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vocational rehabilitation counselors alike. The Alaska vocational rehabilitation system is not fair because it is too intimately connected to the types, amount, and period of time benefits that will be received by the claimant and has resulted in increased litigation to the detriment of the employee. Because of its close connection to the types, amount, and period of time benefits that are received, vocational rehabilitation in Alaska is nothing more than a litigation tool, and as such, is usually computed to dollars and settled out in a settlement. After the settlement, the claimant is no longer entitled to vocational rehabilitation and will more than likely have to return to his work at the time of injury, even if he really should not.

To understand the failure of the present vocational rehabilitation statutes, one must understand the interplay between Temporary Total Disability benefits, Permanent Partial Disability and Vocational Rehabilitation under the present law. Under the present law, it is important for you to understand because there is no cap on the amount or period of time a person can collect Temporary Total Disability benefits and there is a cap on Permanent Partial Disability benefits and because the Alaska Supreme Court in a case called Bignell v. Wise, determined that until a person is both "medically and vocationally stationary" he is entitle to get Temporary Total Disability benefits, the claimant has no interest in getting off Temporary Total Disability and on to Permanent Partial Disability benefits. Therefore, because vocational rehabilitation is so closely tied to how much a person gets and for how long it results in a lot of litigation. This is why vocational rehabilitation does not work in the present system because all it is really used for is a tool to facilitate larger claims and/or to prolong the claim. This is where we lawyers do a lot of our work. As such, the Joint Labor Management Task Force Bill should be passed because it removes vocational rehabilitation from the litigation process and puts a cap on Temporary Total Disability benefits of two years and does not make Temporary Total Disability benefits or Permanent Partial Disability benefits tied to whether or not the patient is vocationally stable. However, in the bill pending vocational rehabilitation is still afforded to claimants who need the services. Only those claimants who truly want these services will use them if they are not tied so intimiately to the claim. Even though no one can give hard dollars in terms of savings, I cannot see how this concept would not save a lot of costs in the workers' compensation system.

If any of you have any questions in regard to this bill or any legal questions on this matter, please feel free to

connect me. Thank you for taking the time to read this written testimony.

Sincerely,

Shelby L. Nuenke-Davison

Shelby L. Nuenke-Davison

SND/kac

DRAFT REPORT TO THE ALASKA STATE LEGISLATURE
ON WORKERS' COMPENSATION BENEFITS

from

UNIFIED FAIRBANKS

This is the final report of the Special Task Force formed by Unified Fairbanks to address the problem of an apparently unjustified increase in workers' compensation premium costs.

The Task Force grew out of an information seminar attended by 160 people, and a followup seminar attended by half that many. Emphasis at the first seminar was on receipt of all information that the State could provide, together with information from professionals in every area. At the second seminar, the preliminary action areas were crystalized and direction was given thereon. At this point, the matter was transferred to the Task Force Committee which consisted of 24 persons who were employers, labor representatives, health professionals, rehabilitation professionals, and attorneys (on both sides). Meetings were held each Wednesday at North Star Terminals. Committees worked an average of 10 hours each on their various projects. Input was had from all members on all reports, and all recommendations contained herein are unanimous unless noted to the contrary.

Organizationally, this should be viewed as a supplement to the WCCA draft legislation which is now before you as SB

questions of fact, the Board's findings are conclusive if supported by any evidence at all. Whether the court system will find a declaration of legislative intent sufficient to change the standard of judicial review is open to question. The final "intent" is to reduce benefits to persons with residences outside, so as to give them an incentive to go back to work.

RECOMMENDATION

Sections A and C are straight-forward legislative goals. Section B might better be amended along the lines of California Workers' Compensation Code, Section 3202.5 as follows: "The legislature declares that the workers' compensation laws must be fairly and impartially construed by the courts. In promotion of that goal, it is the intention of the legislature that the preponderance of evidence standard be utilized in determining the compensability of a workers' compensation claim. Preponderance of the evidence means such evidence as, when weighed ~~of~~ with that opposed to it, has more convincing force and a greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence."

ACTIONS PROPOSED

None in this area unless changing the standard of judicial review is seriously contemplated. If such is contemplated, there is a probability that multiple amendments may be requisite in such places as the Administrative Procedure Act and Title 22.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

02-576(2/77)

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Organizationally, this should be viewed as a supplement to the WCCA draft legislation which is now before you as SB

322. Sections will be taken in the order that they are set forth in SB 322. There are some additional recommendations beyond what was covered by that draft legislation. Some are of a legislative nature, there are also administrative recommendations for both proposed regulation and action. There are, finally, executive recommendations which must be considered by the Governor's Office in the budgeting process.

The overall goal was to make changes in the workers' compensation system which would reduce the cost of the system as it is reflected in premiums paid by employers.

The format for approaching each section or subject will be:

1. Comments addressing the WCCA proposal (SB 322);
2. The Unified Fairbanks recommended approach;
3. Actions proposed by Unified Fairbanks, whether legislative, administrative, or executive; and,
4. Arguments and problem areas which should be addressed.

I. LEGISLATIVE INTENT

COMMENTS

According to WCCA, this does not alter the presumption of compensability, but does indicate a legislative preference for a "preponderance of the evidence" test to be used by the Board without favor to either side. Additionally, the standard of judicial review is to be changed to provide that, on

questions of fact, the Board's findings are conclusive if supported by any evidence at all. Whether the court system will find a declaration of legislative intent sufficient to change the standard of judicial review is open to question. The final "intent" is to reduce benefits to persons with residences outside, so as to give them an incentive to go back to work.

RECOMMENDATION

Sections A and C are straight-forward legislative goals. Section B might better be amended along the lines of California Workers' Compensation Code, Section 3202.5 as follows: "The legislature declares that the workers' compensation laws must be fairly and impartially construed by the courts. In promotion of that goal, it is the intention of the legislature that the preponderance of evidence standard be utilized in determining the compensability of a workers' compensation claim. Preponderance of the evidence means such evidence as, when weighed ~~of~~ with that opposed to it, has more convincing force and a greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence."

ACTIONS PROPOSED

None in this area unless changing the standard of judicial review is seriously contemplated. If such is contemplated, there is a probability that multiple amendments may be requisite in such places as the Administrative Procedure Act and Title 22.

Act and Title 22.

ARGUMENTS AND PROBLEM AREAS

These have been raised above.

II. DEPARTMENT MAY SET UP TO SELECT AND REMOVE REHABILITATION SPECIALISTS OR PHYSICIANS

COMMENTS

In Fairbanks, we felt strongly that the "may" should be replaced by "shall", "must" or "will" creating a mandate. WCCA feels that, providing the Board with the power will be enough to cause it to act. Additionally, the "or" probably should be a "and" because the two are not meant to be alternatives.

RECOMMENDATIONS

Our recommendations in the medical and rehabilitation areas are addressed in those particular areas of this report. We concur with the intent of WCCA in Section 2 with the strong recommendation that the word "may" be made mandatory, and clarifying that both rehabilitation specialists and "physicians" (as defined elsewhere) are to be selected.

ACTIONS PROPOSED

See above.

ARGUMENTS AND PROBLEM AREAS

Hopefully, the qualifications for health care providers will not strongly differ from the standard of licensing, etc.

III. WHEN ANYTHING IS DECLARED UNCONSTITUTIONAL, DEPARTMENT "SHALL IMMEDIATELY" DRAFT NEW REGULATIONS

COMMENTS

A different drafter for WCCA uses the mandate "shall" and adds to it the word "immediately". This drafter probably meant to say "shall forthwith adopt a replacement regulation or regulations".

RECOMMENDATION

A good idea.

ACTIONS PROPOSED

See above.

ARGUMENTS AND PROBLEM AREAS

Since the Department does not have legal counsel and the route for cooperation with the Attorney General's Office is rather tortuous, any requirement of immediacy may be dysfunctional.

IV. FALSE STATEMENT ON PREEMPLOYMENT QUESTIONNAIRE WAIVES ALL BENEFITS

COMMENTS

First, there is no mechanism for determining whether any particular ~~this~~ statement is actually false. Questions composed by individual employers can mean various things. Well designed questionnaires can even be susceptible of dual interpretations. Second, (1) is vague. It probably should provide that, had the

employer known the true state of facts, a) the employee would not have been hired, and b) the non-hiring would have been legal under federal and state law. Third, (2) is again vague because a representation on a piece of paper in the office seldom causes anything. Reference should be to the condition hidden from the employer by the misrepresentation.

RECOMMENDATION

Unified Fairbanks agrees with the intent and feels that the drafting should be cleaned up.

ACTIONS PROPOSED

See above.

ARGUMENTS AND PROBLEM AREAS

See above.

V. SECOND INJURY FUND CONTRIBUTIONS AND REPORT TO BE FILED ANNUALLY

COMMENTS

The State receives currently both data and funds within a short period of time after each case is concluded. This amendment permits the State to have data consolidated on a single annual report from each carrier. It also permits the insurance company to earn interest on money due for the intervening time between closing a case and the annual report.

RECOMMENDATION

Since the State is unable or unwilling to compile data

from
~~for~~ reports filed on a case-by-case basis, this appears to be a way in which the annual reports from the carriers can be summarized, thereby providing for the first time, some data with respect to the validity of rates charged, and where the problems in the administration of the act happened to be. We join in the recommendation to attack the problem.

ACTIONS PROPOSED

Unified Fairbanks would like the State to explore the possibility that, either through the use of a personal computer or access to some other computer plus the addition of one person to the staff of the department, the reports as they are currently received could be entered into the computer so that all data necessary for fixing rates or ascertaining percentages of expenditure, etc. would be instantly available to the State and any employer or agency requesting the information. It is most likely that the cost to the State of a computer, its programing, and a person to operate it, at least on a part-time basis, would be less than the interest lost by providing the delay in payment by the carriers. There is no indication that the additional interest earned (which will probably be on the remainder in a claims reserve) will effect the workers' compensation premium rates in any way.

ARGUMENTS AND PROBLEM AREAS

The State Department of Insurance and the State Department of Workers' Compensation are both unable to produce

statistics indicating the basis for premiums or the disposition of monies paid out. If this problem is not addressed, we will continue to set rates in a blind fashion and amend legislation without knowing whether we are doing any good.

VI. REHABILITATION

COMMENTS

Unified Fairbanks agrees that rehabilitation should be voluntary with the employee. We find no evidence from any source which indicates the law which has been proposed will reduce the cost of workers' compensation. We have repeatedly sought facts from the State government indicating what segment or segments of a workers' compensation system had been causing the greatest increase in cost. Absolutely no information has been forthcoming, although we have been able to obtain the same information from other states with a telephone call. In short, all we know is that there is a serious problem with the cost of the system. However, no one in our State government has been able to identify where the problem lies. We firmly believe that it is wrong to legislate massive changes in what is basically a sound law when no one has yet identified where the problem lies. We are, in fact, worried that the cost of the system may be increased by the proposed changes. There have been no regulations adopted to put into effect the rehabilitation scheme that is presently in the law. We therefore do not know how the

presently existing scheme will work or what its costs will be. We are therefore reluctant to change for the sense of change.

RECOMMENDATION

A. INEFFECTIVE WORK BY STATE AGENCIES, Division of Insurance:

Much of the blame for the increased cost of the workers' compensation system has been placed on vocational rehabilitation. However, the Division of Insurance has absolutely no information available to anyone concerning the costs of vocational rehabilitation or of any other workers' compensation benefit for that matter. Nonetheless, the Division continues to approve massive rate increases for workers' compensation insurance, and a portion of the blame gets placed on a "vocational rehabilitation system which is too liberal." The last increase was granted without the preparation of any findings of fact and without the presentation of any specific information to those in this State who are involved. We suggest legislation requiring some state agency to keep statistics on the cost of rehabilitation evaluations, rehabilitation plans, the cost of litigation, and so forth. When future rate increases are suggested, facts and figures will be available to indicate where the cost increase is coming from.

B. INEFFECTIVE WORK BY STATE AGENCIES, Workers' Compensation Board:

The Department of Workers' Compensation has seriously faltered in its obligation to administer the existing vocational

rehabilitation law. Over five and a half years have passed without the promulgation of a single rule or regulation by the Board to govern procedures under the law which went into effect on July 1, 1982. The present law has never been given a chance to work and we find it ridiculous that the Legislature now stands ready to cast it aside. We suggest the legislature take whatever steps are necessary to immediately secure the promulgation of administrative rules and regulations by the Board.

Two good examples of what has happened as the present system has struggled without the benefit of administrative rules:

1. We suspect a major portion of any increased cost of vocational rehabilitation is in the payment of temporary benefits to injured workers while they wait for the vocational process to be completed. The system in Fairbanks has worked very slowly without the rules and regulations needed. As a result, injured workers remain far too long on temporary benefits. Rather than deprive injured workers of temporary benefits during vocational rehabilitation, which we think is a worthwhile benefit, we suggest the Board streamline the system with the promulgation of rules and that the existing law be tightened up to provide certain specific time limitations for each step of the process. This is the main thrust of our suggested changes in the existing law.

2. In Fairbanks, there is no full-time rehabilitation administrator. At present, the one administrator is in Fairbanks one day a month. This allows a maximum of three rehabilitation conferences. Without timely rehabilitation conferences available to all parties, increased costs of continuing temporary benefits have resulted. It is obvious additional staff are required.

C. LEGISLATIVE TASK FORCE

We believe the Legislature should form a task force to keep the existing vocational rehabilitation system moving. The group should have representatives of all major participants in the system. The information needed from the Division of Insurance could be pursued, enforcement of the Board's obligation to promulgate rules and regulations would be enhanced, and proposed changes in the law and regulations could be generated.

D. SECOND INJURY FUND/TEMPORARY PARTIAL DISABILITY

Our committee believes one of the greatest benefits to the system would be strong encouragement to employers to rehire injured workers. The present Second Injury Fund does nothing to provide this encouragement as coverage begins only after 104 weeks of disability. We suggest the period of coverage be drastically reduced to make it possible for injured workers' to return more rapidly to the work force. A further encouragement toward the goal of returning injured workers to a job is our

proposed new subsection(n) which encourages the use of TPD when employers rehire their injured workers in a "modified" or "light duty" capacity.

ACTIONS PROPOSED

In order to keep in line with the WCCA recommendation, we propose that the statutory language be as follows:

AS 23.30.041. Rehabilitation of injured workers.

(a) The board shall select and employ a rehabilitation administrator. The board shall adopt regulations to implement this section. The board shall authorize the rehabilitation administrator to select and employ sufficient rehabilitation staff to conduct hearings and to collect and analyze statistical data. The rehabilitation administrator is in the partially exempt service under AS 39.25.120.

(b) The rehabilitation administrator shall implement the provisions of this section, study the issue of rehabilitation, both physical and vocational, enforce the regulations as adopted, and maintain and report statistical data on a contining basis as to the cost of rehabilitation to the Legislature on at least an annual basis.

(c) If an employee suffers a compensable injury that could preclude return to the job held at the time of injury, the employee shall be referred for an evaluation for participation in rehabilitation services within 30 days after the date of injury. A full evaluation shall be performed by a qualified

rehabilitation professional within 30 days of the date of referral. If in the opinion of the qualified rehabilitation professional, the medical, physical, or emotional state of the employee precludes a full evaluation, the rehabilitation professional shall prepared a preliminary evaluation within 14 days of the date of referral. A preliminary evaluation shall include the reasons why a full evaluation cannot be made, an opinion as to when the employee will be able to participate in a full evaluation, and any information that would be included in a full evaluation that can be determined and reported by the rehabilitation professional at the time of the preliminary evaluation. If the employer does not timely make a referral for evaluation under this subsection, the rehabilitation administrator shall retain a qualified rehabilitation professional to perform the evaluation. The employer shall pay the reasonable costs of an evaluation under this subsection.

(d) A full evaluation by a qualified rehabilitation professional shall include a determination whether rehabilitation services are necessary, as outlined in the regulations.

(e) Refusal by an injured employee to participate in an evaluation results in forfeiture of disability compensation for the period the refusal continues. The rehabilitation administrator shall find that an employee refuses to participate in an evaluation if the employee fails to cooperate with the

rehabilitation provider as outlined in the regulations.

(f) After the evaluation is completed, the employee must elect in writing to the administrator within 14 days of receipt of the full evaluation whether or not he or she will participate in further rehabilitation services.

(g) The employee's election not to participate in rehabilitation services is final, provided, however, that the employee shall have the option within 30 days of the notice under subsection (f) to notify the administrator in writing that he now wishes to participate in rehabilitation services.

(h) After the employee has elected to participate in vocational rehabilitation services for which he is eligible, the vocational rehabilitation counselor will within 90 days submit a vocational rehabilitation plan to concerned parties including the rehabilitation administrator which will enable the employee to return to suitable gainful employment. A rehabilitation plan may consist of any of the following; however, if the employee can be restored to suitable gainful employment with rehabilitation plans of higher preference, then a rehabilitation plan of a lower preference need not be offered by the employer. The order of preference fore rehabilitation plans is return to work

(1) with the same employer at the same or modified job as at the time of injury;

(2) with the same employer at a new job using transferrable skills;

(3) with a new employer at the same or modified job;

(4) with a new employer in a new job using transferrable skills;

(5) through developing already existing skills or acquiring new skills through on-the-job training;

(6) after developing already existing skills or acquiring new skills through vocational training;

(7) after developing already existing skills or acquiring new skills through academic training;

(8) in self employment; and

(9) through direct placement in an unrelated job not using transferrable work skills.

(i) If the employer and employee fail to agree in writing on the submitted vocational rehabilitation plan within 14 days, the employee shall submit an alternative plan to the rehabilitation administrator. The employee's alternative plan must be submitted within an additional 14 days. In the event of a dispute, the rehabilitation administrator or his staff may either write a decision or schedule a formal rehabilitation conference to be held within 10 days of receipt of the alternative plan. If a conference is held, a decision as to the appropriate plan shall be issued within 10 days after the conference. The rehabilitation administrator's decision is

binding unless a party seeks review of the decision by requesting a hearing with the Board in accordance with AS 23.30.110.

(j) A vocational rehabilitation plan may not exceed ~~up to~~ 37 training weeks, except that the rehabilitation administrator may order a plan up to an additional 37 training weeks. This subsection does not prohibit an employer or carrier from providing extended vocational rehabilitation services on a voluntary basis. If rehabilitation requires residence away from the employee's customary residence, reasonable cost of board, lodging, and travel shall be paid by the employer. Temporary disability under AS 23.30.185 or AS 23.30.200 shall be paid throughout the rehabilitation plan under this section.

(k) For purposes of this section, suitable gainful employment means employment that is reasonably attainable in the light of an individual's age, education, vocational history, and physical capabilities, and that offers an opportunity to restore the individual as soon as practical to a remunerative occupation as nearly as possible to the individual's gross weekly earnings as determined by section AS 23.30.220.

(l) For purposes of this section, "labor market" means a geographical area that offers employment opportunities in the following priority:

(1) area of last employment;

(2) area of residence;

(3) the State of Alaska;

(4) outside Alaska.

(m) "Qualified rehabilitation professional" means a person who by education and experience has the skills to work in the field of rehabilitation as determined by Board established regulations.

(n) While an injured worker is participating in a preliminary evaluation and/or a subsequent full evaluation under this section, he or she shall receive temporary partial disability benefits under AS 23.30.200 when an employee under section (h)(1) or (2) and primary physician agree, prior to medical stability and a full release, that an employee may return to modified, light duty, part time, or trial work status.

VII. BARRING ALL LIABILITY BY AN EMPLOYER (BOARD AND COURT) TO AN EMPLOYEE WHO COMMITS AN UNTRUTH ON HIS OR HER PREEMPLOYMENT QUESTIONNAIRE

COMMENTS

Much of this has been discussed under number IV above. No one can know what the courts will do with this. There is no way to provide a prompt adjudiciation of whether a worker committed an intentional falsehood, and it is not likely that the courts will deprive a worker of both compensation benefits and civil liability (if the employer was negligent) without a firm adjudication of intentional fraud.

RECOMMENDATION

We favor the approach, but feel there must be a standarized questionnaire with admonitions on it and, if need be, provisions to help illiterates complete it. We also recommend that there be some proviso for prompt determination of whether fraud has been committed in order that a carrier not pay benefits if they are not supposed to be paid, but not withhold benefits if they are supposed to be paid.

ACTIONS PROPOSED

There should be a statute providing for forfeiture of civil liability against the employer, as well as benefits under the workers' compensation law. This would be easiest if it were done under Title 11 (the criminal code). This will require legislation to effect what has just been set out, administrative cooperation in getting these matters to the proper authorities on a relatively emergency basis, and executive allocation of funds to handle the hearing which declares these rights to have been waived.

ARGUMENTS AND PROBLEM AREAS

Equal protection questions will doubtless be raised as they always are with any forfeiture or waiver. Additionally, we are all aware that, if employment is down as it is now, a person needing a job will say what is necessary to get that job. This will make that person a "good guy" in the eyes of the court, and there will be an effort to avoid this waiver, particularly in

the event of a hard case where the employee is very badly injured and the employer was quite negligent.

VIII. NO DOCTOR HOPPING

COMMENTS

In the first sentence, the word "attendance" should be "attendants". We feel that the cases where there is no specialist within the State (in an area where an employee needs treatment) will be sufficiently rare that the Board can handle these as special matters. We worry that the transfer to a specialist will be considered a change in "attending physician" because this is the ~~meeting~~ meaning that the medical profession attaches to such a change.

RECOMMENDATION

We concur fully with requesting the passage of Section VIII. There will have to be considerable public education and the adoption of regulation covering the Notice of Change ~~in~~ of a physician. We do recommend that the term "attending physician" be changed to be "primary physician". This will eliminate the semantical problem. We feel it advisable that the problems of prior notification be avoided by providing that the notice must be "within 14 days" of the change. This is in line with the present law.

ACTIONS PROPOSED

Aside from the semantical suggestion above, the

Department and the Board should prepare regulations and forms to cover change of physician. We would prefer that the amendment be as follows:

"The employer shall furnish medical, surgical, and other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus for the period which the nature of the injury or the process of recovery requires, not exceeding two years from and after the date of injury to the employee. However, if the condition requiring the treatment, apparatus, or medicine is a latent one, the two-years period runs from the time the employee has knowledge of the nature of his disabililty and its relationship to his employment and after disablement. It shall be additionally provided that, if continued treatment or care or both beyond the two-year period is indicated, the injured employee has the right of review by the Board. The Board may authorize continued treatment, or care, or both, as the process of recovery may require. When medical care is required, the injured employee may designate a licensed physician inside the state where the employee resides to render the care. Upon procuring the services of a physician, the injured employee shall give proper notification of his selection to the employer within a reasonable time after first being treated. The employee may not make more than one change in the employee;s choice of primary physician without the written consent of the employer. Referral to a specialist by the employee's primary

physician is not considered a change in physicians. Notice of a change in the primary physician shall be given within 14 days after the change."

ARGUMENTS AND PROBLEM AREAS

There will always be emergencies where there is not time to go through the notification procedure. This should be covered by the regulations. There will always be situations where an employee is referred to more than one specialist during the same time period. Once again, this can be worked out with the accompanying regulations.

IX. COURSES OF TREATMENT TO BE WRITTEN IN ADVANCE

COMMENTS

This proposal will greatly increase the medical cost of treatment. Physicians are not magicians. They cannot predict with exactitude at what point during a "course of treatment" a person will actually be cured. In order to avoid malpractice, all physicians will have to recommend a maximum course of treatment <u>in case such is needed</u>. Unified Fairbanks does not feel that the proposed amendment is workable, nor that the cost increase necessary for a physician to prevent malpractice is money well spent.

RECOMMENDATION

We recommend no amendment to Subsection C.

ACTION PROPOSED

The evil sought to be remedied here, namely that of endless treatments without real value, should be addressed by a study committee to find a feasible way of handling the situation. Hopefully, the way should not increase the cost.

ARGUMENTS AND PROBLEM AREAS

See above.

X. A DEFENSE MEDICAL EXAMINATION AFTER 14 DAYS AND THEN EACH 30 DAYS THEREAFTER

COMMENTS

Because of the definition of the word "physician" contained later on, it would be advisable to remove the words "or surgeon" in line 4 regardless of what else is done. Additionally, there may be problems with respect to types of practice (hypnotic, chiropractic, osteopathic, religious, etc.) and personality conflict which will sooner or later result in problems under this section whether or not amended. We felt that the present statute was adequate, and [redacted] that there was no need to wind everyone up with the idea of a defense medical exam every 30 days, and that money expended thereby would be a waste.

RECOMMENDATION

That we leave Section (e) as it currently is and schedule this problem for study as will be referenced later.

ACTIONS PROPOSED

Scheduling this problem for study in the future.

ARGUMENTS AND PROBLEM AREAS

Sending a Jehovah Witness to a hematologist is not likely to be functional. This sort of preference, as mentioned above, should be considered in study.

XI. USUAL, CUSTOMARY AND REASONABLE FEES

COMMENTS

This is a very good idea. Care will have to be taken by the Board in the manner in which it adopts a UCR fee so that that fee does not become known to medical practitioners (see below).

RECOMMENDATION

We join in requesting passage.

ACTIONS PROPOSED

Same (with caution so that the UCR schedule is not made available).

ARGUMENTS AND PROBLEM AREAS

UCR fees are used by almost every insurance company that writes health insurance. With the big carriers, the UCR rate for any procedure is set at the 90th percentile. This means that 89% of all doctors practicing in the area charge less than the UCR fee for that procedure, while 10% of the same doctors charge more. Each carrier jealously guards the secrecy of its UCR schedule because, if that schedule becomes known, it will become a "minimum fee schedule" and medical costs will

really escalate. If the Board adopts a UCR schedule, it will probably will have to do so in a public meeting and with notice. This will mean that the schedule could become public property or at least known to many physicians. That sort of action will result in a massive increase in medical costs with no enhancement of medical care.

XII. REPEALING RELIANCE ON AMA GUIDE FOR EVALUATION OF PERMANENT IMPAIRMENT AND OBTAINING A BOARD CONSULTANT ON APPROPRIATENESS, NECESSITY AND COST OF MEDICAL SERVICES

COMMENTS

This may be the one place where "may" should not be replaced by "shall". The repeal of the reliance on the AMA Guide is then undone later on in this bill with a subsequent adoption of the same guide. Additionally, we feel that new subsection (k) takes care of the problem without needing to spend extra monies on medical consultation.

RECOMMENDATION

We are negative on this repeal and new rule.

ACTIONS PROPOSED

None.

ARGUMENTS AND PROBLEM AREAS

Another layer of medical authority may well simply confuse the issue. Enough corrections have been taken in other sections.

XIII. INDEPENDENT MEDICAL EXAMINATION

COMMENTS

The use of a single physician as an independent medical examiner became obsolete in the medical profession several years back. We do not have, in Alaska yet, multiple discipline panels of Board certified physicians, and hence this portion of our medical practice is going outside. Alaska currently has a number of clinics who can perform this function and we are recommending a medical update by using them (unless the employer or carrier prefers an outside group). The principles set forth ~~is~~ are good. We have some reservations about using "clear and convincing objective evidence" since the medical meaning of "objective evidence" differs considerably from the lay persons definition.

RECOMMENDATION

To reword the proposal of WCCA creating the [illegible]t but updating the medical services and apportioning the weight to be given to the testimony of such a panel to be equal with the preference already given to a "treating physician".

ACTIONS PROPOSED

We recommend the following wording for Section (k) of AS 23.30.095(k) to read: "In the event of a medical dispute regarding determinations of causation, medical stability, degree of impairment, functional capacity, the amount and (ethicacy) of the continuance of or necessity of treatment, or compensability

between the employee's attending physician and the employer's independent medical evaluation, an independent multiple discipline panel of board certified physicians shall conduct an examination of the employee. This panel shall be selected by the Board from a list established and maintained by the Board. The cost of the examination and medical report shall be paid by the employer. The report of the panel shall be furnished to the Board and to the parties within 14 days after the examination is concluded. The opinion of the independent panel shall, in the absence of clear and convincing evidence to the contrary, have equal weight with the opinion of the attending physician. No person may seek damages from an independent multiple discipline panel of board certified physicians for the rendering of the opinion described in this subsection or for testimony by any member of said panel under this subsection, except in the event of fraud." This will require that the Board entertain applications from various clinics currently formed and to be formed for appointment to the panel list. Publication of the legislative change will probably be adequate to form a number of these panels within the state. The Department will probably need to assign an employee (part-time) to handle the rotating list. That same person (or computer) could handle the other rotating lists suggested in this legislative package.

ARGUMENTS AND PROBLEM AREAS

Care should be taken to watch out for panels which

spring up without fully qualified people in the necessary disciplines on them. There should be a regulation describing the disciplines which must be available on any panel and the requirement of Board certification to handle this problem. If the weight given the panel is equal to the weight given the attending physician, and if the two differ, then the defense medical examination will be the swing vote. This sort of apportionment is necessary because medicine is not yet reduced to total certainty and a demonstrably incorrect judgment call (in hindsight) and will produce lawsuits even if only between the physicians involved.

XIV. STATUTE OF LIMITATION TRIGGERED BY DIRECT COMPENSATION BENEFITS

COMMENTS

This amendment clarifies a confusing situation so that litigation in this area will no longer occur.

RECOMMENDATION

Support for the WCCA proposal.

ACTIONS PROPOSED

Adopt the WCCA proposal.

ARGUMENTS AND PROBLEM AREAS

Knowledge of the commencement of the Statute of Limitations is something that is difficult to come by for a layman. In all probability, regulations will be needed providing that, upon payment of the final payment, there be an

accompanying letter or form indicating that the Statute of Limitations commences as of the date of that letter.

XV. NO PRESUMPTION OF COMPENSABILITY IN MENTAL INJURY CASE

COMMENTS

The term "mental injury" is undefined in law and in medicine. What is probably meant here is a stress related injury with manifestations primarily found in brain dysfunction. Without clarifying the term, much litigation will be required.

RECOMMENDATION

The idea is good. The proposal should be adopted to eliminate litigation. The definition of the injury should be made clear.

ACTIONS PROPOSED

Same as above.

ARGUMENTS AND PROBLEM AREAS

Only if the term is not defined will there be much litigation to determine what is meant. All injuries have a mental aspect. Almost all diseases commonly thought of as mental diseases have physical manifestations.

XVI. BOARD'S FACTUAL DETERMINATIONS CONCLUSIVE IF ANY EVIDENCE AT ALL

COMMENTS

See our comments under Section I.

RECOMMENDATIONS

See our recommendations under Section I.

ACTIONS PROPOSED

See our actions proposed under Section I.

ARGUMENTS AND PROBLEM AREAS

See our arguments and problem areas under Section I.

XVII. BOARD HAS ONE YEAR TO RECONSIDER ERRONEOUS FACTUAL FINDINGS

COMMENTS

This is a technical correction to make clear when the one year starts running. The correction is needed and does make the situation clear. This doubtless supplements the "any evidence" rule found in Sections XVI and I, making Board determinations relatively unappealable on the facts.

RECOMMENDATION

We join the WCCA recommendation.

ACTIONS PROPOSED

Adopt the proposed amendment.

ARGUMENTS AND PROBLEM AREAS

This section will doubtless now be used because of the cutoff of appellate rights if the "any evidence" rule is adopted. It is part of an attempt to make the Board's decision final, except on questions of legal interpretation. The Board should anticipate ~~this~~ increased usage. There may be staffing implications in the increased usage.

XVIII. PENALTIES CAN BE REDUCED

COMMENTS

A necessary supplement to the amendment proposed in Section V.

RECOMMENDATIONS

See comments in Section V.

ACTIONS PROPOSED

See comments in Section V.

ARGUMENTS AND PROBLEM AREAS

See comments in Section V.

XIX. REAFFIRMATION OF LAST INJURIOUS EXPOSURE RULE

COMMENTS

Simply a restatement of the current law.

RECOMMENDATION

A good rule. It can't hurt to repeat it.

ACTIONS PROPOSED

Passage of the amendment.

ARGUMENTS AND PROBLEM AREAS

None, since the rule is already in effect.

XX. ANNUAL REPORTING DATE AND PENALTY INCENTIVE

COMMENTS

Another portion of the procedure set forth in Sections V and [illegible]III.

RECOMMENDATION

See comments under Section V.

ACTIONS PROPOSED

See comments under Section V.

ARGUMENTS AND PROBLEM AREAS

See comments under Section V.

XXI. MAXIMUM AND MINIMUM ON WEEKLY DISABILITY PAYMENTS

COMMENTS

While looking like a major reduction, this will probably effect very few injured persons under the various rules currently existing. For an injured employee with a wife and children, benefits will often be less than unemployment benefits.

RECOMMENDATION

Adopt the proposal and then monitor the situation to see whether injured employees are waiving disability in order to collect unemployment.

ACTIONS PROPOSED

Adopt the proposal.

ARGUMENTS AND PROBLEM AREAS

An injured employee whose disability benefit is less than unemployment may waive disability benefits and request that his doctor release him for work so that he can draw

unemployment. This could have a domino effect on other benefits.

REINSTATE REDUCED BENEFITS FOR THOSE RESIDING OUT-OF-STATE

COMMENTS

This portion of Section XXI seeks a return to ~~the~~ reduced benefits for those workers who reside out-of-state. It also indicates that only instate work will be used to calculate earnings in the past. Between the two, the long term effect will hopefully be to provide a substantial disincentive to residents of other states with respect to working in Alaska. This is a tradeoff for the increase in permanent partial disability.

RECOMMENDATION

Adopt the proposal in this form unless the Attorney General's Office suggests one less likely to be attackable in court.

ACTIONS PROPOSED

Same.

ARGUMENTS AND PROBLEM AREAS

A case entitled Brown v. Alpac in the Supreme Court found severe difficulty with compensating workers who reside out-of-state less than those who reside instate. There are equal protection and freedom of travel problems possible here and plans should be made to defend this scheme.

XXII. FACTORS TO BE CONSIDERED IN DETERMINING PERMANENT TOTAL DISABILITY

COMMENTS

A part of the package very very rarely used.

RECOMMENDATION

Adopt the amendment and monitor it for effect.

ACTIONS PROPOSED

Same.

ARGUMENTS AND PROBLEM AREAS

The reference to "area of last employment" may refer to work available in another state. This may be part of the equal

protection and freedom of travel problem. However, it doesn't seem likely that this would be an area of attack. This seems to eliminate the problem of whether a person is still able to work if that person can hold only some job that is only available in another state.

XXIII. FAILURE TO ACHIEVE EMPLOYABILITY NOT NECESSARILY PERMANENT TOTAL DISABILITY

COMMENTS

Presumptively, this refers to the person who could, with more effort put forth, hold some job that is available somewhere in Alaska, but does not do so.

RECOMMENDATION

We have no idea of the effect and therefore join WCCA in advocating the amendment.

ACTIONS PROPOSED

Same.

ARGUMENTS AND PROBLEM AREAS

If this is not spelled out to some greater detail in regulations, there will have to be a series of court cases to ascertain what its effect may happen to be.

XXIV. TEMPORARY TOTAL DISABILITY LIMITED TO TWO YEARS OR MEDICAL STABILITY, WHICHEVER IS FIRST

COMMENT

Under the proposed definition of medical stability

found in later sections, this will mean that TTD will last only so long as the injured employee makes objectively measurable improvement each 45 days. It would require at least 16 objectively measurable improvements to keep TTD running for two years. Only horrendous and compound injuries should ever find their way into that category. Most severely injured people will be without improvement for a 45 day period somewhere during their recovery and hence, they will pass directly to the permanent partial disability rating.

RECOMMENDATION

We have no idea of the effect and therefore join WCCA in advocating the amendment.

ACTIONS PROPOSED

Same.

ARGUMENTS AND PROBLEM AREAS

Medical professionals are likely to create illusory improvements to avoid this rule and to permit their patient to recover to a true point of medical stability before being permanently rated. Alternatively, people will be rated for permanent partial disability long before they have recovered and unless there is a motion to amend the Board's findings within one year, the carrier will not get ~~the~~ any funds (which have been paid) returned. This could be expensive.

XXV. PERMANENT PARTIAL DISABILITY RENAMED AND BASED ON $240,000 FOR A "WHOLE MAN", SPECIAL FACTOR TO REDUCE PAYOUT FOR THOSE LESS THAN 31% DISABLED

COMMENT

Almost all disabilities fall within the 0-30% category and hence, will be cut back rather than based on the $240,000 whole man. This will be a very beneficial amendment for those quite severely injured. The change in caption was probably a transcribing accident and should be rectified. The $250.00 minimum should be adequate to lock in the reduced payment for those with only minor disabilities such as loss of a hand. The amendment further readopts the American Medical Association's guides to evaluation of permanent impairment (repealed earlier in this package) and provides for the Board to adopt and use a supplemental schedule if they so desire. The language probably should be "shall" rather than "may" so that this supplemental schedule does not have to be created by courts on appeal.

RECOMMENDATION

Adopt the amendment and monitor it for effect.

ACTIONS PROPOSED

Same, but restore the caption to use the word "disability" so as to be consistent with other sections. Also, "may" should be changed to "shall".

ARGUMENTS AND PROBLEM AREAS

It is to be anticipated that people less than 31% disabled will test this section in the courts. It appears that it will withstand the test.

XXVI. CUTTING OFF TEMPORARY PARTIAL DISABILITY IN THE SAME MANNER AS TEMPORARY TOTAL DISABILITY

COMMENTS

The two-year and "medical stability" problems foreseen above in Section XXIV are encountered here again.

RECOMMENDATION

See number XXIV.

ACTIONS PROPOSED.

See number XXIV.

ARGUMENTS AND PROBLEM AREAS

See number XXIV.

XXVII. WAGE EARNING CAPACITY FOR CALCULATION OF PERMANENT DISABILITY TO BE DETERMINED BY ACTUAL SPENDABLE WEEKLY WAGE OR SET BY BOARD

COMMENTS

This is the only use of the term "actual spendable weekly wage". It is undefined and is obviously intended to be different from "spendable weekly wage" which is very narrowly defined. Until this term is defined by regulation or by the courts, the Board will probably have to have a hearing and set the wage earning capacity of each person who becomes eligible for permanent disability of any sort. Since this is the compensation on which the amount that the injured person will receive is based, we can only hope that settlements will become

a pattern. Otherwise, the Board will be snowed under with a new type of hearing which only occasionally occupied them in the past.

RECOMMENDATION

Adopt the amendment and monitor its effect.

ACTIONS PROPOSED

Adopt the amendment and monitor its effect.

ARGUMENTS AND PROBLEM AREAS

This appears to say that the wage earning capacity of a person will be based upon the spendable weekly wage which the person is earning at the time he or she is injured. The use of wages contempory with the injury is to be encouraged, particularly because of the bizarre effects of Alaska's boom and bust economy when a historical earnings criteria is used. The inconsistencies between this and the next section may result in litigation. Our discussions indicate that this is a more desirable approach in Alaska's economy (see our comments in the next section).

XXVIII. BOARD MUST DETERMINE EMPLOYEE'S GROSS WEEKLY EARNINGS

COMMENTS

This amendment is imposed upon the delightful conundrum which has been AS 23.30.220(a). The section as it currently exists begins by saying that the current wage at the time of injury is the basis for computing compensation. It goes on to

provide that this is current receivable wage and that this is calculated on the basis of earnings history only. There are two formulas that are customarily used in workers' compensation statutes. One bases the calculation of compensation on the earnings of the employee at the time of injury. The other bases the calculations on a wage earning history. This latter has created much of the problem on which we are currently working. In a boom and bust economy, a workers' compensation system that is based upon earnings history finds that in boom periods, the workers benefits are calculated on his earnings during the bust period and hence, are low, and there are plenty of jobs at high wages available as an incentive to return to work. At this time then, claim payments are very low and profits are very high. On the other side of the mountain, when the economy is going into a bust, the payments to the injured worker are based on earnings history and hence, are high, and wages available are low (if any). This provides a disincentive to return to work and during this period, there would normally be no profit at all for the insurance carriers since the profit was drawn during the boom time. Alaska has, however, elected to try to provide profit both during boom and bust while still calculating benefits based on historical wages. The effect of these two policies makes for low premiums (but lots of profit) at the boom time and impossibly high premiums (and small profit) at the bust time, thus further damping the economy and permitting those employers

who can come into the state from outside (with a multi-state workers' compensation policy) to underbid employers who are residents of the state. This is, of course, foolish in the extreme. Unified Fairbanks is exceedingly concerned that the Director of Insurance has adopted an "even profit throughout" theorum in setting rates, because this is incompatible with our economy, if we are going to predicate workers' compensation benefits on our earnings history.

RECOMMENDATION

Consider basing benefits paid on wages earned at the time of the injury as a condition precedent to the adoption of the amendments. Beyond this, adopt the amendments and monitor for the problems set forth below.

ACTIONS PROPOSED

Adopt the proposed amendment but change the definition of spendable weekly wage to one providing that it is based on the wage being earned at the time of injury.

ARGUMENTS AND PROBLEM AREAS

The judgment of two years, or 18 months out of two years, eliminate much of the flexibility in determining an employees compensation as a result. Those seeking to go back to work after a workers' compensation (or other) injury lasting, say, a year to a year and five months will have virtually no workers' compensation coverage. This will undoubtedly be litigated on equal protection and probably other grounds.

XXIX. REDUCTION IN BENEFITS FOR PEOPLE COLLECTING PENSION OR PROFIT SHARING BENEFITS

COMMENTS

A wise decision since those who retire would not, in most instances, be the ones sought to be covered by workers' compensation benefits.

RECOMMENDATION

Adopt the amendment.

ACTIONS PROPOSED

Adopt the amendment.

ARGUMENTS AND PROBLEM AREAS

There will probably be equal protection problems based on the fact that a worker may have accumulated pension benefits over a great number of years. A further problem will be the employee who, because of the compensable injury, is forced into disability retirement. Presumptively, these will be resolved in favor of the amendment.

XXX. NON-DISCRIMINATION IN HIRING AGAINST INJURED PERSONS EXCEPT DISCRIMINATION PERMITTED IF EMPLOYER CONSIDERS "SAFETY PRACTICES" OR "PHYSICAL AND MENTAL ABILITIES" EMPLOYER MAY REQUIRE QUESTIONNAIRE COMPLETION TO DETERMINE "PHYSICAL AND MENTAL CAPACITY"

COMMENTS

We were unable to consider this amendment adequately because of the obvious conflict between Section (a) and Sections

(b) and (c). It appears that the draftsman resolved the conflict by including everyone's proposed rule.

RECOMMENDATION

We will go along with WCCA, but do not endorse conflicting rules.

ACTIONS PROPOSED

Put this on the shelf until a clear rule can be drafted.

ARGUMENTS AND PROBLEM AREAS

The obvious conflict between the sections. There are also possible conflicts with the federal law prohibiting refusing to hire because of disability.

XXXI. REPEAL OF MOST RAGLAND BENEFITS

COMMENTS

The Ragland case provided that an employee's wage include fringe benefits paid and room and board if supplied. This removes the room and board unless it is taxable (true only with town jobs where room and board not supplied for the convenience of employer). Fringe benefits are not taxable to the employee, if they are paid into a trust, unless they are actually or constructively received by the employee. This amendment leaves only pension or profit sharing benefits for older and vested employees to be considered as part of an employee's income. This is a compromise and, in the view of

Unified Fairbanks, this is an agreeable reduction in benefits offset against a possible reduction based on collateral benefits received by the employee.

RECOMMENDATION

Unified Fairbanks considered adoption of this amendment in consideration of dropping potential adoption of an offset against collateral benefits rule. We therefore recommend its adoption.

ACTIONS PROPOSED

If this amendment is not adopted, fairness would decree that we then consider an amendment to AS 23.30.225 providing, "Where an employee receives periodic disability benefits under the provisions of a pension plan, disability or accident insurance plan, financed in whole or in part by the employer, the aggregate benefits payable for temporary total disability, temporary partial disability, permanent partial, and permanent total disability shall be reduced by an amount equivalent to such portion of the employer finance benefits paid to an employee in excess of temporary or permanent disability benefits calculated on the employees spendable weekly wages."

ARGUMENTS AND PROBLEM AREAS

Non-union employers on Davis-Bacon jobs often take the fringe benefit sums and place them in a separate account. This account is to be used to pay fringe benefits. However, if an employee does not work long enough to vest any interest in those

fringe benefits (which is the rule on construction jobs), the money returns to the employer. Since the chance of vesting is minimal and since under these circumstances these payments are not deductible to the employer, they are included in gross wages paid for the purpose of calculating workers' compensation premiums. If premiums are to be based on these sums, there may be lawsuits with respect to the way they are to be considered in gross earnings. It is probable that the "vested" requirement will shortcut any court test here.

XXXII. COMPENSABLE INJURIES NOT TO INCLUDE "MENTAL INJURY CAUSED BY MENTAL STRESS"

COMMENTS

The same defect of definition is found in this reference to "mental injury" as is found in Section XV. Please see comments on Section XV.

RECOMMENDATION

Please see comments at Section XV.

ACTIONS PROPOSED

Please see comments at Section XV.

ARGUMENTS AND PROBLEM AREAS

Please see comments at Section XV.

XXXIII. MEDICAL STABILITY (TERMINATING PAYMENT OF ALL TEMPORARY BENEFITS) OCCURS WHEN NO OBJECTIVELY MEASURABLE IMPROVEMENT HAS OCCURRED TO THE INJURED EMPLOYEE IN ANY 45 DAY PERIOD

COMMENT

This may be rebutted by clear and convincing evidence, but it divorces the medical definition of "medical stability" (meaning that the patient is improved as much as he or she is reasonably expected to improve) from the meaning of "medical stability" for workers' compensation purposes. Because of the burden of proof associated with it, this should greatly increase the number of hearings before the Board.

RECOMMENDATION

This has been earlier discussed in Sections XXIV and XXVI. Unified Fairbanks agrees that temporary benefits should be terminated and permanent benefits (if applicable) should be started immediately upon medical stability as that term is used by the medical profession. We hope the WCCA will agree to an amendment bringing their definition more in line with that of the medical profession.

ACTIONS PROPOSED

Try to redefine "medical stability" more toward that time when an injured person first reaches a condition in which whatever disability has been caused by the compensable injury is not likely to become measurably less in the near future.

ARGUMENTS AND PROBLEM AREAS

Doctors will probably continue to apply their definition of medical stability and will take whatever reporting steps are necessary to circumvent the imposition of the "45 day rule".

XXXIV. REPEAL OF THE CURRENT METHOD OF DETERMINATION OF WAGE EARNING CAPACITY

COMMENTS

A necessary part of the new method of determination proposed.

RECOMMENDATION

We concur with WCCA providing, of course, the new sections are adopted.

ACTIONS PROPOSED

Adoption as part of the overall package.

ARGUMENTS AND PROBLEM AREAS

None not mentioned in the section amending the new methcd of determination of wage earning capacity.

XXXV. REPORTING DURING TRANSITION

COMMENTS

This section is only needed if we go to the annual reporting format in order to permit the State to accumulate easily accessible figures.

RECOMMENDATION

To be adopted, if we adopt the annual reporting approach.

ACTIONS PROPOSED

Same.

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 with 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 (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 and 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 overhall 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 balance of Unified Fisheries 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 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 must be addressed. 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 have advised that the WCCA will brook no interference whatsoever in the way that employers or carriers ~~[illegible]~~ 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, which profit 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~~ the 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 records 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 legislation.

To MCA 33.30.205,

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 for the second injury fund (From?) 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

then were set forth as needing a legislatively oriented task force, to monitor changes being made, and to resolve those problems not yet addressed.

RECOMMENDATION

Immediate creation of a task force containing legislators, insurance carriers, medical care providers, attorneys (from both sides), rehabilitation personnel, labor unions, executive and administration representatives, and employers. This task force should first address those problems which have not been addressed by legislative, executive, or administrative changes and later on, they should monitor the effect of the changes now being made. Only in this way will we be able to hone these problems down to a workable point.

ACTIONS PROPOSED

Establishment of the above committee forthwith.

ARGUMENTS AND PROBLEM AREAS

The function of this committee is to address problems. Its creation will do a good deal toward satisfying the employers (who are now being gouged by workers' compensation premiums that are too high. Costs should be minimal.

his argument by stating that any ductwork which is not installed according to specific guidelines has the potential of being installed improperly. Thus, to alleviate the installation problem, he recommended that the State adopt—or at least reference—SMACNA's *HVAC*

ing" stage from all of the testimony they received. Staff members of the Commission indicate that Vermeulen made his point and that the State will more than likely adopt his recommendations. We'll keep you posted on further updates. □

Everything You Wanted to Know About the CAL SMACNA Workers Compensation Captive, But Were Afraid to Ask

By James Gullone, CPCU, President CAL SMACNA Business Insurance Agency, Inc.

In order to give you a full picture of how the captive works, I need to digress for a bit and give you a synopsis of the inside workings of the California Workers Compensation System. Once the inner workings of this system are laid before you, it will be easy to see how the captive works to your advantage at every turn.

How are my workers comp rates calculated?

Every insurance company in the state is responsible for filing a Unit Statistical Report with the Workers Compensation Insurance Rating Bureau (WCIRB) for every employer who has workers compensation insurance with them. This report contains the premium and losses that the employer sustained during the year broken down by rating class.

The rating class is one of 232 categories where one of your workers can be categorized in order to determine his workers compensation rate. A common category in our industry is Sheet Metal Work, Erection, Installation or Repair ($16 or more per hour), Code 5542, rate $9.05.

By using three years worth of these statistics, the WCIRB determines by statistical analysis what rates are necessary to pay claims and insurance company expenses for each workers compensation class. For example, in the rate class 5542 mentioned above, the rate as of 1/1/86 was $6.66. As of 7/1/87, that rate had climbed to $9.05, almost a 36 percent increase in a year and a half.

By contrast, the rate for roofers on 1/1/86 was $30.33. By 7/1/87, it was $33.85 and had increased only a little less than 12 percent during the same year and a half.

Are the rates that the WCIRB promulgates the minimum rates that an insurance company can charge for workers compensation?

Yes. California is a minimum premium state. Companies can charge more than the minimum but they cannot charge less.

There is, however, a legal way for you to pay less and it involves the Unit Statistical Report that we mentioned. Not only is that report used to set the minimum rates, it is also used to set an individual company's Experience Modification Factor (EMF).

If your account develops over $14,500 in premium using the minimum rates, you automatically qualify for Experience Rating. By a set formula, the WCIRB measures the number of claims you have, the claims you have over $2,000 and your premium.

If you are above average, your Experience Modification will be 1.00. If you are above average, your Experience Modification will be less than one. And if your claims are worse than average, your experience Modification will be greater than one.

So the Experience Modification Factor can affect my rates?

Very much. Let's say that you have a $200,000 payroll of sheet metal workers in the 5542 code which charges $9.05 for each $100 of payroll. The minimum rate that would be developed is $18,100. If this acount had a number of losses and the Experience Modification Factor was 1.25, they would be charged $18,100 × 1.25 or $22,625.

If the account loss history was better than average and developed an Experience Modification Factor of .75, this account would be charged only $13,575.

Obviously, the Experience Modification Factor is very important. To my way of thinking, it is *THE* most important factor in your workers' compensation program for several reasons:

a) You can legally pay less for your workers' compensation insurance than your competitor.

b) A consistently low Experience Modification Factor means you probably have a good safety program and you are reaping the benefits of that program.

c) Unlike dividends—which are not guaranteed—a good Experience Modification Factor at least guarantees your rates for that year.

d) You can have some control over your Experience Modification Factor, whereas it is very difficult to control your dividend. □

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

Robson Law Office
Arthur Lyle Robson
Attorney at Law

600 University Avenue, Suite 6E
Fairbanks, Alaska 99709
(907) 479-6281

January 15, 1988

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

Honorable Dave Donley, Chairman
House Labor & Commerce Committee
P. O. Box V
Juneau, AK 99811

RE: Workers' Compensation and Actions Taken by Unified Fairbanks

Each of you are aware that the apparently unmerited increase in Workers' Compensation premiums produced a "vigorous" reaction in Fairbanks. This is a status report to let you know how the Task Force, which is working on recommendations to make to yourselves, is proceeding. Because of considerable pressure by local legislative representatives to have our work completed today, the committee has directed me, as its Chairman, to at least get a report in, so that you will not feel that we have lost interest in the proceedings.

The original meeting was an all day session held on Saturday, December 12th. At this session, Jackie McClintock, Jan Henson, John George, and multiple other State officials appeared. A spiral booklet was prepared with information which was disseminated to the more than 160 attendees. The meeting was chaired by Borough Mayor Juanita Helms. It broke up into committees on each of the major areas, which committees made recommendations, and then we ran out of time.

Just about half of those who had been present at the first meeting appeared at the second meeting on Saturday, December 19th. The purpose of that meeting was to complete the business

scheduled for the first meeting and we did complete it. We also received a report from the WCCA group in Anchorage, and on a good number of points we are in agreement with them. There are a number of extra points which we felt should be considered to make the program workable. The final action at that meeting was to create a Task Force Committee of 24 persons. I include a roster of the Task Force Committee. This Task Force Committee meets on Wednesday afternoons from 3:00 to 5:00 p.m. and has met on December 23rd and 30th, as well as January 6th and 13th. At our scheduled meeting on January 20th, we will be combining the reports of the various groups, evaluating the compromise between various interests and assigning the entire matter for drafting in a legislative format. At the following meeting on January 27th, we will make whatever changes are necessary in the draft so that it can be forwarded to you by Friday, January 29th.

I hope that this letter will not be untimely, since we have an excellent committee of employers, union representatives, and the whole panoply of professionals who work in the area. They have debated these matters long and heatedly. We have committees that have done an absolutely amazing amount of work including consultation with a number of other states, research in the law of other states, and badgering the living daylights out of both our own Workers' Compensation program and the Division of Insurance, for Data. As you will see by my inclusion of those reports that are written (about two-thirds of the total of reports), a tremendous amount of time, energy and research has gone into this. I do not feel that the committee can give you a decent thoroughly fought out, and thought out, report at an earlier moment. On the other hand, I certainly don't want to see the many hours of meeting and research ignored because it is later than the WCCA recommendation (though being earlier than the Governor's Task Force recommendation).

The Task Force Committee has subcommittees, as you can see from the attachments. Of the 24 members (it expands one or two each week), almost all have attended all of the meetings. I cannot give enough praise to the hard work and enthusiasm that the Task Force Committee members have put in, and it is my fervent hope that you will be able to receive their input before action is

taken. They will make recommendations for legislative changes, as well as regulations to be adopted, and I believe there will be some structural changes recommended also. In great measure, they will coincide with the WCCA recommendation and again as a general statement, they will simply go into problems not addressed by WCCA and the regulation in administrative fields.

If there is any chance that we are missing the boat by the scheduling I have outlined, please call me (collect if necessary) as quickly as possible, and we will arrange to work evenings to complete our recommendations.

Sincerely yours,

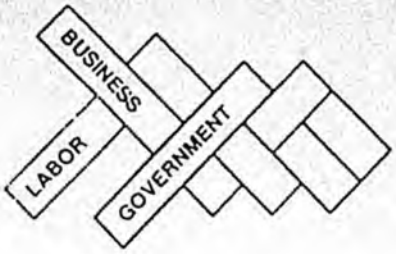
ROBSON LAW OFFICE

ARTHUR LYLE ROBSON, Attorney

ALR/sj

Enc.

cc: All media
Unified Fairbanks Task Force members
All Fairbanks legislators



UNIFIED FAIRBANKS

Good morning, and welcome to your seminar on Workers' Compensation.

The attached agenda is a revision that will take the place of the agenda in your bound reference book.

Some of the identification badges have been color coded; a yellow dot indicates one of our speakers or panelists, and a blue dot indicates Unified Fairbanks or Chamber of Commerce personnel.

Attached to this sheet, you will find the names and addresses of our speakers and panelists.

Also attached, you will find the list of questions that were pre-submitted by you, during the registration, which are addressed to Ms. McClintock and Mr. George.

Some time during the morning, we will pass out the list of all the attendees' names and addresses, as well as the position, if we receive it, that WCCA has just formulated in Anchorage. This should assist us in our deliberations during the afternoon session.

The rolls and coffee are furnished without additional charge as a part of the admission fee. There is an "honor table" set up in the refreshment area that contains milk, soft drinks, and juices. These items are for sale at $1.00 per item. There is a dish that you can put your money in as you take anything from the tray.

Please make sure that you wear your I.D. badge when you go to the luncheon buffet. This indicates you have paid for the luncheon.

At the completion of the seminar, there will be a box by the door. Would you please put your badges in the box as you leave for the day.

Thank you for participating in what we feel is a very important discussion on Workers' Compensation. We hope you will enjoy the program.

Sincerely,

UNIFIED FAIRBANKS

Charles P. Rees, President

CPR:jal:UF7

Attachments

P.O. Box 60389 Fairbanks, Alaska 99706 • (907) 456-7986

AGENDA

MODERATOR: **Mayor Juanita Helms, Fairbanks North Star Borough**

7:45 - 8:00 a.m. **Registration** - Rolls and Coffee - Gold Room

8:00 - 9:00 a.m. Speakers: **Jacque McClintock, Director of Division of Workers' Compensation and Jan Hansen, Chief of Adjudication.**
Topic: **What is Workers' Compensation Law? Is it Federal or State?**

9:00 - 10:15 a.m. **Shelby Nuenke-Davison, Workers' Compensation Defense Lawyer**
Topic: The basic legal aspects of Workers' Compensation will be discussed including: burden of proof, liability for aggravations and pre-existing conditions, types and computation of benefits, and the last injurious exposure rule.

10:15 - 11:00 a.m. **Ann Brown, Attorney**
Topic: Requirements for Second Injury Fund Contributions.

11:00 - 12:00 p.m. **Panel Discussion on Problems Areas of Workers' Compensation**

Chancy Croft	Attorney
Vince Gollogly	Rehab Counselor, Northern Rehab
Dr. Kurt D. Merkel	Orthopedic Surgeon
Earl Romans	Interior Manufacturers' Association
Peter Kelley	Insurance Broker
Steve Thompson	Workers' Compensation Board
Al Veazy	Alaska General Contractors

All guest speakers will be invited to join in panel discussion.

12:00 - 12:15 p.m. **Break**

12:15 - 1:30 p.m. **Lunch**
Luncheon Speaker: **Mr. John George, Director, Division of Insurance, State of Alaska.**
Topic: **How workers'compensation rates are computed.** Question and Answer Period.

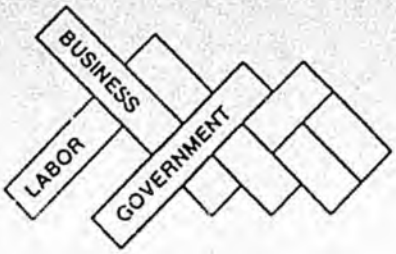
1:30 - 2:45 p.m. Divide into individual groups to formulate action plans on the workers' compensation structure specifically aimed at Legislative Changes.

2:45 - 3:00 p.m. **Break**

3:00 - 4:00 p.m. Combined meeting to hear reports by the different groups and to formulate and agree on a final action plan for Legislative Action to implement necessary changes.

As a follow up to the Seminar, a Task Force may be appointed. If you are interested in being considered for the Task Force, please contact Mayor Helms, Lois Payton, or Chuck Rees.

Reference Notebook: All attendees will be provided a reference notebook which they can utilize in business for training additional management and staff. It will include any materials provided by speakers and reference material on the Workers' Compensation Law.



UNIFIED FAIRBANKS

Following is the list of names and addresses of the speakers and panel members for the Workers' Compensation Seminar, December 12, 1987.

MODERATOR:

Mayor Juanita Helms
Fairbanks North Star Borough
P.O. Box 1267
Fairbanks, AK 99707
452-4761

SPEAKERS:

1 Ms. Jacque McClintock, Director
Division of Workers' Compensation
State of Alaska
P.O. Box 1149
Juneau, AK 99802
465-2790

2 Ms. Jan Hansen, Adjudicator
Dept. of Workers' Compensation
State of Alaska
P.O. Box 7-019
Anchorage, AK 99510
264-2424

3 Ms. Shelby Nuenke-Davison
Attorney at Law
2525 Blueberry, Suite 102
Anchorage, AK 99503
276-6555

4 Ms. Ann Brown
Hughes, Thorsness, Gantz,
Powell, & Brundin
590 University Avenue
Fairbanks, AK 99701
479-3161

5 Mr. John George, Director
Division of Insurance
State of Alaska
Pouch D
Juneau, AK 99811
465-2515

PANELISTS:

1 Mr. Chancy Croft
Attorney at Law
613 Cushman, Suite 210
Fairbanks, AK 99701
456-8777

2 Dr. Vince Gollogly
Northern Rehabilitation
232 Second St. Grachl
Fairbanks, AK 99701
451-0544

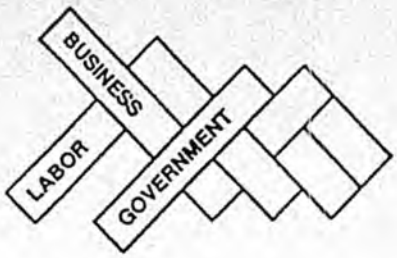
3 Mr. Peter Kelley
Cathart Ltd.
520 5th Ave., Ste. 323
Fairbanks, AK 99701
451-6863

4 Dr. Kurt Merkel
Fairbanks Clinic
1867 Airport Way
Fairbanks, AK 99701
452-1761

5 Mr. Earl Romans
ABI - Alaskan Battery Inc.
157 Old Richardson Highway
Fairbanks, AK 99701
452-2002

6 Mr. Steve Thompson
M & O Auto Parts
P.O. Box 2033
Fairbanks, AK 99707
452-3911

7 Mr. Al Veazy
Lakloey, Inc.
1216 Rangeview Road
North Pole, AK 99705
488-7212



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QUESTIONS FOR JACQUE McCLINTOCK

1) Concern about necessary and sufficient public access to complete and current listings of job description definitions and accompanying workers compensation insurance rates.

2) Concern about the adverse economic impact on this state. Where opportunities for local contractors are becoming less and less profitable, we're killing the incentive for our own business.

3) If a claim was filed, at the time of the incident, that would have a long term effect, how soon should someone reopen their claim and what are the limitations? For example: a hip injury that might not show full damage until later.

4) How does the number and type of claims directly relate to insurance premiums?

5) What are the legal problems with the organization of "Contractor's Workman's Comp. Co-Op" State wide to cover Alaska workers, paid into at rates established by the Co-Op, which would be all Alaskan Contractors?

6) Can limits be established by average of five year income, to establish weekly payments?

7) Can changes be made to require the employee to pay half of or all of the rate for the insurance to cover his welfare, and give the employee option of being covered or not being covered at the employees expense?

8) Can a State Workman's Comp. Fund be established and workers and contractors pay into it?

9) What is the legal background for Workman's Comp.?

10) When there is no comparable industry in the state, how are rates established?

11) Why does NCCI (National Council of Compensation Insurance) rate Alaska work experience heavier than other states?

12) Why are W. C. benefits based on the two preceeding years prior to the claim instead of the current work period?

13) Who monitors claimants and services rendered for rehabilitation?

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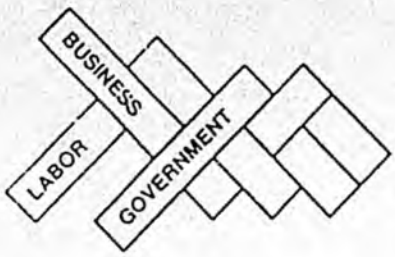

UNIFIED FAIRBANKS

14) Why the disparity in published figures of weekly benefit payments? (See attachment 1 from AJC written by Workman's Comp. Committee, stating 200% and attachment 2 from Employee W. C. Handbook, published by Alaska Dept. of Labor, W. C. Division stating 80% maximum.)

15) What can be done to establish fraud investigation?

16) How can out of State contractors be monitored to assure that when performing in Alaska they are paying Alaskan W. C. rates?

17) Can a proposal be made by a group like Unified Fairbanks be acted upon by the State without it going through the legislative process and being watered down?

18) Why doesn't someone enforce a penalty on those who cheat as far as rates and codes?

19) Why isn't cost based on hourly bases instead of per $100? Hourly would be much more fair.

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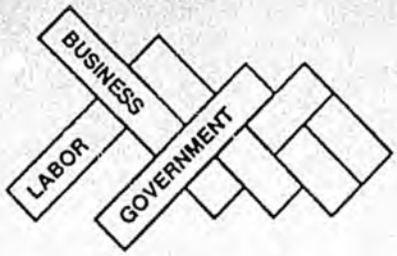

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QUESTIONS FOR JOHN GEORGE

1) When one employee is cross-utilized in more than one job capacity, why is the percentage of Workman's Comp. calculated at a higher rate, instead of calculating the percentage of time worked in each capacity and calculating Workman's Comp. accordingly?

2) How can a person doing one job function be trained for another function without having the higher rate apply?

3) Better rates should be available for low risk individuals, as well as low risk jobs: Some people are just innately, consistently more careful than others.

4) Better rates should be available for low risk businesses. It's unfair to charge businesses a standard industry rate, set in more dangerous circumstances than the businesses being considered "similar".

5) What must be done to bring the rates down to give our contractors a competitive edge?

6) What should we look for in an insurance binder?

7) What changes must be made to get reasonable rates?

8) Wouldn't it save paperwork, time, and money to have a deductible as under most other medical insurance policies?

9) Why couldn't large premiums be paid monthly or quarterly instead of annually?

10) Couldn't low risk non-profit organizations join an insurance trust and pay on a reimburseable basis?

11) When an employee's duties fall under more than one classification, why are we charged at the higher rate classification rather than according to the percentage of time devoted to each class?

12) How are claims paid? According to classification claimant worked under and wages paid to claimant?

13) Why am I required to cover a sub-contractor when he is a sole proprietor, and he doesn't carry his own coverage? When, up to last year, a sole owner could not even get coverage?

14) Can audit results be appealed? If so, where? If not, why not?

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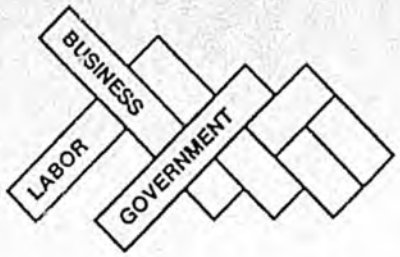


UNIFIED FAIRBANKS

AGENDA

BREAKFAST SERVING	7:45 a.m.
CALL TO ORDER	8:15 a.m.

DISCUSSION OF WCCA RECOMMENDATIONS

DISCUSSION OF SEMINAR RECOMMENDATIONS

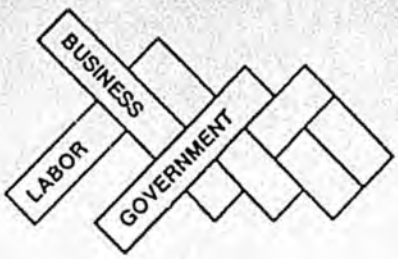
- Insurance
- Legal
- Medical
- Employers
- Employees

FINALIZATION OF RECOMMENDATIONS

APPOINTMENT OF FOLLOW UP COMMITTEE

ADJOURN

P.O. Box 60389 Fairbanks, Alaska 99706 • (907) 456-7986



UNIFIED FAIRBANKS

December 14, 1987

Dear Seminar Participants:

We should all feel very proud of the participation we had at the Workers Comp Seminar and for the positive way that we ended up with recommendations for possible changes. A copy of those recommendations are attached to this letter.

You will also find an agenda for this coming Saturday's meeting. As you can see from the agenda, we hope to resolve these questions, to make definite recommendations and to appoint a follow-up task force to pursue the implementations of those recommendations.

It is very important that you R.S.V.P. 456-7986 by Thursday at 5 p.m. whether or not you are going to attend Saturday morning's seminar. The charge will be $12.00 for the buffet breakfast and for the coffee service. If you do not want breakfast, it will be $4.50 for coffee. These prices cover our room fee. There also will be the honesty cart filled with milk, soda pop, etc.

If we can get a good reading by Thursday at 5:00 p.m., we can plan the room size a lot better and not have the crowded conditions or the stuffy air that we experienced last Saturday. We had approximately 30 people sign up at the door that we had not anticipated. It was too late to change the room configuration to accommodate the extra people.

We did not receive a recommendation from the medical participants and we hope, upon receipt of this letter, that they will come together and have some recommendations ready for presentation at Saturday morning's meeting.

We started the job, now let's finish it.

Sincerely,

UNIFIED FAIRBANKS

Charles P. Rees, President

CPR:mc:WCS:sp

P.O. Box 60389 Fairbanks, Alaska 99706 • (907) 456-7986

EMPLOYEES

Facilitator:

Jim Carroll

1. Workers' Compensation Rates.

Change the rates to by the hour instead of by the dollar. At the present time with rates set by the dollar everyone wants to hire as cheap as possible so they may not always get qualified people to save on insurance.

2. Rehabilitation.

Would like to see employee get to determine whether he/she wants settlement or rehabilitation. At the present time rehabilitation is mandatory and employees are put into a system they can't get out of.

If employee decides to take rehabilitation, suggest retraining at prompt wage comparable occupation so employee would not lose incentive to work.

If Rehab and employee cannot come to agreement on job that employee will accept then there should be an option to be able to be cashed out.

3. Workers' Compensation Payments.

Would like to see prompt payment on an injury. Sometimes payment has been delayed as much as 6 weeks, this causes hardship for the employee who cannot work and has no money either.

LEGAL

Facilitator

Art Robson

1. Priorities.

A realignment of priorities which must be executive in nature to cause the Attorney General to expend some percentum of his or her budget on prosecution of matters in which the employers have either no insurance or insurance that is not correct; that is not at the Alaska rate, so your probably not going to get paid at the Alaska rate, or in which the employee is committing fraud by drawing compensation.

2. Certificate of Insurance.

Require a filing of a particular form of a Certicate of Insurance (we discussed whether political subdivisions of the state should get this) the only thing where anybody who is an employer has to get anything is a business license, maybe thats the vehicle that you have to use to require that it be filed and forwarded to Department of Labor who forwards a copy to the Insurance Company. The form should be designed to cover all the loopholes, ie. yes we paid Alaska Rates, heres the estimated amount of the payroll, etcetera.

3. Attorney Fees.

State regulates the claimant's attorney fees and sets them minimally, thats why approximately five attorneys in the state will take compensation cases and the rest won't. The defense side is unregulated or regulated by the market, its whatever they can charge.

Require a form by which the court or some agency, probably the Board make some kind of determination on a fair fee for each side.

4. Time Limit on Temporary Total Disability, TTD.

Encountered problems due to treatments that have to be given for certain types of injuries and claimants are going through rehab, time limits will have to be set out to about two and a half to three years, which is longer than it should be set if these problems are not a factor. We did not come up with any suggestions or solutions and realize this still needs to be addressed.

5. Hearing Calander.

Hearings should be within one month of decision that one is needed. More Hearing Officers will be required. Also opinion should be submitted in ten days instead of thirty days, this will also require more Hearing Officers.

6. Procedural Matter.

After finishing hearing on a case, take your vote at that time if its at all possible, (if you don't have to read a mass of medical records or something), try to take the vote then in interest of time efficiency.

EMPLOYER

Facilatator:

Jan Steele

1. Temporary Partial Disability, (TPD's).

There should be a cap on this as it goes on forever unless you force them into a rating and get either a settlement or some kind of a percentage to pay out on these people that you can live with. It was decided that the TPD right now looked more like a retirement program than benefit program.

2. Medical Evaluations/Doctors.

The facilitators were questioning the doctors' opinions and some of these things are in place, but they'd like to see more teeth put into them. Right now the doctors can be selected by the patient, you then as as the employer can have an independent medical evaluation, but then who is the tie breaker if these things are different?

Possibly there be a list of doctors or a tie breaker appointed by the state.

3. Voluntary Loss Control.

We'd like to see the funding restored and really plugged up on the state program for voluntary loss control, everything is in place right now but the funding has been cut and every one of the employers felt that this would be an excellent benefit to have more people out there assisting us in the loss control.

4. Mandatory Review - Insurance.

We would like to see a mandatory review of the insurance department anytime there is going to be an increase. We want an independent evaluation so these people have to justify anytime that there is an increase. This was done in Texas. Dr. Merkel was talking about it earlier, they cried that they were losing money right and left; when the independent audit was finally done they saw that they were making a hellatious amount of profit instead. We would like to see this put in place and done on an annual basis.

5. Insurance Brokering - State

Some employers felt that it might be a good idea that the state enter into the insurance brokering business. If you make it a little bit competitive out there maybe some of the rates would come down. The State of Arizona is a good example.

6. Audit - Insurance Companies

We would like an independent audit of all the insurance companies that provide insurance in the State of Alaska, whether they reside here in Alaska or whether they just sell insurance to Alaskan companies. Again make them justify any rate increases that they may have.

7. Benefit Offset

At this time I don't believe there is a benefit offset. So if somebody is receiving compensation and say that they have Blue Cross on the side or something like that they would like to see some sort of benefit offset so this doesn't become such a lucrative business to be in; this being on compensation. This would also include retirement programs, maybe even a second job while on compensation or other incomes coming from insurance companies pertaining to the accident. There is Social Security Offsets.

8. Alaska Compensation Rates.

One of the employers brought up that he would like to see the state or an independent auditor investigate the dollars that would be saved by the employers by lowering the Alaska Maximum Compensation Rate to a figure closer to the national average, to reevaluate what our compensation rate is set on and see just what exactly we would save if we even knocked it down further. Compensation rates could be based on current wages at the time of the injury and adjustment for people under 18 who are dependents, like college students who are living at home, who may not have the same income requirements as others, if there could possibly be an adjustment for dependents that have other sources of income.

9. Wages - Current/Future.

Get some kind of a formula to look at what the difference in the benefit structure would be if it was based on current or future wages, and see what kind of a savings there would be.

10. Fraudulent Claims.

Some teeth put into wor[illegible]s' comp law. Either there is a fine in place if your discovered to have submitted a fraudulent claim, and this should be for all parties involved. Doctors and attorneys who may have decided that it would be a good way for the state to make money.

Mandatory employer contact prior to the doctor issuing his opinion of whether or not this person is or should be placed on compensation. So doctor has more than just claimants information to base his evaluation on.

WORKERS' COMPENSATION SEMINAR
DECEMBER 12, 1987

RECOMMENDATIONS

INSURANCE

Facilatators:

Gordon Depue
Kevin J. Krauklis

1. How to enforce the Alaska Statutes for Workers' Compensation at Alaska rates on contractors that come in from out of state and bring their payroll with them to perform Alaska jobs.

Certificate of Insurance states that workers' compensation policy is in force and qualifies under Alaska Statutes. Add wording that says that this is a public money project and certification of insurance is in place at Alaska rates with Alaska benefits. A copy of that goes to the insurance company who ought to be interested in collecting Alaska rates on that payroll. Also notification to insurance company of amount of payroll.

We should extend the penalty that applies to people who have no workers' compensation which is $1,000 per week or $50,000.00, to contractors who have improper workers' compensation. Contractors without proper workers' compensation would have to pay what they owe plus penalty, which should be turned over to the Attorney Generals' Office to ensure collection of that penalty.

2. The Insurance Companies are going to be looking at catching up, so even though we may be doing something quickly to turn this around the Insurance Companies are probably still looking at trying to recoup some of the differences between the premiums that they received and the benefits that they paid. So we may still be looking at increases from the Insurance Companies and this may be something we still need to address.

Suggestions and solutions to this problem still need to be addressed.

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December 18, 1987

Mr. Charles P. Rees, President
Unified Fairbanks
P.O. Box 60389
Fairbanks, AK 99706

Dear Mr. Rees:

We would like to express our thanks for your efforts, and the efforts of the other sponsors in putting together the recent worker's compensation seminar. We found it informative and helpful.

Enclosed you will find a letter we recently forwarded to Senator Fahrenkamp in response to a letter we received from her regarding legislative reform of the worker's compensation system. We hope our response will be of some help in initiating a legislative response to a matter of particular concern to us and our clients.

We would very much appreciate it if you could channel the enclosed copy to the appropriate seminar committee facilitator(s) so that the question of worker status is addressed in any final recommendations your organization formulates.

Thank you for your consideration.

Sincerely,

Daniel M. Duame
Attorney at Law

DMD:lk
Encl.

EDWARD T. NOONAN
Attorney at Law

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December 18, 1987

The Honorable Bettye Fahrenkamp
515 Seventh Avenue, Suite 130
Fairbanks, AK 99701

COPY

Dear Senator Fahrenkamp:

Thank you for your recent letter regarding upcoming legislative activities addressing worker's compensation issues. We appreciate your efforts in keeping us informed as to significant developments in this area.

Regarding specific areas in need of reform, we would like to share with you our thoughts and concerns respecting one relatively small, but to those affected, extremely significant area of the Worker's Compensation Act; *i.e.*, the issue of defining worker status as employee vs. independent contractor.

This problem arises primarily because the Act is absolutely silent on this issue. Because the Act is silent, the courts have by necessity ended up essentially "making" the law in this area. As the law now stands, employers wishing to establish legitimate independent contractor relationships through "arms length" negotiations are left in an untenable state of uncertainty as to whether the relationship will hold up for worker's compensation purposes. This problem is particularly troublesome in the trucking industry, where independent contractors (owner-operators) are used extensively.

The present situation could easily be remedied by legislative action, and we would like to propose that the following two options be explored. The first applies specifically to the trucking industry, while the second provides a generalized solution.

As to the problem facing the trucking industry specifically, a preferred method of dealing with the owner-operator (O/O) worker's compensation issue would be a legislative amendment to the Act which would exclude O/O's from coverage. Changes to the section of the Act which specifically addresses the question of

"persons not covered" (A.S. 23.30.230) have been made as recently as late 1986. The last two groups to be excluded were commercial fisherman and contract entertainers. A.S. 23.30.230(4), (5) (Supp. 1987).

This section now reads:

> **Sec. 23.30.230. Persons not covered.** (a) The following persons are not covered by this chapter:
>
> (1) part-time baby sitters;
>
> (2) cleaning persons;
>
> (3) harvest help and similar part-time or transient help'
>
> (4) persons employed as entertainers on a contractual basis; and
>
> (5) commercial fishermen, as defined in AS 16.05.940.
>
> (b) The exclusion of certain persons under (a) of this section, may not be construed to require inclusion of other persons as employees for purposes of compensation under this chapter. (§33(3) ch 193 SLA 1959; am § 1 ch 47 SLA 1986; am § 1 ch 77 SLA 1986)

It is our opinion that the trucking industry as a whole, and independent owner-operators as well, would favor a statutory exemption which would provide the *option* of establishing an employment relationship which is unquestionably outside the scope of the Act. At present, it is simply impossible to achieve any safe level of certainty, regardless of the agreement struck between the contracting parties.

A second, and more generalized approach, would be to simply define "independent contractor" in the Act. This is the approach taken by states considered leaders in the area of worker's compensation, such as Wisconsin.

The Wisconsin legislature has adopted the following provision which reflects the key aspects of the "relative nature of the work" test, which is the cumbersome, fact based test now employed by the Alaska courts to make status determinations.

> (8) Every independent contractor who does not maintain a separate business and who does not hold himself out to and render service to the public, provided he is not himself an employer subject to this chapter or has not complied with the conditions of subsection (2) of Section 102.29 [requiring