ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6418 SENATE LABOR & COMMERCE

822

STATE OF ALASKA
1990 LEGISLATIVE SESSION

Bill Version: CSSB 508 (L&C)
Publish Date:

FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act relating to workers compensation
Sponsor: Labor and Commerce
Requestor: Sen. Kelly

Agency Affected: Administration
BRU: Risk Management
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

The addition of Volunteer Emergency Medical Technicians to the State workers compensation program will not require any change in the Risk Management appropriation request.

Prepared by: Don Hitchcock, Director — Phone: 465-2180
Division: Risk Management — Date: 4-23-90

Approved by Commissioner: Frank S. Baxter / Dana M. Bosbor for — Date: 4-23-90
Agency: Department of Administration

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

15/9K1/042304-0/1&2

Rev: 11/89

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSSB 508 (L&C)
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Agency Affected: Labor
Title: "An Act relating to workers' compensation."
BRU: Workers' Compensation
Sponsor: Senate Labor & Commerce
Components:
Requestor: Senate Labor & Commerce
Workers' Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Note: There will be no impact on FY 90.

Elaine VanderSande

Prepared by: Elaine VanderSande, Admin Officer
Phone: 465-2790
Division: Workers' Compensation
Date: 4/23/90

Approved by Commissioner: Jim Sampson
Date: 4/23/90
Agency: Department of Labor

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Letter of Intent
for
Senate Bill No. 508

It is the intent of the Senate Labor and Commerce Committee that the Alaska Department of Labor contact the professionals who conduct impairment ratings for workers who are injured on the job and urge that these ratings be determined as expeditiously as possible, thus allowing those injured workers to receive their due compensation in a timely manner.

6-2068Ja
Ford

A M E N D M E N T

OFFERED IN THE SENATE BY SEN. KELLY

TO: CSSB 508(L&C)

Page 9, line 26:

Delete "January 1, 1991"

Insert "immediately under AS 01.10.070(c)"

APR 25 1990

4/25/90

A M E N D M E N T

OFFERED IN THE SENATE BY SEN. FAIKS

TO: SB 508

Page 2, line 14:

Delete "or a licensed physical or occupational therapist"

Page 5, lines 28 - 29:

Delete "or licensed physical or occupational therapist"

A M E N D M E N T

OFFERED IN THE SENATE BY SEN. ELIASON

TO: CSSB 508 (Labor & Commerce)

Page 6, after line 17:

Insert new bill sections to read:

"* Sec. 8. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.238. VOLUNTEER EMERGENCY MEDICAL TECHNICIANS AS EMPLOYEES. (a) A person who is injured during the course and within the scope of providing service as a volunteer emergency medical technician is an employee of the state for purposes of this chapter if the person

(1) is certified by the state under AS 18.08 as an emergency medical technician;

(2) provides emergency medical service outside an incorporated city or borough; and

(3) is not otherwise covered for that injury by an employer's workers' compensation insurance policy or self-insurance certificate.

(b) The gross weekly earnings for a person receiving benefits under this section shall be the gross weekly earnings paid a full-time emergency medical technician employed in the city or borough nearest to the place where the injury occurred, or, if the nearest city or borough has no full-time emergency medical technician, at a reasonable figure previously set by the nearest city or borough to make this

determination, but in no case may the gross weekly earnings for calculating compensation be less than the minimum wage computed on the basis of 40 hours of work a week.

* Sec. 9. AS 23.30.265 is amended by adding a new paragraph to read:

(34) "volunteer emergency medical technician" means a person who is certified by the state as an emergency medical technician under AS 18.08 and who provides emergency medical services on a voluntary basis."

Original sponsor(s): Labor & Commerce Committee

IN THE SENATE BY THE LABOR & COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 508 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to workers' compensation; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 23.30.041(b) is amended to read:

(b) The administrator shall [PERFORM THE FOLLOWING FUNCTIONS:]

(1) enforce regulations adopted by the board to implement this section;

(2) recommend regulations for adoption by the board that establish performance and reporting criteria for rehabilitation specialists;

(3) enforce the quality and effectiveness of reemployment benefits provided for under this section;

(4) review on an annual basis the performance of rehabilitation specialists to determine continued eligibility for delivery of rehabilitation services;

(5) submit to the department, on or before July 1 [JANUARY 1] of each year, a report of reemployment benefits provided under this section for the previous calendar [FISCAL] year; the report must include a general section, sections related to each rehabilitation specialist employed under this section, and a statistical summary of all rehabilitation cases, including

(A) the estimated and actual cost of each active rehabilitation plan;

(B) the estimated and actual time of each

rehabilitation plan;

(C) a status report on all individuals completing or terminating a reemployment benefits program including a return to work date;

(D) the cost of reemployment benefits;

(6) maintain a list of rehabilitation specialists who meet the qualifications established under this section;

(7) monitor the activities of medical managers assigned by the carrier to an injured employee, including reviewing reports or correspondence concerning the injured employee;

(8) promote awareness among physicians, adjusters, injured workers, employers, employees, attorneys, training providers, and rehabilitation specialists of the reemployment program established in this subsection.

* Sec. 2. AS 23.30.041(e) is amended to read:

(e) An employee is [SHALL BE] eligible for benefits under this section upon the employee's written request and by having a licensed physician, or regarding muscular, skeletal, or neurological injuries, a licensed physician or a licensed physical or occupational therapist, predict that the employee will have permanent physical capacities that are less than the physical demands of the employee's job as described in the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles" for

(1) the employee's job at the time of injury; or

(2) other jobs that exist in the labor market that the employee has held or received training for within 10 years before the injury or that the employee has held following the injury for a period long enough to obtain the skills to compete in the labor market, according to specific vocational p_eparation codes as described in the

United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles."

* Sec. 3. AS 23.30.041(k) is repealed and reenacted to read:

(k) The employer shall pay compensation to an employee eligible for reemployment benefits, as follows:

(1) until the employee reaches medical stability or the reemployment plan is completed or terminated, whichever comes first, temporary disability benefits shall be paid;

(2) if the employee reaches medical stability and has requested reemployment benefits or has been found eligible for reemployment benefits, temporary disability benefits shall cease and permanent impairment benefits shall then be paid biweekly at the employee's temporary total disability rate until plan completion, termination, or exhaustion of permanent impairment benefits; permanent impairment benefits remaining unpaid upon completion or termination of the plan shall be paid to the employee in a single lump sum;

(3) if the employee's permanent impairment benefits are exhausted before the completion or termination of the reemployment plan, the employer shall pay, on a biweekly basis, an amount equal to 60 percent of the employee's spendable weekly wage as determined under AS 23.30.220, not to exceed $525, until the completion or termination of the plan;

(4) if the employee reaches medical stability before an impairment rating is given as provided in AS 23.30.190, except for the first 30 days the employee shall be paid 60 percent of the employee's spendable weekly wage until an impairment rating is given; benefits paid more than 30 days after medical stability but before an impairment rating is given shall be offset from the total sum of permanent impairment benefits due to the employee; after the employee reaches

medical stability and an impairment rating is given, all benefits paid shall be included as permanent impairment benefits;

(5) benefits related to the reemployment plan may not extend past two years from the date of the initiation of the 60 percent payment of the employee's spendable weekly wage, plan approval, or plan acceptance, whichever date occurs first, at which time the benefits expire;

(6) if the employer controverts the employee's claim or appeals a ruling of the administrator or the board that is favorable to the employee, the controversion or appeal delays completion of an evaluation, development, commencement or completion of a plan, and the employee is successful in the claim or appeal, the employer shall pay the employee 60 percent of the spendable weekly wage during the period of controversion or appeal, except that temporary disability benefits shall be paid until the employee reaches medical stability; for purposes of this paragraph the two-year limitation on payment of benefits in (5) of this subsection does not begin to run or is tolled, and payments made at 60 percent of the employee's spendable weekly wage during controversion or appeal may not be offset from permanent impairment benefits due to the employee.

* Sec. 4. AS 23.30.041(1) is amended to read:

(1) The cost of the reemployment plan incurred under this section <u>is</u> [SHALL BE] the responsibility of the employer, shall be paid on an expense incurred basis, and may not exceed $10,000. <u>The cost of the rehabilitation specialist shall be paid by the employer, but may not be included in determining the cost of the reemployment plan. Fees charged by and paid to a rehabilitation specialist for services must be comparable to fees for similar services in the community in which the services are performed, as determined by the board.</u>

* Sec. 5. AS 23.30.041(p) is amended to read:

(p) In this section

(1) "administrator" means the reemployment benefits administrator under (a) of this section;

(2) "employability" means possessing the ability but not necessarily the opportunity to engage in employment that is consistent with the employee's physical status imposed by the compensable injury;

(3) "labor market" means a geographical area that offers employment opportunities in the following priority;

(A) area of residence;

(B) area of last employment;

(C) the state;

(D) other states;

(4) "medical manager" means a nurse, rehabilitation specialist, or other health care provider assigned by the carrier to assist an employee in coordinating medical benefits, or to monitor the employee's medical services;

(5) "physical capacities" means objective and measurable physical traits such as ability to lift and carry, walk, stand or sit, push, pull, climb, balance, stoop, kneel, crouch, crawl, reach, handle, finger, feel, talk, hear or see;

(6) [(5)] "physical demands" means the physical requirements of the job such as strength, including positions such as standing, walking, sitting, and movement of objects such as lifting, carrying, pushing, pulling, climbing, balancing, stooping, kneeling, crouching, crawling, reaching, handling, fingering, feeling, talking, hearing, or seeing;

(7) [(6)] "rehabilitation specialist" means a person who is a certified insurance rehabilitation specialist, a certified

rehabilitation counselor, or a person who has equivalent or better qualifications as determined under regulations adopted by the department;

(8) [(7)] "remunerative employability" means having the skills that allow a worker to be compensated with wages or other earnings equivalent to at least 60 percent of the worker's gross hourly wages at the time of injury; if the employment is outside the state, the stated 60 percent shall be adjusted to account for the difference between the applicable state average weekly wage and the Alaska average weekly wage.

* Sec. 6. AS 23.30.041 is amended by adding a new subsection to read:

(q) After a medical manager has been assigned to an injured employee, the medical manager shall send written notice to the employee, the employer, and the employee's physician explaining in what capacity the medical manager is employed, who the medical manager represents, and the scope of the services to be provided.

* Sec. 7. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.047. COMPENSATION FOR HEALTH INSURANCE. (a) An employer who pays compensation to an injured employee under this chapter and who provided health insurance to the employee at the date of injury shall also pay to the employee an amount equal to the amount contributed by the employer to provide health insurance coverage for the employee and covered dependents, or the amount paid by the employee for replacement health insurance coverage, whichever amount is less. Compensation required under this section commences when the employee's health insurance provided by the employer's contribution ceases and shall continue until the employee is no longer receiving compensation under this chapter, or for 18 months, whichever period is shorter.

(b) Payment of compensation under this section is not required if the employee fails to provide ongoing proof of health insurance coverage.

(c) Compensation paid under this section is subject to the provisions of AS 23.30.155.

* Sec. 8. AS 23.30.055 is amended to read:

Sec. 23.30.055. EXCLUSIVENESS OF LIABILITY. The liability of an employer prescribed in AS 23.30.045 is exclusive and in place of all other liability of the employer and any fellow employee to the employee, the employee's legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from the employer or fellow employee at law or in admiralty on account of the injury or death. The liability of the employer is exclusive even if the employee's claim is barred under AS 23.30.022. However, if an employer fails to secure payment of compensation as required by this chapter, an injured employee or the employee's legal representative in case death results from the injury may elect to claim compensation under this chapter [,] or to maintain an action against the employer at law or in admiralty for damages on account of the injury or death. In that action, the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of the employment, or that the injury was due to the contributory negligence of the employee. In this section, "employer" includes the employer's carrier, an insurance service agent to a self-insured employer, or a trade association, if the carrier, insurance service agent, or trade association provides or fails to provide safety inspections or safety advisory services.

* Sec. 9. AS 23.30.190(b) is amended to read:

(b) All determinations of the existence and degree of permanent impairment shall be made strictly and solely under the whole person determination as set out in the American Medical Association Guides to the Evaluation of Permanent Impairment, except that an impairment rating may not be rounded to the next five percent. The board shall adopt a supplementary recognized schedule for injuries that cannot be rated by use of the American Medical Association Guides. An impairment rating shall be determined by a licensed physician or if the injury is related to muscular, skeletal, or neurological disabilities, by a licensed physician or a licensed physical or occupational therapist.

* Sec. 10. AS 23.30.195 is amended to read:

Sec. 23.30.195. SURVIVAL OF THE RIGHT TO COMPENSATION. (a) Compensation to which a [ANY] claimant would be entitled under AS 23.30.190 [EXCEPTING (a)(20) OF THAT SECTION] shall, notwithstanding death arising from causes other than the injury, be payable to and for the benefit of the following persons [FOLLOWING]:

(1) if there is [BE] a widow or widower, but [AND] no child of the deceased, to the widow or widower;

(2) if there is [BE] a widow or widower and a surviving child or children of the deceased, one-half to the widow or widower, the other half to the surviving child or children, in equal shares;

(3) if there is [BE] a surviving child or children of the deceased, but no widow or widower, then to the child or children, in equal shares.

(b) An award for impairment [DISABILITY] may be made after the death of the injured employee.

* Sec. 11. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.238. VOLUNTEER EMERGENCY MEDICAL TECHNICIANS AS

EMPLOYEES. (a) A person who is injured during the course and within the scope of providing service as a volunteer emergency medical technician is an employee of the state for purposes of this chapter if the person

(1) is certified by the state under AS 18.08 as an emergency medical technician;

(2) provides emergency medical service outside an incorporated city or borough; and

(3) is not otherwise covered for that injury by an employer's workers' compensation insurance policy or self-insurance certificate.

(b) The gross weekly earnings for a person receiving benefits under this section shall be the gross weekly earnings paid a full-time emergency medical technician employed in the city or borough nearest to the place where the injury occurred, or, if the nearest city or borough has no full-time emergency medical technician, at a reasonable figure previously set by the nearest city or borough to make this determination, but in no case may the gross weekly earnings for calculating compensation be less than the minimum wage computed on the basis of 40 hours of work a week.

* Sec. 12. AS 23.30.265 is amended by adding a new paragraph to read:

(34) "volunteer emergency medical technician" means a person who is certified by the state as an emergency medical technician under AS 18.08 and who provides emergency medical services on a voluntary basis.

* Sec. 13. This Act takes effect January 1, 1991.

6-2068J
Ford
4/23/90

Original sponsor(s): Labor & Commerce Committee

IN THE SENATE BY THE LABOR & COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 508 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to workers' compensation; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 23.30.041(b) is amended to read:

(b) The administrator shall [PERFORM THE FOLLOWING FUNCTIONS:]

(1) enforce regulations adopted by the board to implement this section;

(2) recommend regulations for adoption by the board that establish performance and reporting criteria for rehabilitation specialists;

(3) enforce the quality and effectiveness of reemployment benefits provided for under this section;

(4) review on an annual basis the performance of rehabilitation specialists to determine continued eligibility for delivery of rehabilitation services;

(5) submit to the department, on or before July 1 [JANUARY 1] of each year, a report of reemployment benefits provided under this section for the previous calendar [FISCAL] year; the report must include a general section, sections related to each rehabilitation specialist employed under this section, and a statistical summary of all rehabilitation cases, including

(A) the estimated and actual cost of each active rehabilitation plan;

(B) the estimated and actual time of each

rehabilitation plan;

(C) a status report on all individuals completing or terminating a reemployment benefits program including a return to work date;

(D) the cost of reemployment benefits;

(6) maintain a list of rehabilitation specialists who meet the qualifications established under this section;

(7) monitor the activities of medical managers assigned by the carrier to an injured employee, including reviewing reports or correspondence concerning the injured employee;

(8) promote awareness among physicians, adjusters, injured workers, employers, employees, attorneys, training providers, and rehabilitation specialists of the reemployment program established in this subsection.

* Sec. 2. AS 23.30.041(e) is amended to read:

(e) An employee is [SHALL BE] eligible for benefits under this section upon the employee's written request and by having a licensed physician, or regarding muscular, skeletal, or neurological injuries, a licensed physician or a licensed physical or occupational therapist, predict that the employee will have permanent physical capacities that are less than the physical demands of the employee's job as described in the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles" for

(1) the employee's job at the time of injury; or

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United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles."

* Sec. 3. AS 23.30.041(k) is repealed and reenacted to read:

(k) The employer shall pay compensation to an employee eligible for reemployment benefits, as follows:

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(2) if the employee reaches medical stability and has requested reemployment benefits or has been found eligible for reemployment benefits, temporary disability benefits shall cease and permanent impairment benefits shall then be paid biweekly at the employee's temporary total disability rate until plan completion, termination, or exhaustion of permanent impairment benefits; permanent impairment benefits remaining unpaid upon completion or termination of the plan shall be paid to the employee in a single lump sum;

(3) if the employee's permanent impairment benefits are exhausted before the completion or termination of the reemployment plan, the employer shall pay, on a biweekly basis, an amount equal to 60 percent of the employee's spendable weekly wage as determined under AS 23.30.220, not to exceed $525, until the completion or termination of the plan;

(4) if the employee reaches medical stability before an impairment rating is given as provided in AS 23.30.190, except for the first 30 days the employee shall be paid 60 percent of the employee's spendable weekly wage until an impairment rating is given; benefits paid more than 30 days after medical stability but before an impairment rating is given shall be offset from the total sum of permanent impairment benefits due to the employee; after the employee reaches

medical stability and an impairment rating is given, all benefits paid shall be included as permanent impairment benefits;

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(6) if the employer controverts the employee's claim or appeals a ruling of the administrator or the board that is favorable to the employee, the controversion or appeal delays completion of an evaluation, development, commencement or completion of a plan, and the employee is successful in the claim or appeal, the employer shall pay the employee 60 percent of the spendable weekly wage during the period of controversion or appeal, except that temporary disability benefits shall be paid until the employee reaches medical stability; for purposes of this paragraph the two-year limitation on payment of benefits in (5) of this subsection does not begin to run or is tolled, and payments made at 60 percent of the employee's spendable weekly wage during controversion or appeal may not be offset from permanent impairment benefits due to the employee.

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as determined by the board.

* Sec. 5. AS 23.30.041(p) is amended to read:

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(1) "administrator" means the reemployment benefits administrator under (a) of this section;

(2) "employability" means possessing the ability but not necessarily the opportunity to engage in employment that is consistent with the employee's physical status imposed by the compensable injury;

(3) "labor market" means a geographical area that offers employment opportunities in the following priority;

(A) area of residence;

(B) area of last employment;

(C) the state;

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(4) "medical manager" means a nurse, rehabilitation specialist, or other health care provider assigned by the carrier to assist an employee in coordinating medical benefits, or to monitor the employee's medical services;

(5) "physical capacities" means objective and measurable physical traits such as ability to lift and carry, walk, stand or sit, push, pull. climb, balance, stoop, kneel, crouch, crawl, reach, handle, finger, feel, talk, hear or see;

(6) [(5)] "physical demands" means the physical requirements of the job such as strength, including positions such as standing, walking, sitting, and movement of objects such as lifting, carrying, pushing, pulling, climbing, balancing, stooping, kneeling, crouching, crawling, reaching, handling, fingering, feeling, talking, hearing, or seeing;

(7) [(6)] "rehabilitation specialist" means a person who is

a certified insurance rehabilitation specialist, a certified rehabilitation counselor, or a person who has equivalent or better qualifications as determined under regulations adopted by the department;

(8) [(7)] "remunerative employability" means having the skills that allow a worker to be compensated with wages or other earnings equivalent to at least 60 percent of the worker's gross hourly wages at the time of injury; if the employment is outside the state, the stated 60 percent shall be adjusted to account for the difference between the applicable state average weekly wage and the Alaska average weekly wage.

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(q) After a medical manager has been assigned to an injured employee, the medical manager shall send written notice to the employee, the employer, and the employee's physician explaining in what capacity the medical manager is employed, who the medical manager represents, and the scope of the services to be provided.

* Sec. 7. AS 23.30 is amended by adding a new section to read:

Sec. 23.30.047. COMPENSATION FOR HEALTH INSURANCE. (a) An employer who pays compensation to an injured employee under this chapter and who provided health insurance to the employee at the date of injury shall also pay to the employee an amount equal to the amount contributed by the employer to provide health insurance coverage for the employee and covered dependents, or the amount paid by the employee for replacement health insurance coverage, whichever amount is less. Compensation required under this section commences when the employee's health insurance provided by the employer's contribution ceases and shall continue until the employee is no longer receiving compensation under this chapter, or for 18 months, whichever period is shorter.

(b) Payment of compensation under this section is not required if the employee fails to provide ongoing proof of health insurance coverage.

(c) Compensation paid under this section is subject to the provisions of AS 23.30.155.

* Sec. 8. AS 23.30.055 is amended to read:

Sec. 23.30.055. EXCLUSIVENESS OF LIABILITY. The liability of an employer prescribed in AS 23.30.045 is exclusive and in place of all other liability of the employer and any fellow employee to the employee, the employee's legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from the employer or fellow employee at law or in admiralty on account of the injury or death. The liability of the employer is exclusive even if the employee's claim is barred under AS 23.30.022. However, if an employer fails to secure payment of compensation as required by this chapter, an injured employee or the employee's legal representative in case death results from the injury may elect to claim compensation under this chapter [,] or to maintain an action against the employer at law or in admiralty for damages on account of the injury or death. In that action, the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of the employment, or that the injury was due to the contributory negligence of the employee. In this section, "employer" includes the employer's carrier, an insurance service agent to a self-insured employer, or a trade association, if the carrier, insurance service agent, or trade association provides or fails to provide safety inspections or safety advisory services.

* Sec. 9. AS 23.30.190(b) is amended to read:

(b) All determinations of the existence and degree of permanent impairment shall be made strictly and solely under the whole person determination as set out in the American Medical Association Guides to the Evaluation of Permanent Impairment, except that an impairment rating may not be rounded to the next five percent. The board shall adopt a supplementary recognized schedule for injuries that cannot be rated by use of the American Medical Association Guides. An impairment rating shall be determined by a licensed physician or if the injury is related to muscular, skeletal, or neurological disabilities, by a licensed physician or a licensed physical or occupational therapist.

* Sec. 10. AS 23.30.195 is amended to read:

Sec. 23.30.195. SURVIVAL OF THE RIGHT TO COMPENSATION. (a) Compensation to which a [ANY] claimant would be entitled under AS 23.30.190 [EXCEPTING (a)(20) OF THAT SECTION] shall, notwithstanding death arising from causes other than the injury, be payable to and for the benefit of the following persons [FOLLOWING]:

(1) if there is [BE] a widow or widower, but [AND] no child of the deceased, to the widow or widower;

(2) if there is [BE] a widow or widower and a surviving child or children of the deceased, one-half to the widow or widower, the other half to the surviving child or children, in equal shares;

(3) if there is [BE] a surviving child or children of the deceased, but no widow or widower, then to the child or children, in equal shares.

(b) An award for impairment [DISABILITY] may be made after the death of the injured employee.

* Sec. 11. This Act takes effect January 1, 1991.

6-2068E
Ford
3/21/90

changes on pg 5

Original sponsor(s): Labor & Commerce Committee

Not considered

IN THE SENATE BY THE LABOR & COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 508 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to workers' compensation."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Section 1. AS 23.30.041(b) is amended to read:

(b) The administrator shall [PERFORM THE FOLLOWING FUNCTIONS:]

(1) enforce regulations adopted by the board to implement this section;

(2) recommend regulations for adoption by the board that establish performance and reporting criteria for rehabilitation specialists;

(3) enforce the quality and effectiveness of reemployment benefits provided for under this section;

(4) review on an annual basis the performance of rehabilitation specialists to determine continued eligibility for delivery of rehabilitation services;

(5) submit to the department, on or before July 1 [JANUARY 1] of each year, a report of reemployment benefits provided under this section for the previous calendar [FISCAL] year; the report must include a general section, sections related to each rehabilitation specialist employed under this section, and a statistical summary of all rehabilitation cases, including

(A) the estimated and actual cost of each active rehabilitation plan;

(B) the estimated and actual time of each rehabilitation plan;

(C) a status report on all individuals completing or terminating a reemployment benefits program including a return to work date;

(D) the cost of reemployment benefits;

(6) maintain a list of rehabilitation specialists who meet the qualifications established under this section;

(7) promote awareness among physicians, adjusters, injured workers, employers, employees, attorneys, training providers, and rehabilitation specialists of the reemployment program established in this subsection.

* Sec. 2. AS 23.30.041(e) is amended to read:

(e) An employee <u>is</u> [SHALL BE] eligible for benefits under this section upon the employee's written request and by having a <u>licensed</u> physician <u>or a licensed physical or occupational therapist</u> predict that the employee will have permanent physical capacities that are less than the physical demands of the employee's job as described in the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles" for

(1) the employee's job at the time of injury; or

(2) other jobs that exist in the labor market that the employee has held or received training for within 10 years before the injury or that the employee has held following the injury for a period long enough to obtain the skills to compete in the labor market, according to specific vocational preparation codes as described in the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles."

* Sec. 3. AS 23.30.041(k) is repealed and reenacted to read:

(k) The employer shall pay compensation to an employee eligible for reemployment benefits, as follows:

(1) until the employee reaches medical stability or the reemployment plan is completed or terminated, whichever comes first, temporary disability benefits shall be paid;

(2) if the employee reaches medical stability and has requested reemployment benefits or has been found eligible for reemployment benefits, temporary disability benefits shall cease and permanent impairment benefits shall then be paid biweekly at the employee's temporary total disability rate until plan completion, termination, or exhaustion of permanent impairment benefits; permanent impairment benefits remaining unpaid upon completion or termination of the plan shall be paid to the employee in a single lump sum;

(3) if the employee's permanent impairment benefits are exhausted before the completion or termination of the reemployment plan, the employer shall pay, on a biweekly basis, an amount equal to 60 percent of the employee's spendable weekly wage as determined under AS 23.30.220, not to exceed $525, until the completion or termination of the plan;

(4) if the employee reaches medical stability before an impairment rating is given as provided in AS 23.30.190, the employee shall be paid 60 percent of the employee's spendable weekly wage until an impairment rating is given; benefits paid more than 30 days after medical stability but before an impairment rating is given shall be offset from the total sum of permanent impairment benefits due to the employee; after the employee reaches medical stability and an impairment rating is given, all benefits paid shall be included as permanent impairment benefits;

(5) benefits related to the reemployment plan may not extend past two years from the date of the initiation of the 60 percent payment of the employee's spendable weekly wage, plan approval,

or plan acceptance, whichever date occurs first, at which time the benefits expire;

(6) if the employer controverts the employee's claim or appeals a ruling of the administrator or the board that is favorable to the employee, the controversion or appeal delays completion of an evaluation, development, commencement or completion of a plan, and the employee is successful in the claim or appeal, the employer shall pay the employee 60 percent of the spendable weekly wage during the period of controversion or appeal, except that temporary disability benefits shall be paid until the employee reaches medical stability; for purposes of this paragraph the two-year limitation on payment of benefits in (5) of this subsection does not begin to run or is tolled, and payments made at 60 percent of the employee's spendable weekly wage during controversion or appeal may not be offset from permanent impairment benefits due to the employee.

* Sec. 4. AS 23.30.041(1) is amended to read:

(1) The cost of the reemployment plan incurred under this section <u>is</u> [SHALL BE] the responsibility of the employer, shall be paid on an expense incurred basis, and may not exceed $10,000. <u>The cost of the rehabilitation specialist shall be paid by the employer, but may not be included in determining the cost of the reemployment plan. Fees charged by a rehabilitation specialist for services under a reemployment plan must be usual, reasonable, and customary as compared to fees for similar services in the community in which the services are performed, as determined by the board.</u>

* Sec. 5. AS 23.30.055 is amended to read:

Sec. 23.30.055. EXCLUSIVENESS OF LIABILITY. The liability of an employer prescribed in AS 23.30.045 is exclusive and in place of all other liability of the employer and any fellow employee to the

employee, the ployee's legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from the employer or fellow employee at law or in admiralty on account of the injury or death. The liability of the employer is exclusive even if the employee's claim is barred under AS 23.30.022. However, if an employer fails to secure payment of compensation as required by this chapter, an injured employee or the employee's legal representative in case death results from the injury may elect to claim compensation under this chapter [,] or to maintain an action against the employer at law or in admiralty for damages on account of the injury or death. In that action, the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of the employment, or that the injury was due to the contributory negligence of the employee. In this section, "employer" includes the employer's carrier, an insurance service agent to a self-insured employer, a trade association, or a labor organization to the extent that the carrier, insurance service agent, trade association, or labor organization provides or fails to provide safety inspections or safety advisory services.

* Sec. 6. AS 23.30.190(b) is amended to read:

(b) All determinations of the existence and degree of permanent impairment shall be made strictly and solely under the whole person determination as set out in the American Medical Association Guides to the Evaluation of Permanent Impairment, except that an impairment rating may not be rounded to the next five percent. The board shall adopt a supplementary recognized schedule for injuries that cannot be rated by use of the American Medical Association Guides. An impairment rating shall be determined by a licensed physicia. or licensed

physical or occupational therapist.

* Sec. 7. AS 23.30.195 is amended to read:

Sec. 23.30.195. SURVIVAL OF THE RIGHT TO COMPENSATION. (a) Compensation to which a [ANY] claimant would be entitled under AS 23.30.190 [EXCEPTING (a)(20) OF THAT SECTION] shall, notwithstanding death arising from causes other than the injury, be payable to and for the benefit of the following persons [FOLLOWING]:

(1) if there is [BE] a widow or widower, but [AND] no child of the deceased, to the widow or widower;

(2) if there is [BE] a widow or widower and a surviving child or children of the deceased, one-half to the widow or widower, the other half to the surviving child or children, in equal shares;

(3) if there is [BE] a surviving child or children of the deceased, but no widow or widower, then to the child or children, in equal shares.

(b) An award for impairment [DISABILITY] may be made after the death of the injured employee.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

P.O. BOX 21149
JUNEAU, ALASKA 99802-1149
PHONE: (907) 465-2700

FAX: (907) 46[illegible] 2784

March 27, 1990

The Honorable Dick Eliason, Chairman
Labor and Commerce Committee
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Senator Eliason:

In response to your recent request, following is the Department's position on Section 5 of Senate Bill 508.

In Van Biene v. ERA Helicoptors, (Alaska, August 18, 1989), our supreme court held, in part, that although the deceased pilots' survivors were entitled to receive benefits under the Alaska Workers' Compensation Act, Wausau Insurance Company (ERA's insurer) was not protected from a suit for negligence. It has been alleged that Wausau voluntarily undertook a safety inspection at ERA and performed the inspection negligently.

Section 5 of Senate Bill 508 would alter the result reached in Van Biene by amending the (employer's) exclusive liability provision under AS 23.30.055 by expanding the definition of "employer" to include workers' compensation insurers, insurance service agents of a self-insured employer, or labor organizations when they perform, or fail to perform, safety inspections or related safety services. The effect of this proposed amendment would be to allow an insurer to stand in the shoes of the employer for the purpose of being shielded from responsibility for negligently performing safety inspections.

The Department of Labor opposes Section 5 of Senate Bill 508. We are not persuaded that any valid reason exists for allowing an insurer to hide behind the employer's exclusive liability provision, thereby escaping responsibility for its negligent acts. An insurer, like any other third party, should be responsible for its own negligence when it controls events which cause injury.

Workplace safety is of paramount importance to the Department of Labor; we support legislation that will enhance employers' safety practices. We do not favor any legislation that would have a detrimental effect on safety practices that affect Alaska's labor force.

We recognize the public policy argument, advanced by the proponents of the statutory amendment, which asserts that unless exempted from liability for safety inspections they perform, insurers will simply forego those activities and the workers will bear the consequences. We believe that argument lacks merit. First, we believe that insurers still have enough self-interest at stake in making inspections that they will still continue to perform them, even in the face of potential tort liability. We also believe that a negligently performed safety inspection is likely to be worse than no safety inspection at all. In that connection, we are concerned that when insurers perform safety inspections, employers may become complacent and neglect their traditional duties to inspect and provide a safe workplace.

Although it is not clear to us that the proposed amendment would reduce the quality or quantity of safety inspections performed by insurers, it is clear that without the amendment, when insurers or labor unions undertake safety inspections, there will be a strong incentive for the inspectors to perform their safety inspections in a careful, competent, and non-negligent manner.

I appreciate the opportunity to clarify the Department's position. Thank you.

Sincerely,

Jim Sampson
Commissioner

JS/EP/jt
032190-5

POSITION PAPER/Department of Health & Social Services

Position Paper

CS for Senate Bill No. 508 (L & C)

For an Act entitled: "An Act relating to worker's compensation."

Section 23.30.238 of CS for SB 508 would provide workers' compensation coverage by the state for state certified volunteer EMT's who are injured while providing emergency medical services outside an incorporated city or borough and who are not otherwise covered for worker's compensation.

Background

Approximately two-thirds of Alaska's two thousand plus state certified Emergency Medical Technicians (EMT's) are volunteers. These volunteers provide the backbone of the emergency medical services system in many parts of rural Alaska. Although most volunteers respond to fewer emergency medical calls than paid EMT's, they often face similar hazards and are at some risk of becoming injured.

Under AS 23.30.092, a political subdivision may elect to provide benefits and compensation to volunteer ambulance attendants, policemen or firemen by obtaining insurance and filing copies of the policies with the commissioner of the Department of Labor. However, volunteer EMT's who live in and provide services in unincorporated communities outside organized incorporated cities or boroughs do not have worker's compensation coverage at the present time. A review of the computer records of the Emergency Medical Services Section in the Division of Public Health reveals that less than one hundred fifty state certified EMT's reside in unincorporated areas' and therefore would be eligible to receive benefits under this bill.

If this bill passes, those volunteer EMT's who reside in incorporated cities or boroughs that elect not to provide this coverage would still not be eligible to receive workers' compensation benefits, except if they happen to be injured while providing services outside incorporated cities and boroughs. We have no way of estimating how many volunteer EMT's would be in this category, but we estimate that the number is low.

The Matanuska-Susitna Borough has provided workers' compensation coverage for volunteer EMT's and firefighters for over ten years. Currently, 350 volunteers are covered by borough paid worker's compensation coverage. According to Kevin Koechlein, EMS Coordinator for the Matanuska-Susitna borough, over ten years there have been two lost work time injuries, costing less than $1,000 apiece, and an average of

POSITION PAPER/Department of Health & Social Services

about $2,000.00 per year in medical claims. Last year, among the volunteer EMT's, there were two needlestick injuries, one back strain, and one laceration.

Position

The Department of Health and Social Services supports the intent of Section 23.30.238 of CS for SB 508 (L & C). We believe it is only fair that EMT's who provide emergency medical services in unincorporated areas should receive the same or similar benefits if injured as those volunteer EMT's who are provided workers' compensation coverage by a local government. This should help emergency medical services in remote rural areas to recruit and retain volunteer EMT's.

We defer to the Department of Labor to comment on the other sections of this bill.

The Department of Health and Social Services supports Section 23.30.238 of CS for SB 508 (L & C).

Recommended by: Katherine A. Kelley

Katherine A. Kelley, Dr. P.H.
Director
Division of Public Health

Date: 4/26/90

Approved by: Myra M. Munson

Myra M. Munson
Commissioner
Department of Health and Social Services

Date: 4/27/90

STATE OF ALASKA
1990 LEGISLATIVE SESSION

Bill Version: CS SB 508 (L & C)
Publish Date:

REQUEST:

FISCAL NOTE

Revision Date:
Agency Affected: Health & Social Serivces
Title: An Act Relating to Worker's Compensation
BRU: State Health Serivces
Sponsor: Labor & Commerce Committee
Components: EMS Training & Licensing
Requester:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (Thousands of Dollars)

General Funds						
Federal Funds						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

Full-Time	0	0	0	0	0	0
Part-Time						
Temporary						

ANALYSIS: (attach a separate page if necessary)

See attached

No fiscal impact in FY 90

Prepared By: Katherine Kelley, Dr.P.H., Director
Phone: 465-3082
Division: Divsion of Public Health
Date: 04/26/90

Approved By Commissioner: Myra M. Munson
Date: 4/26/90
Agency: Department of Health and Social Services

Distribution (by preparer):
Legislative Finance, Legislative Sponsor, Requestor,
Office of Management & Budget, Impacted Agency(ies)

Mr. President:

CSSB 508 is a compromise, agreed to by Labor and Management representatives of the AD HOC Committee that has been addressing Workers Compensation issues over the last eight years or so. Both sides have approved the changes to the Act and the Department of Labor has also given its blessing on the Bill.

There are four substantive changes. In the Vocational Rehabilitation portion of the Act (Sections 1 through 4); this bill would provide for benefits that an injured worker could lose between medical stability and the rating of an injury. Also, it puts controls on Medical Managers that are hired and paid by the Insurance carriers, when they interact with injured workers. These Medical Managers may be the same Vocational Rehabilitation Specialists that the Board uses. These controls on Medical Managers are necessary to preserve the intent of the 1988 amendments to the Act, which took control of the rehabilitation process out of the hands of the Carrier.

Under Sections 2 and 9 of this Act is language that would allow Occupational and Physical Therapists the right to perform evaluations and ratings of injuries that are within their areas of expertise. Allowing these individuals to perform evaluations and ratings of injuries is necessary to expedite the rating process. Currently, many injured workers are not receiving their benefits in a timely manner.

In order to protect the safety programs and safety inspections provided by carriers, self-insured employers, reciprocal employers and trade assoications, this Bill (under Section 8) would provide the same liability protection to these organizations that the employer currently has from civil suits. That protection would be limited, however, to only safety-related services.

Under Section 7, up to 18 months of health insurance would be provided to injured workers. Under present law, an extended injury could jeopardize an injured workers' health coverage. This extended coverage could include family members.

Also covered under Sections 11 and 12 of this Bill is the inclusion of Workers Compensation Benefits to Volunteer Emergency Medical Technicians outside an incorporated City or Borough.

Mr. President, I respectfully request the Bill be passed.

Thank you.

Anchorage Fracture & Orthopedic Clinic

GEORGE B. WICHMAN, M.D.
DECLAN R. NOLAN, M.D.
RICHARD W. GARNER, M.D.
THOMAS P. VASILEFF, M.D.
RICHARD D. MCEVOY, M.D.

3546 LA TOUCHE STREET
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Fellows American Academy of Orthopaedic Surgeons

April 24, 1990

Senator Dick Eliason
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

RE: Senate Bill 508

Dear Senator Eliason:

I have already called your office and expressed my serious concern about passing Senate Bill 508.

I hope your aide communicated my thoughts to you.

The other day I heard some comments that concerned me. These comments were made to Dr. Michael James that indicated the State Medical Association and the orthopedic surgeons of the community were all in favor of this bill. Nothing could be further from the truth. It concerns me when bad information is being bandied about and an orthopedic surgeon like myself who called with serious reservations about the bill may be quoted as being in favor of it.

Disability, permanent loss of function and whether or not a patient has reached a stable clinical state are all M.D. decisions. Granted, anyone can be trained to measure movements of parts of the body and record them on a sheet of paper. However, it takes years or training, knowledge and significant experience to be able to make a clinical diagnosis of disability or impairment.

Daily I have patients in my office claiming disability who are not in the least bit disabled. However, a physical therapist, an occupational therapist or other paramedical personnel could easily be misled into writing up disability limitations which would be wrong.

I am not sure what the problem is that this bill is meant to fix. I have been told by your aide that it appears to be the insurance companies are interested in it because there is a backlog of disability ratings that need to be done. That was the first I ever heard about that. If that is the case there are many other ways to solve that problem without going the route of this bill.

I strongly oppose the bill and I feel that if it is passed it will lead to major difficulties in the medical administration of disability claims.

Sincerely,

Declan Nolan

Declan R. Nolan, M.D.

DRN:bj
cc to: Michael James, M.D.
Alaska State Medical Society

MTL SERVICES
8445 Jupiter Drive
Anchorage, Alaska 99507
(907) 346-2474

MARJORIE T. LINDER, M.A., C.R.C.
Vocational Rehabilitation Counselor

March 3, 1990

Senator Eliason, Chairman
Senate Labor and Commerce Committee
State of Alaska
Juneau, Alaska

Dear Senator Eliason:

I love Dr. Seuss books because they contain so much truth about human nature. One of my favorite books is Yurtle, the Turtle. Remember that he was the turtle king who decided he could expand his kingdom to the clouds, the mountains and the trees by standing on the backs of more and more turtles. But it only took one little turtle, a turtle named Mack, to step out of the bottom of the pack and topple Yurtle.

Some of the parts of SB 508 remind me of this story. SB 508 heaps more restrictions and legislation on the backs of rehabilitation counselors in the workers' compensation system. I want you to be aware that SB 508 is seeking to control an estimated maximum of $148,000 spent in FY '89 on vocational rehabilitation counseling fees for injured workers. This expense (which is probably greatly exaggerated) represents less than .1% of the $150,000,000 in premiums collected from Alaskan employers during this period.

During FY '89, 289 injured workers out of 10,193 time loss claims requested re-employment eligibility evaluations. The Workers' Compensation Board referred out 83 workers for these evaluations. Eventually 6 injured workers out of 10,193 time loss claims received plans for retraining. This embarrassingly low number of rehabilitation recipients, not the further restriction of the high estimate of $148,000 paid rehabilitation counselors, is the real issue that should be examined by this committee.

This focus on rehabilitation fees is an attempt to control the professional opinions of rehabilitation counselors and to make the law even more exclusionary than it already is. Putting the focus on rehabilitation counselors takes it off the difficulties injured workers have in getting served in the workers' compensation system with retraining and other services related to vocational rehabilitation.

I believe whoever drafted the legislation regarding rehabilitation fees may be so far up on the turtle pack that he or she is simply out of touch with what is really going on. As a vocational rehabilitation counselor, I gladly volunteer to be one of the first to step out of the pack to try and topple any provisions in this bill which make rehabilitation harder for injured workers to get.

Since you are guarding State expenditures, you need to be aware that if the retraining obligation of Alaskan employers to injured workers is not met within the workers' compensation system, support for these people will be met by a public system, ie. public assistance, the VA, Social Security, etc. You may wish to remedy this problem in this bill.

Thank you for looking more carefully at the provision of the bill limiting rehabilitation counselor fees which poses the danger of controlling professional opinion with frivolous challenges of rehabilitation bills for evaluations adverse to them. Lest you think I have a vested economic interest in the outcome of this legislation, I want you to know that I am happily employed in a full time job outside the workers' compensation arena. I participate in vocational rehabilitation performing eligibility evaluations at the request of the workers' compensation board. I have, to date, received since July '88 a total of six referrals--hardly a way to "get rich."

Yours truly,

Marjorie T. Linder, M.A., CRC
Vocational Rehabilitation Counselor

TESTIMONY ON SB 508

DR. JAMES: I don't believe that anybody in the medical community has signed off on this. As far as I know, none of the orthopedic community has. In fact they were quite surprised when they heard about this about a week or two weeks ago. I spoke with Pat Clanolen, Tom Bashloff and several others and they were surprised, and some of them were going to write letters. I don't know if you have recieved them or not, but they didn't believe it was an appropriate thing to do. So I don't think you have any consenese here at all in it regarding the medical community

MARY PIERCE: Contrary to what Dr. James just said, we did talk to the Alaska State Medical Association and the Division of Workers' Compensation specifically attended a meeting and talked to the orthopedic community and they were in concurrence with that. At least the information that we received and agreed that these people were perfectly qualified to do impairment ratings, and in fact encouraged us because they are -- there feeling was that they were kind of bombarded with paper work and certainly this was something that could be done by somebody else to speed along the process.

ALASKA STATE SENATE

SENATOR DICK ELIASON
SITKA
CHAIRMAN

SENATOR PAT RODEY
ANCHORAGE
VICE-CHAIRMAN

LABOR AND COMMERCE COMMITTEE

MEMBERS
SENATOR JAN FAIKS
ANCHORAGE

SENATOR JACK COGHILL
NENANA

SENATOR JALMAR KERTTULA
PALMER

SENATE LABOR & COMMERCE COMMITTEE

Senator Richard I. (Dick) Eliason, Chairman

Senator Pat Rodey, Vice-Chairman
Senator Jan Faiks
Senator Jalmar Kerttula
Senator Jack Coghill

4/25/90

Bob Sullivan, Legislative Committee Chair, of the National Association of Rehabilitation Professionals in the Private Sector called.

He asked that all committee members be made aware that he supports SB 508, except the section regulating fees for a rehabilitation specialist - as this is prejudicial.

P.O. BOX V, JUNEAU, AK 99811 (907) 465-3844

MTL SERVICES

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MARJORIE T. LINDER, M.A., C.R.C.
Vocational Rehabilitation Counselor

April 23, 1990

Senate Labor and Commerce Committee
State House
Juneau, Alaska

Dear Members of the Senate Labor and Commerce Committee:

Yesterday, we as a nation and world celebrated "Earth Day." We learned, among other things, that styrofoam cups are not biodegradable, that they last for thousands of years in their existing form.

Well, I want you to know that injured workers without vocational rehabilitation do not change either. They, too, exist somewhere, possibly out of the sight of their insured, insurance adjustor, attorney, would be rehabilitation counselor, and the Alaska Workers' Compensation Board, but they live on....sometimes limping through life on a public system. The perception that their disability ends when they are paid their small green poltice is as flawed as the perception that vocational rehabilitation is the cause of our expensive workers' compensation system. They go elsewhere and it's often under the trash heap.

To give you some statistics: Approximately 10,100 workers were injured in FY '89. During that period of time, approximately 290 workers requested re-employment services monitored by the Alaska Workers' Compensation Board. Approximately 80 of those 290 workers who requested the benefit were allowed eligibility evaluations for the benefit. Six out of 10,100 workers got plans written for them.

The perception that vocational rehabilitation is still the culprit whose fees and practices need to be monitored like some red tide ready to carry away employers with extra expenses still exists. Despite the fact that the numbers of people being delivered vocational rehabilitation has been reduced over 90%, vocational rehabilitation is still being blamed for the high costs of workers' compensation employers are paying for.

The reality is that some other entity is getting rich for despite these statistics, insurance premiums paid by Alaskan employers were on the average reduced by only 4%. I believe the self-insureds have had a better experience in their reductions.

What all this means is that the insurance industry has merely transferred its responsibility to the public sector and is charging employers almost the same as it always did. Under the guise of "helping small employers" and employees, insurance companies are seeking further immunity from responsibility. By cracking down on rehabilitation fees, they are seeking to make the system exclude injured workers even more than it already does from benefits owed them under the act.

I hope this shameful statistic of 6 recipients of vocational rehabilitation in FY '89 will raise your consciousness about the real truth about the lack of response to injured workers. Obviously, the fear of high fees by vocational rehabilitation providers does not match the reality. If in 1989, all six persons received $4000 worth of vocational rehabilitation counseling and all 83 people who were provided eligibility evaluations cost in rehabilitation fees an average of $1500 a piece (which is about average), a total of $148,000 in rehabilitation fees would have been spent on injured workers. In a $150,000,000 system, that computes to less than one/tenth of one percent of the amount spent by employers each year on workers' compensation. Therefore, I question where the other 99.9% of the money is going, why employers have not experienced more relief, and why injured workers have received such frugal benefits.

Thank you for considering these things.

Yours truly,

Marjorie T. Linder, M.A., CRC

April 24, 1990

The Honorable Dick Eliason
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Reference: CSSB508

Dear Senator Eliason:

The Labor/Management Ad Hoc Committee on Workers' Compensation would like to take this opportunity to clarify our intent in adding occupational and physical therapists as additional persons capable of performing impairment ratings.

First, I would like to emphasize that occupational and physical therapists are being added in addition to physicians. Our intent is not to replace physicians in doing these ratings, but to increase the employee's option of individuals capable to do them. In most cases, physicians would continue to perform impairment ratings.

This problem arose because we were confronted with evidence of employees not receiving compensation because their treating physician did not perform a timely rating. We felt this was unfair to the employee. All our research lead us to conclude that the employee would have a competent alternative with occupational or physical therapists performing their impairment rating.

Our main intent was to expedite the process. A peripheral benefit could be a cost savings to employers if the employee chooses to utilize an occupational or physical therapist.

We also were concerned with limiting the occupational and physical therapists to only those ratings for which they were qualified. We, therefore, added wording to limit them to ratings in which they had professional expertise.

Sincerely,

Mary A. Pierce
Co-Chair

Kevin Dougherty
Co-Chair

National Association of Rehabilitation Professionals
in the Private Sector - Alaska Chapter (NARPPS)
P. O. Box 240654
Anchorage, AK 99524-0654

April 10, 1990

Senator Dick Eliason
State Senate
P.O. Box V
Juneau, Alaska 99811

Dear Senator Eliason:

Is statutory fairness important? Do you endorse State agencies replacing private industry? The Workers' Compensation Act (AS23.30) was changed recently to save money. The result is unfair. Benefits usually provided under insurance policys have been severely restricted. Now claimants must request state agencies for service. Public sector expenses are increasing. Where are the savings? If total costs are analyzed there are few savings. The payors have simply become public rather than private. Private sector savings should not come from private responsibilities being assumed by public offices. Despite reduced service responsibility and increased requests for state funded service, Workers' Compensation (W/C) premiums have not been reduced. Where are the savings?

When you send positi papers to your constituency, include a survey. Are they satisfied with W/C benefits? Do they know what their benefits are? If rehabilitation services have been used, who provided the services? Private sector specialists or state Vocational Rehabilitation (DVR) counselors? Do you know injured workers can request DVR services <u>at state expense</u> when, or if, they are denied insurance rehabilitation benefits? If they are not denied, do you know they can <u>still</u> settle their W/C claim and then receive <u>state funded services</u>? Should state funded services replace W/C rehabilitation benefits? As a fiscally responsible elected official, do you support this? In July 1982 the W/C act was rewritten in part to reduce industrial rehabilitation benefits provided by the state. The July 1988 changes result in W/C claimants' application to DVR. The pendulum has swung full cycle.

Please request data from DVR. How many DVR clients were industrially injured after July 1, 1988? How many have applied? How many were eligible? How much DVR money is spent evaluating and serving handicapped injured workers? Is DVR money spent on services which should be paid by W/C? Although DVR's client information is protected, their data can be presented confidentially. Ask them to do this.

Workers' Compensation Revisions

Ask Public Assistance (PA) and Unemployment Insurance (UI) the extent to which workers receive PA or UI after loosing jobs due to industrial injuries? Does PA or UI track this kind of data? Does PA or UI support workers whose support should come from W/C? Are you aware that injured workers who receive 9 months or more of W/C loose their UI benefits? Why is that?

Obtain names and AWCB file numbers of workers injured since July 1, 1988. Ask for injury dates, dates of rehabilitation evaluation requests and dates referred for an evaluation. How many workers with 90 or more days of time loss have not been referred for a rehab evaluation? This information is not confidential. Please publish the data you discover.

Prior to the 1988 workers compensation revisions, biased and incomplete information was circulated by special interest groups. Legislation based on biased, incomplete information is ineffective and usually must be redone or modified. Have you received complaints about the new act? Were those who complained involved with promoting the changes that went into effect on July 1, 1988? What do your constituents say? Have you been asked to re-do or modify AS23.30 which went into effect only eighteen months ago? Why is that?

Large amounts of money are exchanged in the W/C system. Both management and labor can show enormous losses. Therefore, despite revisions in 1988, pressure for change continues. On one hand, finger pointing occurs, alleging inadequacies or inefficiencies of one or more parties. Meanwhile, the other hand waves biased and inaccurate data.

Scapegoated groups rarely have an opportunity to defend themselves or meaningfully contribute to the change process. Public hearings are ventilation exercises which do not influence proposed legislation. Private hearings are more effective. Power brokers transmute their interests into legislative change privately, outside the public hearing process. The resulting change often produces transplanted advantage, not fairness. The revised W/C statute offers advantages to some but fairness to none. If a law is not fair, dissatisfaction persists. Finger pointing continues. Pressure for change increases. As discontent grows, who is held accountable? It is usually not those who wrote or promoted a bad law. The change promoters often protest loudest. The same scapegoated groups are found at the end of the pointing fingers. Pointing is little help. Everyone can make a better good faith effort to improve things. Improving the system is not the same as changing it.

Workers' Compensation Revisions

Major efforts have been made to define and clarify workers compensation benefits. Why are similar efforts not made to prevent injuries? Why are employers not offerred incentives to re-employ injured workers? Insurance carriers assume risk on behalf of employers who may or may not comply with safety or OSHA standards. What compells compliance? Most responsible employers have internal safety provisions, but safety regulations are often unenforced. What do irresponsible employers do? Who are they? Are they held accountable? If OSHA finds an employer accountable and then fines them for conditions which resulted in injuries, injured workers do not receive compensation from the fine.

By law, employers must purchase W/C insurance. Money used to buy insurance is not available to make the workplace safe. Injury exposure is sold to the insurance carrier! "Don't see me about your injury, I sold your problem to my carrier." Of course insurance carriers are worried about expense. They pay enormous no fault costs resulting from conditions they do not control. Of course injured workers worry about benefits. They must live with unfair provisions if they get hurt. Where are legislation and incentives for promoting safe working conditions? If the central issue remains cost containment, then advantages will simply be moved from one source of expense to another. Fairness and loss prevention should be the central issues, not limitation or expansion of benefits.

Workers' compensation is a no fault quid pro quo: in return for specific benefits paid by management, workers give up rights to sue for damages. Benefits include compensation, medical treatment, vocational rehabilitation, if needed, and payment of a worker's attorney if benefits are disputed. Benefits may be recommended or critiqued by a committee: i.e. the Workers' Compensation Committee of Alaska (WCCA). The committee meets to debate the provisions and propose changes. The process is very political. The debate is usually about expense, not safety or fairness. As a result of the debate workers still have lost the right to sue. The only change is the level of benefits they will receive in return for having lost the right to sue. What the worker exchanges in the quid pro quo remains the same. What he receives in return changes. Workers cannot change what they offer, employers can. Is the exchange fair?

Benefits cannot be unlimited. Exploitation must be eliminated. Ensuring specific, fair benefits and preventing benefit exploitation is difficult. Both management and labor can do more to prevent losses and mitigate damages. But losses will periodically and unavoidably occur. Therefore, in response to unavoidable losses, the system

must be fair. Fairness should be more important to management and labor than to vendors. But it is vendors who usually discuss the fairness issue. It is vendors who provide services under the fairness provisions or lack thereof. It is vendors who are accused of unfairness when unfair legislative provisions are followed. Is it fair that risk for work injuries is sold to carriers who have no control over the safety of working conditions? Is it fair that some W/C premiums match employer payroll? Is it fair to seduce workers to seek public rehab services when W/C premiums have been paid to support private sector services? Is it fair to place publicly funded services in competition with similar private sector services? Is it fair to set compensation rates that force injured workers to loose their homes or leave the state? Is it fair that uncontrolled, unsafe working conditions result in large losses for both carriers and workers? Obviously these are rhetorical questions. When the work place is safe and benefits fair, expenses will come down.

Are you aware of a political action committee known as Professional Rehabilitation Organization (PRO)? PRO advocates for injured workers. Please respond to their recent questionnaire and become involved in effecting positive change. Seek data from several sources to obtain a full picture of the dynamics behind W/C issues. Most sources have an agenda, so contact as many sources as possible. These are not simple, linear issues. Surface, single-source data will not give you a picture of the underlying dynamics. Effective legislation must address underlying dynamics rather than symptomatic issues. Obtain information that clarifies the underlying dynamics. Effective legislation is the foundation for stable and effective services. The reverse is also true. Are services stable and effective?

Give this issue the attention it requires. We would be happy to be of assistance. I look forward to your response.

Sincerely,

Jon C. Deisher, MA, CRC, CIRS
President

cc: Members, House of Representatives
Members, Senate
Keith Anderson, Director, DVR
Acting Director, AWCB

JCD:st

AMERICAN INSURANCE ASSOCIATION
WESTERN REGIONAL OFFICE

The Renaissance Tower
801 K Street, Suite 912
Sacramento, California 95814
(916) 442-7617
(916) 442-8178 FAX

April 9, 1990

Senator Richard I. Eliason
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Dear Dick:

I was delighted to have the opportunity to see you during my recent visit to Juneau. One of the things I miss most now that I live outside Alaska is the opportunity to visit and talk with you and others who continue to work toward enhancing the economic climate. During my next visit, I sincerely hope that time will permit us to spend more time discussing economic and political issues.

As I mentioned in our brief visit, the Association I represent is seeking an amendment to the current law which would overturn the Alaska Supreme Court decision in Van Biene v. ERA Helicopters because we believe that decision has adversely affected work-place safety. We deeply appreciate your interest in and support for this vital legislation. We are particularly appreciative of the leadership you have taken in protecting the intent of encouraging safety in the work place which this bill was designed to foster. We understand SB 508 is currently in the Senate Labor and Commerce Committee and no further hearings are scheduled at this time. It is my hope that with your continued leadership, this vital legislation will pass this session. In the interim, should you have any questions concerning this or any other insurance related legislation, I hope you will feel free to call on me or our local counsel, Bob Blasco of Robertson, Monagle & Eastaugh, at 277-6693.

Again, it was good to see you again and I look forward to a longer visit with you during my next trip.

Sincerely,

James R. Jinks

REHABILITATION MEDICINE ASSOCIATES, P.C.

2401 E. 42nd AVENUE, SUITE 304 ANCHORAGE, ALASKA 99508
(907) 563-8876 FAX (907) 563-7654

J. MICHAEL JAMES, M.D.
ROBERT FU, M.D.
MORRIS R. HORNING, M.D.
DIPLOMATES AMERICAN BOARD OF PHYSICAL MEDICINE AND REHABILITATION

29 March 1990

Senator Richard Eliason
P. O. Box V
Juneau, Alaska 99811

RE: Senate Bill 508

Dear Senator Eliason:

I recently had the opportunity to review the modifications of Senate Bill 508 specifically regarding the utilization of physical therapists and occupational therapists to determine physical impairment ratings as well as determine when a person is physically impaired to the degree which would require rehabilitation efforts or the lack of that physical impairment.

I do not believe that the "licensed physical therapist and occupational therapist" have the background or depth of knowledge to make an appropriate judgement with regard to the probability of permanent impairment and; more importantly, the degree of physical impairment which is what this bill would allow them to do. We have a difficult enough time educating physicians in this issue, because in a large number of patients this is extremely complex, let alone try to educate a group of people whose depth as well as breadth of knowledge is limited.

I feel this is "poor medicine" as well as poor public policy.

Yours sincerely,

J. Michael James, M.D.

sf/DNR

cy: Senator Jan Faiks
Representative Curt Menard
Representative Mike Navarre
Representative Dave Donley
Representative Ron Larson
Representative Virginia Collins

Thomas D. Armstrong
6430 East 9th Avenue
Anchorage, Alaska 99504

TESTIMONY SB 533 4/23/90

Mr. Chairman members of the committee - For the Record my name is Thomas Armstrong, I am a resident of Anchorage and have been a resident of Alaska since 1947. I am a member of the International Brotherhood of Operating Engineers, Local 302. I have been a member of 302 for over 25 years.

During the committee hearings in House Labor and Commerce committee members said that they wished that they could hear from rank and file construction workers.

I support SB 533 and I am sure that all the men I work with support SB533.

It has only been in the last 6 years that members of our union have been without contractor provided camps. We were encouraged to delete this requirement for requiring camps from our labor agreements so that the union contractors we work for could be competitive with the non-union contractors who do not and have never provided camp living for their construction crews.

I guess the requirement for contractor provided camps is just a form of per diem for construction crews very similar to what most other employees receive when they must work away from home to earn a living.

It seems to me that the primary concern ought to be for the health and welfare of the men and women who must work at remote sites. There are currently a wide range of conditions that construction workers away from home are experiencing.

Some contractors provide nothing and workers pitch tents in old gravel pits. Some contractors provide a place to park a pickup and camper and nothing else, some contractors provide a generator for electricity and hoses with water. Very few of the contractors provide dump sites for human waste and grey water.

I think it is unfair for those of us who work out of town to have buy a camper, motorhome or trailer as a condition of employment. Some of us cannot afford to buy a temporary shelter.

This bill treats non-union and union construction workers alike. Contractors would be required to provide a camp which would be another item included in their bid documents. My understanding is the Federal Highway Administration does not have a problem with contractor provided camps as part of bid document.

I have a memo from DOT that Representative Hanley requested for me last summer about per diem costs for DOT. I would like submit this memo for the record.

Thank you for the opportunity to testify on this bill and I urge your support of this bill.

Enclosure

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

P.O. BOX Z
JUNEAU, ALASKA 99811-2500
PHONE: (907) 465-3911

DIVISION OF MANAGEMENT AND FINANCE
(COMPTROLLER)

August 11, 1989

The Honorable Alyce Hanley
3111 "C" Street, Suite 410
Anchorage, AK 99503

ATTN: Ms. Shirley Armstrong

Dear Representative Hanley:

You recently inquired as to the total amount of per diem paid, during fiscal year 1989, by the Department of Transportation and Public Facilities. The amounts shown below cover the operations of International Airport System, Alaska Marine Highways, maintenance and operations of highways, airports and certain state buildings, and the capital construction program.

Per Diem Costs FY 1989

Classified Employees	Exempt/PX Employees	Total Cost
$2,775,798	$ 57,897	$2,833,695

Please call if you have questions or need additional information.

Sincerely,

Paula Ramsey for

Robert N. Bartholomew
Director

cc: Margene DeSmet, Finance Officer, Management and Finance
Catherine McHugh, Legislative Liaison, Commissioner's Office

25A-T67LH

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

P.O. BOX Z
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(COMPTROLLER)

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Sincerely,

Paula Ramsey for

Robert N. Bartholomew
Director

cc: Margene DeSmet, Finance Officer, Management and Finance
Catherine McHugh, Legislative Liaison, Commissioner's Office

25A-T67LH

FAX TRANSMITTAL

DATE: 4/17/90

TO: Eldon - Senator Kelly's Ofc.
COMPANY:
LOCATION: AK State Senate
FAX #: 463-4867

FROM: MARY PIERCE
MICA
4000 Old Seward Highway, Suite 203
Anchorage, Alaska 99503
Telephone: (907) 563-3414
FAX#: (907) 562-7804

RE: Eldon,

The following needs to be costed out:

If an employee sustains a legitimate, non-contested, compensable injury the employer will pay;

a.) an amount equal to the contribution the employer is currently making towards health insurance. (If he is not contributing - ie employee pays premium or he doesn't provide health insurance as a benefit then no payment made

if b.) the employee ~~must~~ gives to Workers' Comp. carrier or employer if self-insured proof that he purchased insurance (Cert. of Ins. from private insurers or proof of self-pay to Health and Welfare trusts)

for c.) a period of up to 12 mos, 18 mos, or 2 yrs.

N.) There would be an offset if employee fell under COBRA benefi

Management's original proposal was 12 mos, labor told me they wanted 2 yrs but would settle for 18 mos. I think we need to know cost differential between all three. This is summary - details need work. Mary

THE SUPREME COURT OF THE STATE OF ALASKA

HOLLIS VAN BIENE, Personal Representative of the Estate of Michael Brian Van Biene, and STANLEY THOMSON, Personal Representative of the Estate of Stanley Mark Thomson, Appellants, v. ERA HELICOPTERS, INC.; EMPLOYERS INSURANCE OF WAUSAU; ROWAN COMPANIES, INC.; INTERCONTINENTAL DYNAMICS CORPORATION; GATES LEARJET, Appellees.	File No. S-2571 3AN-87-8195 Civil O P I N I O N [No. 3485 - August 18, 1989]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, J. Justin Ripley, Judge.

Appearances: Robert H. Wagstaff, Wagstaff, Pope & Clocksin, Anchorage, for Appellants. Clark Reed Nichols, Perkins, Coie, Anchorage, for Appellees.

Before: Matthews, Chief Justice, Rabinowitz, Burke, Compton and Moore, Justices.

MOORE, Justice.

I. INTRODUCTION

This appeal arises out of litigation by the estates of two airline pilots who died in an airplane crash while employed by ERA Helicopters, Inc. (ERA). The estates seek recovery against ERA for the intentional tort of "overworking" the two deceased pilots and against Employers Insurance of WAUSAU (WAUSAU), ERA's workers' compensation carrier, for its negligence in the inspection, certification, authorization, and approval of ERA's working conditions.

For the reasons set forth below, we affirm the trial court's dismissal of the claims against ERA and the claims against the "Doe defendants." We reverse the trial court's dismissal of the claims against WAUSAU.

II. FACTS AND PROCEEDINGS

Stanley Thomson and Michael Van Biene were pilots employed by ERA. At 2:00 a.m. on August 20, 1985, ERA dispatched them to fly a Learjet to Gulkana, Alaska. By completing this mission, Thomson and Van Biene would necessarily violate the Federal Aviation Administration's (FAA) flight time and duty regulations. The Learjet crashed on approach to the Gulkana airport, killing both pilots. WAUSAU paid compensation for the pilots' deaths.

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In the investigation of the accident, other ERA pilots told the National Transportation Safety Board (NTSB) of lengthy on-duty periods and exhausting flight schedules. Three captains reported ERA's disapproval of pilots' refusals to fly because they were fatigued. One captain believed that ERA intentionally overworked its pilots to increase its profits.

On September 14, 1987, the estates filed their Second Amended Complaint alleging negligence against WAUSAU in their inspection, certification, authorization, and approval of ERA's working conditions. The complaint made the following allegations against ERA:

> On or about August 20, 1985, at 020[illegible] AKDT, Stanley Thomson and Michael Van Biene were Captain and First Officer of Learjet N455JA which was dispatched by defendants ERA, Jet Alaska, and ROWAN for a night flight to Gulkana, Alaska. The mission dispatch was accomplished without obtaining current weather information and would necessarily exceed the flight time and duty requirements of Plaintiffs, and the aircraft was overweight for appropriate landing. The dispatch of the aircraft under the conditions described and given the preceding flying time of Plaintiffs without rest or sleep, constitutes negligence and gross negligence.

The estates contended at oral argument before the trial judge, and on appeal, that this language alleges an "intentional tort of dispatching [the deceased pilots] for a night flight . . . without adequate rest or sleep." ERA

Argues that the complaint only alleges negligence against it as an employer, and that therefore, the claim is barred by the exclusivity provision of the Alaska Workers' Compensation Act, AS 23.30.055.

The estates argue that WAUSAU is a separate legal entity from the employer and thus may be sued for its own negligence as a third party pursuant to AS 23.30.015(a). In response, WAUSAU argues that the exclusivity doctrine also protects it from such a negligence claim and that regardless of any immunity protection, WAUSAU did not owe a duty to the decedents to inspect, certify, authorize or approve ERA's working conditions.

The superior court granted ERA and WAUSAU's motions to dismiss under Civil Rule 12(b)(6) on the ground that the Alaska Workers' Compensation Act provides the workers' exclusive remedy against an employer or its compensation insurer. The estates appeal.

III. DISCUSSION

A. Did the Court Err in Dismissing the Estates' Claims Against ERA under Civil Rule 12(b)(6) Instead of Treating It as One for Summary Judgment Under Civil Rule 56?

The estates argue that the trial judge should have treated ERA's motion to dismiss as one for summary judgment because ERA submitted affidavits and the court did not

expressly or affirmatively rule that it was not considering this evidence outside the pleadings.

Civil Rule 12(b) states that when "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by Rule 56." When material outside the pleadings is presented to the trial court, a motion to dismiss "is automatically converted into one for summary judgment unless the court 'affirmatively' and 'expressly' rules that it is not considering evidence outside of the pleadings." Adkins v. Nabors Alaska Drilling, Inc., 609 P.2d 15, 21 n.11 (Alaska 1980).

From our review of the remarks of the judge and counsel during oral argument, we conclude that Judge Ripley expressed his intention not to rely on the affidavits when granting the motion to dismiss. Consequently, the court correctly dismissed the claims under Rule 12(b)(6) rather than Rule 56.

B. Did the Court Err in Holding that the Estates' Claim Against ERA Was Barred by the Exclusivity Doctrine of AS 23.30.055?

1) Standard of Review

"A motion to dismiss for failure to state a claim is viewed with disfavor and should rarely be granted." Mattingly v. Sheldon Jackson College, 743 P.2d 356, 359

(Alaska 1987) (citing Knight v. American Guard & Alert, Inc., 714 P.2d 788, 791 (Alaska 1986)). "In determining the sufficiency of the stated claim it is enough that the complaint set forth allegations of fact consistent with and appropriate to some enforceable cause of action." Linck v. Barokas & Martin, 667 P.2d 171, 173 (Alaska 1983). The court "is under a duty to examine the complaint to determine if the allegations provide for relief on any possible theory." Mattingly, 743 P.2d at 359 (emphasis deleted).

2) Application of Exclusivity Doctrine to Intentional Torts of the Employer

Under AS 23.30.055, the liability of an employer under the Workers' Compensation Act "is exclusive and in place of all other liability of the employer and any fellow employee to the employee, the employee's legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from the employer or fellow employee." See Wright v. Action Vending Co., Inc., 544 P.2d 82, 85 (Alaska 1975).

In Elliott v. Brown, 569 P.2d 1323 (Alaska 1977), we recognized an exception to the exclusivity doctrine in cases of intentional torts committed by a fellow employee or employer. We found that the socially beneficial purposes of the workers' compensation law "would not be furthered by allowing a person who commits an intentional tort to use the

compensation law as a shield against liability." Id. at 1327. The court concluded that the fellow employee's assault on the worker fell outside the purview of the accidental injuries covered by the act. The worker was therefore permitted to pursue a common-law tort action against the fellow employee.[1] Similarly, in Stafford v. Westchester Fire Insurance Co., 526 P.2d 37, 43 n.29 (Alaska 1974), overruled on other grounds, 556 P.2d 525 (Alaska 1976), we noted that:

> In suits for other intentional torts committed by the employer, recovery is permitted on the theory that the harm is not accidental and therefore not covered by the act. A stiff burden is placed on the employee to demonstrate intent to harm by the employer, or in some cases by his agents.

The estates argue that the trial court erred in dismissing their claims against ERA since they allege an intentional tort which is not barred by the exclusivity doctrine. ERA argues that the complaint fails to allege an intentional tort by ERA.

The estates' Second Amended Complaint alleges that ERA violated a number of FAA regulations and that "given the

---

1. The Elliott court, however, held that the corporate employer was not liable in tort on a theory of respondeat superior for the intentional tort of its supervisor. 569 P.2d at 1325-26.

preceding flying time of Plaintiffs without rest or sleep, [dispatching the flight] constitute[d] negligence and gross negligence." (Emphasis added). Paragraph IX generally alleges:

> Defendants' actions as described and in other particulars as to be shown at trial constitute wilful misconduct and were jointly and separately negligent, gross, and wanton.

The estates contend that the complaint alleges an intentional tort of dispatching the deceased pilots for a night flight without adequate rest or sleep.

We conclude that these allegations fail to constitute the type of intentional tort actionable outside the workers' compensation system. Liberally construed, the facts alleged fail to make out an intentional tort. At best, the complaint alleges gross negligence or wilful and knowing violation of FAA regulations.

The vast majority of courts have held that such allegations do not constitute an intentional act allowing suit outside of the workers' compensation act. As Professor Larson notes:

> Since the legal justification for the common-law action is the nonaccidental character of the injury from the defendant employer's standpoint, the common-law liability of the employer cannot, under the almost unanimous rule, be stretched to include accidental injuries caused by the gross, wanton, wilful, deliberate, intentional, reckless, culpable, or malicious negligence, breach of

> statute, or other misconduct of the employer short of genuine intentional injury.
>
> . . .
>
> Even if the alleged conduct goes beyond aggravated negligence, and includes such elements as knowingly permitting a hazardous work condition to exist, knowingly ordering claimant to perform an extremely dangerous job, wilfully failing to furnish a safe place to work, or even wilfully and unlawfully violating a safety statute, this still falls short of the kind of actual intention to injure that robs the injury of accidental character.

2A A. Larson, Larson Workmen's Compensation § 68.13, at 13-8 to -26 (1983 & Supp. 1985) (footnotes omitted).

In Stafford we recognized this majority rule. As the court explained, suits for intentional torts have been permitted on the grounds that the harm is not accidental but "[a] stiff burden is placed on the employee to demonstrate intent to harm by the employer, or in some cases by his agents." 526 P.2d at 43 n.29.

Even under a liberal interpretation of the allegations made by the complaint, the estates fail to allege an intent to harm the pilots so as to overcome the exclusivity provision of the act. In conclusion, we affirm the trial court's dismissal of the claims against ERA under Rule 12(b)(6).

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C. Did the Court Err in Holding that the Exclusivity Doctrine Contained in AS 23.30.055 Bars a Negligence Action Against the Employer's Workers' Compensation Carrier, WAUSAU?

The estates argue that WAUSAU is a separate legal entity from the employer and thus may be sued for its own negligence as a third party pursuant to AS 23.30.015(a). In response, WAUSAU argues that the exclusivity doctrine protects it from such a negligence claim.

The issue of whether a workers' compensation carrier can be sued for its own negligence in inspecting the employer's workplace is a question of first impression in Alaska. This court considered a related but distinctly different issue in Stafford. The court considered whether an employee was barred from suing his or her employer's compensation carrier for intentional torts. Stafford had alleged that the carrier wilfully and maliciously withheld compensation benefits resulting in infliction of emotional distress. The court concluded that "[u]nder our compensation act the carrier is considered a separate entity from the employer." 526 P.2d at 42. The court, however, then noted:

> Stafford recognizes that the principle of subrogation may be utilized to conclude that the carrier derives immunity from the exclusive remedy provisions in a damage action brought by the employee. However, Stafford argues that this immunity should not extend to intentional torts. This is supported by the decision of the Supreme Court of

> California in Unruh v. Truck Insurance Exchange, in which suit for an intentional tort by an injured employee against her employer's compensation carrier was allowed.

Id. (footnote omitted). After discussing the reasoning in Unruh v. Truck Insurance Exchange, 498 P.2d 1063 (Cal. 1972), the court concluded:

> We believe that AS 23.30.155 was envisioned by Alaska's legislature to cover situations where the employer or carrier negligently, or wilfully, failed to make timely compensation payments, but that this section was not intended to operate as the exclusive remedy for all intentional wrongdoings. In so holding we adopt the reasoning of Unruh. In circumstances where there is tortious conduct that goes beyond the bounds of untimely payments, the immunity from suit provided by the Workmen's Compensation Act is lost. Normally the carrier must investigate claims in order that the compensation scheme of payments for actual injuries will be properly administered. However, intentional torts committed in connection with the investigation of claims and payment thereof are not to be protected. Stafford has alleged that Westchester did more than delay in making benefit payments; he has asserted that it intentionally and maliciously misled him about his right to compensation and discouraged him from exercising his rights, resulting in emotional injury. We conclude that Stafford is not precluded, by virtue of AS 23.30.155, from a trial on the merits of his claims.

526 P.2d at 43-44.

We conclude that the Stafford court did not decide the issue in this case: whether the exclusivity provision

bars suit against an insurance carrier for negligent inspection of an employer's workplace. First, the court did not expressly hold that the immunity extends to a carrier. Rather, the court accepted arguendo that the doctrine of subrogation might be utilized to conclude that the carrier derives immunity from the exclusive remedy provisions. However, the court held that regardless of whether such immunity existed, intentional torts committed in the investigation of claims and payment thereof were actionable. Id. at 43-44.

While Stafford relied on the reasoning of Unruh, this should not be construed as an acceptance of the California courts' interpretation of its workers' compensation scheme since the Alaska scheme differs significantly from the California scheme.[2] Unlike the Alaska scheme, the California statute explicitly defines "employer" to include "insurer." Cal. Lab. Code § 3850(b) (West Supp. 1987). In Unruh, this identification was held forfeited when the insurer stepped outside the proper bounds of an investigation of the nonmedical facts of the case. 498 P.2d at 1069,

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2. Unruh cites two California Court of Appeal cases holding that a carrier may not be sued for negligence in performing work place inspections. Burns v. State Comp. Ins. Fund, 71 Cal. Rptr. 326 (Cal. App. 1968); State Comp. Ins. Fund v. Superior Court (Breceda), 46 Cal. Rptr. 891 (Cal. App. 1965).

1073. Because the California statute specifically identified the insurer with the employer, the court resorted to a negligence/intentional tort distinction to hold that the insurer no longer was the employer's alter ego when it committed intentional torts.

Other jurisdictions confronting this question of third-party actions against insurers for alleged negligence in either safety inspections or medical services have reached differing results.[3] These decisions are of limited value since each state's statutory scheme differs greatly. We therefore turn to the specific language of the Alaska Act.

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3. For decisions allowing suit against carriers as third-parties in the absence of express statutory language, see Beasley v. MacDonald Eng. Co., 249 So. 2d 844 (Ala. 1971); Nelson v. Union Wire Rope Corp., 199 N.E.2d 769 (Ill. 1964); Fabricius v. Montgomery Elevator Co., 121 N.W.2d 361 (Iowa 1963); Andrews v. Insurance Co. of N. Am., 230 N.W.2d 371, 374 (Mich. App. 1975); Corson v. Liberty Mut. Ins. Co., 265 A.2d 315 (N.H. 1970); Rothfuss v. Bakers Mut. Ins. Co., 257 A.2d 733 (N.J. Super. App. Div. 1969); Derosia v. Duro Metal Products Co., 519 A.2d 601 (Vt. 1986).

For decisions prohibiting suit against an insurer as a third party, see Kifer v. Liberty Mut. Ins. Co., 777 F.2d 1325 (8th Cir. 1985) (Arkansas law); Gerace v. Liberty Mut. Ins. Co., 264 F. Supp. 95 (D.D.C. 1966); Mustacha v. Liberty Mut. Ins. Co., 268 F. Supp. 890 (D.R.I. 1967), aff'd, 387 F.2d 631 (1st Cir. 1967); Barrette v. Travelers Ins. Co., 246 A.2d 102 (Conn. Super. 1968); Reid v. Employers Mut. Liab. Ins. Co., 319 N.E.2d 769 (Ill. 1974); Flood v. Merchants Mut. Ins. Co., 187 A.2d 320 (Md. 1963); Matthews v. Liberty Mut. Ins. Co., 238 N.E.2d 348 (Mass. 1968).

The Alaska Workers' Compensation Act does not mention an insurer in the exclusivity provision of AS 23.30.055, the definition of employer in AS 23.30.265(13), or in the third-party suit provision in AS 23.30.015(a). A "carrier" is defined in AS 23.30.265(5) as "a person authorized to insure under this chapter and includes self-insurers." Thus, as noted in Stafford, the Act defines "employers" and "insurers" as separate, distinct entities. 526 P.2d at 42.

Alaska Statute 23.30.015(i) subrogates an insurer to all the rights of the employer after the carrier has assumed the payment of compensation. WAUSAU argues that this provision provides them with the employers' immunity from a negligence action. Other courts have been hesitant to allow suit against a carrier due to the related problem of a subrogated carrier suing itself.[4] The concern is that since the carrier is subrogated to the injured employee's cause of action against a third-party tortfeasor, "if the carrier can be a third-party tortfeasor, the carrier will end by suing

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4. See Mustapha v. Liberty Mut. Ins. Co., 268 F. Supp. 890 (D.R.I.), aff'd, 387 F.2d 631 (1st Cir. 1967); Kotarski v. Aetna Cas. & Sur. Co., 244 F. Supp. 347 (E.D. Mich. 1965), aff'd, 372 F.2d 95 (6th Cir. 1967); Schultz v. Standard Acc. Ins. Co., 125 F. Supp. 411 (E.D. Wash. 1954) (Idaho law); Flood v. Merchant Mut. Ins. Co., 187 A.2d 320 (Md. 1963).

itself" -- an incongruous result that the legislature could not have intended. 2A A. Larson § 72.95, at 14-321. However, as Larson points out:

> This argument has been rejected on several grounds by the courts finding carrier liability. One is that the subrogation provisions are purely procedural and thus cannot be held to modify the definition of "employer." Another is that the subrogation passage "does not deal with the subject matter" in issue, which is the question whether the employee's common-law right is taken away from him. The original Smith case invoked a sort of dual capacity doctrine, saying that the carrier was being sued not as compensation carrier but as an independent third party. All such cases made short work of the spectre of double recovery by pointing out that the carrier would or course be entitled to set off in a judgment against itself as a tortfeasor the amount of compensation paid by it as insurance carrier. And running through all these opinions was the thought that this kind of result was really not all that preposterous. Increasingly common is the spectacle of an insurance carrier acting as compensation subrogation plaintiff and as defendant insurer on a third party's automobile liability risk. Problems of conflict of interest and of public policy may arise; but no one worries much anymore about the conceptual problem whether the carrier can sue itself.

Id. at 14-322 (footnotes omitted). We similarly conclude that the subrogation provision in AS 23.30.015(i) does not bootstrap an insurer into the definition of an employer in subsection (a). We therefore conclude that there is nothing in the statutory language of the Alaska scheme which

prevents an employee from bringing a negligence action against a carrier for negligent inspection of the employer's workplace.[5]

WAUSAU contends that such a result is contrary to public policy since the threat of potential tort liability will discourage carriers from inspecting employers' workplaces.[6] We decline to judicially amend the Act on the basis of such a policy argument. This type of policy determination is appropriately left for the legislature.

In conclusion, we find that there is nothing in the statutory language of the Alaska scheme which prevents an employee from bringing suit against a compensation carrier for the negligent performance of a safety inspection. Therefore, Judge Ripley erred in dismissing the estates' claims against WAUSAU.

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5. In the absence of express legislative intent to the contrary, "[s]tatutes . . . that establish rights . . . in derogation of the common law are construed in a manner that effects the least change possible in the common law." Huco v. City of Fairbanks, 658 P.2d 155, 161 (Alaska App. 1983) (citing 3 C. Sands, Sutherland Statutory Construction § 59.03, at 6-7 (4th ed. 1973)).

6. Some courts have extended immunity to carriers from third-party suits since they believed imposing liability on carriers would create a great disincentive to their carrying out the socially useful function of independent safety inspections. See Kifer, 777 F.2d at 1335, 1338-39; Nelson, 199 N.E.2d at 796 (Schaefer, J., dissenting); Matthews, 238 N.E.2d at 348; Kotarski, 244 F. Supp. at 558-59 (Michigan law); 2A A. Larson § 72.98.

D. Did WAUSAU Owe a Duty to the Pilots to Inspect ERA's Working Conditions in a Non-negligent Manner?

WAUSAU argues that even if a carrier is not immune from suit for its negligent inspection of an employer's work place, dismissal was proper on the alternative ground that WAUSAU owed no duty to the decedents to inspect ERA's working conditions. The estates contend that, even in the absence of contractual obligation between WAUSAU and ERA, WAUSAU may be held liable for "negligent performance of undertaking to render services" if WAUSAU actually inspected the working conditions of ERA prior to the accident.

The estates' argument is well taken. The Restatement (Second) of Torts § 324A (1965) imposes liability on a defendant to a third party when the defendant negligently performs an undertaking to render services:

> One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to [perform] his undertaking, if
>
> (a) his failure to exercise reasonable care increases the risk of such harm, or
>
> (b) he has undertaken to perform a duty owed by the other to the third person, or
>
> (c) the harm is suffered because of reliance of the other or the third person upon the undertaking.

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See Adams v. State, 555 P.2d 235, 240 n.7 (Alaska 1976) (citing § 324A of the Restatement). In Adams, the court held that victims of a hotel fire had a cause of action against the state for failure to take action after fire inspectors discovered extremely dangerous fire conditions. Id. at 240-42. The court noted that "once an inspection has been undertaken the state has a further duty to exercise reasonable care in conducting fire safety inspections, and that liability will attach where there is a negligent failure to discover fire hazards which would be brought to light by an inspection conducted with ordinary care." Id. at 240. The court then cited a number of cases in which employees were allowed to sue workers' compensation carriers for negligent safety inspections.[7]

The second amended complaint alleges that "WAUSAU . . . did inspect, certify, authorize, and approve the working conditions of Defendants Jet Alaska, ERA and Rowan" and that WAUSAU's actions "were accomplished negligently." This language is sufficient to make out a cause of action for negligent performance of an undertaking. As a result, it would be improper to dismiss the allegations against WAUSAU

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7. Beasley, 249 So. 2d at 847; Sims v. American Cas. Co., 206 S.E.2d 121 (Ga. 1974); Nelson, 199 N.E.2d at 779; Fabricius, 121 N.W.2d at 365.

for failure to state a cause of action. We, therefore, reverse the trial court's dismissal of the claims against WAUSAU under Civil Rule 12(b)(6) and remand the issue to the trial court for further proceedings.

E. Did the Court Err in Dismissing the Allegations Against the John Doe Defendants?

We initially note that since all claims against the Doe defendants were dismissed by the trial judge, this question is ripe for review and properly before us.[8]

Judge Ripley dismissed the allegations against the "John Doe" defendants on the grounds that such use of fictitious defendants is not permissible under our rules of civil procedure.

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8. ROWAN contends that the issue is not ripe for review since the superior court had not entered final judgment with respect to the "John Doe" defendants. In Greater Anchorage Area Bor. v. City of Anchorage, 504 P.2d 1028, 1030 (Alaska 1972), this court stated that the "basic thrust of the finality requirement is that the judgment must be one which disposes of the entire case. . . ." "[T]he reviewing court should look to the substance and effect, rather than the form, of the rendering court's judgment, and focus primarily on the operational or 'decretal' language therein."

We conclude that since Judge Ripley's order dismisses the Does from the case, the order disposes of the entire case as to the Does and the finality requirement is thereby satisfied.

At common-law, it was essential that a person's name appear in the complaint before he or she could be made a defendant in the action.[9] The majority of courts considering this issue have held that juridiction to sue unknown or fictitious persons must be obtained pursuant to some express rule or statute.[10] However, at least one state has judicially adopted Doe pleading without an express statute or rule.[11]

The estates argue that there has been a long standing practice of Doe pleading in this state. While we

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9. Note, Designation of Defendants by Fictitious Names--Use of John Doe Defendants, 47 Iowa L. Rev. 773, 775 (1961). This requirement has been eliminated in certain situations by statutes which allow the pleading of fictitious or John Doe defendants. Id. at 776. However, as the above commentator noted "[t]his is not to say that the rule requiring the true name of the defendant to be stated in the complaint is without force; John Doe complaints are still an exception to the rule and used only under exceptional circumstances." Id.

10. Hailey v. Interstate Machinery Co., 459 N.E.2d 346, 347 (Ill. App. 1984) (citing 59 Am.Jur.2d Parties § 17 (1971)); Hutchinson v. Fish Engineering Corp., 153 A.2d 594 (Del. Ch. 1959); Grantham Realty Corp. v. Bowers, 22 N.E.2d 832, 836 (Ind. 1939); Hill v. Henry, 57 A. 534 (N.J. Eq. 1904); 59 Am. Jur. 2d Parties § 16, at 401 (1987) ("In actions or proceedings which are not strictly in rem but are in personam or only quasi in rem, there is generally no authority to proceed against unknown persons in the absence of statute or rule. Jurisdiction to sue such persons must be obtained pursuant to some statute or rule."); Note, supra note 9, at 776.

11. Maddux v. Gardner, 192 S.W. 14, 18 (Mo. App. 1945).

acknowledge this past use of Doe pleading, we note that we have never been called upon to consider the propriety of this practice. We decline, however, to address the general propriety of Doe pleading in this case.[12] In the action before us, we find that Judge Ripley did not abuse his discretion in dismissing the claims against the Doe defendants since the estates are unable to identify which allegedly defective component of the Learjet was manufactured by the Doe defendants.[13] We therefore affirm the superior court's dismissal of the Doe defendants.

F. Did the Court Abuse Its Discretion in Awarding ERA and WAUSAU $14,476 in Attorney's Fees, which Represented 80 Percent of Their Actual Attorney's Fees?

The trial court awarded ERA and WAUSAU 80 percent of their fees, finding that the plaintiffs' claims "bordered

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12. We acknowledge the potential importance of this issue and have referred its consideration to the Civil Rules Committee.

13. The Second Amended Complaint contains the following allegations against the "John Doe" defendants:

> Defendants Doe I, II, and III negligently manufactured and designed other equipment used in Learjet N455JA, which items were not manufactured and designed in accordance with generally accepted standards.

very closely upon the nonmeritorious and the frivolous." Since we reversed the court's dismissal of the claim against WAUSAU, the award of fees to them is vacated. As to the award of fees to ERA, we conclude that the trial court did not abuse its discretion in awarding fees.

In State v. University of Alaska, 624 P.2d 807, 817-18 (Alaska 1981), this court held that an award of "substantially full attorneys fees" is manifestly unreasonable in the absence of a claim that is "frivolous, vexatious or devoid of good faith." The court held that an award over 90 percent of actual costs was a substantially full award of fees. Id.

However, this court has affirmed partial awards of fees as high as 86 percent of actual fees even when the claims were not frivolous. See Hansam v. Wodrich, 574 P.2d 805, 811 (Alaska 1978) (court affirmed award of 86 percent of actual attorney's fees even though the case involved no improper conduct by the losing party); see also O'Buck v. Cottonwood Village Condominium Ass'n, Inc., 750 P.2d 813, 821 (Alaska 1988) (court affirmed award of approximately 80 percent of actual attorney's fees to prevailing defendants); Steenmeyer Corp. v. Mortenson-Neal, 731 P.2d 1221, 1226 (Alaska 1987) (court affirmed award of 75 percent of actual attorney's fees); Crook v. Mortenson-Neal, 727 P.2d 297, 306

(Alaska 1986) (court affirmed award of 80 percent of actual attorney's fees).

We conclude that in this case an award of 80 percent of actual attorney's fees is not manifestly unreasonable. We therefore decline to interfere with the trial court's exercise of discretion and affirm the award of attorney's fees to ERA.

IV.

In conclusion, we affirm the superior court's dismissal of the claims against ERA and the John Doe defendants. We reverse the dismissal of the claims against WAUSAU and remand the claims back to the superior court for further proceedings consistent with this opinion. We vacate the award of attorney's fees to WAUSAU and affirm the award of fees to ERA.

AFFIRMED in part, REVERSED in part, VACATED in part and REMANDED for further proceedings consistent with this opinion.

Alaska State Legislature

Please enter into the record my testimony to the LABOR & COMMERCE committee name

committee on SB 508 / WKERS COMP FOR EMT'S bill/subject, dated 4/23/90.

I was unable to stay to provide this testimony in person. It is my understandy that the committee substitute for SB 508 includes language to provide workers Comp. for Volunteer EMT's outside municipalities & who are not otherwise covered. I strongly encourage you to support this addition:

- Alaska's pre-hospital system is primarily composed of Volunteers. people like you & I who give of their time to respond to accidents & injuries.
- The EMS Volunteers not only protect their neighbors, but also respond to all of Alaska tourists
- Should an EMS Volunteer be injured in the course of responding to an accident, they are with out compensation or a way to recover for lost work from their normal 5 day a week job.
- EMS volunteers ~~protect~~ provide the initial medical protection network along our highways & isolated areas, rural & urban, inland waterways & sea coast.
- Without these Volunteers ~~[illegible]~~ we would not have an EMS System.
- Providing this coverage will be seen by our volunteers as a testimony of support & encouragement as well as a motivation to continue to Volunteer.

Signed: CRAIG LEWIS
Testifier

ALASKA EMS ASSOCIATION / INT REG EMS COUNCIL, INC)
Representing (Optional)

1881 MARIKA RD., FBKS 99709
Address

456-3978 FAX 456-3970
Phone No.

SB 514

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

6-2310 H/1
b

DATE: 3/2/90

FURTHER: Finance

Date of 5-Day Notice: 4/5/90
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 4/10/90

Labor & Commerce Committee considered SB 514

"An Act relating to the exemption from regulation by the Alaska Public Utilities Commission of public utilities owned and operated by political subdivisions."

and recommended:

[✓] replace with _____ CS SB 514 (L+C) [✓] same title
[ ] new title

[ ] attached amendment(s)

[ ] _____ letter of intent adopted

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to _____

ATTACHES NEW FISCAL NOTE(S):
Department(s)/Date: Department(s)/Date:

[✓] fiscal note(s) _____
Dept of Commerce 3/6/90
fiscal note for CS forthcoming

[ ] zero fiscal note(s) _____

[ ] appropriation-no fiscal note

[ ] Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:
Do Not Pass

Chair: Signature and Recommendation

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: SB 514
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Relating to the exemption of municipal utilities from APUC
Sponsor: Senate Labor & Commerce
Requestor: Senate Labor & Commerce

Agency Affected: Commerce & Economic Dev.
BRU: APUC
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)	(176.4)
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	(4.0)	(4.0)	(4.0)	(4.0)	(4.0)	(4.0)
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

SEE ATTACHED

Prepared by: T.S. Moninski II, Executive Director
Division: Alaska Public Utilities Commission
Phone: 276-6222
Date: 3/5/90

Approved by Commissioner: Larry Merculieff
Agency: Department of Commerce & Economic Development
Date: 3/6/90

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

6386D-1/3690b

Fiscal Note

ANALYSIS - FISCAL NOTE FOR SB 514

If enacted, SB 514 would operate to immediately deregulate the utilities owned by the Municipality of Anchorage (MOA) which are currently regulated by the APUC. Although only 4 of 119 regulated entities (3.4%), given their size and complexity, the MOA utilities constitute a much larger work load component. Even when factoring out those areas which will continue to be jurisdictional under other sections of AS 42.05 (i.e., certifications, interconnections, wholesale power agreements, access charges, etc.), the APUC estimates that its work load will be decreased by approximately 10% if SB 514 becomes law.

A 10% reduction in the Personal Services line item, commensurate with the anticipated work load decrease, equates to 4.0 FTE positions. The distribution of impact results in staffing reductions per the following probable scenario: 1.5 Utility Financial Analysts; .5 Utility Tariff Analyst; .5 Utility Engineer; .5 Consumer Protection and Information Officer; and 1.0 support position.

6386D/3690b

Patrick M. Rodey
Senator

Alaska State Legislature

3111 C. St., Suite 510
Anchorage, Alaska 99503
(907) 561-7618

During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-3793

Senate

DATE: March 12, 1990

TO : Senator Dick Eliason, ~~Chair~~
Senate Labor & Commerce Committee

FROM: Senator Patrick Rodey Pat

RE : Senate Bill 514 - legislation relating to municipal utilities being exempted from APUC

I respectfully request that the above-mentioned bill be scheduled for a hearing as soon as possible.

If you have any questions, I would welcome discussing the bill with you.

Thank you for your consideration of this request.

Alaska State Legislature

Senate Judiciary Committee

April 3, 1990

MEMORANDUM

TO: Senator Dick Eliason, Chairman
Senate Labor and Commerce Committee

FROM: Senator Jan Faiks

SUBJECT: Senate Bill 514 - "An Act relating to the exemption from regulation by the Alaska Public Utilities Commission of public utilities owned and operated by political subdivisions."

Recently I provided Ms. Peterson with suggested language for inclusion in Senate Bill 514 which is currently in your committee. I would greatly appreciate your consideration of scheduling the bill at your earliest convenience, as well as considering the new language as a proposed committee substitute.

If I can provide you with any additional information, please just let me know.

Thank you.

Post Office Box V • Juneau, Alaska 99811