problem." I suggest instead that you pause and focus first on identifying the goals which an effective workers' compensation system should achieve. Once you have agreed on those goals, then you can focus on containing costs.

The Alaska Workers' Compensation Act is complicated, so I have divided my testimony into three parts. First, I will review some fundamentals that are necessary to an informed discussion of the Act and its operation. Second, I will suggest amendments to improve the Act, and at times I will comment upon amendments proposed by the Workers' Compensation Committee of Alaska (WCCA), which represents some members of the insurance and business community. Third, I will conclude by comparing: (a) the

benefit that is likely to occur to the Alaska economy, work force and state revenues if the Act is amended to bring its operation in line with its humanitarian goals, with (b) the danger that will occur to the Alaska economy, work force, and revenues if the WCCA proposals are adopted.

I. FUNDAMENTALS OF THE ACT AND ITS OPERATION.

A. The Social Policy Behind Workers' Compensation Insurance.

All fifty states have workers' compensation insurance acts. This is because an inescapable fact of life is that people get hurt at work, and they incur medical expenses, loss of income and loss of jobs. But, it is important to realize that more than insurance for medical expenses, wages and jobs is at stake when a worker gets hurt. If people are not adequately insured against these events, then secondary costs will ensue, such as state welfare payments, default on house payments, loss of parents' dreams for their children's educations, and loss of personal retirement plans, personal savings, personal business investments and purchasing power.

Thus, workers' compensation insurance insures not only the worker against work related injuries that result in medical costs, lost wages, and rehabilitation expenses, but it also insures the state economy, work force and State revenues against secondary costs of on-the-job injuries. The advantages of adequate workers' compensation coverage are great, and the risks of inadequate coverage are equally great. Regardless of the

nature of the law, those risks will be borne somewhere in society. Those risks will be borne either by out-of-state insurance companies paying adequate benefits, or by Alaska government paying financial, medical and rehabilitation support, or by Alaska banks losing on defaulted loans, or by Alaska business as losing investment capital, or by Alaskans losing jobs, savings, investments, property, and personal health.

Because of such considerations, the states are unanimous in requiring employers to carry insurance to cover medical expenses, wage loss, vocational rehabilitation and other needs for injured workers. The universality of these insurance requirements rests on the same belief that underlies unemployment insurance and social security. That belief is that society is better off if government requires insurance against some risks in life.

Like social security and unemployment insurance, workers' compensation insurance has problems, but attacks on the fundamentals of workers' compensation should be viewed with the same suspicion that would accrue to attacks on the fundamentals of social security or unemployment insurance. If such attacks were to succeed, the economic, social and governmental impacts would be severe.

B. The Insurance Benefits.

When an employer buys workers' compensation insurance, the most important benefits are those covering lost wages, medical expenses, and rehabilitation expenses that result from

work related injuries and diseases.

There are four kinds of wage loss benefits, any one of which may be appropriate to cover lost weekly wages.

TEMPORARY TOTAL DISABILITY.-- If a worker is injured so that he is unable to go to work and as a consequence loses income, then he is eligible for temporary total disability benefits, which provide 80 percent of his after tax wage during the time he is unable to work.

PERMANENT PARTIAL DISABILITY -- If a worker is injured, recovers partially but is unable to return to his pre-injury occupation because of the injury and instead must take work that pays less but is within his post-injury physical capacity, then he is eligible for permanent partial disability benefits. Those benefits, depending on the type of injury, cover a portion of the resulting loss in wages.

PERMANENT TOTAL DISABILITY -- If a worker is injured and is unable to return to any work, then he is eligible for permanent total disability benefits, which provide him with 80 percent of his pre-injury, after tax wage.

TEMPORARY PARTIAL DISABILITY -- If a worker is injured and temporarily unable to return to his previous work but is able to return to lower wage work prior to returning to his previous work, then he is eligible for temporary partial disability benefits, which provide him with 80 percent of the difference between his pre-injury, after tax wage and his temporary, post-injury, after tax wage.

Vocational Rehabilitation benefits are utilized by some injured workers when they are unable to return to their former jobs without special assistance or are unable to find suitable gainful employment on their own in light of their skills and post-injury physical capacity. Vocational rehabilitation benefits cover the costs of the services of a vocational rehabilitation program for the worker that is provided by a vocational rehabilitation specialist. That program may involve a wide variety of assistance, such as (and in descending order of preference): (1) prosthetic devices and training to enable the worker to return to the former job, (2) assistance to the employer to modify the working conditions so as to return the injured worker to the former job, (3) on-the-job training, (4) vocational training, and (5) academic training. Many vocational rehabilitation programs involve an evaluation of the post-injury physical capacities of the worker, an analysis of the skills needed in the pre-injury job and prospective post-injury jobs, vocational therapy to restore physical skills, a labor market analysis, and some assistance in finding a job.

Medical benefits are for the most part self-explanatory.

C. "Scheduled" and "Unscheduled" Injuries.

The third fundamental concept involves understanding that some injuries are "scheduled" under permanent partial disability and others are "unscheduled" under permanent partial disability.

Scheduled injuries are those for which there is a ceiling on the amount and duration of wage loss benefits available for a permanent partial disability resulting from a scheduled injury, such as lost eyes, lost extremities, or lost hearing. In scheduled injuries the present and future nature of the injury is reasonably certain, although the impact of the injury on the worker's capacity to work is less certain. The advantage of scheduling injuries is simplicity. The disadvantages are that doing so bears little relation to lost wages, discourages adequate vocational rehabilitation, diminishes the quality of the Alaska work force, and has other negative costs to the economy.

Unscheduled injuries are those for which there is a ceiling (\$60,000) on the long term amount, but not on the duration, of the benefits available for a permanent partial disability resulting from an unscheduled injury. Unscheduled injuries include many back, neck, and internal head injuries. In unscheduled injuries, the present and future nature of the injury is less certain; hence, the durational limit on benefits is removed.

D. Abuse By Carriers and Claimants.

As certainly as people get injured, carriers and claimants accuse each other of abuse. If one cares about "pointing fingers", as the carriers and WCCA are now pointing at the claimants, it is important to be open minded.

I hope the Legislature will care little about pointing

fingers, and instead, will focus first on goal attainment and only thereafter cost containment. However, if the Legislature must listen to "pointed finger" arguments, then legislators might want to start with the assumption that power corrupts.

The power in the workers compensation system is in the hands of the insurance companies. They can deny benefits simply by filing a "controversion notice" alleging any number of grounds. Carriers may controvert by alleging that the injury is not work related even though their client, the employer, does not contest the fact that the injury is work related. Carriers may controvert on the grounds that they have not received medical records to demonstrate the injury, even though the employer to whom the injury was reported does not contest the fact that an injury occurred. Carriers may controvert on the grounds that the injury is a pre-existing medical condition, even though no doctor has yet said that. Carriers may controvert on the grounds that the present injury is a flare up of an old injury that occurred under the coverage of a previous employer or previous carrier, which leaves an undisputably injured worker without income, medical care, or rehabilitation while two carriers point fingers at each other.

Furthermore, carriers can controvert a claim at any point in the process. Carriers will often controvert when an injured worker to whom they have paid benefits reaches medical stability, even though the worker has lost his job, has had no rehabilitation, and has been told by his doctor not to return to

the former occupation.

There are many other grounds for controversions, but the common denominator is that all controversions take the carrier off the hook for months or years, while the claim is litigated before the Alaska Workers Compensation Board and perhaps the courts. The result is that claimants suffer not only financially and medically, but also within their marriages, families, and career goals. While this happens to claimants, insurance companies find it cheaper to controvert, deny benefits, pay legal fees, and eventually settle cases for less than the full exposure on a case.

It is certainly true that some claimants file invalid claims, either out of an unjustified belief that an injury should be covered or out of intent to defraud. There are criminal penalties for fraud.

However, the key point is that the power in the system is in the opportunity of the carriers to controvert a claim at any time a carrier musters up any reason, even an unjustifiable reason, for objecting to the claim. This wreaks havoc on the healing process and creates unnecessary litigation costs.

E. Why Carriers Cry For Reform.

Nothing in the law compels insurance companies to sell a workers compensation policy to anyone. If existing policies are too unprofitable, then perhaps the best economic decision for some carriers is simply to stop selling policies. The free market will sort out the successful carriers from the

unsuccessful. If rates for some companies go up, so be it. The free market will sort that out better than government. Carriers have to make money to stay in business, but attacking the system simply because of financial costs to carriers puts cost containment ahead of goal attainment.

A temporary fact is that the Alaska economy is depressed. Blue collar jobs, where many injuries occur, are declining. A result is that workers who injured themselves and stayed on the job but now face unemployment "come out of the woodwork" to file claims. This occurs because many workers report injuries, get brief medical or time loss benefits, return to work at less than full physical capacity because they want to work, then get laid off or face a prospective lay off, and therefore file for further time loss benefits. Nothing in that scenario says that the claim is invalid or should be invalid. After all, the worker might have never returned to work and could have stayed on benefits throughout the scenario as validly disabled from his job.

The point is that in tough times claims come out of the woodwork. The increase in claims has more to do with the fact that the decline in oil prices has depressed the state economy than it does the validity of the claims or the long term profitability of carriers.

II. PROPOSALS TO AMEND THE ALASKA WORKERS' COMPENSATION ACT

A. Termination of Employment

(1) Problem:

Many employers suspend or discharge the injured employee solely because of his injury. In many cases, the factual record demonstrates that the employer openly admits that the employee is discharged because of his injury. Employers frequently thereafter try to avoid workers' compensation benefits by alleging that the employee would have been discharged regardless of the injury. This sort of assertion has become increasingly common with the decline of the Alaskan economy, and employers assert that because of the decline in the number of jobs the employee would not have retained his job regardless of the injury. Such assertions are an open attempt to avoid payments under the Alaska Workers' Compensation Act.

(2) Solution:

The Alaska Workers' Compensation Act should be amended to provide as follows:

(a) No employer may suspend or discharge an injured employee solely because of the injury, unless the Board determines that the employee is no longer able to perform the requirements of the job and that the employer has no other work available which the employee can perform.

(b) An injured employee suspended or discharged because of an injury shall be given first preference for hire for any position for which the injured employee is qualified and capable of performing which thereafter becomes available. This preference shall continue until the injured employee is returned to suitable gainful employment.

(c) An employer who violates the provisions of this section shall be subject to a penalty of \$1000.00.

(3) Rationale:

Injured workers who receive time loss benefits generally have no other income. The authority to terminate an injured workers' time loss benefits before he can return to work should not rest solely with the employer or carrier, who have financial interests to protect. A more equitable solution would be to vest that decision in the hands of an unbiased agency. That agency obviously should be the Workers' Compensation Board of the Alaska Department of Labor. Finally it is important to realize that injured workers who are receiving wage loss benefits are not receiving paychecks from the employer. Our second suggested amendment, i.e. that an injured employee be given preference for rehire when the employee is qualified and capable of performing the work, is consistent with the rehabilitation goals of the Act. Such a provision would further the goal of returning injured workers to productive economic roles.

The penalty provision is suggested in order to assure compliance.

B. Equal Access to Justice

(1) Problem:

Aside from the testimony of the injured worker, the most valuable evidence available to the Workers' Compensation Board are the findings, conclusions, and opinions of the worker's treating physician. Where that information is available in the

form of medical records and reports it is clearly preferred by the Board as the most cost effective and time efficient means of presenting critical evidence. However, reports or records frequently are ambiguous or do not address key questions. Furthermore, the Alaska Supreme Court, in Burgess Construction Company v. Smallwood, ruled that any party to a workers' compensation case has the right to object to the admissibility of written reports and records, including the reports and records of the treating physician. When the "Smallwood objection" is raised, the written records become inadmissible unless the other party provides the objecting party with an opportunity to cross examine the physician who wrote the report. The result is a deposition.

In order to obtain the deposition of a treating physician the injured worker must not only provide the services of a court reporter to take down and transcribe the testimony but also must pay a witness fee to the physician for testifying. Most physicians in this state will not testify for less than \$250 per hour! In a contested case the injured worker is generally neither working nor receiving benefits. Accordingly, it is very difficult, if not realistically impossible, for the injured worker to raise the funds necessary to take the deposition. As a result, the injured worker is deprived of the medical evidence which is most relevant to the claim.

(2) Solution:

Add the following provisions to the Act.

(a) Where the employer or insurer takes a deposition or recorded interview of the injured worker, the employer or insurer shall provide a copy of the transcript of the testimony to the injured worker at no expense to the worker.

(b) Where the employer or insurer asserts an objection to the admissibility of the reports and records of the injured worker's treating physician based upon the right of cross examination the injured worker shall be entitled to obtain the deposition of the treating physician. In such an instance the employer or insurer shall pay the costs of the deposition, including:

(1) All reasonable expenses of transportation, meals and lodging incident to the deposition incurred by the injured worker or the injured worker's legal representative.

(2) A reasonable witness fee to the testifying physician in accordance with the provisions of the Alaska Rules of Court governing the testimony of expert witnesses.

(3) A copy of the transcript of the deposition.

(4) A reasonable allowance for attorney's fees in an amount to be determined by the board.

(c) The deposition of any physician located outside the state of Alaska shall be taken telephonically unless the board finds compelling reasons why in person attendance of the parties or their legal representatives is required.

(3) Rationale:

Whether or not an injured worker is represented by an

attorney there is a significant cost incurred in obtaining and preserving deposition testimony. The injured worker who, as previously noted, is often not only disabled but without benefits due to a controversion, is least able to bear those costs. This proposal seeks to mitigate the economic duress inherent in the current system.

Ofttimes the insurance carrier will take the deposition of an injured worker even before any identifiable dispute exists with respect to a claim. In fact, the deposition process, whether done formally or through an informal recorded statement, is the means whereby the insurance carrier or its legal representative obtains most of the factual information necessary to adjust the claim. The first part of the proposal addresses the matter of a deposition or recorded interview of the injured worker. It directs the insurance carrier to furnish to the injured worker a copy of the deposition testimony or recorded interview, once transcribed.

In light of the mandate of the Alaska Supreme Court that a party who so requests must be provided with an opportunity to cross examine a medical witness, it is not unusual for an injured worker to be placed in a position where he or she cannot proceed with the claim unless the treating physician is deposed. In the face of a "Smallwood objection" the reports and opinions of the treating physician are inadmissible! And the costs associated with taking a deposition -- generally payable in advance -- most often render it impossible for the injured worker

to overcome the objection. Thus, by playing the "Smallwood card" an insurance carrier is able to place the injured worker in a position of either having to accept a premature or unfair settlement or proceed to a hearing without critical medical evidence.

The second part of this proposal eliminates a large portion of the economic disparity between the parties by providing that where the insurance carrier objects to the medical reports of the treating physician, thus rendering the medical records inadmissible, the injured worker will be able to obtain the needed deposition in order to overcome the objection and get the treating physician's findings and conclusions included in the board's record. Reasonable cost provisions, including limitations on fees which the physician can charge for testifying, are included within the proposal.

The third part of the proposal is aimed at disposing of unnecessary travel costs -- generally incurred by insurance carrier attorneys -- by mandating that depositions of physicians located outside the state of Alaska must be taken by telephone conference call unless a compelling reason exists for the parties or their legal representatives to attend in person. This provision will not only reduce costs by eliminating expensive "deposition trips" by insurance carrier attorneys, but it will avoid the subtle advantage which insurance carrier attorneys acquire by being able to be present at a deposition when the injured worker's legal representative can only attend by

telephone.

C. LIMITATIONS ON PERMANENT PARTIAL DISABILITY BENEFITS

(1) Problem:

The current dollar limits on permanent injuries are inadequate in some situations and wasteful in others.

(2) Solution:

Pay scheduled permanent partial disability benefits based on the weeks of disability and remove the dollar limits. Remove the \$60,000 ceiling on unscheduled permanent partial disability benefits.

(3) Rationale:

The arbitrary ceiling on permanent partial disability benefits discriminates against higher income workers by failing to cover much of their wage loss. Repeal of the ceilings would eliminate that discrimination and would save costs in situations where the ceilings are wasteful. Arbitrary ceilings implicitly, but erroneously, indicate it is more important to contain costs for insurance companies than it is to adequately insure against lost wages and the secondary costs to the economy of those losses.

D. Scheduled Injuries and Rehabilitation

(1) Problem:

Scheduling injuries encourages inadequate vocational rehabilitation. This forces injured workers to return to work at low paying jobs rather than being adequately trained for skilled

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

telephone.

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D. Scheduled Injuries and Rehabilitation

(1) Problem:

Scheduling injuries encourages inadequate vocational rehabilitation. This forces injured workers to return to work at low paying jobs rather than being adequately trained for skilled

jobs. The results are a decline in the quality of the Alaska work force, a contribution to the importation of out-of-state labor for skilled jobs, and a hinderance to the diversification of the Alaska economy.

(2) Solution:

In situations where the vocational rehabilitation services result in return to work at less then 60% of the pre-injury wage, the ceilings on scheduled injuries should be removed until the injured worker returns to 60% of his pre-injury wage.

(3) Rationale:

The intent of the Act is to insure against lost income and return injured workers to appropriate employment. The suggested amendment furthers that intent and encourages a skilled work force by promoting appropriate vocational rehabilitation.

E. Termination of a Worker's Benefits

(1) Problem:

Insurers sometimes terminate or suspend benefits without adequate justification. They do so for a number of reasons, including:

(a) delays inherent in the system;

(b) the vagaries of the medical and legal standards applied to claims;

(c) the fact that an insurer can draw interest on monies not paid to workers; and

(e) the fact that an injured, disabled individual who is not receiving benefits is easier to negotiate with,

insurers sometimes terminate or suspend benefits without adequate justification.

(2) Solution:

Add the following sections to the Act:

(a) Absent an order from the Board, the employer or insurer shall not terminate a claimant's disability benefits without good cause. For the purpose of this section "good cause" means substantial medical evidence demonstrating that the claimant is capable of returning to suitable gainful employment without the need for further vocational or medical services.

(b) Where the board determines that benefits were terminated without good cause the employer or insurer shall pay to the claimant a penalty equal to three times the accrued, unpaid benefits or \$5000, whichever is greater.

(3) Rationale:

The healing process requires full and good faith efforts from all involved, not just from the injured worker. Good faith from the insurer includes reliable assurances that disability benefits will not be unjustifiably or unfairly suspended or terminated. Nothing so rapidly fosters an attitude of suspicion and mistrust between the insurer and the injured worker, so rapidly triggers avoidable litigation, or so significantly impedes the healing process than unwarranted and unexpected termination of support benefits. Certainly there is no doubt that when an injured worker has recovered from the effects of the injury, medically and vocationally, the worker

should return to work and benefits should cease or be reduced. But until that occurs the injured worker must have some safeguard against random or unsupported interference with the benefit payment schedule.

This proposal gives the insurance carrier the right to terminate, but only where "good cause" exists or where the insurance carrier has first obtained an order from the board. The substantial proposed penalty is designed to deter unsupported termination of benefit payments.

This proposal also reduces costs resulting from litigation over unjustified termination of benefits.

F. Determination of "Gross Earnings" [A.S. 23.30.265(15)] and Gross Weekly Earnings" [A.S. 23.30.220]

(1) Problem:

(a) A significant percentage of litigation before the board has been engendered by Alaska Supreme Court decisions which point out the inadequacies or ambiguities of the statutory definition of "gross earnings" and which attempt to clarify how weekly compensation rates would be calculated.

(2) Solution:

AS 23.30.265(15) shall be amended as follows:

"Gross earnings" means periodic payments, by an employer to an employee for employment before any authorized or lawfully required deduction or withholding of money by the employer, including compensation that is deferred at the option

of the employee and compensation for fringe benefits, such as pension and health and welfare plans, when such compensation is calculated as part of the employee's wages in the contract of hire, and excluding irregular bonuses, reimbursement of expenses and expense allowances; the value of room and board to the employee may be considered in determining gross earnings; however, the value of room and board that would raise an employee's gross weekly earning above the Alaska average weekly wage at the time of injury may not be considered.

AS 23.30.220(2) shall be amended as follows:

(2) if the board determines that the wage at the time of the injury cannot be fairly calculated under (1) of this section, or cannot otherwise be ascertained without undue hardship to the employee, the wage for calculating compensation shall be the usual wage for similar service rendered by paid employees under similar circumstances, as determined by the board.

(3) Rationale:

Litigation costs associated with the workers' compensation system are among the most avoidable. Identifying and addressing issues which generate litigation is one clear cut means of reducing the cost burden upon the system.

The amendment to A.S. 23.30.265 encompasses the intent of the Alaska Supreme Court in Ragland v. Morrison-Knudsen when defining the scope of "wages" under former A.S. 23.30.265(20).

The objective of AS 23.30.220 is to formulate a fair

approximation of a claimant's probable future earning capacity during the period in which compensation benefits are to be paid. The entire objective of wage calculation is to arrive at a fair approximation of claimant's probable future earning capacity. His disability reaches into the future, not the past; his loss as a result of injury must be thought of in terms of the impact of probable future earnings, perhaps for the rest of his life.

The amendment to A.S. 23.30.220 contains the exact language utilized by the Court in Johnson v. RCA-OMS when outlining the exception to the two year gross earning method of determining the gross weekly earning for compensation rate calculation purposes and will serve to eliminate many of the costs arising from disputes over an appropriate compensation rate.

G. Suitable Gainful Employment

(1) Problem:

Vocational rehabilitation efforts often bog down over the issue of whether or not a particular plan or program will return an injured worker to "suitable gainful employment". Existing law (A.S. 23.30.041) defines suitable gainful employment but does not offer any suggestion as to what specific wage level satisfies that goal.

(2) Solution:

Redefine "suitable gainful employment" to provide that an injured worker has been returned to suitable gainful employment when the worker has regained a permanent wage earning

capacity equal to 60% of that worker's pre-injury gross weekly earning.

(3) Rationale:

Defining suitable gainful employment in specific economic terms will avoid much of the unproductive squabbling which occurs throughout the rehabilitation process. Identifying a target wage level will eliminate the now common practice of trying to "force" every claimant into the generic "job of the month." Instead, more individualized rehabilitation and return programs can be developed which will focus on identifying employment prospects reasonably consonant with the injured workers demonstrated earning capacity.

H. Delays in Hearings and Board Decisions

(1) Problem:

Delays in scheduling hearings and issuing decisions.

(2) Solution:

(a) The Act finds that prompt, efficient and inexpensive resolution of workers' compensation claims is in the interest of all of the parties. If the Act is to work as intended, it is necessary that claims be handled as quickly as judiciously possible. In providing a speedy remedy the Board should act to avoid the hardships that result to injured workers from delay. In effectuating this purpose the Board should be required to set cases for hearing promptly and at the earliest convenient date. The Act should be amended to require the Board to issue a decision with regard to a claim as soon as possible

and in any event within thirty (30) days of the closing of the hearing record.

(b) In the event the Board does not issue a decision within thirty (30) days after the hearing record closes or approve or deny a Compromise and Release within thirty (30) days of receipt, the Board should be required to pay to the prevailing party the sum of ten dollars (\$10.00) per day thereafter until the Decision and Order is issued or a Compromise and Release is acted upon.

(c) In considering a motion for continuance the Board should be required to determine whether or not an injured worker is receiving compensation. If the claimant is not receiving compensation, the Act should provide that Board may grant a continuance, over the claimant's objection, only if it (a) orders compensation to be paid in the interim or (b) makes an express finding that the interest of justice outweighs the hardship to the injured worker. In determining whether or not to order interim compensation, the Board is not bound by the same standard of proof required in making the final determination. The Act should provide that interim compensation be paid shall not be used in any way to shift the burden or proof on the ultimate issue of responsibility for compensation.

(3) Rationale:

Some delay to permit reasonable discovery and conduct investigation is available but the present five (5) to seven (7) months between the time a dispute arises and calendaring for

hearing is excessive. Furthermore, the current sixty (60) to ninety (90) days frequently passes before the Board issues a decision after the record closes is unjustified. Delay damages were formerly in effect, and decisions were more timely. The impact of delays affects the worker in financial ways that everyone acknowledges. Delays also affect the healing process and contribute to psychological deterioration as well.

I. Commencement of Benefits

(1) Problem:

Injured workers with valid claims are denied benefits while insurance adjusters investigate the claim delaying payment and inhibiting the healing process.

(2) Solution:

Commencement of benefits should be automatic if the employer does not contest that the injury occurred at work and if the injured worker provides a medical report indicating that a disability is present.

(3) Rationale:

Once a claim has been controverted the injured worker's only effective response is to obtain an attorney and request a hearing. Litigation ensues and the collateral costs of the claim escalate. Providing a directive to insurers to commence payment upon receipt of a medically documented claim will create financial incentive without undue interference with the recovery process.

III. CONCLUSION

The foregoing discussion of the problems related to the

Alaska Workers' Compensation Act demonstrates that many issues are at stake other than just costs to the insurance carriers. From the claimant's perspective, wage loss benefits are at stake as are medical expenses and vocational rehabilitation expenses. From the state's perspective, many economic concerns are at stake. Those concerns include the state's revenues which would probably have to be tapped if worker's compensation benefits are inadequate. State concerns also include the general public interest in avoiding foreclosures on peoples homes, the general public interest in assuring that parent's plans for their children's education are fulfilled, and the general public interest this state has in having a well qualified, able-bodied and well trained work force.

As I tried to point out at the beginning, worker's compensation is not only insurance for the injured worker, but it is also insurance for many public interests and state interests.

Many of the suggestions that I have put before you today, I believe, further those interests.

I hope as the Legislature considers amendments to the Alaska Workers' Compensation Act, it will bear in mind there are greater interests at stake here than just the financial interests of the insurance carriers.

Thank you for the opportunity to appear before you.



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GOLDEN WHEEL AMUSEMENT WORKMAN'S COMPENSATION
 SUMMARY 1981 TO DATE

<u>FISCAL YEAR</u>	<u>GROSS PAYROLL</u>	<u>PREMIUM</u>	<u>CLAIMS</u>	<u>LOSS RATIO</u>
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	<u>370,107.80</u>	<u>132,868.70</u>	(est) <u>4,000.00</u>	<u>3.0%</u>
Totals	<u>\$1,370,117.80</u>	<u>\$367,904.70</u>	<u>\$ 13,073.22</u>	<u>3.6%</u>

Current Rate: 5.90

Experience Modification: 0.90

Claire Morton, Owner • Manager



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

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GOLDEN WHEEL AMUSEMENT WORKMAN'S COMPENSATION

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Current Rate: 35.90

Experience Modification: 0.90

Claire Morton, Owner • Manager

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3892

November 9, 1987

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

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

Re: Workers' Compensation Hearing

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

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

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

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

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3892

November 6, 1987

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

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

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

The ad hoc committee, a ~~sub-committee of WCCA~~ (Workers' Compensation Committee of Alaska), consists of five representatives from management/employers and five from labor organizations. Members are:

LABOR

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

MANAGEMENT

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

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

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

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

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

REHABILITATIVE SERVICES

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

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

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

MEDICAL COSTS

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

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

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

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

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

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

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

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

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

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

DETERMINING BENEFITS/AVERAGE WEEKLY WAGE

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

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

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

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

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

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

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

OTHER ISSUES AND RECOMMENDATIONS

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

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

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

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

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

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

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

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

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

* * * * *

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

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

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3592

October 30, 1987

To: Members, House Labor and Commerce Committee

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

Re: Notes for Friday's Workers' Compensation workshop

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

The purpose of the workshop is two fold:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Reform Alaska's workers' compensation system

By STEVE HAAG

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

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

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

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

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

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

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

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

Why is Alaska's system so expensive? There are numerous reasons. Alaska is one of only two states which provide that benefits paid to an injured worker will be based on 200 percent of the statewide average weekly wage. This can result in a weekly compensation wage of more than \$1,100, tax free, while the salary an employee may have been earning while on the job was significantly less.

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

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

Unlike many states, Alaska has no provision for per-

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

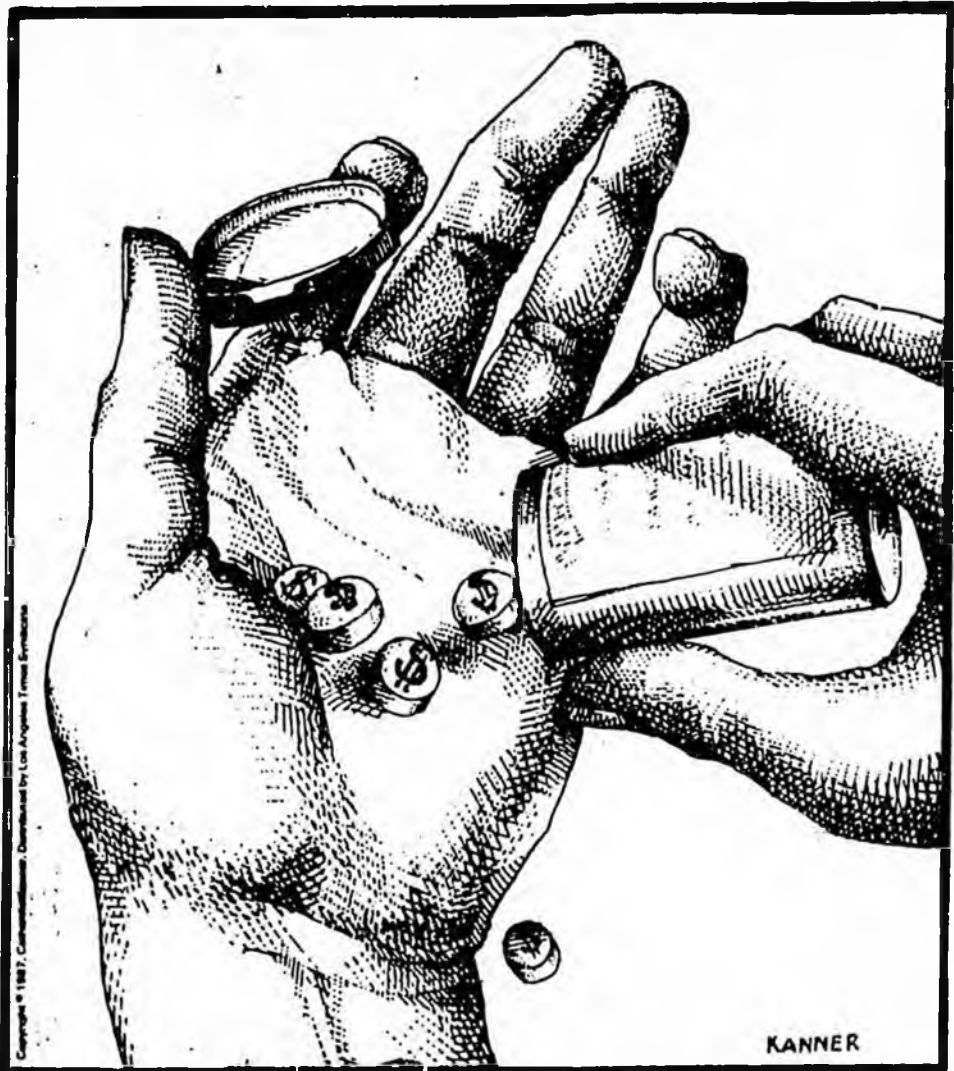
Many other factors have driven up the cost of coverage including runaway medical costs, the failure of occupational rehabilitation legislation passed in 1982, a lack of limits on benefits and a lack of fraud investigation.

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

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

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

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



KANNER

Robert B. Atwood
President and Publisher

Elaine Atwood
Assistant Publisher

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

Relief for businesses

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

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

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

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

Thank heavens.

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

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

What changes will be

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

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

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

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

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

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

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OCT 23 1987

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sent from
Pat Sullivan
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AN ACT
Relating to workers' compensation.

* Section 1. AS 23.30.230 is repealed and reenacted to read:

Sec. 23.30.230. PERSONS NOT COVERED. (a) The following persons are not covered by this chapter:

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

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

* Sec. 2. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.239. SOLE PROPRIETORS AND PARTNERS AS EMPLOYEES. (a) A person who is a sole proprietor, or a member of a partnership, may elect coverage as an employee under this chapter by making written application to an insurer. The insurer may accept the application and fix an assumed monthly wage at which the person shall be carried on the payroll for purposes of this chapter.

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

May 11, 1987

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

RECEIVED MAY 13 1987

RE: Pac West Laminate
TY 881-7513

Dear Tim:

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

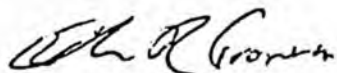
1. The degree of skill involved in the claimant's work. There are some skills required to install the cabinets, flooring and countertops which the insured sells. This tends to support the independent contractor status.
2. The degree to which the work is a separate calling or business. I was unable to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

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

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

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

Sincerely,



Edwin R. Grove, III
Premium Audit Manager

ERG:njm

cc: Don Koch

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

19071 562-1995

May 21, 1987

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

Dear Bill and *Paula* Peggy:

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

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

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

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

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

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

(d) the skill required in the particular occupation;

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Ritzell Rd. #2
Alaska 99507

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

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

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

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

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

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

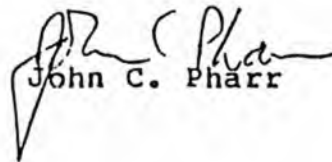
(j) whether the principal is or is not in business.

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

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

Very truly yours,

LAW OFFICES OF
JOHN C. PHARR


John C. Pharr

JCP/js



Pac West, Inc.

Industrial Indemnity
4341 B St.
Anchorage, AK 99503

May 31, 1987

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

Attn: Edwin R. Grove

Dear Mr. Grove:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- d. The skills required in the particular occupation:

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

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

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

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

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

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

All payment is by the job.

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

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

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

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

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

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

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

1349-1681
Tzell Rd. #2
Alaska 99507

07) 349-1681
Hartzell Rd. #2
Alaska 99507

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,
Paula M. Westhusing

Paula M. Westhusing
Vice-President

cc: John Pharr
Tim Lamb

Enclosure

June 25, 1987

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

RE: Workers Compensation Policy Number TY 881-7513

Dear Mrs. Westhusing:

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

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

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

Sincerely,



Edwin R. Grove, III
Premium Audit Manager

ERG:dms

cc: Tim Lamb, Bangs & Lamb

Industrial Indemnity
a Crum and Forster organization

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

October 6, 1987

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

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

Dear Helen:

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

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

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

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

Best regards,

 Jay Hite
Workers Compensation Underwriter

JH:njm

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

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3892

PRESS RELEASE

NOVEMBER 3, 1987

TO: Mary Pat Murphy
The Anchorage Times

FOR IMMEDIATE RELEASE

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

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

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

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

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For more information call Ginger Baim 561-7629.

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PACIFIC

CONSTRUCTION SYSTEMS

RECEIVED
NOV 4 1987

October 29, 1987

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

Attn: Ginger

Re: Workmen's Compensation
Insurance Rates

Dear Ginger:

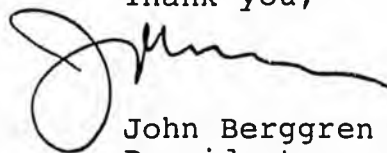
Pacific Construction Systems of Alaska, Inc. strongly supports placing the revisions of the state Workmen's Compensation Laws before the 1988 legislative session. This is very important to us as a small business in Alaska. We have suffered over a 42% increase in 1987 and are looking at an additional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

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

Please roll back rates and tighten up on benefits!

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

Thank you,



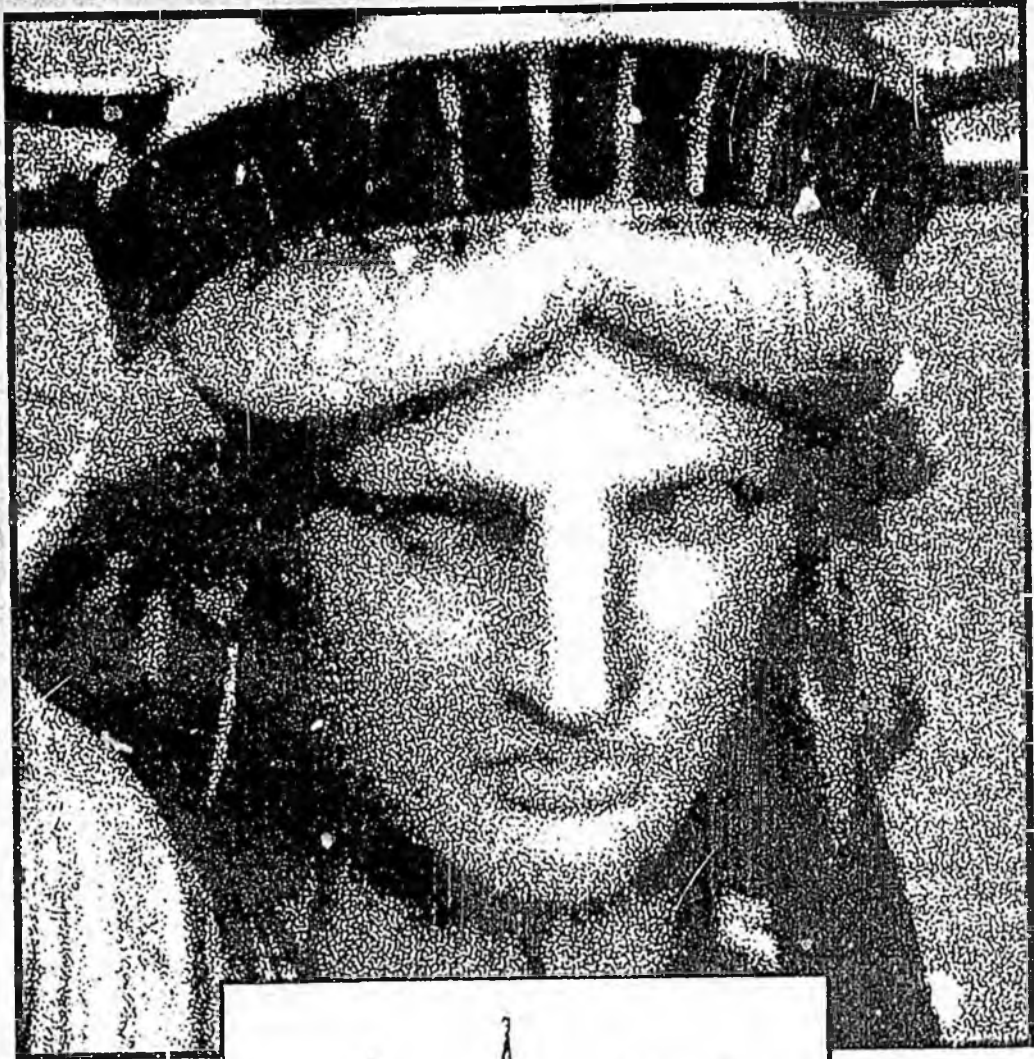
John Berggren
President

JB/ab

Pacific Construction Systems • Post Office Box 4-1268 • Anchorage, Alaska 99509 • (907) 563-4188

Analysis of Workers Compensation Laws

Prepared and Published Annually
By the U.S. Chamber of Commerce



Why Have Workers Compensation?

Workers compensation insurance developed as a way of providing minimal income to people injured on the job, so that if they were unable to work, they and their families had some means of surviving until the injured worker could return to work.

Why Does It Cost So Much?

Alaska has the most costly workers compensation system in the United States. Statutes provide for the most generous interpretation of laws and administrative decisions, where such generosity is not specifically spelled out. Here are some examples:

- Alaska is one of two states which bases benefits paid to injured workers on 200% of the statewide average weekly wage. For instance, a construction worker who is injured may get a lot more than an average Alaskan earns. If he earned \$2,000 per week, he could get as much as 80% of his take-home pay and benefits combined, while he recovers. That's a long way from keeping a roof over his head!
- Benefits are calculated on the basis of the past and future earnings. A drop in a person's wages may result in that person being able to earn more money from workers compensation than from current wages!
- Vocational rehabilitation is mandatory for workers whose injuries keep them from returning to employment in 90 days. In the five years since this became Alaska law, less than 100 injured workers have benefitted — although hundreds of thousands of dollars have been spent trying to rehabilitate people who may not want it!
- Alaska's relatively small range of occupations limits the potential for placing workers with permanent partial disabilities into jobs they can do.
- Unlike many states, Alaska has no provision for reviewing treatment of injured workers by medical or rehabilitation experts, nor any guidelines for fees. Treatment can go on indefinitely, with no results!
- Unlike some states, injured workers pay no portion of medical costs.
- Unlike many states, pensions do not offset workers compensation payments. Only Social Security payments can be offset. Workers compensation payments have been paid even to Pioneer Home residents!

These are among the factors contributing to Alaska's soaring costs!

Some Workers Compensation Cases

Plastic Surgery for a Strained Back!

A new bakery employee injured her back while lifting, after three days on the job. The employee was substantially overweight; doctors recommended that weight loss would help relieve back strain. The employee had difficulty losing weight, and requested an operation to surgically remove some of the fat. (She had earlier undergone operation for breast reduction and gastrointestinal bypass, and had lost 100 lbs.) The employer went along with the request. Dissatisfied with the results of the operation, the employee was uncooperative in following a medically-prescribed regimen of physical therapy. She insisted on a second cosmetic surgery to remove more fat and repair scars from the first surgery. The employer refused; the overweight problem was not the responsibility of the employer. The injured worker secured a hearing from the Workers Compensation Board. The Board granted her wish: a second operation. The employee has worked less than one week in two years. The employer has paid for two cosmetic surgeries. The employee is still claiming low morale and continued back pain.

A Bumped Knee = Three Years of Compensation

An office worker, carrying a box, lost her grip on the box. Rather than drop it, she tried to break the fall with her knee, injuring it. That evening, a hospital emergency room physical prescribed crutches and a knee brace. A few days later, the worker fell while using the crutches, and injured the ankle of her other leg. Subsequently, the worker was discovered to have one leg longer than the other. Pain in the back and legs is being attributed to the knee injury. She has been seeking medical treatment from more than 12 physicians and chiropractors since the original injury, all paid by the employer. An offer of a different job, allowing her to move around in order to prevent the onset of pain, was refused. The employer is trying to end the continued payouts.

Lose That Promotion? You May Have A Claim!

A building maintenance worker applied for a promotion. The job went to another person. Subsequently, he claimed to have a nervous breakdown or a heart attack, depending on who he was talking to. Chest pains were diagnosed as other than a heart attack. The worker maintained he could not continue on his job. He visited a psychiatrist, who said the worker's stressful situation made it unwise to return to the same job. The employer found another suitable job, in another department. The psychiatrist said his extreme stress might be relieved if he returned to his home in the Midwest. The worker had lived in Alaska since before 1970, almost all his adult life! Within a few weeks, the worker sold his house and moved "home." Continuing visits to a psychiatrist, he found a job. After several months, he quit, claiming extreme stress: he had been reassigned to a night shift, interfering with his private life. When last seen, the man was volunteering his time directing a crew of other volunteers in building a church. The original employer is trying to end the payout.



**Is Your Business Down,
While Your Workers
Compensation Rates
Keep Rising?**



**Is An Injured Employee
Getting More In Workers
Compensation Payments
Than He Got In Salary?**



**Are You Prepared For
Another Rise In Rates
In January 1988?**

WCCA

11401 Olive
Anchorage, Alaska 99515

WCCA

The Workers Compensation Committee of Alaska, Inc. is an organization of business persons who are determined to reduce the budget-breaking costs of workers compensation, by at least 33%. Compensation rates soared as much as 20% for many businesses in January 1987, and more raises are predicted in 1988. Even when business volume and number of employees drops, many businesses are experiencing rises in their rates. In a shrinking economy, those increased costs can no longer be passed on as part of the overhead.

WCCA includes representatives from the Associated General Contractors, Alaska Chapter; North Slope Contractors; Building Industry of Alaska — Anchorage; Alaska Timber Insurance Exchange; Alaska Support Industry Alliance; Alaska State Chamber of Commerce; and many other business and professional associations. Major Alaska businesses which are participating in WCCA include Carr-Gottstein Enterprises, VECO, Anglo Alaska Petroleum Services, Diamond Alaska Coal, and others.

WCCA committees are researching and preparing legislation in these areas:

- The proportion of funds paid out to the injured worker, to medical care, vocational rehabilitation, and to other service providers.
- rate-setting and classification
- the formulas for compensating for loss of wages
- pitfalls of state-run funds
- effectiveness of vocational rehabilitation
- making all injuries 'scheduled' instead of some being open-ended
- Second Injury Fund usefulness
- payments to injured workers who have left Alaska for states with lower living costs
- prosecution of fraudulent claims

Timetable

WCCA is developing its legislative proposals now, to confer with labor unions in an effort to work out areas of agreement, and to present specific requests to legislators in fall, 1987. Our goal is to see the Workers Compensation Statutes overhauled during the 1988 Legislative Session, and to continue working until the cost of workers compensation has been reduced at least by 33%.

Budget

WCCA has a budget of \$100,000 for 1987, and anticipates a budget of equal size for 1988, including the services of a lobbyist.

For More Information

Contact a WCCA Board Member or write WCCA, 11401 Olive Way, Anchorage, Alaska 99515. Call Steve Haag, WCCA President, 344-1577.

Some 1987 Rate Raises

Aircraft — Air Taxi — Flying Crew	+ 16.0%
Auto Body Repairing	+ 24.7%
Bakeries	+ 26.7%
Beer or Ale Dealers	+ 39.0%
Bus or Taxicab Companies	+ 38.9%
Buildings, Oper. by Owner, Lessee	+ 34.4%
Canneries	+ 25.4%
Carpentry Const. — Private Res.	+ 44.8%
Colleges, Schools — All Other	+ 11.5%
Concrete Flrs., Driveways, Sidewalks	+ 16.8%
Department Stores Retail	+ 11.0%
Drivers, Chauffeurs & Helpers	+ 38.8%
Electric Light or Power	
Line Construction	+ 27.6%
Electrical Wiring in Buildings	+ 37.6%
Garbage Collectors	+ 9.2%
Gasoline or Oil Dealers	+ 39.0%
Geophysical Exploration Seismic	+ 37.1%
Hardware Stores	+ 39.0%
Hospital, All Other	+ 37.7%
Hotels	+ 14.3%
Hotels-Restaurant Employees	+ 23.9%
Insulation Work	+ 30.3%
Iron or Steel Erection NOC	+ 42.5%
Logging	+ 11.0%
Lumber Yards, Store Employees	+ 24.4%
Lumber Yards, All Other Employers	+ 39.0%
Machinery Dealers NOC Store/Yard	+ 23.4%
Millwright	+ 45.9%
Municipal or State Employees	+ 36.2%
Natural Gas Companies	+ 38.8%
Newspaper Publishing	+ 11.2%
Office Machine/Appliance Installers	+ 15.8%
Oil or Gas Lease Work by Contract	+ 33.0%
Oil or Gas Pipeline Construction	+ 19.5%
Oil or Gas Wells Logging/Survey	+ 33.0%
Painting or Paper Hanging NOC	+ 13.9%
Photographers	+ 13.8%
Plumbing NOC	+ 21.6%
Printing	+ 21.3%
Radio & Television Stations	+ 38.8%
Restaurants	+ 25.6%
Roofing — All Kinds	+ 46.0%
Sewer Construction	+ 14.4%
Sheet Metal Work Erection NOC	+ 46.0%
Storage Warehouses, Furniture	+ 19.1%
Street Cleaning	+ 13.3%
Telephone & Telegraph,	
Office Employees	+ 33.3%
Traveling Auditors, Accountants	+ 15.8%
Wallboard Installation in Bldgs.	+ 41.6%
YMCA, YWCA	+ 9.4%

These categories represent payrolls of over \$10 million in Alaska.

WCCA Board of Directors

President	Steve Haag	Controller	Udelhoven Oilfield Services, Anchorage
Vice President	Wesley Nason	Construction Manager	H.C. Price and Price/CIRI Anchorage
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	Karen Reddy	Jamie Slack	
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	Municipality of Anchorage	VECO	
	Anchorage	Anchorage	
	Millie Edwards	Neil Rennett	
	Personnel Director	District Manager	
	Humana Hospital	Comprehensive	
	Anchorage	Rehabilitation Services	
	Richard Stone	Anchorage	
	Certified Rehabilitation		
	Counselor		
	Vocational Evaluation &	Elaine Taylor	
	Rehabilitation Consultants	Owner	
	Anchorage	Taylored Construction	
	Howard Cutter	Company	
	Manager of Insurance	Anchorage	
	Alyeska Pipeline		
	Anchorage	Randall Weddie	
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	Counselor	& Holmes	
	MTL Services	Anchorage and Juneau	
	Anchorage	Bill Basham	
	Dona Lewis	Safety Director	
	General Manager	Anglo Alaska Petroleum	
	Alaska Timber Insurance	Services	
	Exchange	Anchorage	
	Ketchikan	Barbara Relerson	
	James Bendell	Co-owner	
	Attorney	RG&B Construction Company	
	Anchorage	Anchorage	



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

P.O. Box Y, State Capitol
Juneau, Alaska 99811-3100
Mail Stop 3100
(907) 465-3991

September 2, 1987

MEMORANDUM

TO: Representative Dave Donley

FROM: Karen Oakley *ko*
Legislative Analyst

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

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

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

Background

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

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

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

Attorney Fees Provisions

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

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

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

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

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

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

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

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

Attorney Fees in Alaska

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

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

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

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

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

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

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

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

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

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

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

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

⁵648 P. 2d 955 (Alaska 1982).

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

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

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

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

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

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