

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672  
5401 SLAB SB 322 (file 17) - (file 18) 93

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

#### Time Required to Settle Controverted Claims

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

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

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

Attachments

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<sup>7</sup>Jan Hansen, Chief of Adjudications, Alaska Workers' Compensation Board, Personal communication.

<sup>8</sup>Ibid.

ATTACHMENT A  
Attorney Fees in Workers' Compensation

Table 18B

ATTORNEY FEES IN WORKERS' COMPENSATION<sup>1</sup>

State	Attorney fees established by statute, rule, operating policy or on individual case basis	Determined by	Statutory provision whereby attorney fees are added to award in certain cases	Statutory provision making unlawful acceptance of unapproved fees	Laypersons permitted to represent claimants	Attorney fees, upon approval, become liens against awards
Alaska	25% minimum on first \$1,000; 10% on balance, statute	Agency	Yes	Yes	Yes	No
Alabama	15%, statute	Court	None	None	No	No
Arizona	25%, statute	Agency	None	None	No	No
Arkansas	30% first \$1,000; 20% next \$2,000; 10% on balance, statute	Agency	Yes	None	Yes	No
California	12% rule	Agency	Yes	None	Yes	Yes
Colorado	Individual case basis	Agency	None	None	No	Yes
Connecticut	Individual case basis	Agency	Yes	None	Yes	No
Delaware	30% or \$2,250, whichever is smaller, statute	Agency	Yes	None	No	No
District of Columbia	Individual case basis	Agency	Yes	Yes	Yes	Yes
Florida	25% first \$5,000; 20% next \$5,000; 15% on balance, statute	Agency	Yes	Yes	No	Yes
Georgia	25% to 33 1/3%, rule	Agency	Yes	Yes	No	No
Hawaii	Individual case basis	Agency	Yes	Yes	Yes	Yes
Iaho	Individual case basis	Agency	Yes	None	Yes	No
Illinois	20%, statute	Agency	Yes	None	No	No
Indiana	20% first \$5,000; 15% next \$5,000; 10% balance, rule	Agency	Yes	None	No	No
Iowa	Individual case basis	Agency	None	None	No	Yes
Kansas	25%, statute	Agency	None	None	No	Yes
Kentucky	20% first \$25,000; 15% next \$10,000; 5% balance, \$6,500 maximum, statute	Agency	Yes	No	No	No
Louisiana	20% first \$10,000; 10% on balance, statute	Court	Yes	Yes	No	Yes
Maine	Individual case basis	Agency	Yes	Yes	No	No
Maryland	20% first \$7,000; 15% next \$18,000; 10% balance, policy	Agency	Yes	None	No	Yes
Massachusetts	20% on lump sum settlement, individual case basis, statute	Agency	Yes	None	No	Yes
Michigan	30%, rule; up to time of trial; plus 15% on redemption settlements	Agency	None	None	No	No
Minnesota	25% first \$4,000; 20% next \$27,500, statute	Agency	Yes	Yes	No	Yes

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

Table 18B—Continued

State	Attorney fees established by statute, rule, operating policy or on individual case basis	Determined by	Statutory provision whereby attorney fees are added to award in certain cases	Statutory provision making unlawful acceptance of unapproved fees	Laypersons permitted to represent claimants	Attorney fees, upon approval, become liens against awards
Mississippi	25% before Commission; 33 1/3% in Court, statute	Agency	None	Yes	No	Yes
Missouri	25%, policy	Agency	None	None	No	Yes
Montana	25% - 40%, policy	Agency	None	None	Yes	Yes
Nebraska	20% - 25%, policy	Court	Yes	None	No	Yes
Nevada	No provision		Yes		Yes	
New Hampshire	20% - 25%, policy	Agency	Yes	None	No	No
New Jersey	20%, statute	Agency	Yes	Yes	No	Yes
New Mexico	10%, if no proceedings are filed invoking the jurisdiction of the Court, statute; individual case basis if Court's jurisdiction is invoked	Court	Yes	Yes	No	No
New York	Individual case basis	Agency	None	Yes	Yes	Yes
North Carolina	Individual case basis	Agency	Yes	Yes	No	No
North Dakota	\$50 per hour, maximum, rule	Agency	Yes	None	No	No
Ohio	Individual case basis	Agency	None	None	No	No
Oklahoma	10% TTD; 20% other types, statute	Court	None	None	No	Yes
Oregon	25% not to exceed \$3,000, rule	Agency	Yes	None	Yes	Yes
Pennsylvania	20%, statute	Agency	Yes	None	No	Yes
Puerto Rico	Individual case basis	Agency	Yes	None	Yes	No
Rhode Island	Individual case basis	Agency	Yes	None	No	No
South Carolina	Individual case basis	Agency	Yes	Yes	No	No
South Dakota	Individual case basis	Agency	Yes	None	Yes	No
Tennessee	20%, statute	Court	None	Yes	No	Yes
Texas	25%, statute	Agency	Yes	None	Yes	Yes
Utah	20% first \$15,000; 15% next \$15,000; 10% balance, maximum \$9,051, rule	Agency	None	None	Yes	No
Vermont	20% maximum \$3,000, policy	Agency	Yes	None	No	Yes
Virginia	Individual case basis	Agency	Yes	None	No	No
Washington	10%, statute	Agency	Yes	Yes	Yes	No
West Virginia	20%, 208 week limit, statute	Agency	None	Yes	No	No
Wisconsin	20% in dispute cases, statute	Agency	None	Yes	Yes	No
Wyoming	Individual case basis	Court	Yes	Yes	Yes	No

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

ATTACHMENT B  
Alaska Statute 23.30.145

**Sec. 23.30.140. Appointment of guardian by court.** The board may require the appointment of a guardian or other representative by a competent court for any person who is mentally incompetent or a minor to receive compensation payable to the person under this chapter and to exercise the powers granted to or to perform the duties required of the person under this chapter. If the board does not require the appointment of a guardian to receive the compensation of a minor, appointment for this purpose is not necessary. (§ 10 ch 193 SLA 1959; § 7(4) (c) ch 193 SLA 1959; § 8(2) ch 193 SLA 1959)

**Sec. 23.30.145. Attorney fees.** (a) Fees for legal services rendered in respect to a claim are not valid unless approved by the board, and the fees may not be less than 25 per cent on the first \$1,000 of compensation or part of the first \$1,000 of compensation, and 10 per cent of all sums in excess of \$1,000 of compensation. When the board advises that a claim has been controverted, in whole or in part, the board may direct that the fees for legal services be paid by the employer or carrier in addition to compensation awarded; the fees may be allowed only on the amount of compensation controverted and awarded. When the board advises that a claim has not been controverted, but further advises that bona fide legal services have been rendered in respect to the claim, then the board shall direct the payment of the fees out of the compensation awarded. In determining the amount of fees the board shall take into consideration the nature, length and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries.

(b) If an employer fails to file timely notice of controversy or fails to pay compensation or medical and related benefits within 15 days after it becomes due or otherwise resists the payment of compensation or medical and related benefits and if the claimant has employed an attorney in the successful prosecution of the claim, the board shall make an award to reimburse the claimant for the costs in the proceedings, including a reasonable attorney fee. The award is in addition to the compensation or medical and related benefits ordered.

(c) If proceedings are had for review of a compensation or medical and related benefits order before a court, the court may allow or increase an attorney's fees. The fees are in addition to compensation or medical and related benefits ordered and shall be paid as the court may direct. (§ 26(1), (3), (4) ch 193 SLA 1959; am § 1 ch 26 SLA 1969)

#### NOTES TO DECISIONS

This section reflects the legislature's intent that attorneys in compensation proceedings should be reasonably compensated for services rendered to a compensation claimant. *Rose v. Alaskan Village, Inc.*, Sup. Ct. Op. No. 333 (File No.

623), 412 P.2d 503 (1966); *Johns v. State, Dep't of Hwys.*, Sup. Ct. Op. No. 424 (File Nos. 732, 743), 431 P.2d 148 (1967).

This section seeks to insure that attorney's fee awards in compensation cases are sufficient to compensate counsel for work

performed. *Wien Air Alaska v. Arant*, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

The right to tax attorney's fees in compensation cases is purely statutory and an employee, in order to be entitled to such fees and to have them taxed against the employer or the carrier, must bring himself under this section. *M-B Contracting Co. v. Davis*, Sup. Ct. Op. No. 275 (File No. 500), 399 P.2d 433 (1965).

The provisions of subsections (a) and (b) impart meaning to subsection (c). *Rose v. Alaskan Village, Inc.*, Sup. Ct. Op. No. 333 (File No. 623), 412 P.2d 503 (1966).

Subsection (a) provides for the award of a minimum attorney's fee. *Haile v. Pan Am. World Airways, Inc.*, Sup. Ct. Op. No. 861 (File No. 1642), 505 P.2d 838 (1973).

Any absurdity that might be said to exist in amount of the minimum fees set out in subsection (a) is inherent in the statute and not dependent on any interpretation which might be given it. *Alaska Interstate v. Houston*, Sup. Ct. Op. No. 1760 (File No. 3655), 586 P.2d 618 (1978).

**Relief from inadequate fee.** — Subsection (a) provides for a minimum fee. If application of the minimum fee formula yields a fee inadequate to compensate the attorneys, there is the right to appeal to the superior court. *Wien Air Alaska v. Arant*, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

Subsection (a) award applies only in cases where claim has been controverted. — The award of the minimum statutory fees applies only in cases where a claim has been controverted. *Haile v. Pan Am. World Airways, Inc.*, Sup. Ct. Op. No. 861 (File No. 1642), 505 P.2d 838 (1973).

The subsection (a) formula only applies to "controverted" claims. *Wien Air Alaska v. Arant*, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

Where the board awarded employee's attorney's fees on all compensation in excess of \$6,000, the amount tendered by the employer as a permanent partial disability award, the \$6,000 voluntarily tendered by the employer was not "in controversy" despite the fact that the employer disputed the disability classification, since this section unambiguously restricts the award of attorney's fees to amounts which are controverted. *Bignell v. Wise Mechanical Contractors*, Sup. Ct. Op. No. 2566 (File No. 5929), 651 P.2d 1163 (1982).

Subsection (a) requires only that the board "advises that a claim has been controverted," not that a formal notice of controversy be filed under AS 23.30.155(d). *Alaska Interstate v. Houston*, Sup. Ct. Op. No. 1760 (File No. 3655), 586 P.2d 618 (1978).

The word "advises" in subsection (a) can be read as "finds." *Wien Air Alaska v. Arant*, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

A formal notice of controversion is not required to be filed under AS 23.30.155(d) as a prerequisite to an award of the minimum attorney fees of subsection (a). *Alaska Interstate v. Houston*, Sup. Ct. Op. No. 1760 (File No. 3655), 586 P.2d 618 (1978).

A notice of controversion by the employer is not required for an award of attorney's fees under subsection (a). *Wien Air Alaska v. Arant*, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

AS 23.30.155(d) serves the independent concern of AS 23.30.155, and does not purport to define when a claim is in fact controverted. *Alaska Interstate v. Houston*, Sup. Ct. Op. No. 1760 (File No. 3655), 586 P.2d 618 (1978).

**"Award".** — The transitive verb "award" means "to grant as merited or due." *State, Dep't of Hwys. v. Brown*, Sup. Ct. Op. No. 1935 (File Nos. 3912, 4374), 600 P.2d 9 (1979).

Where an insurance carrier believed that if a claim were controverted further, the ultimate result would be a decision by the Workmen's Compensation Board awarding the employee the compensation to which he was entitled, the carrier's payment of the compensation without waiting for action by the board can fairly be construed as the equivalent of "awarding" such compensation to the employee in the general sense of granting that which is merited or due. *State, Dep't of Hwys. v. Brown*, Sup. Ct. Op. No. 1935 (File Nos. 3912, 4374), 599 P.2d 9 (1979).

Subsection (b) makes no reference to the award of a minimum fee, but refers only to the allowance of a "reasonable attorney fee." *Haile v. Pan Am. World Airways, Inc.*, Sup. Ct. Op. No. 861 (File No. 1642), 505 P.2d 838 (1973).

**Applicability of subsection (b) grant.** — The subsection (b) grant of reasonable attorney fees applies to an employer who otherwise fails to make payment of compensation. *Wien Air Alaska v. Arant*, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

Subsection (b) construed as separate from minimum fee provision of subsection (a). — Had the legislature intended the minimum fee provision to apply to subsection (b), it would have been a simple matter to have so specified. The failure to do so, coupled with the illogic of awarding a fee which may be out of all proportion to the services performed, dictates a construction of subsection (b) as being separate and distinct from the minimum fee provision of subsection (a). *Haile v. Pan Am. World Airways, Inc.*, Sup. Ct. Op. No. 861 (File No. 1642), 505 P.2d 838 (1973).

Alaska's provision allowing attorney's fees is unique in its generosity to the claimants and their counsel. *Haile v. Pan Am. World Airways, Inc.*, Sup. Ct. Op. No. 861 (File No. 1642), 505 P.2d 838 (1973).

But it does not provide that a delay in payment, by itself, constitutes a controversion of the claim justifying the award of the minimum fees. *Haile v. Pan Am. World Airways, Inc.*, Sup. Ct. Op. No. 861 (File No. 1642), 505 P.2d 838 (1973).

An employer's delay in making payment, which was due to conditions over which it had no control, cannot be equated to a controversion of the claim. *Haile v. Pan Am. World Airways, Inc.*, Sup. Ct. Op. No. 861 (File No. 1642), 505 P.2d 838 (1973).

When claim is controverted. — Although a delay in payments did not constitute a controversion, where an employer has consistently denied and litigated its obligation to pay the increase of compensation sought, and eventually received by the claimants, the employer controverted the claimant's claim. *Wien Air Alaska v. Arant*, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

The fact that an employer agreed to pay compensation and only disputed the amount does not preclude a finding of controversion and an award of attorney's fees under subsection (a). *Wien Air Alaska v. Arant*, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

The contention that subsection (a) attorney fees may be awarded only in cases where the right to compensation, as distinct from the amount, is at issue is contrary to the express language of subsection (a) which contemplates controversion "in part." *Alaska Interstate v. Houston*, Sup. Ct. Op. No. 1760 (File No. 3655), 586 P.2d 618 (1978).

Discretion of court. — This section authorizes the court, before which a com-

pensation order of the board is up for review, to exercise its discretion as to whether attorney's fees should be allowed to counsel for the claimant appellee and be taxed against the employer, even though the employee is not successful on the appeal. *M-B Contracting Co. v. Davis*, Sup. Ct. Op. No. 275 (File No. 500), 399 P.2d 433 (1965).

An award of attorney's fees is subject to the broad discretion of the trial court. *Wien Air Alaska v. Arant*, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

An abuse of discretion is established where it appears that the trial court's determination as to attorney's fees was manifestly unreasonable. *Wien Air Alaska v. Arant*, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

The superior court's fee award for the appeal should provide for realistic compensation, taking into account the same factors that the Workmen's Compensation Board considers when it grants attorney's fees for noncontroverted claims: "the nature, length and complexity of the services performed, transportation charges, and the benefits resulting from the services to the compensation beneficiaries." Additionally, though, the superior court should consider the board's fee award. This is relevant where application of the formula in subsection (a) has produced a disproportionately large award for the board proceeding. *Wien Air Alaska v. Arant*, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

Counsel for claimants should be afforded a hearing on the issue of the amount of attorney's fees that would be reasonable in the case considering the time expended and the results obtained. *Haile v. Pan Am. World Airways, Inc.*, Sup. Ct. Op. No. 861 (File No. 1642), 505 P.2d 838 (1973).

When a carrier contests the amount of compensation owed to an injured workman, it "resists the payment of compensation" within the meaning of subsection (b). In such cases, if the claimant has hired an attorney in the successful prosecution of his claim, subsection (b) entitles him to reasonable attorney's fees in addition to any added compensation that is awarded to him. *Bradley v. Mercer*, Sup. Ct. Op. No. 1424 (File No. 3057), 563 P.2d 880 (1977).

Employee entitled to fees based on total amount of compensation. — Where a claim for temporary total disabil-

ity compensation had been controverted by the insurance carrier, the employee disputed this action, secured representation by counsel, and filed an application for adjustment of the claim, and subsequently, as a result of medical evidence, the carrier paid the employee the accumulation of past-due payments covering the preceding year and thereafter continued disability payments until the employee had received the statutory maximum for temporary total disability, the employee was entitled to attorney's fees based on the total amount of compensation, not just the amount of the past-due payments. *State, Dep't of Hwys. v. Brown*, Sup. Ct. Op. No. 1935 (File Nos. 3912, 4374), 600 P.2d 9 (1979).

**Award to employer-defendant.** — Appellate court grant of attorneys' fees to an employer-defendant must be based on finding that claimant's appeal was frivolous, unreasonable, or brought in bad faith. *Whaley v. Alaska Workers' Comp. Bd.*, Sup. Ct. Op. No. 2533 (File No. 5701), 648 P.2d 955 (1982).

**Attorney's fees held reasonable.** —

See *Johns v. State, Dep't of Hwys.*, Sup. Ct. Op. No. 424 (File Nos. 732, 743), 431 P.2d 148 (1967).

**Attorney's fees held not sufficient.** — See *Rose v. Alaskan Village, Inc.*, Sup. Ct. Op. No. 333 (File No. 623), 412 P.2d 503 (1966).

**Award of attorneys' fees under prior law.** — See *Hunter v. Wagner*, 7 Alaska 382 (1926); *Bacciglieri v. Ghezzi*, 11 Alaska 93 (1946); *Alaska Packers Ass'n v. Alaska Indus. Bd.*, 12 Alaska 465 (1949).

**Appeal.** — An attorney in a workers' compensation proceeding has the right to appeal from an award of attorney's fees by either the board or the superior court. *Rose v. Alaskan Village, Inc.*, Sup. Ct. Op. No. 333 (File No. 623), 412 P.2d 503 (1966).

Applied in *J.B. Warrack Co. v. Roan*, Sup. Ct. Op. No. 366 (File No. 684), 418 P.2d 986 (1966); *Ketchikan Gateway Borough v. Saling*, Sup. Ct. Op. No. 2006 (File No. 3820), 604 P.2d 590 (1979).

Cited in *Cooper v. Carlson*, Sup. Ct. Op. No. 907 (File No. 1769), 511 P.2d 1305 (1973).

**Collateral references.** — Compensation of attorneys for services in connection with claims. 159 ALR 912.

#### Article 4. Payment of Compensation.

Section	Section
150. Commencement of compensation	165. Lien
155. Payment of compensation	170. Collection of defaulted payments
160. Assignment and exemption of claims	

**Collateral references.** — 82 Am. Jur. 2d, *Workmen's Compensation*, §§ 649-658.

101 C.J.S., *Workmen's Compensation*, §§ 826-848.

Construction of provision of act regarding "waiting period." 81 ALR 1261.

**Sec. 23.30.150. Commencement of compensation.** Compensation may not be allowed for the first three days of the disability, except the benefits provided for in AS 23.30.095; if, however, the injury results in disability of more than 28 days, compensation shall be allowed from the date of the disability. (§ 5(1) ch 193 SLA 1959)

*Raab v. Parker Drilling*, Ct. App. Op. No. 3000 (File No. S-681), 710 P.2d 423 (1985).

**Standard for determining liability for formerly disabled employee's subsequent disability.** — Applying the presumption of compensability in this section and the last injurious exposure rule in 23.30.205 to a dispute between a carrier and its former insured, which became a self-insured employer, establishes a clear standard for determining liability for a formerly disabled employee's subsequent disability and avoids treating employees of a self-insured employer differently from similarly situated employees of an employer with outside insurance. *Veco, Inc. v. Wolfer*, Sup. Ct. Op. No. 2904 (File No. 7205), 693 P.2d 865 (1985).

**No preliminary showing of on-the-job stress.** — The supreme court of Alaska held that a worker who suffered a mental disability allegedly due to non-traumatic gradual work-related stress did not have to make a preliminary showing that the on-the-job stress the worker experienced was greater than the stress which

all employees experience. *Fox v. Alascom, Inc.*, Sup. Ct. Op. No. 3051 (File No. S-482), 718 P.2d 977 (1986).

**Effect of elimination of presumption of compensability.** — In the circumstance where the presumption of compensability has been successfully rebutted, the presumption is eliminated and the employee must prove all the elements of his case by a preponderance of the evidence. *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2933 (File Nos. S-42, S-119), 698 P.2d 1206 (1985).

**Employee's claim not compensable.** — Where the presumption in paragraph (1) of subsection (a) has been successfully rebutted, and the employee has failed to prove all elements of his claim by a preponderance of the evidence, the employee's claim is not compensable. *Burgess Constr. Co. v. Smallwood*, Sup. Ct. Op. No. 2933 (File Nos. S-42, S-119), 698 P.2d 1206 (1985).

**Benefits claim because of Crohn's disease denied.** — See *Delaney v. Alaska Airlines*, Sup. Ct. Op. No. 2903 (File No. S-226), 693 P.2d 859 (1985).

### Sec. 23.30.130. Modification of awards.

#### NOTES TO DECISIONS

##### I. GENERAL CONSIDERATION.

**Notice to employer under AS 23.30.110.**

It is within the authority of the Workers' Compensation Board to modify an earlier factual determination; however, where it does so without providing the worker's former employer the notice

required by AS 23.30.110, the board's second order is improper. *Dresser Indus., Inc. v. Hiestand*, Sup. Ct. Op. No. 2946 (File No. S-318), 702 P.2d 244 (1985).

Applied in *McShea v. State*, Sup. Ct. Op. No. 2846 (File No. S-69), 685 P.2d 1242 (1984); *Usibelli Coal Mine v. Marx*, Sup. Ct. Op. No. 2992 (File No. S-522), 708 P.2d 1284 (1985).

### Sec. 23.30.145. Attorney fees.

#### NOTES TO DECISIONS

**Attorney's fees when claim controverted more than once.** — An employee could not recover multiple attorney's fees when his employer controverted his workers' compensation claim more than once. *Bignell v. Wise Mechanical Contractors & Indus. Indem. Co.*, Sup. Ct. No. 3065 (File No. S-742), P.2d (1986).

**Application of res judicata to workers' compensation judgment.** — See *Bignell v. Wise Mechanical Contractors & Indus. Indem. Co.*, Sup. Ct. Op. No. 3065 (File No. S-742), P.2d (1986).

**Contingent-fee agreement not enforced.** — See *McShea v. State*, Sup. Ct. Op. No. 2846 (File No. S-69), 685 P.2d 1242 (1984).

**Attorney's fees held reasonable.**

The amount of the court's award of attorney's fees to the claimant's counsel was not an abuse of discretion in light of the time spent by counsel, the complexity and novelty of the case, the benefit which resulted to the claimant, and the contingent nature of counsel's right to compensation.

§ 23.30.185 LABOR AND WORKERS' COMPENSATION § 23.30.200

Wise Mechanical Contractors v. Bignell, Sup. Ct. Op. No. 3053 (File Nos. S-566, S-627), 718 P.2d 971 (1986).

Applied in Providence Wash. Ins. Co. v. Grant, Sup. Ct. Op. No. 2905 (File No. 7903), 693 P.2d 872 (1985).

Quoted in Bailey v. Litwin Corp., Sup. Ct. Op. No. 3009 (File No. S-378), 713 P.2d 249 (1986).

Article 5. Computation of Compensation.

Sec. 23.30.185. Compensation for temporary total disability.

NOTES TO DECISIONS

Applied in Bailey v. Litwin Corp., Sup. Ct. Op. No. 3009 (File No. S-378), 713 P.2d 249 (1986).

Cited in Deuser v. State, Sup. Ct. Op. No. 2920 (File No. S-243), 697 P.2d 647 (1985).

Sec. 23.30.190. Compensation for permanent partial disability.

NOTES TO DECISIONS

Editor's notes. — Cesar v. Alaska Workmen's Comp. Bd., Sup. Ct. Op. No. 150 (File No. 281), 383 P.2d 805 (1963), which is annotated in the main pamphlet, was overruled by Providence Wash. Ins. Co. v. Grant, Sup. Ct. Op. No. 2905 (File No. 7903), 693 P.2d 872 (1985).

This section states maximum amount recoverable without referring to percentage of impairment. — The plain language of this section does not require that the maximum amount recoverable for a "scheduled injury" be multiplied by the percentage of impairment to the body member or function; instead, it states the maximum amount recoverable under a subsection without referring to the percentage of impairment. Providence Wash. Ins. Co. v. Grant, Sup. Ct. Op. No. 2905 (File No. 7903), 693 P.2d 872 (1985).

Pro-rating maximum awards for percentage of impairment undermines legislative policy. — Requiring that the maximum awards for "scheduled injuries" be prorated according to the employee's percentage of impairment to the body member or function would not further the policy of placing absolute limits on an employer's liability under this chapter; instead, such a requirement undermines the legislative policy, embodied in paragraphs (1)-(19) of subsection (a), to award no more than specific amounts for specific disabilities. Providence Wash. Ins. Co. v. Grant, Sup. Ct. Op. No. 2905 (File No. 7903), 693 P.2d 872 (1985).

Applied in Bailey v. Litwin Corp., Sup. Ct. Op. No. 3009 (File No. S-378), 713 P.2d 249 (1986).

Sec. 23.30.200. Temporary partial disability.

NOTES TO DECISIONS

Applied in Bailey v. Litwin Corp., Sup. Ct. Op. No. 3009 (File No. S-378), 713 P.2d 249 (1986).

NOTE: THIS PERSON HAD TO LEAVE AND  
COULD NOT TESTIFY SO SHE SUBMITTED  
THIS TESTIMONY FOR THE FILE. 11/12/87

# NARPPS

National Association of Rehabilitation Professionals in the Private Sector




November 11, 1987

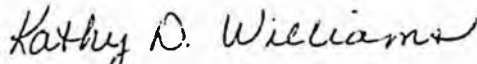
The Executive Officers of the Alaska Chapter of the National Association of Rehabilitation Professionals in the Private Sector (AK NARPPS) make the following statements regarding the Alaska Workers' Compensation Act, specifically, Article I, Administration, Section 41, Rehabilitation of Injured Workers.

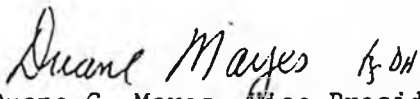
- I. Rehabilitation providers have had to work without approved guidelines for over five years. The providers have voluntarily complied with proposed regulations in accordance with the efforts of two previous administrators. In accordance with 23.30.005 (h) and in cooperation with the rehabilitation providers, the AWCB is strongly urged to assume more direct responsibility by supporting and administering the mandated provisions of Title 23, Labor and Workers' Compensation, Chapter 30.
- II. The scope, intent, and design of Section 23.30.041 should be evaluated, refined, and revised, not discarded, to improve the provision of service to those eligible injured workers.
  - A. It is not because .041 makes rehabilitation mandatory that it cannot work, but rather other variables such as prompt referrals, early intervention, increased opportunities by employers to accommodate return to work plans for injured workers.
- III. The AWCB should duly implement and administer registration and standards for minimum credentials, education, and experience of rehabilitation providers.

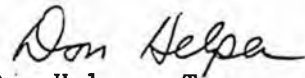
In conclusion, we believe it is better to develop the operational and procedural aspects of existing legislation. Capitalizing on the combined expertise of the Board in cooperation with rehabilitation providers and other resources, could create an environment which would facilitate a more timely return to work for our injured workers.

Cordially,

  
 Neil R. Bennett, President  
 M.Ed., CRC, CIRS, QRP

  
 Kathy D. Williams, Secretary  
 M.Ed., CVE, CCC, QRP

  
 Duane G. Mayes, Vice President  
 M.S., CIRS, CVE, QRP

  
 Don Helper, Treasurer  
 CVE, CWA, QRP

NRB/pjm

# CHART IX WAITING PERIOD FOR INCOME BENEFITS; MEDICAL BENEFITS January 1, 1986

JURISDICTION	WAITING PERIOD <sup>1</sup>	RETRO-ACTIVE PERIOD	MEDICAL BENEFITS				
			UNLIMITED	CHOICE OF PHYSICIAN <sup>2</sup>		ARTIFICIAL APPLIANCES FURNISHED	SPECIAL PROVISIONS
				EMPLOYER	EMPLOYEE		
ALABAMA	3 days*	3 weeks	Yes	Initial choice	(**)	Yes	Employer must replace appliances damaged in work related accident and provide physical and vocational rehabilitation
ALASKA	3 days	4 weeks	Yes		Yes	Yes	Injury includes damages to eyeglasses, dentures, hearing aids, or any prosthetic devices
AMERICAN SAMOA	3 days	2 weeks	Yes			Yes	
ARIZONA	7 days	2 weeks	Yes		Yes	Yes	Prayer or spiritual treatment by agreement
ARKANSAS	7 days	2 weeks	Yes	Agency may change		Yes	Spiritual treatment by agreement**
CALIFORNIA	3 days*	3 weeks*	Yes		If prior notification given to employer	Yes	Includes x-ray reports, medical reports, and testimony and laboratory tests reasonably required to prove a claim**
COLORADO	3 days	2 weeks	Yes	Agency may change		Yes	Dental Service—maximum \$500
CONNECTICUT	3 days	1 week	Yes		From state list	Yes*	Worker compensated for time lost due to medical attention. Employer must repair or replace appliances damaged in employment. Must also repair or replace eyeglasses, contact lenses, hearing aids, or dentures where injury to face or head. Prayer or spiritual treatment with Connecticut's approval
DELAWARE	3 days*	7 days*	Yes		Yes	Yes	Employer must replace prostheses as needed
DISTRICT OF COLUMBIA	3 days	2 weeks	Yes		From state list	Yes	Spiritual treatment by agreement
FLORIDA	7 days	2 weeks	Yes	Yes		Yes	Injury includes damage to dentures, eyeglasses, and prosthetic devices in conjunction with accident. Employer must provide custodial care
GEORGIA	7 days	1 week	Yes	Agency may change		Yes*	
GUAM	7 days	21 days	Yes			Yes	
HAWAII	3 days		Yes		Yes	Yes	Maximum monthly attendant's allowance—4 times SAWW
IDAHO	5 days*	2 weeks*	Yes	Yes		Yes	Christian Science treatment permitted
ILLINOIS	3 days*	2 weeks	Yes		Yes	Yes	Spiritual treatment by agreement. Employer must repair/replace appliances damaged in compensable accident
INDIANA	7 days	3 weeks	Yes	Yes		Yes	Employer pays reasonable expenses, including travel, food, and lodging, for treatment outside county. Spiritual treatment by agreement
IOWA	3 days*	2 weeks	Yes	Yes		Yes	Employer must repair or replace appliances
KANSAS	7 days	3 weeks	Yes	Yes		Yes	Prayer or spiritual treatment by agreement
KENTUCKY	7 days	2 weeks	Yes		Yes	Yes	
LOUISIANA	14 days	6 weeks	Yes		Yes	Yes	Employer must repair/replace appliances
MAINE	3 days*	2 weeks	Yes		Yes	Yes	Chiropractic services authorized
MARYLAND	3 days	2 weeks	Yes		Yes	Yes	Employer must repair/replace appliances
MASSACHUSETTS	5 days	6 days	Yes		Yes	Yes	
MICHIGAN	7 days	2 weeks	Yes	Initial choice		Yes	
MINNESOTA	3 days	10 days	Yes		Yes	Yes	Christian Science treatment by agreement. Chiropractic and podiatric treatment authorized
MISSISSIPPI	5 days	2 weeks	Yes		Yes	Yes	
MISSOURI	3 days	2 weeks	Yes	Agency may change		Yes	Prayer or spiritual treatment by agreement
MONTANA	5 days*	5 days*	Yes		Initial choice	Yes	Employer must repair/replace appliances damaged as a result of injury
NEBRASKA	7 days	6 weeks	Yes		Yes	Yes	Employer must replace appliances damaged due to compensable injury. Employer must provide plastic surgery for disfigurement
NEVADA	5 days	5 days	Yes		Yes	Yes	Spiritual treatment permitted
NEW HAMPSHIRE	3 days	1 week	Yes		Yes	Yes	
NEW JERSEY	7 days	8 days	Yes	Yes		Yes	Hospital care must be semi-private, if available
NEW MEXICO	7 days	4 weeks	Yes	Yes		Yes	Claimant may not refuse treatment reasonably essential to provide recovery*
NEW YORK	7 days	2 weeks	Yes		From state list	Yes	Employer liable for X-rays, special diagnostic tests, consultations
NORTH CAROLINA	7 days	4 weeks	Yes	Yes	Agency may change	Yes	Employer must repair/replace appliances damaged in compensable accident. Medical care includes rehabilitation services
NORTH DAKOTA	5 days	5 days	Yes		Yes	Yes	
OHIO	7 days	2 weeks	Yes		Yes	Yes	Includes hospitalization and damage to eyeglasses, dentures, hearing aids, or prostheses
OKLAHOMA	3 days	3 days	Yes		Yes	Yes	Employer must repair/replace appliances. Special provisions for hernias
OREGON	3 days	2 weeks	Yes		Yes*	Yes	Spiritual treatment by agreement

<sup>1</sup> If disability continues for longer than stated periods, compensation is paid for the waiting period. Waiting periods do not apply to medical care, which is furnished from the first day of injury.

<sup>2</sup> Information for 1984 supplied by Division of State Standards, U.S. Department of Labor.

Ala. \*Temporary disability only.

\*\*Employee can select second physician from a panel selected by employer.

Calif. \*Waiting period also terminated by hospitalization.

\*\*Psychologists included within definition of physician and treatment permitted. Personal chiropractor allowed if employee has previously notified employer that chiropractic treatments were being rendered.

Conn. \*By court decision. *Olmstead v. Lumphreys*, 93 Conn. 20, 104 A. 488 (1918).

Del. \*No waiting period if incapacity results in hospitalization or is caused by amputation of member.

Ga. \*Included in total amount allowed for medical care.

Idaho \*Waiting period also terminated by hospitalization.

Ill. \*Temporary total disability only.

Iowa \*No waiting period for permanent partial disability.

Maine \*Firemen are exempt from waiting period and receive compensation from date of disability.

Mont. \*Waiting period refers to number of days on which worker has a loss of wages.

N.M. \*By court decision. *Brooks vs. Employers National Insurance Co.*, 688 P.2d. 25 (1984).

Ore. \*May choose physician within state. Allowed 4 changes; changes thereafter require Director's approval.

CHART IX  WAITING PERIOD FOR INCOME BENEFITS; MEDICAL BENEFITS  January 1, 1986 (continued)

JURISDICTION	WAITING PERIOD <sup>1</sup>	RETRO-ACTIVE PERIOD	MEDICAL BENEFITS				
			UNLIMITED	CHOICE OF PHYSICIAN <sup>2</sup>		ARTIFICIAL APPLIANCES FURNISHED	SPECIAL PROVISIONS
				EMPLOYER	EMPLOYEE		
PENNSYLVANIA	7 days	2 weeks	Yes	Initial choice*		Yes	
PUERTO RICO	3 days	10 days	Yes	State agency			
RHODE ISLAND	3 days	2 weeks	Yes		Yes	Yes	
SOUTH CAROLINA	7 days	2 weeks	Yes	Yes		Yes	
SOUTH DAKOTA	7 days*	6 days	Yes	Yes		Yes	Employer must repair/replace appliances damaged in compensable accident
TENNESSEE	7 days	2 weeks	Yes		From employer list	Yes	Provides for nursing services, treatment by chiropractors
TEXAS	7 days	4 weeks	Yes		Yes	Yes	Repair or replacement of appliances when determined by physician
UTAH	3 days	2 weeks	Yes	Agency may change		Yes	\$1,800 limit for each artificial appliance, except unusual costs
VERMONT	3 days*	4 days	Yes		Initial choice	Yes	Injury includes damage to and cost of replacement of eyeglasses, hearing aids, and prosthetic devices
VIRGIN ISLANDS	1 day	1 day	\$16,000		Yes; agency may change	Yes	\$30,000 amount limit if treatment outside Virgin Islands
VIRGINIA	7 days	3 weeks	Yes		From employer list	Yes	Employer must repair/replace appliances damaged in compensable accident. Employer may be ordered to furnish wheelchair and make alterations to home; maximum \$10,000
WASHINGTON	3 days	2 weeks	Yes		Yes	Yes	Employees pay half of medical aid premiums. Department will replace/repair appliances damaged in compensable accident
WEST VIRGINIA	3 days	1 week	Yes		Yes	Yes	Payment for prosthetic/orthotic appliances will not be made until appliance is deemed serviceable. Repair or replacement of glasses damaged in an accident not paid for unless there was compensable injury
WISCONSIN	3 days	1 week	Yes		Yes	Yes	Repair or replacement of appliances is limited to normal wear and tear
WYOMING	3 days	6 days	Yes		Yes	Yes	Maximum amount for prosthesis or hearing aid - \$1,500 plus \$350 for travel for fitting; amount in excess may be granted upon application
F.E.C.A.	3 days*	14 days	Yes			Yes	Additional \$500 monthly for medical attendant
LONGSHORE ACT	3 days	2 weeks	Yes		Labor Secretary may change	Yes	Consent for specialist, if needed. Spiritual treatment permitted
ALBERTA	1 day	1 day	Yes		Yes	Yes	Appliances repaired or replaced by Board. Board may repair or replace garment damaged in compensable accident. Clothing allowance for wear due to prosthetic or wheelchair - \$200 per year. Attendance allowance - \$378 to \$1,329 per month, plus independence allowance of \$125 per month
BRITISH COLUMBIA	1 day		Yes		Yes	Yes	Appliances repaired or replaced at Board's discretion, regardless of personal injury (includes eyeglasses, dentures, and hearing aids unless worker is at fault). Board may provide eyeglasses for serious visual impairment caused by work injury. Personal care allowance - maximum \$1,050 21 monthly. Annual clothing allowance for wear due to prosthesis - \$160.64 for upper limb, \$321.30 for lower limb, \$481.94 for both
MANITOBA	1 day	1 day	Yes		Yes	Yes	Appliances repaired or replaced at Board's discretion, regardless of personal injury. Clothing allowance for wear due to prosthetic device - \$120 upper limb, \$240 lower limb. Attendance allowance \$102 to \$114 monthly
NEW BRUNSWICK	1 day	1 day	Yes		Yes	Yes	Medical aid includes repair or replacement of appliances. Clothing allowance for wear due to prosthesis - \$150. Attendance allowance \$90 to \$300 monthly
NEWFOUNDLAND	1 day	(-)	Yes	No	Initially yes; should consult Commission before changing	Yes	Commission may repair or replace appliances and may pay daily allowance for treatment away from home. Clothing allowance for wear due to prosthetic device - \$150 to \$300. Attendant's allowance - \$100 to \$100 monthly. Home care allowance payable at Commission's discretion
NORTHWEST TERRITORIES	1 day	1 day	Yes		Yes, subject to Board approval	Yes	Clothing allowance for wear due to prosthetic device - \$100. Board may repair/replace appliances damaged in a compensable accident
NOVA SCOTIA	3 days*	3 days	Yes		Yes	Yes	Attendant's allowance - \$300 monthly. Clothing allowance for wear due to prosthetic device - \$350 per year. Board may repair or replace appliances, and renew eyeglasses (replaced if damaged in any accident)
ONTARIO	1 day	(-)	Yes		Initial choice	Yes	Maximum attendance allowance - \$1,029 monthly. Clothing allowance for wear due to prosthetic device - \$175 for upper limb and \$240 for lower limb**
PRINCE EDWARD ISLAND	1 day	1 day	Yes		Initial choice	Yes	Appliances repaired or replaced at Board's discretion
QUEBEC	1 day	(-)	Yes		Yes	Yes	Commission may repair/replace prosthesis damaged in course of employment. Additional clothing allowance for wear due to prosthetic device - \$300. Attendance allowance - \$200 to \$800 monthly
SASKATCHEWAN	(-)	(-)	Yes		Yes	Yes	Clothing allowance for wear due to prosthetic device - \$142 for arm, \$316 for leg. Employer must repair/replace appliances damaged in compensable accident. Personal care allowance - \$213 to \$1,075
YUKON TERRITORY	1 day	1 day	Yes		Yes	Yes	Clothing allowance - \$132 for upper limb and \$260 for lower limb. Personal care allowance - \$7.00 to \$24.00 per day, independence allowance \$100 per month
CANADIAN MERCHANT SEAMEN'S ACT	3 days	3 days	Yes		Yes	Yes	Employer must keep appliances in repair or replace, at Board's discretion

Pa. \*Only if 5 physicians posted and for first 14 days of treatment.

So. \*Consecutive days.

Vt. \*Total disability only.

F.E.C.A. \*Waiting period begins running after 45 days' continuation of pay."

Mid. \*Employer payment for day on which accident occurs.

N.S. \*No waiting period for permanent partial disability.

Ont. \*Compensation not paid for the day on which the accident occurs.

\*\*Compensation payable during disability caused by damage to prosthetic device.

Quebec \*Compensation not paid for day on which injury occurs.

Sask. \*Compensation not paid for the day on which the accident occurs.

# WCCA

July 30, 1987

Mark K. Johnson,  
Counsel  
Senate Labor & Commerce Committee  
P. O. Box V  
Juneau, Alaska 99811

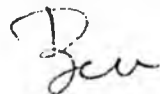
Dear Mark,

Steve Haag and I were both very pleased to be able to meet you last week, and Steve was especially appreciative of his further chance to talk again during his visit to Juneau.

Attached is a copy of the list of issues which the Labor and Management representatives laid on the table at their June 30 meeting. You can see that both groups have agreement in the areas of medical care and vocational rehabilitation.

We'll keep you posted on WCCA's progress in developing concepts for legislative proposals.

Sincerely,



Beverly Isenson

cc: Steve Haag  
Encl. Task Force Issues list

# WCCA

WCCA Board Meeting  
Minutes  
October 1, 1987

The meeting took place at Nikko Gardens. Vice-President Wes Nason called the meeting to order at 7:10 a.m.

Wes reported that Steve Haag was out of town this week. Wes provided a President's report. He noted the retention of Holden Hackney and Breeze to conduct fundraising and public relations efforts. He stated that the Executive Committee had interviewed several lobbyists and had plans to talk with others prior to determining who might be retained to lobby for WCCA during the next session. He also stated that the Task Force has been reviewing recommendations of the vocational rehabilitation and compensation committees.

Wes asked for a motion to approve minutes from the previous meeting. A motion was made and seconded. Without objection, the minutes were approved.

Eric Tollefson presented a Treasurer's report noting recent contributions by Totem Ocean Trailer Express and \$5000 in airfare from Alaska Airlines.

Dick Cattanaach reported on the work of the Task Force. Recent meetings have focused on the vocational rehabilitation recommendations. Most issues have been resolved. Medical committee recommendations will soon be reviewed and scheduled benefits will be discussed.

Wes asked for items under Old Business. There were none. Under New Business, David Gottstein asked that a meeting of the vocational rehabilitation committee be arranged. He also stated that a proposal had been made to the Executive Committee regarding a bottom line position he felt WCCA should adopt. That position would be to seek legislative action that would result in a 15% decrease in the cost of workers' compensation insurance. After general discussion, he moved that WCCA determine by mid-November whether the recommendations of the Task Force would achieve a bottom line 15% reduction in the cost of insurance, and that, if the recommended plan would not achieve such results, that WCCA be prepared to go forward on its own with employers to achieve such a goal through the legislature. The motion was seconded and approved without objection.

A presentation on the recommendations of the Second In. Committee was made by Frank Mears and Rene Murray. Written materials covering their recommendations were distributed. Final recommendations will be forwarded to the Executive Committee.

The meeting adjourned at 8 a.m.

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

WORK

# WCCA

AGENDA  
WCCA Board Meeting

November 5, 1987

- I. President's Report
- II. Approval of Minutes
- III. Treasurer's Report
- IV. Presentation: Recommendations and Negotiations  
of the Management-Labor Task Force  
  
Dick Cattanach  
Bob Anders
- V. Old Business
- VI. New Business  
\* Volunteers for AGC Booth
- VII. Adjournment

# The WCCA Sounder

*"A publication for people concerned about workers' compensation reform"*

November 1987

## 1988 Increases

Workers' Compensation premiums will skyrocket up to 68 percent in 1988 for some Alaskan businesses under recommended rates recently suggested by the National Council on Compensation Insurance. The 1988 rates were unveiled during public hearings conducted by the State Division of Insurance October 22.

While the average rate increase is 25 percent, many businesses will see greater rate hikes. As a result, Alaskan employers will contribute up to \$38 million more in 1988 to cover increasing workers' compensation claims. Workers' comp losses have more than doubled in the past four years, growing from \$71 million in 1983 to \$159 million in 1986. In 1986, Alaskan businesses paid \$153 million. At the same time, payrolls have dropped below 1982 levels.

Rate classifications are divided into four sections. The average 1988 rate increase for each will be:

**Manufacturing:** includes bakeries, canneries, carpentry shops, machine shops and newspapers: **-14 to +36 percent.**

**Contracting:** includes plumbing, masonry, welding, electrical, water drilling, excavating, roofing and sewer construction: **+4 to +54 percent.**

**Oil and Gas:** includes oil companies, oil-field service companies and pipeline firms: **+18 to +68 percent.**

**Other:** includes logging, trucking, airline, retail sales, hospitals, hotels, restaurants, legal and government agencies: **-7 to +43 percent.**

Reacting to the rate announcement, WCCA president Steve Haag said the increases will certainly signal an end for some employers. "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.

WCCA continues to prepare a legislative reform package for introduction to the 1988 legislature. The State House Labor and Commerce Committee will hold a public hearing on workers' compensation issues November 12. (See page 4.)

## Committee Work

WCCA's four hard-working committees have focused on specific aspects of workers' comp law which, if changed, will save employers millions of dollars and make the system better serve both the employee and employer.

1. **Vocational Rehabilitation Committee:** Among recommendations made by the committee is making rehabilitation program entry voluntary rather than mandatory. Selection of a re-employment 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. What constitutes non-cooperation with the plan would be clearly defined. A maximum amount would be designated for tuition and supply costs.

2. **Compensation and Benefits Committee:** Among recommendations is a re-definition of "gross earnings" to restrict inclusion of some fringe benefits. Vested interests in a qualified pension or profit sharing plan will be allowed toward determination of gross earnings. The task force has also agreed to a proposal which would hold the last employer liable to pay workers' compensation claims when a dispute arises over which employer may be at fault until the dispute is settled. The committee proposes 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.

3. **Medical Committee:** The committee recommends placing a limit on the number of times an injured worker can change primary physicians and a limit on how much doctors can charge for services provided to workers' comp recipients. The committee also recommends disputes between employers and employees on medical issues be settled following an evaluation by an independent medical examiner whose findings would carry predominant weight in disputes. The committee proposes a limit on the number of medical visits a claimant may make before an independent medical evaluation is required.

4. **Second Injury Fund:** The committee has recommended abolishing the current fund to be replaced by what will be called a Return-to-Work Fund administered by the Division of Vocational Rehabilitation. The fund would provide incentives for employers to hire injured workers. Claims now being paid by the second injury fund would be sunsetted with final payments negotiated with claimants prior to sunseting.

An additional topic being discussed by the task force is the issue of stress as a cause of worker disability. WCCA supports a definition of stress being written into law which would limit when it can be claimed as contributing to a workers' compensation claim.

The labor-management task force is in final negotiations on these and other issues which will be incorporated into a legislative reform package for the 1988 legislature.

Meeting held Oct. 8, Clarion Hotel, starting at 8:30am  
Quick over view from Bob Nestel

File  
—

Workers Compensation Committee of Ak....WCCA

lead speaker Shelby Nuenke-Davidson, attorney at law, speaking on worker comp. cases that have affected rates in Alaska. spoke for 1 1/2 hours non stop and she gave no time for Q and A...15 mintue break...Mary Pierce, Risk Management Consultants, talked about her trip to London and what the English think of Alaska and then about her business with worker's comp. Also reviewed State of Maine (298% rate increase) Overall her time was of a very general nature.

Lunch speaker: Dr. James, office at Alaska Treatment Center (physical medicine rehabilitation) who gave a very good discussion of speciality...outstanding item in talk was device that can tell physican of stress of muscles and bone. absolute proof of patient's condition)

Afternoon was John George who said: worker's comp increase as of 1/1/88 is 25.1% average. We will be going on a total different rate make up by only taking the paid claims. public hearing on October 23 late afternoon and evening...members of Natl. Compensation ...rating authority for workers comp.

Nuenke-Davidson back on specific Alaska problems in worker's compensation, specifically worker's comp board claims...cited 6 cases. She discussed that when an employer does appeal to the board that the case almost always was decided in favor of the employee.

How affects Senate L & C...hearing Oct 23 should be attended. WCCA will sponsor legislation that is still in formative stages. might address "stress" & AIDS...the particular group yesterday has not addressed AIDS.

interestedly: no discussion of drugs or alcohol and how it affects worker's comp problems....also no mention of employee assistance programs: programs that help employees with problems with goal of more productive and happier workers. Commenly called EAP. Counseling, released time for counseling, etc.

# **CORRECTION**

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

# The WCCA Sounder

*"A publication for people concerned about workers' compensation reform"*

November 1987

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WCCA continues to prepare a legislative reform package for introduction to the 1988 legislature. The State House Labor and Commerce Committee will hold a public hearing on workers' compensation issues November 12. (See page 4.)

## New Members

The active membership of WCCA continues to grow as more employers realize the need to reform the workers' compensation system. WCCA thanks these new members for their financial and active support:

Klukwan, Inc.  
Municipality of Anchorage  
Robinhood, Inc.  
Holland America  
Alaska Cleaners  
Anglo-Alaska Petroleum  
Carr-Gottstein Enterprises  
AGC, Anchorage Chapter  
Hickel Investments  
Totem Ocean Trailer Express  
Lynden, Inc.

Northern Air Cargo  
Alaska Airlines  
Reeve Aleutian Airways  
GCI  
Veco  
Arco  
Standard Alaska  
Enserch  
Dimond Alaska Coal  
Rain Proof Roofing  
Marathon Oil

## Seminar Success

Over 100 persons representing a broad cross-section of Alaskan businesses attended the October 8 seminar co-sponsored by WCCA, making it a resounding success. The focus of the seminar was to educate employers about the workers' compensation act.

The Fairbanks Chamber of Commerce has expressed interest in co-sponsoring a similar seminar in Fairbanks in 1988, and Juneau business representatives have also expressed a desire to conduct a similar conference.

WCCA thanks Dr. Michael James and State Insurance Director John George for taking the time from their busy schedules to conduct informative sessions of the seminar along with Shelby Nuenke-Davison and Mary Pierce.

Additional copies of the reference book distributed at the seminar are available for \$30. A 5-tape set of audio cassettes of the seminar is available for \$40. To obtain either, contact Shelby Nuenke-Davison at 276-6555.

## 1988 Plans

WCCA will retain noted national expert John Lewis to assist in preparation of reform workers' comp legislation which will be introduced to the 1988 legislature. Lewis, a lawyer, has been a consultant to state governments, business and labor organizations on workers' comp. His clients have included: U.S. Dept. of Labor, Rhode Island Dept. of Business Regulation, Delaware and Maryland State Chambers of Commerce, Louisiana Association of Business and Industry, Michigan State Departments of Labor and Commerce, Oregon Workers' Compensation Department and many others.

## Committee Work

WCCA's four hard-working committees have focused on specific aspects of workers' comp law which, if changed, will save employers millions of dollars and make the system better serve both the employee and employer.

1. **Vocational Rehabilitation Committee:** Among recommendations made by the committee is making rehabilitation program entry voluntary rather than mandatory. Selection of a re-employment 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. What constitutes non-cooperation with the plan would be clearly defined. A maximum amount would be designated for tuition and supply costs.

2. **Compensation and Benefits Committee:** Among recommendations is a re-definition of "gross earnings" to restrict inclusion of some fringe benefits. Vested interests in a qualified pension or profit sharing plan will be allowed toward determination of gross earnings. The task force has also agreed to a proposal which would hold the last employer liable to pay workers' compensation claims when a dispute arises over which employer may be at fault until the dispute is settled. The committee proposes 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.

3. **Medical Committee:** The committee recommends placing a limit on the number of times an injured worker can change primary physicians and a limit on how much doctors can charge for services provided to workers' comp recipients. The committee also recommends disputes between employers and employees on medical issues be settled following an evaluation by an independent medical examiner whose findings would carry predominant weight in disputes. The committee proposes a limit on the number of medical visits a claimant may make before an independent medical evaluation is required.

4. **Second Injury Fund:** The committee has recommended abolishing the current fund to be replaced by what will be called a Return-to-Work Fund administered by the Division of Vocational Rehabilitation. The fund would provide incentives for employers to hire injured workers. Claims now being paid by the second injury fund would be sunsetted with final payments negotiated with claimants prior to sunseting.

An additional topic being discussed by the task force is the issue of stress as a cause of worker disability. WCCA supports a definition of stress being written into law which would limit when it can be claimed as contributing to a workers' compensation claim.

The labor-management task force is in final negotiations on these and other issues which will be incorporated into a legislative reform package for the 1988 legislature.

**Meeting Schedule**

**Board of Directors**  
Nikko Gardens Restaurant  
2550 Denali, Anchorage -7 a.m.

December 3  
January 7  
February 4  
March 3

**Executive Committee**  
Barratt Inn  
4616 Spenard Road, Anchorage - 7 a.m.

November 18    December 9  
November 25    December 16  
December 2     December 23

**House Labor and Commerce Public Hearing**  
**on Workers' Compensation**  
Thursday, November 12, 1987  
Legislative Information Office  
3111 C Street, Anchorage  
1:30 - 5 pm

**Workers' Compensation Committee of Alaska**  
11401 Olive Way  
Anchorage, Alaska 99515

Bulk Rate  
US Postage  
PAID  
Permit No. 405  
Anchorage, AK

File  
—

Meeting held Oct. 8, Clarion Hotel, starting at 8:30am  
Quick over view from Bob Nestel

Workers Compensation Committee of Ak....WCCA

lead speaker Shelby Nuenke-Davidson, attorney at law, speaking on worker comp. cases that have affected rates in Alaska. spoke for 1 1/2 hours non stop and she gave no time for Q and A...15 minute break...Mary Pierce, Risk Management Consultants, talked about her trip to London and what the English think of Alaska and then about her business with worker's comp. Also reviewed State of Maine (298% rate increase) Overall her time was of a very general nature.

Lunch speaker: Dr. James, office at Alaska Treatment Center (physical medicine rehabilitation) who gave a very good discussion of speciality...outstanding item in talk was device that can tell physician of stress of muscles and bone. (absolute proof of patient's condition)

Afternoon was John George who said: worker's comp increase as of 1/1/88 is 25.1% average. We will be going on a total different rate make up by only taking the paid claims. public hearing on October 23 late afternoon and evening...members of Natl. Compensation ...rating authority for workers comp.

Nuenke-Davidson back on specific Alaska problems in worker's compensation, specifically worker's comp board claims...cited 6 cases. She discussed that when an employer does appeal to the board that the case almost always was decided in favor of the employee.

How affects Senate L & C...hearing Oct 23 should be attended. WCCA will sponsor legislation that is still in formative stages. might address "stress" & AIDS...the particular group yesterday has not addressed AIDS.

interestingly: no discussion of drugs or alcohol and how it affects worker's comp problems....also no mention of employee assistance programs: programs that help employees with problems with goal of more productive and happier workers. Commonly called EAP. Counseling, released time for counseling, etc.

File  
Worker  
Comp

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:

GROUP	TOTAL NCCI CLASSES	SOME ALASKA PAYROLL	+10 MILLION ALASKA PAYROLL
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.

THE PRECEDING PAGES WERE TREATED AS  
A UNIT IN THE ORIGINAL FILE.

SB

322

(File 18-UNIFIED FAIRBANKS)

SEC I

NEW LANGUAGE: INSERTING FAIRLY  
PREPONDANCE OF EVIDENCE

IN CS.

1

SEC II

IN CS. (3) CHANGE "MAY TO SHALL"  
"OR" TO "AND" — SPECIALISTS / PHYSICIAN

SEC III

PA L 20 INSTEAD OF: "IMMEDIATELY" — FEEDBACK

SEC IV

AGREE WITH INTENT BUT LANGUAGE IS VAGUE —  
— NEEDS CLARIFYING —

4

SEC V

THE STATE S/ FUND & SEE THAT REPORT DATA  
IS COMPILED SO THAT WFO FOR RATE FIXING IS  
IMMEDIATELY <sup>AVAILABLE</sup> THE COST S/BE OFFSET BY NOT PAYING  
INTEREST ON DELAYED PAYMENTS

SEC VI

— NEW LANGUAGE IS PROVIDED  
NOT CONVINCED THAT THE NEW PROPOSAL WILL  
MAKE ANY DIFFERENCE. WE HAVE NO DATA TO PROVE IT.  
— PROPOSE (1) LEGISLATION REQUIRING THE KEEPING OF DATA  
ON COSTS OF REHAB EVALUATIONS, REHAB PLANS, LITIGATION, ETC.  
(2) REQUIRE THAT RESS BE IMPLEMENTED IMMEDIATELY  
REQUIRING TIMELY ACTION ON CASES  
(3) ESTABLISH A LEGISLATIVE TASK FORCE TO FOLLOW THE  
VOCATIONAL REHAB SYSTEM (4) REDIRECT THE SECOND  
INJURY FUND TO PROVIDE MEASURES FOR EMPLOYERS  
TO RETIRE INJURED WORKERS

SEC VII

U.F. FAVORS THE APPROACH BUT FEEL THERE MUST BE STANDARDIZED QUESTIONS & PROVISIONS FOR PROMPT DETERMINATION OF WHETHER FRAUD HAS BEEN COMMITTED - THERE S/B A STATUTE PROVIDING FOR FURFUREURS OF CIVIL LIABILITY AGAINST THE EMPLOYER IN ADDITION TO WORKERS' COMP. THIS S/B DONE UNDER TITLE XI

SEC VIII - AGREE w/ IDEA

\* CHANGE "ATTENDING PHYSICIAN" TO "PRIMARY PHYSICIAN" - TO AVOID PRIOR NOTICE PROBLEMS CHANGE TO NOTICE GIVEN "w/in 14 DAYS" NEW LANGUAGE IS ~~BE~~ INCLUDED

SEC IX -

THIS WON'T WORK ! WILL INCREASE COSTS U.F. RECOMMENDS NOT AMENDING THIS SECTION

SEC X ~~DELETE FROM BILL~~

LEAVE AS 23.30.095 (e) AS IS & STUDY IT

SEC XI - GOOD IDEA AS IS

THE BOARD S/ USE HEALTH INSURANCE ASSO. OF AMERICA UCR SCHEDULE.

15

16

17

THIS SEC MISUNDERSTOOD

MAKE RECOMMENDATIONS TO BOARD

20  
SEC XII

THIS SECTION S/NOT BE CHANGED  
DELETE FROM BILL

# 21  
SEC XIII NEW LANGUAGE PROVIDED  
THE JME'S OPINION S/B EQUAL TO THE  
OPINION OF THE PRIMARY PHYSICIAN. AN INDEPENDENT  
MULTIPLE DISCIPLINE PANEL OF BOARD CERT. PHYSICIANS  
S/B USED ~~ESTABLISHED~~ ~~OF THE~~ ~~2<sup>ND</sup>~~ TO PROVIDE THE  
INDEPENDENT TEAM

SEC XIV

ADOPT SEC. AS WRITTEN

23  
SEC XV

USE "PREPONDERANCE OF EVIDENCE" TEST OVER THIS  
SECTION - MENTAL INJURY NEEDS DEFINED

24  
SEC XVI

USE "PREPONDERANCE OF EVIDENCE"

SEC XVII

AGREE w/ BILL AS IS

SEC XVIII

IN ADDITION, THE BILL S/B REQUIRE COMPILING OF  
DATA ON A REGULAR BASIS TO ACCURATELY DEAL  
w/ THIS

~~SSC XIV~~  
AGREE w/ BILL

SSC XV  
NEED DATA COMPILED - SEE SEC IV

~~SSC XVI~~  
AGREE w/ BILL  
NEEDS TO BE MONITORED TO SEE IF EMPLOYEES  
WANT DISABILITY TO GET OVER BY UNEMPLOYMENT.

~~SSC XVII~~  
ADAPT ~~THE~~ BILL & MONITOR

~~SSC XVIII~~  
ADAPT BILL

~~SSC XIX~~  
ADAPT BILL

SSC XXV  
ADAPT BILL  
CHANGE "MAY" TO "SHALL"

~~SSC XXVI~~  
ADAPT & MONITOR

~~SSC XXVII~~  
ADAPT & MONITOR

~~SEC XXVIII~~  
ADOPT AS IS

~~SEC XXIV~~  
ADOPT AS IS

THEY  
MISUNDERSTAND  
THIS SEC.

SEC ~~XXIX~~ DELETE FROM BILL  
SHELF THIS TILL IT CAN BE CLARIFIED

~~SEC XXXI~~  
AGREE W/ BILL

SEC ~~XXXII~~  
SAME AS ~~IV~~  
MENTAL INJURY NEEDS TO BE DEFINED

34

SEC ~~XXXIII~~  
MEDICAL STABILITY NEEDS TO BE REDEFINED

35

~~SEC XXXIV~~  
ADOPT THIS SECTION

~~SEC XXXV~~  
ADOPT THIS

~~SEC XXXVI~~  
OK

ADD SEC ~~XXXVII~~ - ~~LAN~~ LANGUAGE INCLUSION  
CREATING TASK FORCE TO MONITOR CHANGES  
ADDRESS UPCOMING PROBLEMS

SECTIONS THAT SHOULD BE DELETED FROM BILL  
10, 12, 30

SECTIONS AGREED WITH AS WRITTEN IN THE BILL  
11, 14, 17, 19, 22, 23, 24, 25, 27, 28, 29, 31, 34, 35, 34



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(907) 479-6281

February 10, 1988

Niilo Kopenen  
Alaska State Representative  
710 Chena Ridge  
Fairbanks, AK 99701

Dear Niilo:

The final meeting of the Unified Fairbanks Task Force on Workers' Compensation was a fairly frustrating affair. It was scheduled as a two hour meeting, and the first hour was taken up by a report from Gordon DePue in his capacity as insurance company representative and as member of the Governor's Task Force. We were again subjected to the proposition that a great majority of the legislators were irrevocably committed to passage of the WCCA bill, whether or not it reduced premiums and without changing a word even though it made some rather drastic errors. Several of us asked the question as to whether the Governor's Task Force believed that the legislators had actually been "bought" and the reply was, "I wouldn't phrase it that way, but they are irrevocably committed". The Governor's Task Force via DePue urged, begged, pleaded, directed, etc. that we limit ourselves to constructive comments with respect to WCCA proposed amendments only, and not get into the question of attempting to reduce premiums or attempting to "perfect the system". To my way of feeling, this had a rather disastrous effect on the Task Force. We worked late to bring our report up to snuff. We eliminated many strong criticisms, and totally eliminated the input from the big seminars in Fairbanks which were concerned with matters related to premiums paid, executive and administrative inefficiencies, etc.

For the above reasons, I am sending you a copy of the draft report so that you will know what our real work product was. As you requested, I am also enclosing a mass of committee reports and minutes to give you an idea of which states we checked with

*John:  
Here it is. I would  
have re done the letter but  
(1) Jim lazy, and  
(2) were trying to rush.  
If I can help - let me know.  
AR*

Niilo Koponen  
February 10, 1988  
Page 2

and what their statistics happened to be. I am presuming that there will be statistics prepared by the State of Alaska. If, however, they come from NCCI, it is a foregone conclusion that they will not be accurate and that they will be only those statistics which NCCI has already put together to justify the rate increase. I've seen a copy of these and feel they totally lack credibility.

When giving you a large bundle like this, I should make it easier by pointing out the deletions that I refer to above. These are as follows:

1. The statement that there is no indication that any additional interest earned on second injury fund contributions by insurance companies during the one year delay in reporting will effect Workers' Compensation premiums. This is because these monies will doubtless be held in a claims reserve on which income is not reportable.

2. A statement that, if we don't get statistics, we will continue to set rates in a "blind fashion" and amend legislation without knowing at the time whether we are doing any good.

3. In Section XI, we had taken the time to point out that most usual, customary and reasonable schedules by insurance companies are set at the 90th percentile which means that 89% of doctors charge less than the UCR fee. The Workers' Compensation Board, being subject to the public meetings requirement and the adoption of regulation process being likewise public, there is a danger than any UCR schedule to be adopted would become public knowledge. Insurance companies jealously guard against this because those doctors charging less than the UCR fee (89% of all doctors) will then increase their fee so that the UCR fee tends to become a minimum fee. I have had some experience with this in union health plans, and can definitely back up the cause and effect sequence here.

4. In reaction to the WCCA attempt to modify the presumption of compensability in a "mental injury" case, we used Section XV to advocate adoption of the preponderance of evidence rule. We had intended to avoid this as a trade off as the draft shows.

5. In Section XXI, on maximum and minimum weekly disability payments, we had made reference to the fact that under the new

Niilo Koponen  
February 10, 1988  
Page 3

law, some people will draw more on unemployment than they would on Workers' Compensation. This may tend to force people into claiming to be uninjured so that they can draw the higher benefit.

6. In Section XXVIII, on the Board determination of employee's gross weekly earnings, our draft report makes some fairly disparaging comments about the inability of Mr. George's office to comprehend the economics of a boom and bust economy on a Workers' Compensation System that operates on a workers' earning history rather than on his or her earnings at the time of the accident. We were amazed that so few people understood the economics here, and the fact that Mr. George felt obligated to set rates where a profit would be earned of a decent size during the rapidly descending times when we slide into a bust. When I questioned him, he didn't seem to understand that the profits had been made a couple of years before when people could not afford to claim Workers' Compensation. This is found in the draft at the bottom of Page 38 and the top of Page 39.

7. In the draft, you will find a Section XXXVII on rate making. Its wording may seem strong, but that is the weakest that has been used in our discussions. Since this was the original problem on which we met, a lot of time has been spent going into this area. It may step on some egos, but the committee wanted badly to say this until we received the message that this reaction would be the kiss of death to anyone paying any attention to what we had to say.

8. This extends on into the premium paying criteria section numbered XXXVIII in the draft. (Here I note that the State of Washington has adopted premiums based on hours worked rather than on gross pay and it has been a tremendous success for them. Their rates are actually adjusted downward after adopting this approach.)

9. The section on attorney's fees tries to explain why so few attorneys in the state will even touch a Workers' Compensation case. I can tell you that in my experience, defense counsel is normally paid 3-4 times the amount paid to claimant's counsel. I have had it go as high as 13-1/2 times and, of course, very often claimant's counsel gets nothing (if claimant loses or if the insurance company is willing to settle).

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10. Section XL on using a captive carrier or adopting state coverage, was a result of checking with a great number of other states. Most seemed quite satisfied with this system. In some, it has had bizarre consequences. For instance, Ohio, where so much money was saved, that the legislature raided the saving to supplement general budget funds.

11. Our recommendations on administrative matters are both practical and the result of a pique with the inability of either the Division of Insurance or the Division of Workers' Compensation to summarize the reports they have on hand.

12. One of our strongest recommendations fell in the executive department priorities section. This is to shift some priorities in the Attorney General's Office so that there is come prosecution of fraud in the Workers' Compensation area when it has been firmly established; and so that the Workers' Compensation Board can get the assistance needed in drafting regulations.

13. Recommendation XLIII on the second injury fund has come out of realizing that a tremendous surplus has been accumulated in the fund because it is virtually unusable in its present status. We felt that making it function as it was intended to function, would help, both by way of lowering premiums, and by way of encouraging an employer to hire a person who has had a disability at some time in the past.

That's about all there is. I personally wanted to see a change in the way third party claims are handled, but when I was picked as Chairman, I felt that it was not right for me to bring up my own concerns or try to bend the committee's action. If it appears that there is going to be room to make general improvements, I will attack that dragon at that time.

Sorry to burden you with so much reading.

Sincerely yours,

ROBSON LAW OFFICE



ARTHUR LYLE ROBSON, Attorney

ALR/sj

Enc.

ARGUMENTS AND PROBLEM AREAS

All outlined in the discussion of comparative wisdom of approaches to obtaining statistics discussed above.

XXXVI. EFFECTIVE DATE

COMMENTS

A good choice.

RECOMMENDATIONS

A PR campaign with recompilation of booklets available including the copies of the applicable code and regulation sections.

ACTIONS PROPOSED

A good date to start. Be sure to use lots of PR and recompile all publications, including the gray book.

ARGUMENTS AND PROBLEM AREAS

None.

XXXVII. OBSERVATIONS WITH RESPECT TO THE RATE  
MAKING AS PERFORMED BY JOHN GEORGE AND HIS SUBORDINATES

COMMENTS

NCCI is an insurance lobbying organization. It is hired by a total of twenty states to supply ~~to~~ their insurance commissions <sup>with</sup> data necessary for rate making. Alaska uses them in the workers's compensation field and pays them for their services. Alaska does not check their figures. They do not give breakdowns of figures to Alaska (according to Mr. George)

so that essentially, they provide the State with two or three choices of rates and a summary of probable effects of each of those choices. Alaska then selects one. Even though the State is aware that disability payments are being made, they do not know any sort of an average rate. Our survey indicated that \$560.82 was the average workers' comp disability payment for those cases that have gone into contest in some manner. The Second Injury Fund statistics show a quantum leap in 1985 and 1986; several hundred percent each time. This represents a massive increase in payout for disability. The reason for this is not explained, nor apparently has it been inquired into. Premium rates are currently based upon a gross payroll~~s~~ (figuring that anything is taxable to an employee represents increased risk to the carrier and hence, justifies payments). Many states use this system rather than the "hours worked" system. The states we have contacted, however, are keenly aware of percentages of premium dollar<sup>and</sup> percentages of benefits paid for each of the areas of payment. Neither the workers' compensation folks nor the insurance division folks have been able to produce any kindred statistics for Alaska, nor do they seem to be aware of any way of combining the reports which they receive (setting forth these statistics) so as to give statistics on any meaningful or statewide basis.

#### RECOMMENDATION

We recommend obtaining the breakdown of the reasoning

for premium rates before they are adopted. We recommend that the Department have a person whose duties include maintaining these statistics and we feel that the insurance division should have a similar person. We recommend at least verifying NCCI representation. We recommend audits of carriers and any statistics supplied NCCI or carriers. We recommend that the Insurance Commissioner acknowledge that Alaska has a boom and bust economy and change its criteria for setting premiums to reflect the fact that profits are made in the boom time and no profits are made in the bust time. Generally, we feel that we feel should pattern ourselves after the more successful states.

#### ACTIONS PROPOSED

This will require extensive overhaul of the ongoing procedures and hence, we recommend (and we are willing to participate in) a task force or study group in this area. Alaska simply does not have a grip on the rate making process as do other states. We feel that it must get such a grip. This will require legislative, administrative, and executive changes.

#### ARGUMENTS AND PROBLEM AREAS

These will depend upon the course taken. In all probability, there will be resistance to any change.

#### XXXVIII. PREMIUM PAYING CRITERIA

##### COMMENTS

Generally speaking, older accident-free employees are

paid more than beginners. Premium rates are structured so that the cost of insuring the older accident-free person (who is paid more) are higher than those for the neophyte employee. This is upsidedown. Gordon DePue feels strongly that insurance companies will not want to change, because neither they, nor the employers have any idea how many hours a person works, but they are all acutely aware of the taxable gross paid to that person. ~~the idea of a formula which~~ ~~feels that~~ A formula combining the category in which an employee works and the hours that they work should be explored as a more fair premium base.

Additionally, attached to this letter is an article entitled "Everything You Wanted to Know About the CAL SMACNA Workers Compensation Captive, But Were Afraid to Ask". The experience modification described therein is missing in more than 95% of the premium rate setting in Alaska. Additionally, the question of whether fringe benefits (paid <sub>x</sub> by setting aside in a separate account and which are not likely to be paid to the individual employee) should be considered as wages paid under the present system <sup>must be addressed.</sup> We also feel that State or captive coverage, such as mentioned in the attached article or as found in the State of Arizona, should be considered. Colorado and Montana appear to be bad examples.

#### RECOMMENDATION

The problems in this area are hurting employers badly and hurting them now. A study of this area should not be

postponed until some future indefinite date, but should begin forthwith.

#### ACTIONS PROPOSED

Begin the study now. Think of including several carriers in the information gathering discussion and planning groups. If you want public participation, Unified Fairbanks will be glad to provide some.

#### ARGUMENTS AND PROBLEM AREAS

There will always be a reaction to change. In this area, employers with bad safety records and a history of expensive compensation injuries may well have their premiums increased and they should be expected to complain.

#### XXXIX. ATTORNEY'S FEES

##### COMMENTS

Attorneys ~~fees~~ representing employers and carriers are normally compensated on an hourly basis. Their economic incentive is therefore to spend the maximum amount of time which their relationship with the carrier or employer will stand, on each case. Attorneys for claimant are compensated at 10% (plus \$150.00) of the amount recovered for client, but only if that amount has been controverted and fought out. In other words, settlements rarely carry attorney's fees. There are two problems in this area. The first is that both sets of attorney's fees are expenses which are ultimately reflected in

higher premium rates. In this area, we are yielding to WCCA who has<sup>e</sup> advised that the WCCA will brook no interference whatsoever in the way that employers or carriers ~~indirectly~~ compensate their attorneys, and therefore, the attorney's fee costs should not be approached. In the second area, there is the question of equality of treatment. The claimant's lawyer has an incentive to settle as quickly as possible, but for as much as possible. The carrier or employer's attorney has an incentive to go as deeply into the case (and discovery proceedings surrounding it) as can be justified. This is the reason that almost every attorney in the state would love to defend workers' compensation claims and most of the big and profitable firms do so, while only a very small percentage of attorneys in the state will take claimant's cases. Claimants have a very hard time getting representation because only a law office set up to divert most of the work to paralegals can afford to take the cases without losing money. In order to effect justice, representatives on each side should be reasonably equally motivated, and close to equally paid. If there are to be no limitations on counsel fees on one side, then perhaps the other side should be paid a percentage of what the hourly compensated counsel gets. Currently, claimant's counsel receives nothing unless they win which also discourages attorneys from representing workers' compensation claimants. A half dozen formulas have been suggested, but none of them stand the test of argument if we

accept the given ( that employers and carriers will brook no interference in what they pay their counsel).

#### RECOMMENDATIONS

We therefore recommend study by the legislative task force proposed later, on with the cooperation of the Alaska Bar Association.

#### ACTIONS PROPOSED

As stated above.

#### ARGUMENTS AND PROBLEM AREAS

Medical costs are currently out of control in the compensation area. Presumptively, attorneys would like to have attorney's fees in that same category. There will then probably be lots of arguments in committee, etc., and there may ultimately be a test case as to whether the formula selected is fair.

#### XL. USING EITHER STATE COVERAGE OR A CAPTIVE CARRIER FOR COVERAGE

#### COMMENTS

As mentioned above, Alaska has a boom and bust economy. Either State coverage or a captive carrier can be expected to level out the compensation premiums making profit in boom times and suffering a loss in bust times. For the stability of our economy, this is probably essential. An alternative would be to actually use the authority of John George to set rates that would be fair to employers. Whether

this is possible is an open question.

#### RECOMMENDATION

This should be studied as it may turn out to be the only solution to level fair rates.

#### ACTIONS PROPOSED

A task force in this area is needed.

#### ARGUMENTS AND PROBLEM AREAS

On the one hand, carriers complain that they are not making money. It is to be expected, however, that if they are likely to be supplanted by a captive carrier or the State, they will vigorously oppose this because, in fact, a considerable profit is being made, <sup>which profit</sup> ~~that~~ would be lost to the "competition" of the State or the captive carrier.

### XLI. ADMINISTRATIVE MATTERS

#### COMMENTS

We lack an easy manner for an employer to check on prior injuries having occurred to his employees. We have found that the reports received on each individual case (from insurance carriers) are not combined, ~~in any manner so that~~ The statistics are valueless because they are not cumulated. There is a long period of time between the request for a hearing, and a hearing, both before the Board, and most especially before the rehabilitation officer. Therefore, additional staffing is needed. The grey book which contains the statutes and

regulations with respect to workers' compensation is so outdated as to be useless. There are no regulations providing for audits for carriers. At this point, there is no support within the Department assigned to work with loss control programs which are badly needed.

#### RECOMMENDATION

The extra personnel should be added to the Department to provide: a) a last name index of workers' compensation filings for availability to employer; b) more Board members and more rehabilitation officers in order that the hearing calendar not be over one month after the request for hearing in either of these categories; c) regulations can be set up for adoption providing for audits of carriers to verify the information which is submitted; d) the information received from carriers should be put into a computer so that information would be continuously available (such as, for 1987, what percent of premium dollars went to pay medical costs?) There are many of these type of questions that should be answered in order to be at all effective; and, e) the grey book should be reissued up-to-date so as to make it useful.

#### PROPOSED ACTION

Budgets should be increased and personnel assigned as explained above. On the compilation of statistics matter, cooperation should be worked out with the Insurance Commissioner.

## ARGUMENTS AND PROBLEM AREAS

There will be a slight increase in cost in running the Department. This, of course, will be offset by the fact that information and services will be available.

## XLII. EXECUTIVE DEPARTMENT PRIORITIES

### COMMENTS

The Attorney General's Office does not allocate money to prosecute workers' compensation fraud. The budget will require adjustment upward to provide for the needs set forth above. The Insurance Department will need to be regulated in order to have them accumulate statistics upon which they base their rate setting, and this may require cost increase. The Attorney General's Office should prosecute employers who are operating without insurance or with out-of-state insurance that actually has little, if any, value for Alaskan workers. The Insurance Department should perform audits of the carriers, in order to find out whether ~~what~~<sup>the</sup> information they provide to us (but is just left in file drawers at this time) is reliable, ~~and a~~ certificate showing that workers' compensation is in effect should be designed so that it specifies where Alaskan workers are working, what carrier is covering them, and that they are given coverage at Alaska rates so as to be valid in Alaska. These certificates should be for filing on each Little Davis-Bacon job, with local government bodies that request it,

with the Department of Insurance, with the Department of Workers' Compensation, and anywhere else thought appropriate, in order to give meaning to the requirement of having workers' compensation coverage.

#### RECOMMENDATION

Each of the above problems be addressed and resolved at the earliest possible time.

#### ACTIONS PROPOSED

See above.

#### ARGUMENTS AND PROBLEM AREAS

There will be "empire" problems anytime some of these adjustments are made. The value of the adjustments makes it all seem worthwhile.

#### XLIII. SPECIAL RECOMMENDATION FOR THE SECOND INJURY FUND COMMENTS

The 104 week time required to bring the Second Injury Fund into play is totally destroying the function of the fund. The "written record requirement" keeps many legitimate second injury cases from being compensated out of the fund, and lump sum settlements are discouraged by the fund reimbursing the carriers on an installment basis, rather than by lump sum.

#### RECOMMENDATIONS

We recommend that each of the above problems be addressed by legislative..

ACTIONS PROPOSED

To AS 23.30.205,  
Adoption of amendments as follows:

(a) If an employee who has a permanent impairment from any cause or origin incurs a subsequent disability by injury arising out of and in the course of his employment resulting in compensation liability for disability that is substantially greater by reason of the combined effects of the preexisting impairment and subsequent injury or by reason of the aggravation of the preexisting impairment than that which would have resulted from the subsequent injury alone, the employer or his insurance carrier shall be reimbursed <sup>from?</sup> for the second injury fund for all compensation payments subsequent to those payable from the first 26 (104) weeks of disability. The insurance carrier shall be reimbursed by a lump sum payment from the fund for lump sum settlements approved by the board.

(b) If the subsequent injury of the employee results in the death of the employee and it is determined that the death would not have occurred except for the preexisting permanent physical impairment, the employer or his insurance carrier shall in the first instance pay the compensation prescribed by this chapter, but he or his insurance carrier shall be reimbursed from the second injury fund for all compensation payable in excess of 26 (104) weeks.

(c) In order to qualify under this section for reimbursement from the second injury fund, the employer must

establish (by written records) that the employer had knowledge of the permanent physical impairment before the subsequent injury and that the employee was hired or retained in employment after the employer acquired that knowledge. Employer knowledge shall be established by written records except as follows:

- (1) In cases of paraplegia or quadriplegia,
- (2) In cases of amputation of foot, leg, arm or hand,

and

- (3) When an employee has omitted qualifying information from employee's response to an employment questionnaire completed by the employee prior to the subsequent injury.

(f) An employer or his carrier shall notify the Commission of Labor of any possible claim against the second injury fund as soon as practicable, but in no event later than 15 (100) weeks after the employer or his carrier have knowledge of the injury or death.

#### ARGUMENTS AND PROBLEM AREAS

This will increase the usage of the second injury fund by between three and four times, ~~over~~. It will minimize the "acceptance period" ~~but will require further action.~~ This may produce a problem.

#### XLIV. LEGISLATIVE TASK FORCE

#### COMMENTS

As we addressed each of the problem areas, a number of

Memorandum for Points of Discussion for  
HB 352/SB 322 - Workers' Compensation

February 5, 1988

1. The standard of "any evidence" was questioned by several participants, and the general consensus was that some qualifying language should be included. The current standard is "substantial evidence". The "any evidence" standard was included in response to what many people characterize as the Alaska Supreme Courts' insistence on expanding the bounds of their fact finding responsibilities to consistently and unfairly deny the Boards decisions. (See attachment #5).
2. There was considerable public testimony over whether this section would meet a constitutional challenge. (See attachment #5) There was also some testimony that there is no dependable source of cost of living adjustments for other states to use as a guide in determining benefits for persons residing outside of Alaska.
3. Some participants expressed concern with the method the Board would use to determine eligibility for and placement on the list maintained by the Board. The common fear expressed was that some health care providers would be "blackballed" and would have no recourse to address a possible conflict.
4. There was some concern expressed by participants that an employee may not consider their employment statement false, or may inadvertently omit information that they don't consider important and are later found to have "knowingly made a false statement".
5. A participant who currently serves as a rehabilitation specialist objected to the requirement that specialists must be chosen from a rotating list to perform an eligibility evaluation. She objected because of cost considerations, claiming that she can do several evaluations in adjacent communities at considerably less cost than it would take to send separate specialists for each injured worker seeking an evaluation. She also argued that this provision interfered with free enterprise in that workers would not be free to choose her if they felt she was the best unless her name was at the top of the list at the time.
6. Several participants expressed concern over this section. Their comments generally fell into two categories: 1) Those who felt that "60 percent of pre-injury wages" was not a fair standard for determining eligibility and, 2) those who were concerned that the effect of (2) would be to make rehabilitation a "once in a lifetime deal". Suggestions were made that the language in paragraph (2) include some qualifiers so that a worker can be eligible for a second rehabilitation plan if their previous injury had nothing to do with the second (e.g. working as a dozer operator a worker had a severed limb and was rehabilitated. Several years later the same worker returned to work as a dozer operator and was burned in a job

related fire. Under the current language, this worker would probably not be eligible for a second go at rehabilitation).

7. Several participants asked for qualifying language to be included in this section so that a worker may be able to refuse unreasonable requirements and would have some recourse if they inadvertently missed an appointment or had a family emergency that caused them to fail to adhere to each of the requirements under this section.
8. Several participants expressed concern that the time limits in this section may be difficult or impossible to comply with, in spite of the qualifers giving the Board and/or the rehabilitative specialist the ability to modify the time limits under unusual circumstances.
9. Some participants were concerned that the "abuse of discretion" language was too confusing and restrictive and did not give a worker sufficient ability to argue against a determination under this section.
10. There was concern expressed by several participants that the new definition of "employability" as opposed to "employment" was unfair.
11. Several participants testified in opposition to the expanded definition of "labor market".
12. Several professional rehabilitative groups have asked that their specialties be included in the definition of specialist (see attachment #1)
13. Again, some participants testified that the "60 percent" standard was too low and unfair.
14. The chiropractors offered several suggested amendments to Section 8.- (See attachment #2)
15. Several participants objected to this language and testified that "doctor shopping" was as much a problem with employers/insurers as it was with employees. In addition, the chiropractors have suggested language in attachment 2.
16. There were several objections from participants about limiting the number of visits to a treating physician. It appears that most of the objection was based on a misunderstanding about what the language means since several people believed that the bill prohibited any visits beyond the guidelines spelled out in this section. There is a suggested amendment to this section in attachment #2.
17. Several participants objected to this language because they felt an employer would abuse the presumption of reasonableness. In addition, participants testified that if an employees ability to "doctor shop" were limited, then this section should also require a limit on the ability to "doctor shop" by the employer.

18. Some participants testified that some IME's use painful and unnecessary testing procedures in order to force an employee to refuse treatment/tests and thus lose their benefits. Participants asked that language be included to require that the tests had to be reasonably connected with the injury under investigation. There is additional suggested language in attachment #2 and additional information in attachment #5.
19. There was concern expressed that this section only applied to fees charged by an employee's provider and that the standard would not be applied to IME's chosen by the Board and/or the employer.
20. There was some concern expressed about permitting an "outside" organization to have any say about Alaska Workers' Compensation issues.
21. Participants expressed concern over language giving the presumption of correctness to the second IME.
22. Participants suggested that the "fraud" standard be expanded to include "misrepresentation and gross incompetence. (Also see attachment #2).
23. There was some concern about whether a stress claim could be defined in this manner and still meet a subsequent constitutional challenge.
24. Again, the "any evidence" standard. (See #1)
25. Again, there was some concern expressed as to whether determining benefits on the basis of residency could meet a constitutional challenge.
26. Several participants objected to the expanded definition of the labor market for employee's services.
27. Again, concern was expressed over the new definition of remunerative employability and, in particular, the way that definition is applied to this section in order (in some participants minds) "to avoid paying permanent total disability".
28. There was some objection voiced over the "arbitrary" decision that TTD benefits may not be paid for more than two years. Suggestions were made that this section should be amended to allow TTD benefits to continue beyond 2 years in extenuating circumstances.
29. There were many objections voiced over the new method of determining permanent partial disability benefits under this section. Testimony from John Lewis indicated that several national studies failed to show any correlation between the method used to determine PPD benefits and the subsequent well-being of an injured worker. There was also testimony that indicated that, while this new method would not necessarily reduce benefits for workers, it would insert an "element of certainty" in determining benefits that

may reduce litigation and make it easier for insurers to make actuarial predictions.

30. Again, there was concern expressed over the definition of medical stability and whether it adequately addressed a situation where a worker may be stable but could deteriorate unless medical treatments were continued.
31. There was much concern expressed over this new section, most of which appeared to result from confusion over the wording and the intent.
32. Attachment #3 outlines concerns that legislative drafting has with the way this section is written.
33. Concern was expressed that this section assures that only vested pension and benefits be considered with determining the average weekly wage.
34. Concern was expressed that the definition of a "mental injury" may preclude claims based on mental injuries due to sexual, racial, and religious harassment and discrimination and other illegal employment practices.
35. Again, there was concern that "medical stability" did not adequately address conditions where an injured workers' condition may deteriorate without continued treatment.

\* \* \* \* \*

In addition to concerns expressed over language included in the bill, there were several comments addressed to items that are not covered in the bill. They include:

1. The growing length of time between filing a workers' comp case and a Board hearing ( See attachment #4).
2. A request that the bills include a mandated rate reduction of at least 10 percent.
3. Other "insurance questions", specifically the complaint that HB 352/SB322 fail to "get tough" or make any demands on the insurance industry, either to comply with laws requiring certain information to be filed or to require the Division of Insurance to beef up their financial and market examination functions.
4. The question of whether a contractor can be retroactively billed for workers' compensation insurance for an independent contractor who is a sole-proprietorship that they have contracted with.
5. The entire question of retroactive billing or "post audit" billing. One participant testified that a client of his, a small Southeast Alaska community, had a quote of \$6500.00 for workers' comp

coverage for a small capital project. Upon completion of the project and a post audit report, the municipality was presented with a \$75,000.00 bill for a completed project on which no injuries occurred.

6. Some participants requested that the measure address the problem with out of state companies not having to pay Alaska workers' compensation rates because they have an "all states rider" on their home-based policy that covers them. This puts Alaska businesses, particularly the construction industry, at a tremendous disadvantage.
7. Some participants suggested, in response to claims that injured workers prolonged their problems and used workers' comp as unemployment insurance, that the unemployment law be amended to allow an injured worker to claim unemployment that they have paid in to if they fail to find a job after recovering from an on-the-job injury.

By the Labor and Commerce  
Committee

SENATE BILL NO. 322  
HOUSE BILL No. 352

"AN ACT RELATING TO WORKERS' COMPENSATION..."

PROPOSED CHANGE:

Page 10. Sec. AS 23.30.041 REHABILITATION OF INJURED WORKERS.  
should be changed to read as follows:

(6) "Rehabilitation Specialist" means a person who is certified by at least one of the following national certifying boards: THE NATIONAL BOARD OF CERTIFIED COUNSELORS (National Certified Counselors - NCC); THE COMMISSION ON REHABILITATION COUNSELOR CERTIFICATION (Certified Rehabilitation Counselor - CRC); THE CERTIFIED INSURANCE REHABILITATION SPECIALISTS COMMISSION (Certified Insurance Rehabilitation Specialists - CIRS); THE AMERICAN BOARD OF VOCATIONAL EXPERTS (DIPLOMATE/FELLOW, VOCATIONAL EXPERT - ABVE).

AT PRESENT, P. 10, Sec. AS 23.30.041 (6) reads as follows:

"(6) "rehabilitation specialist" means a person who is a certified insurance rehabilitation specialist or a person who has equivalent or better qualifications as determined under regulations adopted by the department;

*Representative Dave Rowley, Chairman*  
*I support the above proposed change*  
*Jean Meggs NEE*  
*2910 West Northern Lights Blvd. 9E*  
*Cousharaque, A.S. 99517*

H B 352 / SB 222

Attachment  
#2

SECTION A.S. 23.30.095(a):

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

RATIONALE: This passage is objectionable for several reasons:

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

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

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

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

- (3) Amend the language in the next sentence, page 12, line 13, starting "Upon procuring" to read:

Upon procuring the services of an attending physician, etc.

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

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

SECTION A.S. 23.30.095(c):

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

RATIONALE: This passage is ill considered:

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

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

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

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

SECTION A.S. 23.30.95(e):

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

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

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

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

SECTION A.S. 23.30.95(f):

DELETE (UNDERLINED) changes.

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

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

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

SECTION A.S. 23.30.99(1):

DELETE changes. AMEND CURRENT LANGUAGE.

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

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

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

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

We suggest the following language REPLACE Section (j):

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

SECTION A.S.23.30.095(k):

(1) AMEND proposed language.

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

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

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

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

Fourth, limiting the standard required to overcome the presumption to objective evidence deselected critical subsc-  
tive findings that often times form the backbone of a valid diagnosis.

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

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

physicians licensed in the State of Alaska or the state that treatment was rendered from a list established by, with the aid and advice of the medical advisory board, and maintained by the Board. Both the employee and employer shall have the right to challenge one appointment. In the event of a challenge, the next physician on the list will be appointed. The contents of the list and the order of its contents shall be kept confidential by the Board. The report of the independent medical examiner shall be furnished to the Board and both parties within 14 days after the examination is concluded. The opinion of the independent medical examiner shall, in the absence of clear and convincing evidence to the contrary, be presumed to be correct. A person may not seek damages from an independent medical examiner caused by the rendering of an opinion or providing testimony under this subsection, except in the case of fraud, misrepresentation or gross negligence.

SECTION A.S. 23.30.155(c):

DELETE Added language.

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

SECTION A.S. 23.30.155(m):

DELETE changes.

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

# **CORRECTION**

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

physicians licensed in the State of Alaska or the state that treatment was rendered from a list established by, with the aid and advice of the medical advisory board, and maintained by the Board. Both the employee and employer shall have the right to challenge one appointment. In the event of a challenge, the next physician on the list will be appointed. The contents of the list and the order of its contents shall be kept confidential by the Board. The report of the independent medical examiner shall be furnished to the Board and both parties within 14 days after the examination is concluded. The opinion of the independent medical examiner shall, in the absence of clear and convincing evidence to the contrary, be presumed to be correct. A person may not seek damages from an independent medical examiner caused by the rendering of an opinion or providing testimony under this subsection, except in the case of fraud, misrepresentation or gross negligence.

SECTION A.S. 23.30.155(c):

DELETE Added language.

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

SECTION A.S. 23.30.155(m):

DELETE changes.

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

For the employee who is caught within the exception's parameters, however, there is little relief. If the filing requirements did not incorporate notifications to the employee and were, in fact, only ministerial, there might be some justification for the proposal, although it is not readily apparent even in that situation. However, the reports do require notification to the employee and, in the absence of receiving timely reports, the employee may well make decisions that he might not should he receive a timely notification that the employer was either going to controvert, suspend or terminate his compensation. In essence then, the employer is, according to this section, allowed to escape penalties for failing to comply with the employee notification provisions in Subsection (c).

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

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

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

SECTION A.S. 23.30.265 (34):

AMEND proposed language.

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

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

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

SECTION ENTITLED LEGISLATIVE INTENT, SUBSECTION (b):

AMEND proposed language.

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

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

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

Attachment  
#3

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 1, 1988

SUBJECT: Calculation of gross weekly earnings - SB 322  
TO: Senator Mike Szymanski  
FROM: Michael F. Ford *M.F.*  
Legislative Counsel

You have asked for our opinion as to the determination of gross weekly wages under AS 23.30.220(a)(2) as amended in SB 322. Under current law, if the board determines that an employee's gross weekly earnings cannot be fairly calculated from the two previous years earnings, then the board may determine gross weekly earnings by considering the nature of the employee's work and work history, including probably future earnings. See Johnson v, RCA-OMS, Inc., 681 P.2d 905, 907 (Alaska 1984). The amendment to AS 23.30.220(a)(2) removes the language that allows the board to make a fairness determination, and limits compensation to the employee's earnings at the time of injury. It is not clear whether the board would be allowed to consider probable future weekly earnings in determining gross weekly earnings or whether gross weekly earnings are intended to be limited to actual earnings at the time of injury. Under sec. 21 of SB 322 the weekly rate of compensation received by an injured employee is equal to the employee's spendable weekly wages, determined under AS 23.30.220. Therefore, the weekly rate of compensation under AS 23.30.220(a)(2) could be the actual wages earned by the employee.

I would recommend that the language of AS 23.30.220(a)(2) be changed to clearly indicate whether in the case of an employee without sufficient work history, probable future earnings may be considered by the board in calculating gross weekly earnings. If you have further questions, please contact me.

MFF:gc  
WKG1:060

Chancy Croft Law Office

738 H Street -- Suite 200  
Anchorage, Alaska 99501

Attachment  
# 4

Chancy Croft  
Michael J. Jensen

(907) 272-3508

January 29, 1988

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

Dear ~~Representative~~ <sup>Mike</sup> Navarre:

A problem of increasing proportions is developing with the 25,000 Alaskans injured at work each year. Claims cannot be heard in a prompt manner. Many people suffer.

The idea of workers compensation is to provide a speedy, efficient remedy to industrial accidents. Long delays must be avoided. This is the trade-off for limited benefits. It is crucial for workers to receive prompt payment of medical expenses and compensation if the system is to be effective. If claims cannot be heard in a timely and efficient manner workers suffer. Their spouses and children suffer.

The economic consequences of delay have a ripple effect. When compensation is not paid, lost wages to workers mean delayed or missed payments to landlords, utility companies, banks, groceries and department stores. Medical benefits are terminated. Indirectly these costs are passed to the public. Equally important, when workers are paid while disputes are litigated, the costs to employers of rehabilitation and other services are increased. The solution is not to penalize injured workers or good employers. It is to resolve disputes quickly.

The time between filing a claim and getting a decision from the Alaska Workers Compensation Board has increased 67% in the last two years. The delay is getting worse. None of the proposals before the Legislature or any administrative action addresses this problem. Senate Bill 322 and House Bill 352 will only make the problem worse without reducing the cost of premiums to employers or increasing benefits to injured workers.

Very truly yours,

  
CHANCY CROFT

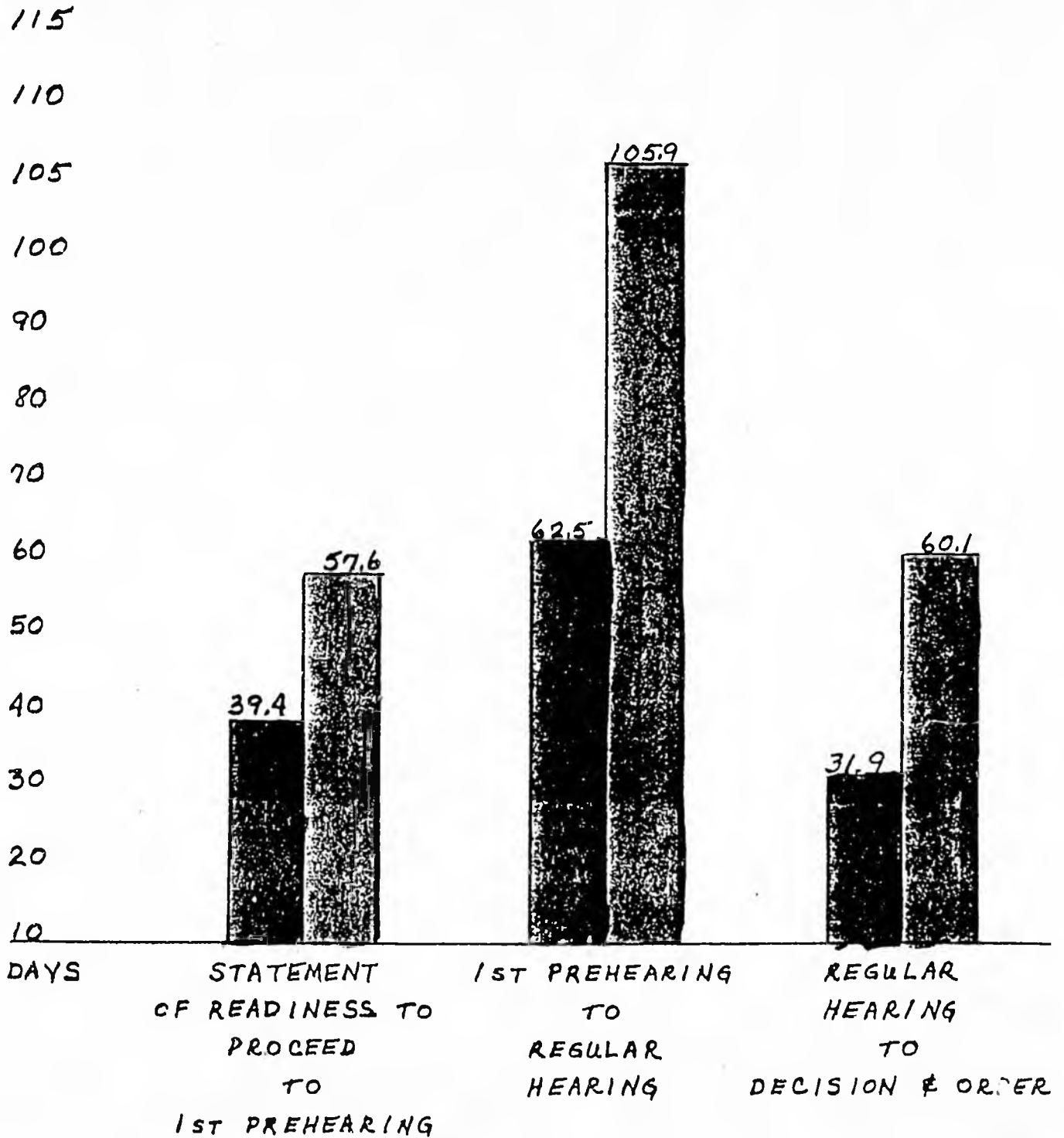
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Enclosures

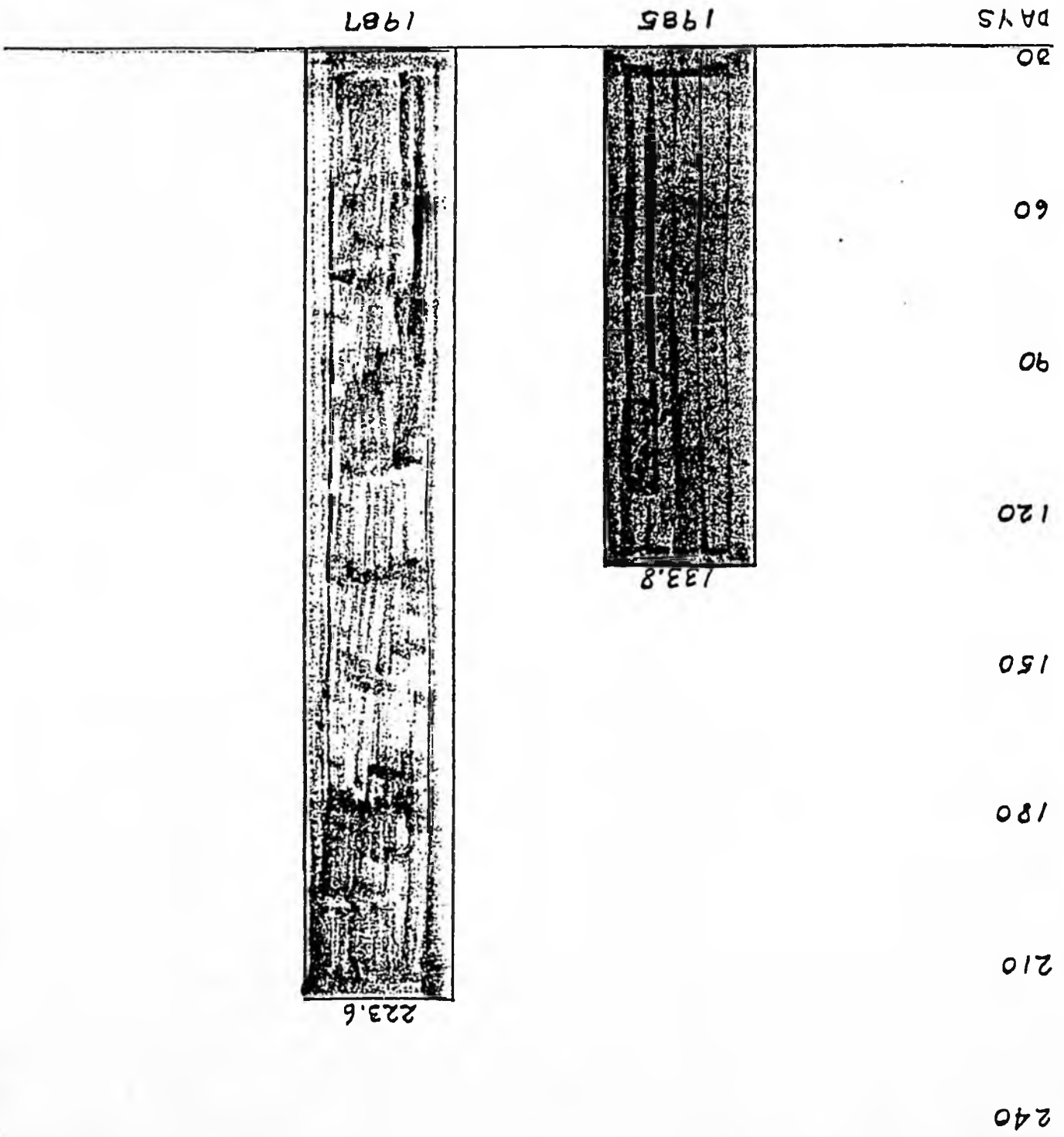
# THE INCREASING DELAYS

## WORKERS' COMPENSATION

### TIME PERIODS



# THE OVERALL EFFECT



JANUARY

29 STATEMENT OF READINESS  
TO PROCEED

FEBRUARY

14 VALENTINE'S  
DAY

MARCH

28 SEWARD'S DAY

APRIL

3 EASTER

MAY

9 LEGISLATURE  
ADJOURNS (120 DAYS)

JUNE

30 MEMORIAL DAY

JULY

4 INDEPENDENCE  
DAY

AUGUST

4 SPACE SHUTTLE LAUNCH

SEPTEMBER

5 LABOR DAY

9 DECISION & ORDER

224 DAYS OF WAITING

#### CHART #1

Chart #1 shows the increased delays in the three crucial steps of getting a workers' compensation case to hearing:

1. First, the filing of a Statement of Readiness to Proceed which initiates Board action,

2. Second, getting a prehearing at which time the date of a full board hearing is set, and

3. Third, to the time a Decision and Order of the Board is issued. Compensation is usually paid within two weeks of the Board's decision.

#### CHART #2

Chart #2 shows the combined effect of the three steps in Chart #1.

#### CHART #3

Chart #3 puts in a different perspective a wait of 224 days which is the average time between the date of filing of a Statement of Readiness to Proceed and the Board's decision in the 60 cases decided between October 1 and December 31, 1987.

[Attachment #5]

LAW OFFICE OF  
SHELBY L. NUENKE-DAVISON

(907) 276-6555

2525 BLUEBERRY ROAD, SUITE 102  
ANCHORAGE, ALASKA 99503

February 3, 1988

Representative Dave Donely  
P.O. Box V  
Juneau, AK 99811

Re: Workers' Compensation Bill

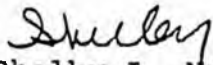
Dear Mr. Donely:

Thank you for phoning me the other evening in regard to some of your concerns about the Workers' Compensation bill. As indicated in our discussion, there are some valid points that were made at the hearing where some of the language should be cleaned up so as to avoid any potential abuses that could arise under the bill. I am going to attempt to sit down and draft up some amendment language on the issue of constitutionality of Brown v. AlPac, and the medical every 30 day IME, so that there is no doubt in anybodies mind that the IME is not meant to be used for a lot of "invasive diagnostic testing." Please feel free to call me any time you have comments or concerns regarding the bill, in that I am anxious to see this bill passed, and as you can tell from the hearings, one desperately needs to be passed as there are a lot of problems under the present system.

I think politically if you can clear up some of the concerns made by some of your constituents you could get the bill through with little changes. I do hope you continue to include the joint Labor Management Task Force in the involvement of any amendments, because as I testified at the hearings, the Workers' Compensation bill is a delicately balanced document.

Since I was unable to testify to everything I had wanted to, and most of the committee members were gone, enclosed please find written testimony I would like submitted to your committee. I will forward the same written testimony to Senator Tim Kelly and his committee.

Sincerely,

  
Shelby L. Nuenke-Davison  
Attorney at Law

SND/kac

enclosure:

2525 BLUEBERRY ROAD, SUITE 102  
ANCHORAGE, ALASKA 99503

Date: February 3, 1988

To: Honorable Tim Kelly and Honorable Dave Donley

From: Shelby L. Nuenke-Davison  
Attorney at Law  
2525 Blueberry Road, Suite 102  
Anchorage, AK 99503  
(907) 276-6555

Re: Labor Management Task Force Bill

WRITTEN TESTIMONY

I have been practicing workers' compensation defense almost exclusively in the State of Alaska for the last six years. I testified just briefly at the hearings held in Anchorage, on January 29, 1988 and was the last witness. Since a lot of committee members were unavailable, I have decided to take the time to do some written testimony because I think this bill is crucial.

I am of the opinion that the Labor Management Task Force Bill should be passed with no amendments made to the bill that do not go through the Labor Management Task Force. The reason for this is because, though I can see legally where some language changes need to be made, I know from working in the Alaska workers' compensation arena that all the statutes are directly related to each other and are intimately intertwined.

I would like to briefly comment on why some of the proposed changes are of the utmost importance. Failure of me to address any particular portion of the bill does not mean that I am not in support of those aspects of the bill.

1. Page 1, Section 1, lines 14 & 15 state, "The legislature declares that the workers' compensation laws must not be construed by the courts in favor of any party." This language is crucial to get passed and quite frankly I think it should be a lot stronger in that no matter what workers' compensation reform is done by the legislature, unless there is a message given to the Alaska Supreme Court that when there is any ambiguity in the workers'

compensation statute it should not go in favor of any party, then the Alaska Supreme Court through case law will nullify a lot of your work. Both the employer and employee give up significant rights in the workers' compensation arena. It is important that everybody understands this because much of the testimony has been surrounding the employee's rights. Employers give up the right to have the employee prove by a preponderance of evidence that he was injured, that the defendants are liable, and his damages. The employer also gives up his common law defenses to comparative negligence and assumption of risk. These are significant rights to give up and, as such, the law should not be construed just in favor of the employee. I understand that the employee also gives up his common law damages in exchange for the workers' compensation remedies. Because both parties give up significant rights, neither party should be favored in the law.

As the law presently stands, the Workers' Compensation Act does not state this. As such, the Alaska Supreme Court always construes the law in favor of the employee if there is any ambiguity in the statute. This is based upon a common law rule that the humanitarian purpose of the law is to favor claimants. To give you an example of how bad the Supreme Court is against employers, there is a common joke which goes around the workers' compensation arena, which is that if a claimant loses at the Board level, the claimant's attorney is malpractice not to appeal. That is somewhat of a significant statement and gives you an idea of how crucial this intent language is.

However, under this section, line 20, we should omit the word "any" evidence and substitute "substantial" evidence because that is the appropriate standard of review for appeals on issues of fact. Keep in mind, substantial evidence is easily found on appeal because it has been defined that any evidence is "substantial enough if it supports the conclusion in the contemplation of a reasonable mind."

2. I would now like to comment on page 2 of the bill Section 4, lines 24 through 29 and over to page 3, line 1. This proposed amendment is important to protect employers from being liable on a claim where an employee knowingly makes a false statement as to his physical condition and then allegedly has an aggravation to that condition. Because of the three-pronged test outlined in the proposed bill, this statute will be hard to prove and will not be easy to abuse against the claimant by the employer. This section however, needs to be supported by the new language in AS 23.30.055 which is on page 11, lines 9-10 & 11 of the

bill. Which states that, "the liability of the employer is exclusive even if the employee's claim is barred under AS 23.30.020 (b)."

3. AS 23.30.095, Section A which is found on page 12, lines 7 & 11, is an important amendment so as to avoid doctor shopping. Doctor shopping prolongs a claim unfairly to the employer. Doctor shopping can presently occur if a claimant goes to a doctor who does not support his position and wants to prolong the claim. Presently, there is nothing in the law stopping this and, therefore, claims go on indefinitely. This statute, however, appropriately protects a claimant if his treating physician refers him to a specialist in an area so as not to have the specialist be constituted a treating physician. At the hearing there was some testimony regarding the right of the employer to have IME's every 30 days and the fear that the claimant would be subjected to numerous "invasive diagnostic tests." As such, I recommend inserting on page 13, line 24 the following: "When possible, the IME physicians should use already existing diagnostic data to make his determination."

4. I would like to discuss briefly on two intertwined statutes which I think are very important to be passed untouched. There is nothing legally wrong with either of these paragraphs. One is Section 15 of AS 23.31.120 (c) which is found on page 16 of the bill, lines 4 through 7, and the other is Section 32, which is AS 23.30.265 (17) which is found on page 25 & 26, specifically on page 26, lines 4 through 14. Both of these amendments are absolutely crucial to be adopted without any changes because stress claims are as a general rule hard to objectify and are the up and coming big exposure for employers. Because there was no legislation on the books, the Alaska Supreme Court have made two devastating rulings on stress that make these claims almost undefensible. Since there are so many stressors in ones life and since a stress claim is subjective in nature, I urge you to enact both amendments untouched. These statutes still affords a party to file a stress claim.

5. Finally, the last areas I would like to address are Section 6, Voluntary Vocational Rehabilitation, Section 24, Temporary Total Disability, and Section 25, The Scheduling of All PPD Benefits and why these sections are important to pass without any significant amendments being made unless they go through the task force.

The present vocational rehabilitation statute in Alaska has already been labeled a failure by many claimants, employers, workers' compensation board members, and