

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672  
7560 SENATE LABOR & COMMERCE

# Alaska State Legislature

Senator Drue Pearce, Chair  
Senator Virginia Collins, Vice Chair  
Senator Dick Ellason  
Senator Rick Halford  
Senator Jay Kerttula



WHILE IN JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3844

3111 C STREET, SUITE 150  
ANCHORAGE, ALASKA 99504  
(907) 561-2018

## SENATE LABOR AND COMMERCE COMMITTEE

April 25, 1991

Kevin Dougherty, Co-Chair  
Ad Hoc Committee on Workers' Compensation  
2501 Commercial Drive, Suite 140  
Anchorage, AK 99501

Dear Mr. ~~Dougherty~~. *Kevin*

The Senate Labor and Commerce Committee has Senate Bill 219 under consideration. It reflects the Management/Labor Workers' Compensation Ad Hoc Committee's proposals for legislation this session.

The Committee is familiar with the background of the Ad Hoc Committee. We agree that the group can play an important role by doing preliminary work to identify areas of concern and by suggesting alternatives to address deficiencies in the worker's compensation system. We appreciate the need for continued improvement of the system so that it better serves the needs of injured workers at an affordable cost.

However, we cannot agree with the stated belief of the Ad Hoc Committee that the resolution of worker's compensation issues should be removed from the legislative process. The draft legislation submitted to our Committee was developed with little or no public input. There were no public notices of the meetings, to our knowledge. The Ad Hoc group presented us with a bill they considered to be balanced and members have asserted that we should not change any provisions lest we lose the support of the group even though there has been no public input. Quite frankly, we do not plan to perform in that manner.

There is some real concern on the part of the Committee about this bill. First, while no person's integrity has been questioned, two Ad Hoc committee members who represented management have resigned from their positions with the Worker's Compensation Committee of Alaska but not from the Ad Hoc committee. We understand from the WCCA that the resignations were caused by concerns about the proposed legislation. This raises questions about the process and the makeup of the Ad Hoc group.

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(907) 561-2010

## SENATE LABOR AND COMMERCE COMMITTEE

April 25, 1991

Matt Grotskie  
Ad Hoc Committee on Workers' Compensation  
1818 W. Northern Lights Blvd  
Anchorage, AK 99517

Dear Mr. Grotskie: *Mat*

The Senate Labor and Commerce Committee has Senate Bill 219 under consideration. It reflects the Management/Labor Workers' Compensation Ad Hoc Committee's proposals for legislation this session.

The Committee is familiar with the background of the Ad Hoc Committee. We agree that the group can play an important role by doing preliminary work to identify areas of concern and by suggesting alternatives to address deficiencies in the worker's compensation system. We appreciate the need for continued improvement of the system so that it better serves the needs of injured workers at an affordable cost.

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## SENATE LABOR AND COMMERCE COMMITTEE

April 25, 1991

Jeff Wertz  
Ad Hoc Committee on Workers' Compensation  
1818 W. Northern Lights Blvd  
Anchorage, AK 99517

Dear Mr. Wertz: *Jeff*

The Senate Labor and Commerce Committee has Senate Bill 219 under consideration. It reflects the Management/Labor Workers' Compensation Ad Hoc Committee's proposals for legislation this session.

The Committee is familiar with the background of the Ad Hoc Committee. We agree that the group can play an important role by doing preliminary work to identify areas of concern and by suggesting alternatives to address deficiencies in the worker's compensation system. We appreciate the need for continued improvement of the system so that it better serves the needs of injured workers at an affordable cost.

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## SENATE LABOR AND COMMERCE COMMITTEE

April 25, 1991

Steve Boyd  
Ad Hoc Committee on Workers' Compensation  
1818 W. Northern Lights Blvd  
Anchorage, AK 99517

Dear Mr. Boyd: *Steve*

The Senate Labor and Commerce Committee has Senate Bill 219 under consideration. It reflects the Management/Labor Workers' Compensation Ad Hoc Committee's proposals for legislation this session.

The Committee is familiar with the background of the Ad Hoc Committee. We agree that the group can play an important role by doing preliminary work to identify areas of concern and by suggesting alternatives to address deficiencies in the worker's compensation system. We appreciate the need for continued improvement of the system so that it better serves the needs of injured workers at an affordable cost.

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## SENATE LABOR AND COMMERCE COMMITTEE

April 25, 1991

Joe Thomas  
Ad Hoc Committee on Workers' Compensation  
1818 W. Northern Lights Blvd  
Anchorage, AK 99517

Dear Mr. Thomas: *Joe*

The Senate Labor and Commerce Committee has Senate Bill 219 under consideration. It reflects the Management/Labor Workers' Compensation Ad Hoc Committee's proposals for legislation this session.

The Committee is familiar with the background of the Ad Hoc Committee. We agree that the group can play an important role by doing preliminary work to identify areas of concern and by suggesting alternatives to address deficiencies in the worker's compensation system. We appreciate the need for continued improvement of the system so that it better serves the needs of injured workers at an affordable cost.

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April 25, 1991

Drue -

RE: SB 219 Title

Spoke with Nordale. She thinks bill will get killed if title too tight. She suggests -

"An Act relating to workers' compensation and civil liability for workplace safety inspections; and providing for an effective date."

OK

Rod

Drue

4/25

**THE J.R. HEESCH COMPANY**

**PUBLIC RELATIONS • MARKETING • COMMUNICATIONS**

**Jack R. Heesch**  
President

523 W. 8th Avenue                      P.O. Box 201608  
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(907) 279-0478                      FAX (907) 279-8261

Ben Esch  
ATTORNEY AT LAW, P.C.

310 K Street  
Suite 709  
Anchorage, Alaska 99501

April 29, 1991

(907) 272-4475  
FAX: (907) 276-6592

Rod Mourant  
Senate Committee on  
Labor and Commerce  
P. O. Box V  
Juneau, AK 99811

Dear Mr. Mourant:

This letter will be in follow-up to our telephone conversation of April 25 concerning the ramifications of the recent Alaska Supreme Court decision of Lesuer-Johnson v. Rollins-Burdick Hunter. I have taken the liberty of enclosing a copy of that opinion so that you may read it yourself. It held (without any substantial analysis) that a person playing softball for a company-sponsored team, when injured is entitled to workers' compensation coverage. This broad view of coverage adopted by the Supreme Court could result in a substantial impact to my client, the Anchorage Softball Association, thousands of players and other recreational leagues across the state.

The Alaska Workers' Compensation Act is premised on the existence of the employment relationship at the time of the injury. (A.S. 23.30.010 & .020) While I appreciate that the Supreme Court views the coverage of the Act very expansively, I don't believe that it is reasonable for an employer who merely pays a registration fee to potentially incur liability under his compensation policy for any injuries occasioned on the sports field. I believe it is unlikely that the sponsors of teams in church dart leagues, lawyers bowling leagues, even the legislative softball league understand that now any employee who is injured in these sporting events, if the injury occurs while on a company sponsored team, has a valid workers' compensation claim, nor I believe the legislature intended such when it established current Title 23, Chapter 30.

I believe, however, there is a relatively easy solution to this problem which would entail a minor modification to AS 23.30.265. The Workers Compensation Board apparently found the basis for liability predicated upon the definitional section of that statute. That is, they found that the sports injury was incurred because it arose out of and in the course of Lesuer-Johnson's employment. The payment of a league fee made the facility "available" to the employee, and that fee, together with some other factors, demonstrated employer "sanction". I believe

April 29, 1991  
Rod Mourant  
Page 2

that such findings could not occur in the future if Subsection 2 was modified as follows:

"Arising out of and in the course of employment" includes employer-required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer-sanctioned activities at employer-provided facilities; but excludes activities of a personal nature away from employer-provided facilities [.] or voluntary participation in any off-duty recreational, social or athletic activity not constituting part of the employee's work-related duties, except where these activities are a reasonable expectancy of, or expressly or impliedly required by, the employment.

The source of this language is the Cal. Labor Code, § 3600(9) (West 1990). The California Act specifically excludes from coverage the type of injury which gave rise to the recent decision.

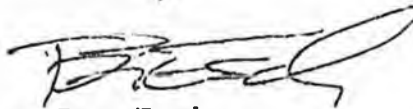
The addition of this language would alleviate the situation which now exists. Notice that there would be no blanket exclusion of these injuries, merely the creation of a presumption that such injuries are excluded unless the injured party can demonstrate that the activity giving rise to the accident is closely related to their work duties. Under the amended statute the decision on coverage would be based on something similar to the four-part analysis which the trial court directed the Workers' Compensation Board to use on remand. This would allow coverage in appropriate cases but would eliminate the presumption of coverage for these injuries which is the current state of the law.

I recognize that there is not a great deal of time remaining in this legislative session; nevertheless, this will be a matter of substantial concern to the Sports Association and its many members here in Anchorage, and will likewise affect recreational sports leagues around the State. I believe it may be very difficult in the future to find employers willing to sponsor teams, because their insurance carriers will adjust rates upwards to offset the added risk. This reduced financial support works to the detriment of the leagues and ultimately, to all of the players. Hopefully, an existing vehicle can be amended to include this proposed change to minimize the impact on these otherwise innocent

April 29, 1991  
Rod Mourant  
Page 3

individuals. Should you have any specific questions, I would appreciate you giving me a call; and to the extent that I or my client can provide any further assistance, please feel free to contact me directly.

Yours,

A handwritten signature in black ink, appearing to read "Ben Esch", with a stylized, cursive flourish.

Ben Esch

BE/cag  
enclosure

Ben Esch  
ATTORNEY AT LAW, P.C.

310 K Street  
Suite 709  
Anchorage, Alaska 99501

(907) 272-4475  
FAX: (907) 276-6592

FACSIMILE TRANSMISSION COVER SHEET

DATE: 4/29

NUMBER OF PAGES INCLUDING

TIME: 10:45

COVER SHEET 4

TO: (Company) ROD MOURANT

(Attention) \_\_\_\_\_

FAX NO.: 463-5352

FROM: BEN ESCH

MESSAGE: \_\_\_\_\_

RE SOFTBALL

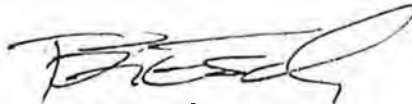
FOR A REPLY -  
OUR FAX NUMBER IS

(907) 276-6592

April 29, 1991  
Rod Mourant  
Page 3

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Ben Esch

BE/cag  
enclosure

MAY 8 1991

**CARR  
GOTTSTEIN** FOODS CO.

LEGAL DEPARTMENT  
Michael Moxness, General Counsel

May 3, 1991

The Honorable Drue Pearce  
Alaska State Senate  
P.O. Box V  
Juneau, Alaska 99811

Re: Workers' Compensation Decision

Dear Senator:

I am sure you are aware of the recent workers' compensation decision in LeSuer-Johnson v Rollins Burdick Hunter. It is now the law that injuries incurred during employer-sanctioned recreational events are covered by workers' compensation benefits.

Carr-Gottstein Foods Co. employs over 2,500 people in Anchorage, Fairbanks, Kenai, Homer, Seward, Valdez, Palmer and Wasilla. At the present, we are sponsoring 12 employee athletic teams around the state. In the coming months, we would have been sponsoring running, hockey and basketball teams, in addition to many special recreational events. We are self-insured for workers' compensation. We cannot risk several hundreds of thousand dollars of exposure each time an enthusiastic amateur team takes the field. Unless there is legislative action reversing the LeSuer decision, we will have to withdraw support from all of these teams and events.

The Workers' Compensation system was designed just after the turn of the century to address the horrible cost of injuries in the factories and mills of the new industrial age. No one ever intended that it cover injuries incurred while playing softball.

We are immensely proud of our employees and hope we can continue assisting them by sponsoring family and community recreational programs. I hope that you will enthusiastically support the proposed legislation exempting recreational activities from the workers' compensation system.

Very truly yours,



Michael Moxness

MM:klb

MAY 10 1991



# ALASKA STATE MEDICAL ASSOCIATION

4107 Laurel Street • Anchorage, Alaska 99508-5334 • (907) 562-2662

May 6, 1991

Senator Drue Pearce  
Senate Labor and Commerce Committee  
P O Box V  
Juneau, Alaska 99811

Dear Senator Pearce,

We have become aware of your proposal to handle SB219 outlined in your April 25 letter.

That seems to be appropriate action at this time regarding the portions of the proposed legislation which deal with physicians. We had shared some of the confusion which you mentioned about the overall process.

If the Alaska State Medical Association can be of any help in providing information about the medical aspects of treatment or evaluation of injured workers, feel free to contact us. We share in your desire for an effective and efficient system to deal with the problems of injured workers.

With regards,

A handwritten signature in cursive script, appearing to read "D G Smith".

Douglas G. Smith, M.D.  
Workers' Comp Council  
Alaska State Medical Association

DGS/js

CC: Rick Urion  
Senator Virginia Collins

# Alaska State Legislature

3111 C Street, Suite 150  
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FAX: (907) 561-4194




During Session:  
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Juneau, Alaska 99811  
(907) 465-4993  
FAX: (907) 463-5352

## Senator Drue Pearce

District G

TO: ALL SENATORS

FROM: Senator Drue Pearce, Chair   
Senate Labor & Commerce Committee

DATE: May 6, 1991

RE: SB 219 - "An Act relating to workers' compensation and civil liability for work place safety inspections; and providing for an effective date."

The Sixteenth Legislature considered SB 508 - relating to workers' compensation in numerous public hearings and committee debate. That bill passed the Senate on a vote of 18 to 2. It later became bogged down in the other House and did not reach the floor for a vote.

Three sections from that legislation are of critical importance to employers and employees and are included in the legislation before us today. Section 2 of CSSB 219(L&C) provides that employers will provide health insurance or the equivalent employer contribution payments to an injured employee for 18 months following a work related injury.

Section 3 allows the Workers' Compensation Board to assess a penalty against an employer who fails to obtain the required insurance coverage. The employer may appeal this penalty to the Commissioner of the Department of Labor and finally to the courts.

Section 4 is based on a court decision in the case of Van Biene v. ERA Helicopter, Inc.. It limits the civil liability of an insurer, insurance agent or a trade association for performing or failing to perform a safety inspection or safety advisory service to acts of intentional misconduct.

Section 5 clarifies existing statute in regard to recreational activities. If an employee participating in a recreational activity that is not a condition of employment is injured, they would not be eligible for workers' compensation.

All of these provisions have the support of the WCCA and the Ad Hoc Committee on Workers' Compensation.

I urge your support for this important legislation.

May 10, 1991

TO: Senator Drue Pearce, Chairperson  
Senate Labor and Commerce Committee

FROM: Nanci Watkins, Personnel Manager  
Spenard Builders Supply

SUBJECT: SB 219

We have just received a copy of SB 219. We have concerns regarding the verbiage in the bill's "little COBRA" medical coverage provisions.

Many employers already extend medical coverage for employees who are disabled as a result of work related injuries. As in our case, Spenard Builders Supply continues coverage for 90 days after the date of disability. Once the ninety days are over the employee is then eligible to self-pay the premiums at 102% of our rate for an additional fifteen months. This meets the provisions of COBRA under federal law.

We believe this to be a fair benefit for our employees as the majority who are injured, whether work related or not, return to work well before the 90 days are up. This relieves us of considerable administration costs in taking an employee off the regular plan, adding them to the COBRA plan, then re-enrolling in upon return to work. Additionally, should the employee require COBRA coverage the three months of employer provided benefit is credited to the eighteen month extended coverage provision under COBRA.

As SB 219 is written, it is not consistent with federal regulations under COBRA and would cause considerable confusion, litigation and expense to administer. We believe this should be re-written for consistency to allow some ease of administration even though it adds to the continually spiralling medical insurance costs which are ultimately absorbed by employees as well as the employers. This would require consistent time-lines for notification of benefit, current plan modifications, application for coverage and payment of premiums as well as exclusions such as dual coverages and the cessation of plan agreements.

# STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

## DEPARTMENT OF LABOR

### OFFICE OF THE COMMISSIONER

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

FAX: (907) 465-2784

May 10, 1991

The Honorable Dave Donley  
House of Representatives  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Representative Donley:

Thank you for the opportunity to review your proposed amendments to Senate Bill 219. We are supportive of efforts to clarify and provide cost-effective enhancements to worker protection programs. We feel SB 219, together with the proposed amendments, meet these criteria. Following are comments on the more significant provisions.

As I have discussed with Becky Bear of your staff, the Department is particularly supportive of the amendments dealing with confidentiality of workers' compensation medical records and the notification requirements with respect to frivolous contraversions. I certainly agree that access to the medical records of injured workers should be restricted to the parties; and clarification of the notification requirements when frivolous contraversions occur will provide opportunity for timely remedial action.

With regard to the proposed reporting provisions, the information required is consistent with that needed to properly and fully evaluate and analyze workers' compensation systems. Accordingly, I am in philosophical agreement with the proposal. However, I do have some concerns with the January 1, 1992 timeline inasmuch as we do not have the automated systems in place at this time to generate all of the data needed to formulate the reports.

I understand you have reconsidered the draft amendments dealing with willful, serious, and repeat safety violations which result in injury to an employee and the amendment dealing with the negotiability of checks. Accordingly, I am not commenting on them at this time.

The Honorable Dave Donley -2-

May 10, 1991

Your proposed amendments would not have a fiscal impact on the Department. Accordingly, our zero fiscal note would not change.

I appreciate the opportunity to review and comment on your proposals.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Nancy Bear Usera".

Nancy Bear Usera  
Commissioner

NBU:kh

## SECTIONAL ANALYSIS OF HCSSB 219 (JUDICIARY)

### SECTION 1

- (a) Describes the purpose of Section 11 which is to resolve the policy question of the liability of insurers for the performance of safety inspections
- (b) Describes the purpose of Section 14 which is to include prior temporary total disability payments within the definition of gross wages
- (c) Describes the purpose of Section 15 which is to clarify that medical stability results when measurable improvement or deterioration is not expected from further medical treatment

### SECTION 2

Provides for payment of compensation to an employee eligible for reemployment benefits and establishes the type of compensation to be paid. Limits the benefits related to the reemployment plan to two years.

### SECTION 3

Provides that when a person is assigned to provide medical management services they have to notify the employee as to who they work for and the extent of the services they would provide.

### SECTION 4

Provides that an injured employee shall receive continued coverage under their

existing coverage if it had been provided on the job at the time of injury

- SECTION 5 Establishes a civil penalty that the board may impose if the employer fails to obtain the required worker's compensation insurance
- SECTION 6 Provides the parameters of employer financial responsibility for out of state medical evaluation and depositions
- SECTION 7 Provides that an injured worker's personal medical records are not public information
- SECTION 8 If the Board determines that the employee's injury resulted from the employers violation of occupational safety or health guidelines the violation shall be reported to the Division of Labor Standards and Safety
- SECTION 9 Provides that the division of worker's compensation shall report frivolous and unfair controversions to the Division of Insurance for investigation under the unfair claims settlement act.
- SECTION 10 Provides that compensation due an employee shall be in a form that the employee may negotiate within three business days
- SECTION 11 Resolves the policy question of the liability of insurers for the performance of safety inspections
- SECTION 12 Provides that a volunteer emergency technician who is injured in the course of the performance of his/her job is considered an employee of the State for the purpose of determining worker's compensation

- SECTION 13 Clears up the issue of employer liability for employee participation in after-hours sports activities
- SECTION 14 Includes prior temporary total disability payments within the definition of gross wages
- SECTION 15 Clarifies that medical stability results when measurable improvement or deterioration is not expected from further medical treatment
- SECTION 16 Defines volunteer emergency technician
- SECTION 17 Requires the Division of Insurance to prepare a report on the feasibility of implementing a contracting classification premium adjustment program to provide premium credits for employers who purchase workers' compensation insurance
- SECTION 18 Requires the Division of Workers' Compensation to prepare a report that looks at ways to cut costs for workers' compensation and increase workplace safety
- SECTION 19 Immediate effective date

DD/bb  
May 18, 1991

Alaska State Legislature  
HOUSE OF REPRESENTATIVES  
*Office of the Chief Clerk*

MESSAGE TO THE SENATE

May 19, 1991

Mr. President:

The House has passed CS FOR SENATE BILL NO. 219 (L&C) with the following amendment:

HOUSE CS FOR CS FOR SENATE BILL NO. 219 (JUDICIARY) am H  
"An Act relating to workers' compensation and civil liability  
for workplace safety inspections.

and it is transmitted for consideration.

*Concur 2*

*CFN*

*Concur Sen. Elvira  
Wesley  
Zhang  
Blaine*

*Dustin Gray*  
CHIEF CLERK OF THE HOUSE

**DIVISION OF LEGAL SERVICES**

**LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

**MEMORANDUM**

May 19, 1991

**SUBJECT:** Workers' compensation - (HCS CSSB 219(Jud))

**TO:** Representative Max Gruenberg

**FROM:** Michael F. Ford *m.f.*  
Legislative Counsel

The attached amendment would correct the problem caused by adoption of the amendment to the amendment offered by Representative Kubina, described on pages 1594 and 1595 of the House Journal, dated May 18, 1991. I believe that the intention of the amendment to the amendment was to replace the language of the first amendment with the attached language. If this was in fact the intention of Representative Kubina, then the problem can be solved by correcting the House Journal to reflect this intention. This will of course require that the body accept the Journal correction.

Please contact me if you have further questions.

MFF:gc  
91-265.glc

Attachment

A M E N D M E N T

OFFERED IN THE HOUSE

Amendment to Amendment No. 1 to HCS CSSB 219 (JUDICIARY)

Delete all material in Amendment No. 1.

Insert "Page 6, line 15, after 'determination',:

Insert 'or the gross weekly earnings paid to the person in the person's regular full-time employment, whichever is greater,' "



Real - reaction from  
Virginia? we  
need to answer.

SHELBY L. NUENKE-DAVISON  
BRUCE E. DAVISON, P.E.\*

May 20, 1991

Senator Drue Pearce  
P.O. Box V  
Juneau, AK 99811

Post-It™ brand fax transmittal memo 7871		# of pages	2
To	Senator Drue Pearce	From	Shelby Davison
Co.		Co.	
Dept.		Phone #	276 6555
Fax #	463-5352	Fax #	276 7873

\*MEMBER OF  
ALASKA AND  
WASHINGTON  
STATE BAR

Re: Senate Bill 219 as amended by the House Judiciary Committee

Dear Senator Pearce:

I am a workers' compensation defense attorney and have been practicing in this area over the last eight years. Because you are a senator in my district, (I live at 7155 Lowell Circle, Anchorage, Alaska 99502 which is in Tanaina Valley Sub-Division) and the original sponsor of SB 219, I am writing to you at this time to express my grave concerns over this bill being passed with the amendments made by the Judiciary Committee.

The amendments added in by the judiciary committee under section 10, AS 23.30.155(o) and section 19 will have a serious impact on businesses in the State of Alaska, and will give an enormous amount of power to the Workers' Compensation Division. Furthermore, additional staff will probably be required to implement sections 10 and 19 and thus, I wonder if a fiscal note should be attached to these sections.

Before the recent amendment made by Representative Donley to AS 23.30.155(o) this section was being utilized by the Division of Workers' Compensation as a vehicle to go through old and closed workers' compensation files to look for any controversions that may have been filed at some date and time throughout the life of the claim, for a determination as to whether any controversions were frivolous or unreasonable. This was true, notwithstanding the fact that the claimant may have received all benefits due and owed to him. Thus, the adjuster was forced to defend his or her controversion because not to do so would have resulted in that controversion being referred to the Division of Insurance under the allegations of the controversion being frivolous or unreasonable. This could place an insurance adjusters license on the line<sup>1</sup>. Prior to the new amendments, the Division of Workers' Compensation, after making a preliminary determination, at least provided to the adjuster a "hearing" as .155(o) as previously written provided for a "Board" determination of a frivolous or unreasonable controversion.

The new amendments to .155(o) has the potential of allowing the Division of Workers' Compensation to conduct a witch hunt against

1 I was involved in five of the claims that were pursued by the Division of Workers' Compensation.

various adjusters against whom they may have personal vendettas, by deeming the controversions on a file frivolous or unfair and reporting them to the Division of insurance without providing them a hearing. Because the new amendments to .155(o) allow a determination to be made that a controversion is frivolous or unfair without affording the adjuster an opportunity to be heard could potentially result in a deprivation of a property interest (i.e. a license) without the right to due process of law. Therefore, it is my opinion that section .155(o) as amended is unconstitutional. Notwithstanding the unconstitutionality of this statute, the impact of this provision on employers in the State of Alaska is simply going to be that more questionable workers' compensation claims and/or medical bills will be picked up and paid because the insurance adjuster is not going to risk that some Division member may come in at some later date and deem what they have done to be frivolous or unreasonable. Thus, a lot more questionable workers' compensation claims and/or medical bills will be paid that shouldn't and that of course will ultimately impact insurance premiums.

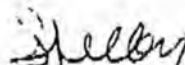
Section 19 is mandating that the Division of Workers' Compensation report to the legislature by 1-1-92 on a list of issues that not only will take an enormous amount of time and state resources but are issues that are primarily one-sided on the behalf of claimants. This is contrary to the administrative goal of reducing the bureaucracy.

Secondly, the report favors employees. Shouldn't the division of workers' compensation also report on fraudulent "frivolous" or "unreasonable" applications made by claimants for workers' compensation benefits and the impact of these fraudulent or frivolous claims on employers, insurance premiums, and ultimately the consumer!

I strongly urge you to vote "NO" on Senate Bill 219, as amended by the house judiciary committee or do whatever you can to delete these provisions. If you want to call me for more specifics on this, please do so.

Sincerely,

DAVISON & DAVISON

  
Shelby L. Nuenke-Davison  
Attorney at Law

SLND/ger/s0065  
cc: Office of the Governor\  
Attention: Laurie Nottingham  
Senator Virginia Collins  
Senator Rick Uhleing

VIA FACSIMILE

DAVISON & DAVISON

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D ELIZABETH CUADRA  
MARY A NORDALE  
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ADMITTED IN WASHINGTON D.C.  
AND ALASKA

ADMITTED IN VIRGINIA \*\*  
WASHINGTON D.C. AND ALASKA

ALL OTHERS ADMITTED  
IN ALASKA

May 30, 1991

Hon. Walter J. Hickel  
Governor of Alaska  
P. O. Box A  
Juneau, Alaska 99811

Re: Requested Veto of S. B. 219

Dear Governor Hickel:

I represent the American Insurance Association, an umbrella industry group comprised of insurance companies primarily engaged in writing property and casualty insurance. The members of the group in the aggregate represent approximately 38 percent of the Alaska workers' compensation insurance market. Because of that market participation, AIA followed the progress of Senate Bill 219 with great interest. I write to urge that you veto the bill.

The impetus behind SB 219 was the desire on the part of employers and insurers to overrule the holding of the Alaska Supreme Court in Van Biene v. Era Helicopters, Inc., 779 P.2d 315 (1989), in which the Court ruled that an injured worker may have a cause of action against his employer's workers' compensation insurer for a negligently performed safety inspection. Prior to that decision, it was generally understood that the exclusivity of remedy available to the employer was also available to the insurer because the condition giving rise to the worker's injuries was under the exclusive control of the employer. Because of Van Biene some insurers have ceased conducting safety inspections and premium rates could rise if the safety inspections in connection with the employers' risk management programs are not resumed.

As you know, workers' compensation is a strict liability program. All the worker needs to do is to show that his injury was work related in order to receive benefits. Findings of fault,

Hon. Walter J. Hickel  
May 30, 1991  
Page 2

either with respect to the employer or to the employee, are irrelevant. Because of this fact, insurers generally do not take active roles in the formulation of program benefits, except to advise employers and others of the probable costs to incorporate certain benefits in the program. Once management and labor have agreed upon the benefits to be made available, the insurers price the agreement and establish rates.

In Alaska, management has been represented by the WCCA, the Workers Compensation Committee of Alaska, and labor has been represented by various unions. Over the last few years, labor and management have formed the so-called Ad Hoc Committee to negotiate workers' compensation changes and the Ad Hoc Committee has submitted those negotiated changes to the Legislature for enactment. That process of negotiation produced SB 219 as originally introduced in the Senate on March 20, 1991, by the Senate Labor & Commerce Committee. Hearings were held almost immediately, before most of the affected employers had an opportunity to analyze the bill, and, therefore, most of the support by employers was generated by the urgency of a remedy of the Van Biene problem. The Senate Labor and Commerce Committee perceived some serious drafting and economic problems with the Ad Hoc Committee's proposal, so when the bill was reported out, it was stripped of a number of the original provisions and contained only six sections:

Section 1 stated the legislative intent of Sec. 4 to provide that insurers would not be liable for providing or failing to provide safety inspections. The exact language of Sec. 4 was:

A carrier, an insurance service agent to a self-insured employer, or a trade association is not liable for civil damages as a result of an act or omission in performing or failing to perform a workplace safety inspection or a safety advisory service unless the carrier's, agent's, or association's act or failure constitutes intentional misconduct.

While the language was not satisfactory to the American Insurance Association, the language was tolerable to some Alaska domestic carriers. However, what emerged in the bill as passed and now before you is the following language:

Sec. 11....A carrier, an insurance service agent to a self-insured employer, or a trade association is not liable for civil damages as a result of an act or omission in performing or failing to perform a

workplace safety inspection or a safety advisory service unless the carrier's, agent's, or association's act or failure to act constitutes reckless or intentional misconduct.

It is the opinion of AIA as an industry group and those of its constituent members, principally Industrial Indemnity and Firemen's Fund, that the quoted language, especially with the inclusion of "reckless or", codifies third-party actions in workers' compensation cases and will generate litigation between claimants and their employers' insurance carriers in most, if not all, instances of workplace injuries. This codification of third-party actions is believed to have several possible consequences: 1) limited assistance to employers in their risk management programs, probably requiring employers to contract for safety inspections and advisory services, now furnished without charge by insurers; 2) limited participation in the market, reducing availability; 3) ultimately increased premiums because of the need for insurers to recover in premiums funds with which to litigate these third-party claims; 4) potential increase in workplace injuries because of the lack of skilled services for risk management; 5) increased costs to the court system because of the increased numbers of cases filed.

The language of Sec. 11 places an insurer at risk if a safety inspection is performed or if the insurer refuses to perform an inspection, a kind of "damned if you, damned if you don't" situation. Alaska represents approximately one-third of one percent of the national market for workers' compensation insurance. Large carriers may not be willing to remain in the Alaska market because of the exposure to risk Sec. 11 offers. Withdrawal of some carriers from the Alaska market may mean that workers' compensation insurance becomes unavailable to some employers, with the result that some employers will be unable to continue their businesses.

When the bill was considered in the House, both in the House Labor & Commerce and Judiciary Committees, requests for fiscal notes and economic analyses were ignored.

Section 2 of the Senate version retained the language recommended by the Ad Hoc Committee to require continuation of the employer's health benefit program for the benefit of injured workers' dependents for a period of 18 months and it also appears as Section 4 of the bill as passed. If found constitutional, the provision will result in an increase in workers' compensation premiums from two to five percent. During the course of hearings in the House, the case of New Jersey Business & Industry Association v. State of New Jersey, 1991 WL 56059, April 1, 1991,

was brought to the attention of the committee, in which the New Jersey court had found that a similar provision in New Jersey's code violated the U.S. Constitution, holding that 29 U.S.C. 1003 preempted state law with respect to employer benefit plans, with narrow exceptions. Litigation on this issue is also going forward in the District of Columbia and may have been commenced in several of the other states that have incorporated this type of provision in their worker compensation codes.

An opinion from the Attorney General should be obtained as to the constitutionality of Sec. 4 before the cost of providing such continued coverage is imposed on employers.

In addition to imposing increased costs, Sec. 4 creates two classes of workers' compensation claimants. Is this wise within the context of workers' compensation? If it is the intent that all workers have continued health benefits, a broad-based program of health insurance is the answer so that discrimination is not built into the system.

Section 3 of the Senate version appears as Section 5 of the passed version, and there appears to be no objection. Section 3, or 5 as the case may be, would authorize the Board to impose a civil penalty on employers who fail to provide workers' compensation insurance, in addition to the criminal sanctions already in law.

Section 4 of the Senate version contained the so-called Van Biene language quoted earlier.

Section 6 of the Senate version was designed to overturn the holding of the Alaska Supreme Court in LeSuer-Johnson v. Rollins-Burdick Hunter of Alaska et al., No. 3681, April 12, 1991, which held that an employer could be liable for workers' compensation for injuries incurred in employer-sponsored recreational activities, and the language of the Senate version was as follows:

(2) "arising out of and in the course of employment"...excludes recreational activities sponsored by the employer, unless participation is required as a condition of employment...

The same problem is addressed in the passed version in Section 13, but the language is significantly different:

(2) "arising out of and in the course of employment"...excludes recreational activities

sponsored by the employer that are performed at nonremote facilities not owned or leased by the employer, unless participation is required as a condition of employment...

Remote job-site employers would remain liable for injuries incurred in recreational activities if they are "employer-sanctioned" at "employer-provided facilities." Questions arise as to the meaning of "nonremote." Would that include intra- or inter-company tournaments at locations remote to the normal workplace or softball field? The use of the word "nonremote" incorporates a great deal of ambiguity into the section and, undoubtedly, will provoke a great deal of litigation. The Court's decision has already resulted in a significant cessation of employer-sponsored sports.

The last section, Section 6, of the Senate version provided for an immediate effective date.

In contrast to the leanness of the Senate version, the version as passed incorporated a number of provisions, some sponsored by the Ad Hoc Committee and some which did not appear in the final committee substitute until the bill was presented on the floor of the House for final passage. Several of the House Judiciary additions are designed specifically to assist lawyers, not claimants. Among the provisions which were included at the last minute are the following:

1. Section 2 of the passed version requires employers to continue to pay benefits during the period of controversion or appeal. No provision is made for recovery of those costs if the controversion is upheld or the employer wins on appeal. This section was included in the Ad Hoc Committee's version, but the Ad Hoc Committee never furnished estimates of the actual cost of its recommendation to employers, and it was objected to as adding significant cost. It was omitted from the Senate bill for that reason so no one knew what the cost might be, just that it would be considerable.

2. Section 3 of the passed version would require persons performing medical management to notify the employee, employer and the employee's physician of those persons' employment and the scope of services they are to perform. The Ad Hoc Committee recommended this provision, but no one else knows why and no satisfactory explanation of the benefit of this added paperwork was given. It merely adds to the expense of administration of the employer's program.

3. Section 6 requires an employer to furnish transportation and per diem to an employee for examination by the employer's physician and transportation and per diem for an attendant if recommended by the employee's physician. Section 6 also requires the employer to furnish transportation and per diem to the employee for one trip if the deposition of the employer's physician is to be taken.

This section was vigorously objected to by employer representatives, but they were given little opportunity to voice their objections to the House Judiciary Committee. Section 6 became known as the family Hawaii vacation provision. Employers already have to pay transportation and per diem to claimants in excess of sums allowed by IRS when requiring them to be examined by the employer's physician. To impose greater costs when only "recommended" but not certified by a physician as "necessary" will increase the costs to employers for exercising their rights of controversion and examination for no discernible benefit. Moreover, there appears no reason why a claimant should be furnished with transportation and per diem simply to attend the deposition of the employer's physician. The claimant can recover costs of pursuing his claim, if successful, but this provision offers no opportunity for cost recovery by the employer if the employer is successful.

4. Section 7 of the passed version requires that medical records held by the board be confidential and not subject to public inspection. In a civil action involving an injury, the injured plaintiff can be required to produce all medical records for inspection by the defendant. The language of Section 7 appears to require that an employer seek a court order in order to review all of the medical records of an injured worker. This double standard makes no sense, especially in view of the fact that workers' compensation is a no-fault, strict liability program, and the provision may be unconstitutional. By requiring an employer to obtain a court order in order to inspect the medical records of a claimant, the cost of controversion and litigation are significantly increased. It increases attorney work, but does not appear to be of a like benefit to the claimant. The constitutionality of the dual system of access to evidence should be the subject of an opinion of the Attorney General.

5. Section 8 of the passed version provides that if the board should decide that the claimant's injury arose from "wilful, serious, and repeated violation" of federal and state occupational safety and health guidelines, the board shall report "the violation" to the Division of Labor Standards and Safety. No provision is made for an evidentiary hearing. Presumably, the

ambiguities in this provision could be cured by regulations, but because the section contains no standards of interpretation, litigation is likely to be significant and expensive.

6. Section 9 requires the Division of Workers' Compensation to notify the Division of Insurance if it determines that an employer's insurer or an adjuster for a self-insured employer files an "apparently frivolous or unfair" controversy. This notice is required even if the claimant does not dispute the controversy or the claimant does dispute the controversy, the controversy is upheld and no compensation is awarded to the claimant. This provision does not require a finding of fact by the board, but would allow the Division of Workers' Compensation to exercise unfettered and subjective discretion.

7. Section 10 requires that compensation be paid by negotiable instrument "that can be cashed" within three business days of issuance. This may be an impossible standard and conflicts with the UCC provisions relating to clearing of instruments. It can also provoke litigation over loss of use of proceeds, interest and other damages because a claimant did not present his check at the issuing bank.

8. Section 14 includes in "gross earnings" any deferred wages and temporary disability compensation. Under existing law, benefits are based on the worker's pre-injury earnings and are calculated by adding wages received in the preceding two years and dividing by 100. Section 14 would raise the net workers' compensation benefits for claimants with prior work-related disability, and it may be compounded by the intent expressed in Section 1 of the bill relating to the 1980 amendments. If the effect of this intent language is an interpretation that the 1980 law has always included temporary disability benefits in the definition of wages, it would retroactively increase benefits on old claims. Insurers did not establish rates under policies in effect over that time and will not be able to recover in future rates for this retroactive change in the law.

The Attorney General should be asked for an opinion as to the constitutionality of Sec. 14 because of its potential retroactivity and its impairment of contracts of insurance.

The Division of Insurance was not asked for and, consequently, did not furnish to the House Judiciary Committee any information on the effect upon rates and premiums. Although people made an effort to have the House Judiciary Committee respond to their questions regarding costs, their efforts were unsuccessful.

Hon. Walter J. Hickel  
May 30, 1991  
Page 8

9. Section 15 amends the definition of "medical stability." Under existing law a disability is no longer "temporary" when the claimant reaches medical stability, that is, when improvement in his condition is not reasonably expected. Section 15 would define "medical stability" as the condition of the claimant when neither improvement nor deterioration is reasonably expected. By including "deterioration" in the definition, the period of temporary disability is prolonged, with no offsetting reduction in eventual permanent disability compensation. Section 15 would raise temporary disability costs and will encourage more litigation over the existence of permanency, in effect overturning the reforms enacted in 1988.

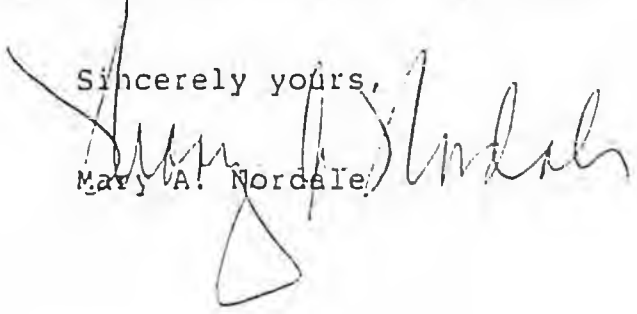
Section 15 was an Ad Hoc Committee proposal but, again, when asked for an explanation of costs, the Committee failed to produce them and, for that reason, the section was omitted in the Senate version. By the time the House Judiciary Committee version emerged, May 18, it was too late for most employers to present testimony as to the economic impact of the bill. In fact, on at least one occasion, and there are rumors of more, members of the House Judiciary Committee held secret and exclusive "negotiations" with less than a handful of lobbyists who were not representative of the employer community in Alaska.

Section 18 requires the Division of Workers' Compensation to report to the Legislature no later than January 1, 1992, on matters relating to attorneys representing claimants and employers, particularly emphasizing whether or not attorneys for employers should have their fees reduced.

SB 219 is a flawed and dangerous bill. If allowed to become law, many of the provisions will cause severe hardship to employers and the likelihood of obtaining remedies in subsequent sessions of the Legislature is remote, at best. Although overturning of the Van Biene decision is crucial to the continuation of adequate workplace safety programs, one more year will not cause the hardship that incorporating the language of SB 219 would impose. Overturning Van Biene should not, therefore, be used as a reason for allowing the other, highly objectionable portions of the bill to become law.

Your favorable consideration of vetoing the bill is urgently sought.

Sincerely yours,

  
Mary A. Nordale



MELISSA

SHELBY L. NUENKE-DAVISON  
BRUCE E. DAVISON, P.E.\*

\*LICENSED IN  
ALASKA AND  
WASHINGTON

Arliss Sturgulewski  
STURGULEWSKI/CAMPBELL HEADQUARTERS  
2505 Barrow  
Anchorage, AK 99503

Dear Arliss:

I know you are very busy with your campaign at this time, but I thought I would send you this information to inform you of the problems at the Workers' Compensation Board. Please call me at your earliest convenience so that we can discuss this further.

Thank you.

Sincerely,

DAVISON & DAVISON

*Shelby L. Nuenke-Davison*  
Shelby L. Nuenke-Davison  
Attorney at Law

SLND/ger.s0009  
Enclosure

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892



October 3, 1990

Alaska Workers' Compensation Board  
Division of Workers' Compensation  
P.O. Box 107019  
Anchorage, Alaska 99510-7019

Dear Board Member:

I am writing to express my concern over recent Board decisions interpreting AS 23.30.155(o), a provision relating to unfair or frivolous controversions that was added by the House Labor and Commerce Committee during our deliberations on the 1988 Alaska Workers' Compensation Reform Act.

Specifically, I am referring to the boards ruling in both Cress and Tofson, that so narrowly and incorrectly interprets AS 23.30.155(o) as to render the section inoperative. Worse, the precedent set by the ruling may result in restricting actions the Division had taken previously to enactment of 155(o) to discourage frivolous or unfair controversions.

AS 23.30.155(o) states:

(o) The board shall promptly notify the division of insurance if the board determines that the employer's insurer has frivolously or unfairly controverted compensation due under this chapter. After receiving notice from the board, the division of insurance shall determine if the insurer has committed an unfair claim settlement practice under AS 21.36.125.

In enacting 155(o), it was the legislatures intent to discourage controversions, specifically those that were unfair or frivolous. The reasons are obvious. Such controversions harm injured employees, waste everyone's time, and greatly and unnecessarily add to the cost of the system.

We were aware that Division staff routinely "watchdogged" insurers for these practices. However, we sought to address several problems by enacting 155(0): to protect staff and the Board by specifically granting them statutory authority to do what they were already doing, to encourage

them to do more, and to implement a reporting procedure to assure that the Division of Insurance was informed.

I understand that the hearing officers and the two board members who rendered a decision in Cress and Tofson these cases were laboring under a tremendous disadvantage. It was the first time the board had considered application of 155(o). Further, the two board members involved were not part of the development of the 1988 Reform Act and were not privy to the public testimony that guided the legislature in adopting 155(o). Finally, the board did not have the advantage of legal counsel to counter the arguments presented by counsel to the carriers and were therefore left to render a decision without having all the facts before them.

Because of the latter, I'd like to commend the board for making a determination that 155(o) applied to self insurers as well as other carriers. That was clearly the intent of the legislature and the board was able to determine that in spite of legal arguments by counsel to the contrary.

However, due to the disadvantages listed above, in Cress and Tofson, the Board apparently agreed with counsel to the carriers that:

- \* The "threshold issue" was whether compensation was due. This is in fact not an issue at all, only a function of boiler plate legal language. The "compensation due" language in 155(o) simply recognizes that a controversion can only occur when a worker has applied for some benefit that may be due them under the system. The true "threshold issue" under 155(o) is whether a controversion was frivolous or unfair.
- \* That a controversion is not frivolous or unfair if there is any basis for it even if the actual basis is not clearly stated in the controversion notice or if the carrier amends a frivolous controversion notice at a later date by providing a valid reason . This interpretation essentially renders 115(o) inoperable. Section 115(o) requires insurers to make reasoned, valid controversions under threat of sanctions by the Division of Insurance for failure to do so. Under Cress and Tofson by disincentive for unfair or frivolous controversions is removed.
- \* That 155(o) applies only to cases which get before the board for other reasons. As stated above, in adopting 155(o) the legislature intended to augment what the division staff and board were already doing, not

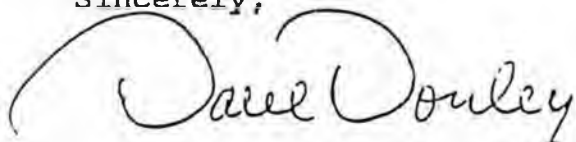
restrict their consideration of frivolous or unfair controversions to the five percent of the cases that come before the board for other reasons.

The arguments set forth in Cross and Tofson regarding 115(o) must not stand unchallenged. The purpose of this letter is to assist the board in reevaluating the implementation of 115(o) so that future cases can be considered with full information at hand and without the taint of the precedent set in these cases.

In closing let me add that I find it hard to understand how counsel for the carriers could present the arguments they did with a straight face. These arguments deliberately misinterpret the scope and intent of 115(o). The legislature simply did not anticipate any problem with 115(o) because we felt the language was clear and unambiguous. Further, counsel was aware of the reasons the legislature adopted 115(o) because they, unlike the board members, participated in the public hearing process and legislative deliberations that led to implementation of the Reform Act.

In short, the board was misled by specious arguments designed to undermine a sound public policy provision that will help to reduce frivolous and unfair controversions and significantly decrease the cost of the workers' compensation system. I urge you to take whatever steps are necessary to implement 115(o) as written and as intended by the legislature.

Sincerely,



Representative Dave Donley, Chair  
House Labor and Commerce Committee

Enclosure

cc: Commissioner Jim Sampson, Department of Labor  
Shari Kochman, Division of Workers' Compensation  
Dave Walsh, Division of Insurance

dd/gb

a:155(o)

# HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892



September 14, 1990

Jan Hansen, Chief of Adjudications  
Division of Workers' Compensation  
P.O. Box 107019  
Anchorage, Alaska 99510

Dear Ms. Hansen:

I am writing to request an update on how certain consumer protection provisions of the 1988 Workers' Compensation Reform Act are working.

Specifically, I'm interested in AS 23.30.155(o) and other provisions dealing with unfair or frivolous controversions by insurance carriers. As you know, the intent of sections such as AS 23.30.255(o) was that they be interpreted in the broadest sense to augment the efforts of the Division staff and the Board to keep the Division of Insurance informed about actions by carriers.

Testimony before the legislature prior to adoption of the Act indicated that some carriers were routinely controverting claims, frivolously denying workers medical coverage, and may be using provisions under the law to harass injured workers by requiring them to submit to unnecessary procedures and testing in order to discourage them from pursuing a rightful claim.

Since only the Division of Insurance can initiate action against an insurance carrier for these kinds of practices, it was necessary to assure that they were informed when such practices occur by the people most likely to be aware of them - the Division of Workers' Compensation staff and the Board. Hence the inclusion of specific provisions requiring reports to the Division of Insurance.

In adopting these provisions it was the intent of the legislature that they be interpreted in the broadest possible sense. We were aware that Division staff did "watchdog" carriers for these practices. However, we were concerned that their efforts were hampered by the lack of specific statutory authority to do so. Further we were concerned that the Board may not be adequately informed about what the staff knew since no reporting mechanism was

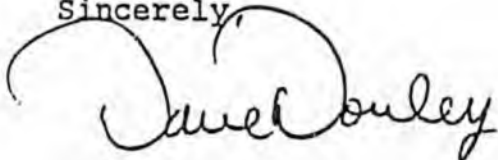
in place and that the Division ultimately responsible for enforcing fair settlement practices would not get the information they needed to do their job as a result.

By mandating reporting requirements, we sought to augment current staff efforts and to protect both the Board and the staff by placing them under a statutory requirement so they could not be accused of overstepping their authority. Personally, I remain concerned that we may not have chosen the right words to get that message across.

Specifically, I'd like to know how the Board has interpreted these provisions, how staff practices have been effected that that interpretation, whether the statutory change is working the way we intended and, if not, what we should do to clarify the language.

Your timely response to this inquiry will be much appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Dave Donley". The signature is written in dark ink and is positioned below the word "Sincerely,".

Representative Dave Donley, Chair  
House Labor and Commerce Committee

cc: Jim Sampson, Department of Labor  
Dave Walsh, Division of Insurance

dd/gb  
a:hansen

# STATE OF ALASKA

## DEPARTMENT OF LABOR

### WORKERS' COMPENSATION DIVISION

6 see me  
STEVE COWPER, GOVERNOR

3301 EAGLE STREET  
P.O. BOX 107019  
ANCHORAGE, ALASKA 99510-7019  
PHONE: (907) 264 2424

September 21, 1990

Representative Dave Donley, Chair  
House Labor and Commerce Committee  
P.O. Box Y  
Juneau, AK 99811

RE: AS 23.30.155(o)

Dear Representative Donley:

Thank you for your September 14, 1990, letter requesting information about the application of AS 23.30.155(o).

Since you also specifically requested how the board has interpreted the statute, the effect of staff practices, whether the statute is working according to the intent you set out in your letter, and whether statutory language needs to be clarified, I think that I can best update you by providing a series of documents which I will index and comment upon in this letter.

In late 1989 the Workers' Compensation Division (Division) finally got to AS 23.30.155(o) and began to work on procedures. By about February or March of 1990 the staff began to apply its procedures as set out in ATTACHMENT #1. The board and some Division employees had already questioned subsection 155(o) violations in a few letters and decisions before then, but no formal action or referrals had been made. At the board's meeting in April 1990, I reported the procedures the Division had worked out to deal with subsection 155(o) and asked the board if it wanted to write any regulations dealing with subsection 155(o). The board instructed the Division to implement the procedures, and then, after some experience in the implementation, report the outcome at a future board meeting so it could determine if regulations were needed.

Following the board meeting, I instructed my staff to implement the procedures in earnest. ATTACHMENT #2, a May 18, 1990 letter from attorney Shelby Nuenke-Davison representing an adjuster, and ATTACHMENT #3, my June 11, 1990 response to Davison, indicate the types of arguments being raised against subsection 155(o), our application of it, and the Division's understanding of the purpose of subsection 155(o).

The staff pushed two cases involving controversions believed to be patently frivolous under anyone's interpretation of the word

LETTER TO REPRESENTATIVE DAVE DONLEY (CONT.)  
RE: AS 23.30.155(o)  
SEPTEMBER 21, 1990

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to hearing before the board on June 1, 1990. As a result of those two hearings the board issued ATTACHMENT #4, Cress v. State of Alaska, AWCB No. 900147 (June 29, 1990), and ATTACHMENT #5, Tofson v. Doggie Motel, AWCB No. 900152 (July 11, 1990). I have commented upon the various board findings and conclusions at length in ATTACHMENT #6, a July 20, 1990 memo from me to my staff regarding AS 23.30.155(o), the board's interpretation of it in Cress and Tofson, and how I think it should be applied in several cases.

For the purpose of getting to what I think you are most concerned about, I will mention three of the board's interpretations here.

(1) In both Cress and Tofson, the board concluded that based on the "compensation due" language in subsection 155(o), the threshold question in any frivolous/unfair controversion inquiry must be whether compensation was due, with "due" meaning actually payable, at the time the controversion was filed. I admit that I didn't see that interpretation coming. The result is that adjusters can file truly outrageous controversions with impunity as long as compensation is not payable at the time. (For some examples, see ATTACHMENT #6 at pages 5-7.) The Division is planning to get some more cases before the board next month in the hope of getting a different panel to reverse that interpretation. If the board does not reverse that interpretation, there will be few cases that can be referred to the Division of Insurance (DOI), no matter how ridiculous the controversion.

(2) In Cress the board did interpret the word "compensation" expansively to include not only time loss payments but medical benefits as well.

(3) In Cress the board also decided that subsection 155(o) should apply to adjusters handling cases for self-insured employers as well.

ATTACHMENTS #7 AND #8 set forth my ideas about what I think is or might be frivolous or unfair in various case settings. The purpose of these memos was to provide some guidance and education to the staff in preparing cases for hearing. ATTACHMENT #9 explains how I believe the Division can use the unfair claims settlement practices regulations to help try to control improper adjuster behavior in view of the severe limitations of AS 23.30.155(o).

The Division is in the process of preparing several cases for board hearing. ATTACHMENTS #9, #10, and #11 are correspondence from attorney Davison to my staff, my response, and Davison's reply in relation to five of those cases. I believe Davison's letters indicate the zealous approach that has been taken to the Division's

LETTER TO REPRESENTATIVE DAVE DONLEY (CONT.)  
RE: AS 23.30.155(o)  
SEPTEMBER 21, 1990

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attempts to apply subsection 155(o).

With regard to the effect of the Division's attempts to apply subsection 155(o), here are the numbers of controversion notices filed since January 1990:

Month	Compensation Reports Filed (No.)	Controversion Notices Filed (No.)	Percentage of Controversions to Compensation Rpts
January	1,776	624	35%
February	1,862	517	28%
March	1,950	567	29%
April	1,989	530	27%
May	1,949	419	21%
June	2,063	561	27%
July	1,985	506	26%
August	2,196	631	29%

Although there is not an absolute relationship between the number of compensation reports filed and the number of controversions filed, compensation reports reflect time loss claims activity. Accordingly, as a general rule, when more decisions are being made about time loss payments (more compensation reports being filed), I would expect more decisions to deny benefits (more controversion notices being filed) to be made, so I think the percentage is helpful. As you can see, there was a marked decrease in the percentage of controversion notices filed in May. I think it was related to the realization that the Division was taking a pretty stringent look at subsection 155(o). However, as you can also see, the numbers have pretty much returned to prior levels in June, July and August. It appears to me that the Division's application of subsection 155(o) has had little effect on the numbers of controversion notices filed.

However, since we do continue to review every controversion notice filed, we can say that adjusters have generally improved the quality of the information they provide on controversion notices. Though I consider subsection 155(o) a disappointment because the board's interpretation of it to date has so limited it, I think that some benefit has resulted from it. Nonetheless, before

LETTER TO REPRESENTATIVE DAVE DONLEY (CONT.)  
RE: AS 23.30.155(o)  
SEPTEMBER 21, 1990

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subsection 155(o), I think there is no doubt that the Division would have reported the Tofson controversion to DOI. The Cress controversion would not have been reported because the employer was self-insured, and DOI takes the position that because the board has jurisdiction over self-insurance, DOI has no jurisdiction over adjusters for self-insureds. In sum, I think that subsection 155(o) has produced some limited benefits to the system, but the Division was freer to refer adjuster misbehavior to DOI before subsection 155(o)'s enactment.

In view of the interpretations already given to subsection 155(o) and some of the arguments being raised, I would suggest that it be amended somewhat along the following lines:

(o) The board shall promptly notify the division of insurance if the board determines that the employer's insurer has filed a notice of controversion for a frivolous or unfair reason [FRIVOLOUSLY OR UNFAIRLY CONTROVERTED COMPENSATION DUE UNDER THIS CHAPTER]. After receiving notice from the board, the division of insurance shall determine if the insurer has committed an unfair claims settlement practice under AS 21.36.125. When the board determines that the adjuster for a self-insured employer has filed a notice of controversion for a frivolous or unfair reason, the board shall consider the self-insured employer's claims adjusting practices in determining whether to cancel or renew a self-insurance certificate.

This proposed language eliminates the "compensation due" interpretation problem in Cress and Tofson. It also eliminates any potential narrow interpretation of the meaning of the word "compensation." Finally, it requires the board to look at the work of self-insureds' adjusters as closely as that of insurers' adjusters. The one problem it doesn't fix that I am concerned about is the argument raised by Davison (and others), and obviously persuasive to board member Donald R. Scott in Cress, that subsection 155(o) applies only to cases which get before the board for other reasons (less than 5% of the cases). I don't know how to fix that.

Because I want to be sure that no one can show that they have not received a fair hearing before the board, I have kept ATTACHMENTS #6, #7, #8, #9, and #11 out of the board files. I do not want the board to see them while any of the cases referred to in them might be under consideration. I would appreciate your keeping these documents confidential until I let you know that there is no longer any need for concern.

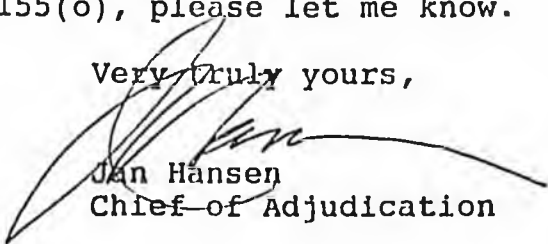
If you need any further information about the application and

LETTER TO REPRESENTATIVE DAVE DONLEY (CONT.)  
RE: AS 23.30.155(o)  
SEPTEMBER 21, 1990

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effects of AS 23.30.155(o), please let me know.

Very truly yours,



Jan Hansen  
Chief of Adjudication

Encls.

cc: Jim Sampson, Commissioner, Department of Labor  
Shari Kochman, Director, Workers' Compensation Division  
Dave Walsh, Director, Division of Insurance

PAT SMUTZ  
5800.5657

LABOR  
w/c



ALEX MILLER MGMT

w/c

WC LEGISLATION

WILLEM VAN HEERDEN  
CRAW FLOOR  
562-3252

WORKERS COMP -  
SOTAD HANDLING  
AROUND 3/18

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SITARON MACKLIN

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
AAA Fence, Inc	Anchorage, AK
ABC Company	Anchorage, AK
Acme Drafting Service	Anchorage, AK
Acme Fence Company	Anchorage, AK
Acreage Systems, Inc.	Anchorage, AK
Adjustco of Alaska, Inc.	Anchorage, AK
AeroMap U. S., Inc	Anchorage, AK
AK Department of Labor, Workers' Comp	Anchorage, AK
Alascom, Inc.	Anchorage, AK
Alaska Airlines	Seattle, WA
Alaska Airlines	Seattle, WA
Alaska Airlines, Inc	Anchorage, AK
Alaska Business Insurance	Anchorage, AK
Alaska Business Insurance	Anchorage, AK
Alaska Business Insurance	Anchorage, AK
Alaska Cleaners	Anchorage, AK
Alaska Corporation	Wasilla, AK
Alaska Council On Prevention Of Alcohol &	Anchorage, AK
Alaska Glacier Seafood Co.	Petersburg, AK
Alaska Housing Finance Corporation	Anchorage, AK
Alaska Mechanical, Inc.	Anchorage, AK
Alaska Medical Maintenance	Anchorage, AK
Alaska Miners' Association	Fairbanks, AK
Alaska National Insurance Company	Anchorage, AK
Alaska National Insurance Company	Anchorage, AK
Alaska National Insurance Company	Anchorage, AK
Alaska National Insurance Company	Anchorage, AK
Alaska Oil Marketer's Association	Fairbanks, AK
Alaska Oilfield Maintenance	Soldotna, AK
Alaska Petroleum Contractors	Anchorage, AK
Alaska Professional Career Counselors	Anchorage, AK
Alaska Professional Counselors	Anchorage, AK
Alaska Pulp Corporation	Seattle, WA
Alaska Pulp Corporation	Sitka, AK
Alaska Pulp Corporation	Sitka, AK 99835
Alaska Rubber and Supply	Anchorage, AK

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
Alaska Rural Electric Cooperative Association	Anchorage, AK
Alaska Sales & Service	Anchorage, AK
Alaska Schools Insurance Company	Juneau, AK
Alaska Sheet Metal	Anchorage, AK
Alaska Spring Company	Anchorage, AK
Alaska State Chamber of Commerce	Juneau, AK
Alaska State Chamber of Commerce	Anchorage, AK
Alaska State Medical Association	Anchorage, AK
Alaska Support Industry Alliance	Fairbanks, AK
Alaska Timber Insurance Exchange	Ketchikan, AK
Alaska Truss & Millwork	Anchorage, AK
Alaska Underground Electric Company	Anchorage, AK
Alaska-West Express, Inc	Anchorage, AK
Alchem, Inc.	Anchorage, AK
Allied Constuction Services	Anchorage, AK
Allvest Laboratories	Anchorage, AK
Alyeska Air Service	Anchorage, AK
Alyeska Pipeline Service Company	Anchorage, AK
Alyeska Pipeline Service Company	Anchorage, AK
Alyeska Resort	Girdwood, AK
American Roofing	Anchorage, AK
American Society of Safety Engineers -	Anchorage, AK
Anchorage Cold Storage	Anchorage, AK
Anchorage Nissan	Anchorage, AK
Anchorage Refuse, Inc	Anchorage, AK
Anchorage Sand & Gravel Company	Anchorage, AK
Anchorage School District	Anchorage, AK
Anchorage School District	Anchorage, AK
Anchorage Telephone Utility	Anchorage, AK
Anchorage Towing & Recovery	Anchorage, AK
Aoki Bothers Construction	Anchorage, AK
Applegate Constuction	Anchorage, AK
APSI	Fairbanks, AK
ARCO Alaska, Inc	Anchorage, AK
ARCO Alaska, Inc	Anchorage, AK
ARCO Alaska, Inc	Anchorage, AK

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
ARCO Alaska, Inc	Anchorage, AK
Arctic Adjusters, Inc.	Anchorage, AK
Arctic Coiled Tubing	Anchorage, AK
Arctic Coiled Tubing, Inc	Anchorage, AK
Arctic Foundations, Inc.	Anchorage, AK
Arctic Slope Regional Corporation	Barrow, AK 99723
Arctic Welding Supply	Anchorage, AK
Associated General Contractors' - Alaska	Anchorage, AK
Aurora Towing	Anchorage, AK
Autocraft	Anchorage,
Automated Laundry Systems	Anchorage, AK
Bailey's Rent-All	Anchorage, AK
Bailey's Rent-All	Anchorage, AK
Barron Constuction	Anchor Point, AK
Beese, Epps, & Potts	Anchorage, AK
Belarde Brothers	Anchorage, AK
Bell Homes	Anchorage, AK
Bendell & Associates	Anchorage, AK
Best Western Barrett Inn	Anchorage, AK
Best Western Barrett Inn	Anchorage, AK
BP Exploration Company	Anchorage, AK
BP Exploration Company	Anchorage, AK
BP Exploration Company	Anchorage, AK
Bristol Bay Contractors, Inc	King Salmon, AK
Burger King of Alaska	Anchorage, AK
Burger King of Alaska	Anchorage, AK
Burkhart's Stores	Palmer, AK 99645
Burnett & Son Constuction	Juneau, AK
Bushnell & McMahon	Wasilla, AK
C. H. I. of Alaska, Inc.	Anchorage, AK
C & H Mechanical Insulation	Douglas, AK
Canal Marine Company	Haines, AK 99827
Carrs Quality Centers	Anchorage, AK
Carrs Quality Centers	Anchorage, AK
Catering Contractors International	Anchorage, AK
Central Alaska Construction	Soldotna, AK

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
Central Plumbing and Heating, Inc	Anchorage, AK
CH2M Hill, Inc.	Anchorage, AK
Channel Corporations	Juneau, AK
Charter College	Anchorage, AK
Chugach Electric Association, Inc	Anchorage, AK
Chugach Timber	Anchorage, AK
Cigna Companies	Anchorage, AK
Cimarron Holdings, Inc	Prudhoe Bay, AK
City and Borough of Sitka	Sitka, AK 99835
City of Fairbanks	Fairbanks, AK
City of Fairbanks	Fairbanks, AK
Club Paris	Anchorage, AK
CMW Company	Anchorage, AK
Cold Weather Contractors, Inc	Anchorage, AK
Collins and Associates	Anchorage, AK
Collins & Associates	Anchorage, AK
Cominco Alaska, Inc	Anchorage, AK
Cominco Alaska, Inc	Kotzebue, AK
Commercial Claims Service	Anchorage, AK
Compensation Risk Consultants	Fairbanks, AK
Compensation Risk Consultants	Fairbanks, AK
Comprehensive Rehabilitation Services	Anchorage, AK
Comprehensive Rehabilitation Services, Inc	Anchorage, AK
Conam Alaska	Anchorage, AK
Conam Alaska	Anchorage, AK
Consolidated Enterprises	Anchorage, AK
Construction Machinery, Inc	Anchorage, AK
Control Craft, Inc	Anchorage, AK
Cook Inlet Regional, Inc	Anchorage, AK
Corporate Communication Strategies	Anchorage, AK
Corroon & Black, Inc.	Anchorage, AK
Costello Custom Jewelry Design	Anchorage, AK
Crawford & Company	Fairbanks, AK
Crawford & Company	Anchorage, AK
Crawford & Company	Anchorage, AK
Crawford Health & Rehabilitation Service	Anchorage, AK

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
Crossroads Lounge	Anchorage, AK
CRW Engineering Group	Anchorage, AK
CTI, Inc	Anchorage, AK
Delta Door Sales	Anchorage, AK
Dar-Con Corporation	Anchorage, AK
Davison & Davison, Inc	Anchorage, AK
DeBarr Quality Cleaners & Laundromat	Anchorage, AK
Delaney, Wiles, Hayes, Reitman	Anchorage, AK
Denali Drilling Company	Anchorage, AK
Denali Insurance Brokers	Anchorage, AK
Denali Transportation Corporation	Fairbanks, AK
Denny's of Alaska, Inc	Anchorage, AK
Designer Realty	Kenai, AK 99611
Diamond	Anchorage, AK
DJ's Alaska Rentals	Anchorage, AK
Doyon Drilling, Inc., J.V.	Anchorage, AK
Doyon Drilling, Inc, J.V.	Anchorage, AK
DVR - Evaluation Center	Anchorage, AK
Dynair Services	Anchorage, AK
E. C. Phillips & Son, Inc.	Ketchikan, AK
E & T Electronics	Anchorage, AK
Eagle Pacific Insurance	Anchorage, AK
Earthmovers, Inc	Fairbanks, AK
Ensearch Alaska Construction, Inc	Anchorage, AK
Ensearch Alaska Constuction, Inc	Anchorage, AK
ENSTAR	Anchorage, AK
Equipment Engineering & Rebuild	Soldotna, AK
Eyak Native Corporation	Cordova, AK
F&W Construction Co, Inc	Anchorage, AK
Fairbanks Chamber of Commerce	Fairbanks, AK
Fairbanks Distributors	Fairbanks, AK
Fairbanks Machine & Steel	Fairbanks, AK
Fairbanks Memorial Hospital	Fairbanks, AK
Fairbanks Memorial Hospital	Fairbanks, AK
Fairbanks Newsminer	Fairbanks, AK
Fairbanks North Star Borough	Fairbanks, AK

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
Fairbanks North Star School District	Fairbanks, AK
Faulkner, Banfield, Doogan, & Holmes	Anchorage, AK
Florcraft, Inc	Fairbanks, AK
Foster's Fine Finishes	Anchorage, AK
Fountain Development, Inc	Fairbanks, AK
Four Star Terminal	Anchorage, AK
Fracmaster, Ltd	Anchorage, AK
Fracmaster, Ltd	Anchorage, AK
GE Government Services	Anchorage, AK
General Communication, Inc	Anchorage, AK
Ghemm Company	Fairbanks, AK
Global Services, Inc	Anchorage, AK
Golden Wheel Amusement Co	Anchorage, AK
Greater Fairbanks Chamber of Commerce	Fairbanks, AK
Greater Sitka Chamber of Commerce	Sitka, AK 99835
Greens Creek Mining Company	Juneau, AK
Gross Alaska Inc	Juneau, AK
GSL Oilfield Services	Anchorage, AK
GTE Alaska Incorporated	Anchorage, AK
H & H Contractors	Fairbanks, AK
H & S Warehouse, Inc.	Anchorage, AK
H & S Warehouse, Inc	Fairbanks, AK
Halsingland Hotel	Haines, AK 99827
Hanson Dispute Resolution Service	Kenai, AK 99611
Hartig, Rhodes, Norman, Mahoney &	Anchorage, AK
Herridon and Thompson	Homer, AK 99603
Hickel Investment Corporation	Anchorage, AK
Hickel Investment, Inc.	Anchorage, AK
High Drive Drilling and Blasting	Sitka, AK 99835
Hoffman Constuction Company	Anchorage, AK
Holland American Lines	Seattle, WA
Holland & Sons Construction Company	Kenai, AK 99611
Homer Electric Association	Kenai, AK 99611
Homer Medical Clinic	Homer, AK 99603
Homestate Insurance Brokers of Alaska, Inc.	Anchorage, AK
Hope Cottages	Anchorage, AK

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
Horst Construction Company	Juneau, AK
Hotel Captain Cook	Anchorage, AK
Humana Hospital	Anchorage, AK
Icicle Seafoods	Seward, AK
IICC	Anchorage, AK
Industrial Indemnity	Anchorage, AK
Industrial Roofing, Inc	Anchorage, AK
Inlet View Services	Anchorage, AK
Interior Builders' Association	Fairbanks, AK
International In-Flight Catering Service	Anchorage, AK
International Mechanical, Inc	Anchorage, AK
Irish Trucking	Fairbanks, AK
J. D. Dozer & Equipment Service Co	Tok, AK 99780
J D Glass and Door	Juneau, AK
J & S Steamway	Anchorage, AK
Jackovich Tractor & Equipment	Fairbanks, AK
Jay D Smith Insurance	Wasilla, AK
JBCS Consulting	Anchorage, AK
Jerry Reinwand	Juneau, AK
Jimmy Gibbs Mechanical	Soldotna, AK
Joe's Oilfield Service, Inc	Anchorage, AK
John's Self Serve Chevron	Anchorage, AK
Johnson-Brisk, Inc	Nome, AK 99762
K. S. K., Inc	Nenana, AK
K&L Distributors	Anchorage, AK
Kay, Saville, Coffey, Hopwood & Schmid	Anchorage, AK
Ken's Electronic Service	Anchorage, AK
Kenai Chamber of Commerce	Kenai, AK 99611
Kenai Peninsula Borough	Kenai, AK 99611
Kenai Peninsula Builders Association	Kenai, AK 99611
Kenai Peninsula Borough	Kenai, AK 99611
Ketchikan Pulp Company	Ketchikan, AK
Ketchikan Pulp Company	Ketchikan, AK
KFAR Radio	Fairbanks, AK
KIMO-TV Channel 13 ABC	Anchorage, AK
Klawock Heenta Corp	Klawock, AK

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
Kluane Construction	Anchorage, AK
Kluane Construction	Anchorage, AK
Klukwan Forest Products, Inc	Juneau, AK
Klukwan Inc	Juneau, AK
Koncor Forest Products	Anchorage, AK
Korobkin Construction of Alaska	Anchorage, AK
KSRM	Soldotna, AK
KTBY - TV Channel 4	Anchorage, AK
Kumin Associates	Anchorage, AK
Kurt's Construction	Delta Junction,
L&D Mechanical	Anchorage, AK
Lamonts	Anchorage, AK
Lamonts	Bellevue, WA
Linford of Alaska	Anchorage, AK
Linford of Alaska, Inc	Anchorage, AK
Little Red Services, Inc	Anchorage, AK
Livingston Slone, Inc.	Anchorage, AK
Long Island Development, Inc.	Juneau, AK
Lynden Incorporated	Anchorage, AK
Lynden Incorporated	Anchorage, AK
Lynden Incorporated	Anchorage, AK
M & B Plumbing	Anchorage, AK
M&O Auto Parts, Inc	Fairbanks, AK
M-W Drilling, Inc	Anchorage, AK
Madison Lumber and Hardware	Ketchikan, AK
Mammoth of Alaska	Anchorage, AK
Mapco Petroleum, Inc	North Pole, AK
Mapco Petroleum, Inc	Fairbanks, AK
Marathon Oil Company	Anchorage, AK
Marathon Oil Company	Anchorage, AK
Mark Air	Anchorage, AK
Marketing & Management Consultants	Anchorage, AK
Mary Conrad Center	Anchorage, AK
Mat-Su Borough School District	Palmer, AK
Mat-Su Borough School District	Palmer, AK 99645
Mat-Su, Inc	Anchorage, AK

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
Matanuska Telephone Association	Palmer, AK 99645
Matanuska Telephone Association	Palmer, AK 99645
Matrix Construction Company	Anchorage, AK
McDonalds of Ketchikan	Ketchikan, AK
Meaux, Bowers, & Cronin	Anchorage, AK
Mechanical Contractors of Fairbanks	Fairbanks, AK
Medical Data Systems	Eagle River, AK
Medical Indemnity Corporation of Alaska	Anchorage, AK
Midas Muffler Shop	Anchorage, AK
Midas Muffler Shop	Anchorage, AK
Mitkof Lumber	Petersburg, AK
Moore Heating, Air Conditioning, &	Anchorage, AK
Moritz Painting, Inc	Anchorage, AK
Multiple Risk Managers	Anchorage, AK
Multiple Risk Managers, Inc.	Anchorage, AK
Municipality of Anchorage	Anchorage, AK
Mush Inn	Anchorage, AK
Nabors Alaska	Anchorage, AK
Nabors Alaska Drilling, Inc.	Anchorage, AK
NANA/Marriott	Anchorage, AK
Natchiq, Inc	Anchorage, AK
National Bank of Alaska	Anchorage, AK
National Electrical Contractors Assn.	Anchorage, AK
NCCI	Agoura Hills, CA
NCP Constuction Company	Anchorage, AK
NFIB	Auke Bay, AK
Nibert's Remodel & Repair Company	Anchorage, AK
Norgasco, Inc	Anchorage, AK
North Country Design & Development	Anchorage, AK
North Country Drywall	Wasilla, AK
Northern Adjusters, Inc	Anchorage, AK
Northern Adjustors, Inc.	Anchorage, AK
Northern Air Cargo	Anchorage, AK
Northern Oilfield Services, Inc.	Anchorage, AK
Northern Rehabilitation Services	Fairbanks, AK
Northern Rehabilitation Services	Anchorage, AK

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
Northland VFW Post 10252	Anchorage, AK
Northwest Technical Services, Inc.	Anchorage, AK
Nutak Trading Company	Juneau, AK
Nye Frontier Ford	Wasilla, AK
Oriental Gardens	Anchorage, AK
Our Lady of Compassion Care Center	Anchorage, AK
PA Productions	Anchorage, AK
Pacific American Commercial Co	Seattle, WA
Pacific Movers	Anchorage, AK
Pacific Rim Publishing	Anchorage, AK
Pacific Telecom	Vancouver, WA
PacRim Construction Services	Anchorage, AK
Palmer Chevron	Palmer, AK 99645
Pan Alaska International Inc	Anchorage, AK
Parker Drilling Company	Anchorage, AK
Parker Drilling Company	Anchorage, AK
PEAK Oilfield Service Co	Anchorage, AK
Penner Construction Company	Soldotna, AK
Petersburg Insurance Center	Petersburg, AK
Physical Therapy Center	Juneau, AK
Pink Elephant Car Wash	Anchorage, AK
Piquiniq Management Corporation	Anchorage, AK
Pool Arctic Alaska	Anchorage, AK
Pool Arctic Alaska, Inc.	Anchorage, AK
Pool Company	Anchorage, AK
Price CIRI Constuction	Anchorage, AK
Price-CIRI Constuction Company	Anchorage, AK
Professional Adjustors of Alaska	Anchorage, AK
Professional Staff Leasing	Anchorage, AK
Prosser Constuction Company	Anchorage, AK
Providence Hospital	Anchorage, AK
QWIK Lube	Anchorage, AK
R G & B Contractors, Inc.	Anchorage, AK
R. Robert Bell & Associates	Anchorage, AK
R & T Constuction, Inc	Anchorage, AK
R&S Fleet	Homer, AK 99603

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
Rain Proof Roofing Company, Inc	Anchorage, AK
Reeve Aleutian Airways	Anchorage, AK
Reeve Aleutian Airways, Inc	Anchorage, AK
Resource Agency	Juneau, AK
Resource Development Council	Anchorage, AK
RG & B Contractors	Anchorage, AK
Ribelin Lowell & Co	Anchorage, AK
Ribelin Lowell & Co	Anchorage, AK
Richards Enterprises, Inc	Anchorage, AK
Risk System Development	Anchorage, AK
Robert Powell Construction Company	Anchorage, AK
Robertson, Monagle, and Eastaugh	Anchorage, AK
Roll'n Alaska	Anchorage, AK
Rollins Burdick Hunter	Anchorage, AK
Ron's Oilfield Services Company	Kenai, AK 99611
RSVP Maid Service	Anchorage, AK
S & S Welding	Anchorage, AK
Safeway Stores	Bellevue, WA
Sandstrom and Sons	Anchorage, AK
Saupe Enterprises	Fairbanks, AK
Schafer Enterprises	Anchorage, AK
Scott Wetzel Services, Inc.	Anchorage, AK
Scott Wetzel Services, Inc	Anchorage, AK
Sea-land, Inc	Anchorage, AK
Sealaska Corporation	Juneau, AK
Sealaska Corporation	Juneau, AK
Sealaska Timber	Ketchikan, AK
Sears, Roebuck & Company	Anchorage, AK
Shell Western E&P, Inc	Kenai, AK 99611
Sitka Sound Seafoods	Sitka, AK 99835
SM & W Company	Anchorage, AK
Small Business Development Center	Anchorage, AK
Smith International	Anchorage, AK
Smyth Moving Service, Inc	Anchorage, AK
Soderberg Logging and Constuction	Ketchikan, AK
Spenard Builders Supply	Anchorage, AK

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
Spenard Builders Supply, Inc	Anchorage, AK
Staley Dellsio Cook & Sherry Inc	Anchorage, AK
State Department of Labor	Juneau, AK
State Farm Insurance	Anchorage, AK
State Farm Mutual Insurance Co	Anchorage, AK
Steel Fabricators, Inc	Anchorage, AK
Steffenworks	Sitka, AK 99835
Stewart Title Company of Alaska	Anchorage, AK
Stikline Inn	Wrangell, AK
Stone, Waller, & Jenicek	Anchorage, AK
Sunset Inn	Fairbanks, AK
Superior Plumbing and Heating	Anchorage, AK
Swanson General Contractors	Anchorage, AK
T&K Enterprises	Eagle River, AK
Tab Electric	Anchorage, AK
TAB Electric, Inc.	Anchorage, AK
Tanadqusix Corporation	Anchorage, AK
Taylorred Construction Services, Inc	Anchorage, Ak
Terminal Oil Sales, Inc	Homer, AK 99603
Tesoro Alaska	Kenai, AK 99611
The Alliance	Anchorage, AK
The Anchorage Hilton	Anchorage, AK
The Anchorage Hilton	Anchorage, AK
The Andrews Group, Inc	Anchorage, AK
The Equitable Life Insurance Society	Anchorage, AK
The Office Place	Anchorage, AK
The Sullivan Group	Anchorage, AK
The Woodcutters	Craig, AK 99921
TMI Management	Fairbanks, AK
Toppers Oil Corporation, Inc.	Anchorage, AK
Totem Ocean Trailer Express	Anchorage, AK
Totem Ocean Trailer Express, Inc.	Seattle, WA
U-Haul Company	Anchorage, AK
Udelhoven Oilfield System Services, Inc	Anchorage, AK
Underwater Construction Company	Anchorage, AK
Underwater Constuction	Anchorage, AK

## W. C. C. A. Membership

<u>Company</u>	<u>City /State/Zip</u>
Unified Fairbanks	Fairbanks, AK
Unit Company	Anchorage, AK
Unitech of Alaska	Anchorage, AK
Universal Services	Anchorage, AK
University of Alaska	Fairbanks, AK
Unocal	Kenai, AK 99611
Unocal Chemical Division	Kenai, AK 99611
Unocal Corporation	Los Angeles, CA
Unocal Oil & Gas Division	Anchorage, AK
US Aviation Underwriters	Anchorage, AK
Usibelli Coal Mine, Inc.	Healy, AK 99743
Valley Restaurant	Sitka, AK 99835
VECO, Inc.	Anchorage, AK
VECO, Inc	Anchorage, AK
VERC	Anchorage, AK
Vertecs Corporation	Anchorage, AK
Visiting Senators Office	Anchorage, AK
Walters & Olson, Inc	Kenai, AK 99611
Warning Lites of Alaska, Inc.	Anchorage, AK
Watterson Construction Company	Anchorage, AK
Weona Corporation	Anchorage, AK
West Coast Stevedoring Corp	Juneau, AK
Westmark Hotels	Anchorage, AK
WETCO	Anchorage, AK
William F. Tull & Associates	Palmer, AK 99645
Wilsyk Alaska, Inc	Anchorage, AK
Workers' Compensation Division	Juneau, AK
Workers' Compensation Division	Anchorage, AK
Wrangell Forest Products	Wrangell, AK
Wrangell Sentinel	Wrangell, AK
Yenney and Associates Construction, Inc	Homer, AK 99603
Young Signs	Anchorage, AK
Yukon Equipment	Anchorage, AK
Yukon Mining Company	Anchorage, AK
ZAT Inc DBA/Pickle Barrel Deli	Anchorage, AK

# Alaska State Legislature

Senator Drue Pearce, Chair  
Senator Tim Kelly  
Senator Rick Halford  
Senator Paul Fischer  
Senator Al Adams



WILFRID JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99801  
(907) 485 4991

111 C STREET, SUITE 150  
ANCHORAGE, ALASKA 99503  
(907) 561 2038

## SENATE SPECIAL COMMITTEE ON OIL AND GAS

Rd.

Call Warren D. of WCCRA

Find out if WCCRA is going to

close the 500,000 acre lease

people - or where they are

from

Ask him what he thinks

should happen w/ Horry

Did - also to the 400,000 acre?

play what is at risk of

bill

No more trading tips scheduled  
for LAC after this week - how  
hard to get you no to

cc: Nancy  
LaComm.  
Bruce

Letter to @ Ad hoc members

cc @ Smutz

cc @ Warren Durak

- discomfort that we are willing or able to explain why elements other than Jon Birme - medical benefits there
- believe Ad hoc importance is to do preliminary work - identify issues of concern and suggest alternatives - concern that we public input. no notice of duty - but then deal "to be followed"
- no person's integrity has been questioned - but resignation of two members have called into question the process.
- elements of last yr's ~~SOB~~ appear to be fair - have had lots of public discussion
- so pulling CS w/ only those elements
- Ad hoc should work this interim - bring leg. + dept in -
- 

be firm that legislature sets policy - we, too, want to improve system - but resolution s/ub removed from public, legislative process

Believe they have a place - work - gather to identify + suggest ways to address deficiencies. (sp)  
Balance is great - but only if reached publicly.

No minutes, no notice = deal but we can't support in good conscience.

etc. etc.

transmitted



TELECOPY COVER SHEET

SENATOR DRUE PEARCE'S OFFICE

VOICE (907) 465-4993 FAX (907) 463-5352

To: WARREN DVORAK Fax: 267-2296

Attn: Phone:

Transmitted by: ROD MOURANT Date: 5/10/91

Re: HCS FOR CS SB 217 (JUDICIARY)

Comments: THE TECHNICAL CHANGES ON PG 4  
LINE 22 WILL BE CARRIED OUT IN  
HOUSE LABOR & COMMERCE COMMITTEE.

WOULD YOU PLEASE REVIEW THE  
OTHER SECTIONS AND COMMENT.

THANKS, RD

Number of Pages: 10 Including Cover Sheet.





From the desk of:  
**Rod Mourant**

Senator Drue Pearce's Office  
P.O. Box V  
Juneau, AK 99811  
Capitol, Room 101  
(907) 465-4993

Approved A. 7

ALL RATES GO UP  
WHAT IS COST - PUNISH EMPLOYER?

~~A. 6~~ ALL REPORTS ARE  
ALREADY DONE OR PENDING

A. 6 ?

A. 10 ~~KEEP REGULATORY~~  
DO NOT ~~ALREADY DOES~~ <sup>WRITING FOR</sup>  
CONFIDENTIALITY <sup>WGS OPINION</sup> -  
SUPPORTS

A. 8 ?

STICKS ~~WINDING~~

A. 4 - POTS IN STATUTE  
WHAT IS ALREADY DONE

RARE OCCURRENCE

A. 5

# Ruling rattles Alaska softball

## Supreme Court rules some injured players eligible for workman's comp

By BETH BRAGG

Daily News assistant sports editor

The Alaska Supreme Court threw a curve at softball when it ruled this month that players are entitled to workman's compensation if they are injured while playing for a team sponsored by their employer.

The ruling could mean increased insurance rates for a majority of the companies that sponsor Alaska's nearly 1,000 softball teams, which in turn could mean fewer sponsors.

"This could be kind of scary."

said state softball commissioner Pat Lillian. "Sponsors are the life-line of the whole amateur sports organization."

Of the estimated 15,000 people who play softball in Alaska, only those who are employed by the same company that sponsors their team would be eligible for workman's comp. Lillian estimated that at least 50 percent of the teams in Alaska feature at least one player who is employed by the sponsor.

"Nobody has a crystal ball, but I think it has a substantial potential to discourage team sponsors,"

said Ben Esch, who is the attorney for the Anchorage Sports Association, the organizing body for more than 400 Anchorage softball teams. "(And) if the sponsors back out, if there's no sponsor's fee, you can only increase players' fees."

The Alaska Supreme Court ruled earlier this month in favor of Judi LeSuer-Johnson, who was injured in a 1986 softball game in Anchorage while playing for Rollins-Burdick Hunter, her employer and the sponsor of an Insurance League softball team.

LeSuer-Johnson filed a claim for

workman's comp, and the Workers' Compensation Board ruled in her favor. After appeals, the state Supreme Court upheld the original ruling, which was based on a 1982 statute that says work-related injuries include those occurring at "employer-sanctioned activities at the employer-provided facilities."

Although Anchorage Sports Association teams play on municipal fields, they are maintained by the association, which collects entry fees to help pay for their maintenance. "My belief is that simply paying a league fee would be ade-

quate (evidence that an employee is providing facilities)," Esch said.

Chancy Croft, the attorney who represented LeSuer-Johnson, said Saturday that by paying a team entry fee, Rollins-Burdick Hunter helped make a softball field available to its team. Without entry fees, "they wouldn't have had a regular field at the time they had it," he said. "They wouldn't have been able to play the schedule."

Though the ruling was the result of an accident in the loosely orga-

Please see Page D-4, **SOFTBALL**

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TO ASSURE LEGIBILITY**

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Please see Page D-4, **SOFTBALL**

Baseball players, owners and sports agents are captured one night on videotape.



## peace in Bush

In a few years, get ready for a new television mini-series: "Failed Blast-Off: Rocket Ismail's Life In a Bush League." Starring Denzel Washington as the Rocket, Don Knotts as Lou Holtz and John Candy as himself.

Will it be a blockbuster or a bomb? In a few years, will anybody await the Rocket's re-entry? Will anybody remember his name?

Sure, Canada's a great place to live. It's got national health insurance, it's close to Greenland, and you'll never run out of plaid shirts.

But what about cuisine? Have you ever heard anybody say, "Hey, let's go out for Canadian food." Or, "Honey, I've got a great idea. Instead of taking that Caribbean cruise, let's go have some laughs in Canada."

Canada has given the world hockey players, Alan Thicke and a currency that



**ALAN GREENBERG**

McNall is a bi-country kind of guy who engineered the trade that brought Wayne Gretzky to La-la land, leaving all of Canada in tears. McNall is a chubby, extroverted, forty-something guy who is buddy-buddy with his superstars, flies them around in his private plane. The Rocket said what he liked about the Argos was

# SOFTBALL: Supreme Court ruling could scare off team sponsors

Continued from Page D-1

nized Insurance League, the Supreme Court's ruling is expected to affect almost all recreational sports leagues.

Lillian, Esch and others hope to amend the law before the effect is widespread.

"There's less than a month left in the (legislative) session, so it's not possible at this date to introduce a new bill," Esch said. "So the question would be, is there an existing vehicle that could be amended? The next question is, what is the likelihood of it passing?"

Esch thinks the answer to both questions is yes. He said there is a bill pending in the Senate Labor and Commerce committee that could be amended to prevent sponsors of recreational sports teams from being

held liable for workman's comp claims. Esch thinks getting an amendment introduced and passed this session "is within the realm of possibility."

If it isn't, sponsors who might be affected by the supreme court decision have a handful of options. One is to not let any of their employees play on their team. Another is to pay higher insurance rates, although companies whose insurance is paid through this summer shouldn't have to worry about rates increasing for the current softball season, which begins next weekend. With any luck, said Esch, the issue will have been resolved by next summer.

Another option is to pull out of the league, although Anchorage Sports Association director Rod Hill said



chances are slim those who do will get their entry fee refunded. "We tell people all the time if somebody wants to take your (team's) place, we'll gladly refund your money," he said. "Otherwise it's out of the question. We'd be tearing schedules apart all season."

Just how many sponsors will back out of their commitment to sponsor teams is critical to the future of recreational sports in Alaska.

"It wouldn't change my attitude about having a team," said Rick Nerland of Nerland/Mystrom Associates, which sponsors a coed team that includes several of

his employees. "I would probably have to check and see what the stipulations of our workman's comp policy would be. (But) the bottom line is, I believe it's a worthwhile enough activity that we will ... resolve the issue and play ball."

Dr. Jay Caldwell, who sponsors a coed team that involves several of his employees at the Alaska Sports Medicine Clinic, said much the same thing.

"It wouldn't stop me from sponsoring a team, but I can see that more prudent employers than I would," he said.

Jerry Grilly, publisher of the Anchorage Daily News, counts himself as one of the prudent ones. The News sponsors a team that is almost entirely made up of employees of the newspaper.

"My reaction is I'm probably going to talk to my lawyer and (the personnel office) and reconsider," Grilly said. "We're just trying to do something recreationally for our employees, and all of a sudden it gets complicated and complex."

"It's not like (playing softball) is a job. It's recreational. They're doing it in their own time. It's real unfortunate. You're just trying to be a good employer and support employees. We're really reaping nothing in this endeavor."

Croft disagrees. "I think a lot of times companies sponsor teams because they get a lot of benefit from it — increased morale, advertising, increased efficiency, more stability in the work force," he said.

any other woman to do a reporting job.

But now Lisa Olson has done what so many Ameri-

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Notice: This is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

JUDI J. LESUER-JOHNSON,	)	
	)	Supreme Court No. S-3493
Appellant,	)	
	)	Trial Court No.
v.	)	3AN-88-9367 Civil
	)	
ROLLINS-BURDICK HUNTER	)	<u>O P I N I O N</u>
OF ALASKA and NATIONAL	)	
UNION FIRE INSURANCE CO.,	)	
	)	[No. 3681 - April 12, 1991]
Appellees.	)	
	)	

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Ralph Stemp, Judge.

Appearances: Chancy Croft, Anchorage, for Appellant. Patricia L. Zobel, Deirdre D. Ford, Staley, DeLisio, Cook & Sherry, Anchorage, for Appellees.

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

PER CURIAM

Appellant Judy LeSuer-Johnson (LeSuer) was injured on June 4, 1986, while playing softball at an Anchorage ballpark for the Rollins-Burdick Hunter (RBH) team against an "insurance league" opponent. The injury occurred after work hours, on a field rented by the insurance league. LeSuer, an employee of RBH, filed a claim for workers' compensation, alleging that the injury arose out of and in the course of her employment. An Alaska statute enacted

in 1982 defines "arising out of and in the course of employment" to include

employer-required or supplied travel to and from a remote job site; activities performed at the direction or under the control of the employer; and employer-sanctioned activities at the employer-provided facilities; but excludes activities of a personal nature away from employer-provided facilities.

AS 23.30.265(2).

LeSuer's argument that her injury arose out of and in the course of her employment is based on her employer's connection to the softball team. RBH provided balls, bats, T-shirts and caps for the team members. It paid \$250 to the league's organizers who rented the ballfield and purchased bases. RBH encouraged its employees to either play on the team or attend the game as spectators. In her job interview LeSuer was asked if she played softball and if she would like to play on the company team. She stated that joining the team was voluntary, but she personally felt pressured to play by co-employees who wanted to be sure that RBH had enough players to field the team each week.

The Workers' Compensation Board found for LeSuer. The board concluded that participation on the softball team was both employer-sanctioned and that it occurred at an employer-provided facility:

We find RBH gave support and encouragement for their employees to participate on the team. By paying the league fee, providing part of the uniform, providing bats and balls and permitting employees to perform activities such as picking up the T-shirts and hats as part of their work duties RBH sanctioned the activity. . . .

Next we consider whether the injury occurred at an employer-provided facility. Defendants argued that the injury was not on Employer's premises. However, the legislature chose to use the term "facility" and not premises. We find this terminology distinction is important. Thus the injury does not have to occur on an employer's property to be compensable.

The term "provide" is defined in Webster at 1144 as "to make available, supply, afford; furnish with . . . ." We find that paying the league fee RBH made available to its employees a field on which to play softball. We conclude that the softball game was at an employer-provided facility.

RBH appealed the board's decision to the superior court. The court held that where, as here, a remote job site was not involved, a four-part test rather than the two-part test set out in the statute was appropriate. The court stated:

The criteria analyzed in Larson, 1A The Law of Workman's Compensation § 22.24(a)-(f), for determining whether an injury on a company team is compensable are the appropriate factors to weigh in deciding this case. They are primarily the time and place of the recreation, the degree of the employer initiative and encouragement, the financial support and equipment furnished, and the benefit to the employer.

The court remanded this case to the board for an analysis using these factors. On remand, the board found in favor of RBH with one member dissenting.

LeSuer then appealed to the superior court, which affirmed the board's decision on remand. LeSuer now appeals this decision.

3631

In our view, the first decision of the board was correct. That portion of AS 23.30.265(2) which pertains to employer-sanctioned activities at employer-provided facilities is not limited to remote job sites as the statute is written. If the legislature had intended such a limitation it could have easily been expressed. The board's conclusions that playing for the RBH softball team was employer-sanctioned and that the injury occurred at an employer-provided facility are supported by substantial evidence.

For the above reasons, the decision of the superior court is REVERSED and this case is REMANDED to reinstate the first decision of the board.

3531

# Alaska State Legislature

During Session  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-2828

---


During Interim  
3111 C Street, Suite 510  
Anchorage, Alaska 99503  
(907) 561-2040

---

**Senator Virginia Collins**

## MEMORANDUM

TO: REPRESENTATIVE DONLEY  
HOUSE JUDICIARY CHAIR

FROM: SENATOR VIRGINIA COLLINS 

SUBJECT: WORKERS COMPENSATION BILL  
HOUSE CS FOR SENATE CS FOR SB219 AM H

PLEASE CONSIDER THE FOLLOWING CHANGES TO SECTION 9 BOTH  
AS23.30.155 AND AS 21.36.125 TO REFLECT

A FULL BOARD HEARING IS NECESSARY TO DETERMINE WHETHER OR NOT  
THERE HAS BEEN A FRIVOLOUS CONTROVERSION. THIS HEARING WILL BE  
CALLED ONLY IF THE ISSUE INVOLVES THE PAYMENT OF COMPENSATION. IF  
THE BOARD DETERMINES THAT THERE HAS BEEN A FRIVOLOUS  
CONTROVERSION, THE MATTER IS THEN REFERRED TO THE DIVISION OF  
INSURANCE.

# Alaska State Legislature

During Session  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-2828

---


During Interim  
3111 C Street, Suite 510  
Anchorage, Alaska 99503  
(907) 561-2040

---

## Senator Virginia Collins

### Memorandum

To: Senator Drue Pearce, Chair  
Senate Labor and Commerce

From: Senator Virginia Collins 

Subject: Workers Compensation Bill

Due to the changes the Workers' Compensation Bill has undergone, I request that the Senate not concur with the House amendments and that the bill be referred to a conference committee. I would like to be on this conference committee. Hopefully if we have the powers of a free conference, we can get a better balance to the bill.

Many parts of the House Judiciary Committee Substitute bill are new and very controversial. The bill coming out of House Judiciary is not a balanced bill. It will escalate the cost of workers compensation insurance. I feel this bill needs some further work and feel confident that through the free conference process we can achieve a well balanced bill.

I am available to discuss this bill at your convenience.

  
**TECHNICAL CHANGES**

**CS FOR SENATE BILL NO. 219 (L&C)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**SEVENTEENTH LEGISLATURE - FIRST SESSION**

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to workers' compensation and civil liability for workplace safety  
2 inspections; and providing for an effective date."

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

4 \* **Section 1. PURPOSE OF SECTION 4.** It is the purpose of sec. 4 of this Act to amend AS 23.30  
5 to provide that an insurer is not liable for providing or failing to provide safety inspections or safety  
6 advisory services; this amendment would decide a public policy question concerning the liability of an  
7 insurer for the performance of a safety inspection or safety advisory service raised in *Van Biene v. ERA*  
8 *Helicopters, Inc.*, 779 P.2d 315 (Alaska 1989).

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

10       Sec. 23.30.047. **BENEFITS FOR HEALTH INSURANCE.** (a) An employer who pays  
11 compensation to an injured employee under AS 23.30.041(k), 23.30.180, 23.30.185, 23.30.190,  
12 23.30.200, or 23.30.215, and who provided health insurance to the employee at the date of injury  
13 shall also reimburse the employee for health insurance coverage for the employee and covered  
14 dependents, as provided in this section.

1 (b) Payment required under this section is equal to the employer's current contribution  
2 for health insurance or the amount paid by the employee for replacement coverage, whichever  
3 amount is less. Payment required under this section commences when the employee's health  
4 insurance provided by the employer's contribution ceases and shall continue until the employee  
5 is no longer receiving compensation described in (a) of this section, or for 18 months, whichever  
6 period is shorter.

7 (c) Payment is not required under this section until the employee provides proof of health  
8 insurance coverage. In this subsection, "health insurance" includes an individual policy of health  
9 insurance, or a notice of self-payment <sup>or</sup> continuance of coverage under <sup>of a</sup> union health or welfare  
10 trust agreement.

11 (d) If benefits required under this section are not paid within 30 days after the employer  
12 receives a request for payment, the employer shall pay a penalty equal to 25 percent of the  
13 amount due.

14 \* Sec. 3. AS 23.30.075(b) is amended to read:

15 (b) If an employer fails to insure and keep insured employees subject to this chapter or  
16 fails to obtain a certificate of self-insurance from the board, upon conviction, the court may  
17 [SHALL] impose a fine of up to \$10,000 and may impose a sentence of imprisonment for not  
18 more than one year. In addition, the board may impose a civil penalty of up to three times  
19 the manual rate that would have been charged for the employer's insurance premium  
20 during the period the employer failed to obtain insurance. If an employer is a corporation,  
21 all persons who, at the time of the injury or death, had authority to insure the corporation or  
22 apply for a certificate of self-insurance [,] and the person actively in charge of the business of  
23 the corporation shall be subject to the penalties prescribed in this subsection and shall be  
24 personally, jointly, and severally liable together with the corporation for the payment of all  
25 compensation or other benefits for which the corporation is liable under this chapter if the  
26 corporation at that time is not insured or qualified as a self-insurer.

27 \* Sec. 4. AS 23.30 is amended by adding a new section to read:

28 Sec. 23.30.232. CIVIL LIABILITY FOR WORKPLACE SAFETY INSPECTIONS. A  
29 carrier, an insurance service agent to a self-insured employer, or a trade association is not liable  
30 for civil damages as a result of an act or omission in performing or failing to perform a  
31 workplace safety inspection or a safety advisory service unless the carrier's, agent's, or

1 association's act or failure to act constitutes intentional misconduct.

2 \* Sec. 5. AS 23.30.265(2) is amended to read:

3 ~~#~~17 (2) "arising out of and in the course of employment" includes employer-required  
4 or supplied travel to and from a remote job site; activities performed at the direction or under the  
5 control of the employer; and employer-sanctioned activities at employer-provided facilities; but  
6 excludes recreational activities sponsored by the employer, unless participation is required  
7 as a condition of employment, and activities of a personal nature away from employer-provided  
8 facilities;

9 \* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

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## Life Protection

- ✓ 24 Hrs. A Day Coverage
- ✓ Level Term
- ✓ Tax Free Death Benefit
- ✓ Full Family Protection

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# **CORRECTION**

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