TESTIMONY

HB1390HD2

Proposed SD1

LINDA LINGLE
GOVERNOR OF HAWAII

MARIE C. LADERTA
DIRECTOR

CINDY S. INOUYE
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

March 17, 2010

TESTIMONY TO THE
SENATE COMMITTEE ON LABOR
For Hearing on Thursday, March 18, 2010
3:00 p.m., Conference Room 224

BY

MARIE C. LADERTA, DIRECTOR

House Bill No. 1390, H.D. 2, Proposed S.D. 1
Relating to Workers' Compensation

(WRITTEN TESTIMONY)

TO CHAIRPERSON DWIGHT Y. TAKAMINE AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. No. 1390, H. D. 2, Proposed S.D. 1, is to require an employer who denies compensability, or indicates compensability is not accepted, to submit a written report to the director and claimant within thirty days of its denial of, or indication not to accept, compensability that substantiates its denial of compensability; prohibits the due date for the employer's written report to be extended.

The Department of Human Resources Development is strongly opposed to this bill for the following reasons:

1. In some cases, it is impossible to complete an investigation within 30 days because it is difficult to immediately obtain medical records in view of current privacy laws.

2. Physicians are required to submit medical reports in accordance with 386-96, Hawaii Revised Statutes. They are not, however, required to include in those medical reports information that relates to the same or similar injuries sustained in the past nor medical conditions that will have a bearing on the injury employee's recovery. We would have to secure those medical reports by requesting a subpoena. If those medical records require a special consent to release information and consent is not

timely provided by the employee because of incapacitation, negligence, or the employee is otherwise uncooperative in providing the consent, the employer would not be able to responsibly complete its investigation and review within the timeframe proposed in the measure. In effect, the claim could be determined to be compensable as a result of the employer's inability to defend itself against an unmeritorious claim. Under such situations, the bill could needlessly escalate the costs of workers' compensation claims because there would be no flexibility for good faith effort by an employer to perform its investigations and reviews.

3. This bill is unnecessary as HAR Section 12-10-73, already provides the checks and balances necessary to expedite the process of investigating a claim by requiring an employer to show good cause in writing as to why an extension is needed. Extensions to file the written report are not granted by the director as a matter of routine. The employer has to explain fully what steps it has taken to investigate the claim and by what date it will be completed.

Based on the above reasons, we strongly urge the Committee to hold this bill.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU
650 SOUTH KING STREET, 10TH FLOOR
HONOLULU, HAWAII 96813

MUFI HANNEMANN
MAYOR

Noel T. Ono
DIRECTOR

March 18, 2010

The Honorable Dwight Y. Takamine, Chair
and Members of the Committee on Labor
The Senate
Hawaii State Capitol
Honolulu, Hawaii 96813

Dear Chair Takamine and Members:

RE: HB 1390, HD2, Proposed SD1 RELATING TO WORKERS' COMPENSATION

The City and County of Honolulu strongly opposes House Bill 1390, HD2, Proposed SD1, amending Section 386-86, Hawaii Revised Statutes (HRS), by setting unreasonable time constraints on the employer for determining the compensability of a claim for workers' compensation benefits.

The employer's decision to accept compensability is frequently prolonged because medical reports and documentation are not submitted in a timely fashion by the claimant and/or the treating physician. This results in the employer having to subpoena medical records, thus delaying the employer's ability to review the records and have them reviewed by medical experts prior to making a determination on whether to accept or deny the claim.

Section 386-85, HRS, already places a tremendous burden on the employer by presuming that all claims are compensable in the absence of substantial evidence to the contrary. This standard of proof often requires that the employer obtain one or more expert opinions if it decides to deny compensability. Given the time it takes for such opinions to be rendered, the amendment proposed by this bill would effectively make a claim compensable based on time constraints rather than medical evidence and will significantly increase the cost of workers' compensation in the State of Hawaii.

We respectfully urge your committee to file House Bill No. 1390, HD2, Proposed SD1.

Yours truly,

NOEL T. ONO
Director of Human Resources

THE SENATE
TWENTY-FIFTH LEGISLATURE,
REGULAR SESSION OF 2010

COMMITTEE ON LABOR
Sen. Dwight Y. Takamine, Chair
Sen. Brian T. Taniguchi, Vice Chair

TESTIMONY OF ILWU LOCAL 142 RE: HB 1390, H.D.2, S.D. 1
RELATING TO WORKERS' COMPENSATION

Hearing: Thursday March 18, 2010
Time: 3:00 p.m.
Place: Conference Room 224, State Capitol

Chairman Takamine, Vice Chair Taniguchi, and Committee Members:

Thank you for the opportunity to present testimony regarding HB 1390, H.D. 2, S.D. 1. We support this useful and constructive bill.

Section 386-86 HRS now contains no time period during which an Employer must make a decision to deny a claim for workers' compensation benefits. HB 1390, H.D. 2, S.D.1, by contrast, establishes a mandatory thirty day time period for the Employer to submit a written report which justifies the denial of the claim. This is a sensible, administrative improvement which should encourage all parties to act responsibly moving cases toward a prompt resolution.

Legislative action is necessary in this area because of the languid pace at which claims are sometimes investigated and accepted or denied. Some employers deny claims "pending investigation", delaying access to vital medical care and compensation benefits for the injured worker while medical evaluations by the employers' physicians are arranged to accommodate the schedules of the examining doctors rather than the need to have the claim adjudicated promptly. Consequently, treatable injuries that should lead to limited periods of disability, prompt rehabilitation and the resumption of productive work become more complicated and prolonged. Physical injuries and disability without compensation or treatment generate corresponding financial and social problems, and with the passage of time, often lead of needless emotional distress and psychological dysfunction.

Delay, however, is not solely the enemy of the injured worker but it is also the enemy of cost conscious employers and the public interest in effective insurance at reasonable premium rates. Because claims are not promptly denied, hearings to determine compensability are delayed, and time that should be devoted to care and rehabilitation is squandered. By requiring a prompt investigation of any denial of a claim within 30 days without extensions, this proposed legislation is an effective antidote to delay and indifference and a meaningful step toward greater efficiency and economy.

Accordingly, ILWU Local 142 staunchly supports the passage of HB 1390, H.D. 2, S.D. 1.

HAWAII INSURERS COUNCIL
A trade association of property and casualty insurance companies

Pauahi Tower, Suite 2010
1003 Bishop Street
Honolulu, Hawaii 96813
Telephone (808) 525-5877
Facsimile (808) 525-5879

Alison Powers
Executive Director

TESTIMONY OF ALISON POWERS

SENATE COMMITTEE ON LABOR
Senator Dwight Y. Takamine, Chair
Senator Brian T. Taniguchi, Vice Chair

Thursday, March 18, 2010
3:00 p.m.

H.B. 1390, H.D. 2, Proposed S.D. 1

Chair Takamine, Vice Chair Taniguchi, and members of the Committee, my name is Alison Powers, Executive Director of Hawaii Insurers Council. Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately 45% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** H.B. 1390, H.D. 2, Proposed S.D. 1. This bill requires an employer to issue a written report to the director and claimant within 30 days of the employer's denial or indication to not accept compensability of a workers' compensation claim, with no extension.

Current law requires this report, but allows an extension by the employer. There are many reasons an extension is requested, that follow. If no extension is granted, there will be additional layers of work required by the employer and director to issue final reports when all information is gathered, there will be additional delays in waiting for final reports, and there may be additional hearings required because of appeals.

1. Some medical providers do not comply with administrative subpoenas. Therefore, medical records are not received within the initial 30-day period.

2. Some providers do not accept an employers' signed authorization to release medical information. They require *their own form* to be signed which causes additional delay and sometimes injured workers do not want to sign another release.

3. Today, before the employer submits the written report, the employer attempts to contact the injured worker and explain the content of the report. Sometimes the injured worker does not have a phone or the employer cannot reach the injured worker which causes delay.

4. There are occasions when the injured worker wants time to think about whether they want to make a workers' compensation claim.

5. Employers should be allowed due process and sufficient time to gather appropriate information to determine causation and compensability.

For these reasons, employer requested extensions are needed to avoid delays further into the process and to avoid unnecessary additional layers of work by the employer and the director.

We respectfully request that H.B. 1390, H.D. 2, Proposed S.D. 1 be held.

Thank you for the opportunity to testify.

THE LAW OFFICES OF DOUGLAS THOMAS MOORE

Office Address:
Century Square
1188 Bishop Street, Suite 1401
Honolulu, Hawai'i 96813

Telephone: (808) 526-0056
Fax: (808) 526-0057
Moore4640@hawaiiantel.net

March 17, 2010

TO: Senate Labor Committee
Hon. Sen. Dwight Takamine, Chair

Re: TESTIMONY IN SUPPORT OF HB 1390, HD2, Proposed SD1
TO BE HEARD 3/18/10 @ 3:00 p.m

Dear Sen. Takamine and Committee Members:

I represent injured workers in their workers' compensation claims. I support HB 1390, HD2, Proposed SD1. The intention of the bill is to protect the rights of injured workers by expediting the investigation of claims and the conduct of hearings to award or deny compensation.

Employers and insurance carriers have the right to investigate claims. However, they do not have the right to abuse this process while investigating claims. Stall tactics such as denying or deferring compensability of the claims pending their investigations hurt the injured worker. The injured worker typically does not receive medical benefits/treatment and/or TTD wage loss during these investigations. This creates great hardship to the injured worker. These investigations which deny or defer compensation can take a long time. HAR 12-10-73(a) allows the director to grant extensions of time to investigate claims. Employers and insurance carriers can abuse this process by conducting lengthy investigations and then are granted more extensions of time to investigate. All the while, the hardship to the injured worker continues. The attitude appears to be: if we stall, maybe this claim will go away.

I enclose here examples of claims that were denied pending investigation. The investigations were lengthy. There were extensions to investigate. Meanwhile, the injured workers suffered physically, mentally and financially.

This bill will help prevent the abusive lengthy denials of compensation pending investigation. Please pass this bill. Thank you.

Should you have any questions or need further information from me, please do not hesitate to contact me.

Very Truly Yours,

Douglas Thomas Moore

encls.

IP002518

Island Insurance Companies

ISLAND INSURANCE COMPANY, LTD. • TRADEWIND INSURANCE COMPANY, LTD.

October 7, 2009

Mr. Darwin Ching
Dept. of Labor and Industrial Relations
Disability Compensation Division
P.O. Box 3769
Honolulu, HI 96812

Re: Claimant : Martin Olvera
Insured : [redacted]
D/Injury : 09-12-09
Our Claim No. : IP002518
DCD Case No. : Pending

Dear Mr. Ching:

We are denying the above noted claim pending further evaluation. According to the WC-1 it is not known as to how Claimant was injured. We are awaiting the statements from Employer, co-workers and Claimant to determine how, where and when Claimant was injured and whether his injury/injuries was related to his job duties. We are also awaiting the medical reports, if any, to determine his diagnosis, prognosis and recommendation for medical treatment.

After we obtain the Claimant's, employer's and co-workers' statements we would like to obtain an independent medical evaluation to determine Claimant's symptoms, medical condition and further treatment.

In light of the above and in compliance with Section 12-10-73, H.R.S., Employer/Carrier is respectfully requesting 120 days to evaluate the above captioned claim. We shall inform all parties as to our position once determination has been made.

Should further discussion be necessary, kindly contact the undersigned. Thank you very much.

Sincerely,

By [redacted]
Telephone (808) [redacted]
Mr. Martin Olvera

RECEIVED
OCT 14 2009

Claims Office 1165 Bethel St. • P.O. Box 1520 • Honolulu, Hawaii 96806-1520 • Phone (808)531-1311 • Fax (808)539-9738

Received by Island Insurance 10/8/2009 8:37:55 AM

THE LAW OFFICES OF DOUGLAS THOMAS MOORE

Office Address:
Century Square
1188 Bishop Street, Suite 1401
Honolulu, Hawaii 96813

Telephone: (808) 526-0056
Fax: (808) 526-0057
Email: Moore4640@hawaiiantel.net

December 23, 2009

[redacted]
Island Insurance Company
P.O. Box 1520
Honolulu, HI. 96806-1520

RE: ACCEPT COMPENSABILITY NOW
Claimant: Martin Olvera, Jr.
Employer: [redacted] Plumbing
Carrier: Island Insurance
D/Injury: 9/12/2009
Case No.: 2-09-

Dear Ms. [redacted]:

This letter follows our conversation 12/21/09 in which I questioned you about the status of accepting compensability in this claim. You have the Claimant's interview transcript. I understand the employer and co-workers have been interviewed. To my knowledge, there is no evidence that Claimant did not suffer a work-related accident and injuries as claimed. Do you have any such evidence? If not, then the claim must be accepted as compensable.

Please be reminded that HAR Sec. 12-10-73 requires that when compensability has not been accepted, the employer shall submit a written report to the director and the injured employee within thirty calendar days supporting the denial. Failure to submit a written report to support the denial shall indicate acceptance of the injury by the employer. To my knowledge, the employer has not submitted as required a written report to the director and the injured employee within thirty calendar days supporting the denial. Therefore, we consider the failure to submit a written report to support the denial as acceptance of the injury by the employer. Pay benefits to Claimant now.

Therefore, please immediately confirm acceptance of claim compensability or we will file for hearing requesting sanctions. Please reply immediately to this request. Thank you for your immediate attention, consideration, and anticipated cooperation.

Very truly yours,

Douglas Thomas Moore

cc: Martin Olvera, Jr.

Martin Olvera
91-046 Parish Dr.
Ewa Beach, HI 96706
219-808-2698

January 27, 2010

To: Hon. Senate Labor Committee
Hon. Sen. Dwight Takamine, Chair
Dear Senators:

I am an injured worker. I am writing to you in support of SB 2339 to limit the time employers and insurance companies can investigate work comp claims and deny compensability of claims.

My work comp claim has been denied pending investigation since 10/7/2009. I was injured on 9/12/2009. I worked for years as a plumber and I hurt my left shoulder while working on pipes.

I have been off work since 9/16/2009. My medical treatment has been denied. I have not received any TTD wage loss. I am experiencing extreme medical/physical and economic hardship.

I have used all my savings. I have no one to support me. I may be evicted soon.

On 10/7/2009, Island Ins. stated to the Dept. of Labor that they wanted 120 days to evaluate my claim. Why do they need 120 days to evaluate a simple work comp injury? This is too much time to investigate and deny my claim pending investigation. I do not understand why I am being denied benefits. I thought work comp was supposed to be like a no-fault system, but I am being treated like I am at fault because I accidentally got hurt on the job.

On 12/23/2009, after having to hire a work comp attorney, my attorney wrote to Island Ins. requesting they accept compensability since they have not filed any report with the Dept. of Labor to support their denial. There has been no response.

Employers and insurance companies should not be allowed to extend their investigations while they deny compensability since this causes so much hardship to injured workers.

I support the proposed amendments to HRS 386-86 as stated in SB 2339. Please vote for and pass this bill. Thank you very much.

Sincerely yours,

Martin Olvera

JOHN MULLEN & CO., INC.
INSURANCE ADJUSTERS AND INVESTIGATORS
Suite 910 • 677 Ala Moana Blvd. • Honolulu, HI 96813
P.O. Box 2096 • Honolulu, HI 96805
Tel: (808) 531-9733 • Fax: (808) 531-0053
Website: www.johnmullen.com • Email: info@johnmullen.com

August 19, 2008

[redacted]
Waipahu HI 96797

'08 AUG 25 A9:00
DISABILITY COMPENSATION DIVISION

Employer: [redacted]
Employee: [redacted]
Date of Injury: 08/02/08
Claim No.: [redacted]
Our File No.: [redacted]
DCD Case No.:

ENCLOSURE: Highlights of Workers' Compensation Law

Dear Ms. [redacted]:

We are the insurance adjusters for your employer and have been notified of your industrial injury/illness.

Based on the information we have received thus far, we are unable to determine whether this is a covered Workers' Compensation claim. Therefore, we are currently investigating this matter. If we have not yet been in contact with you to discuss your claim, please call the undersigned at your earliest convenience. It is imperative that you make immediate contact with this office to discuss your claim.

Enclosed for your review please find a brochure entitled "Highlights of Hawaii Workers' Compensation Law." This will provide you with a brief overview of the Hawaii State Workers' Compensation benefits and procedures.

As your claim is currently under investigation, you may file a WC-5, Employee's Claim for Benefits. This form can be obtained at the Department of Labor and Industrial Relations, Disability Compensation Division. Please be advised that while your claim is being investigated, we will not be able to pay any medical or wage loss benefits. In the interim, you may be entitled to other benefits; and we suggest that you contact your employer about this.

JOHN MULLEN & CO., INC.
INSURANCE ADJUSTERS AND INVESTIGATORS
Suite 910 • 677 Ala Moana Blvd. • Honolulu, HI 96813
P.O. Box 2096 • Honolulu, HI 96805
Tel: (808) 531-9733 • Fax: (808) 531-0053
Website: www.johnmullen.com • Email: info@johnmullen.com

January 8, 2009

TREATMENT PLAN DENIAL

DARWIN L D CHING
INTERIM DIRECTOR OF LABOR
STATE OF HAWAII
DEPARTMENT OF LABOR & INDUSTRIAL RELATIONS
DISABILITY COMPENSATION DIVISION
PO BOX 3769
HONOLULU HI 96812-3769

Employer: [redacted]
Employee: [redacted]
Date of Injury: 08/02/08
Claim No.: [redacted]
Our File No.: [redacted]
DCD Case No.: [redacted]

ENCLOSURE(S):
1. Treatment plan of Dr. [redacted] dated 12/27/08

Dear Mr. Ching:

We are in receipt of Dr. [redacted]'s treatment plan dated December 27, 2008 and postmarked December 27, 2008. Pursuant to Section 12-15-32 of the Workers' Compensation Medical Fee Schedule and Administrative Rules, we object to Dr. [redacted]'s treatment plan as this claim is currently denied pending investigation. The claimant was seen for an Independent Medical Evaluation with Dr. [redacted] and we await his report. Until such time as we receive his report, we are unable to complete our investigation to determine compensability of this claim.

By copy of this letter, Dr. [redacted] and the Claimant are notified that should they disagree with this denial, a review by the Director may be requested within fourteen (14) calendar days after postmark of the Employer's denial. Failure to do so shall be construed as acceptance of Employer's denial.

Thank you for your time and attention in this matter. If there are any questions, please feel free to contact me directly.

Sincerely,

[redacted]

cc: Dr. [redacted]
cc: Douglas Moore, Esq.

RECEIVED
JAN - 9 2009

LINDA LINGLE
GOVERNOR

MARIE C. LADERTA
DIRECTOR

CINDY S. INOUYE
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA ST., 13TH FLOOR
HONOLULU, HAWAII 96813

July 17, 2009

Mr. Gary S. Hamada, Administrator
Department of Labor and Industrial Relations
Disability Compensation Division
830 Punchbowl Room 209
Honolulu, HI 96813

Dear Mr. Hamada:

RE: EMPLOYEE: [redacted]
EMPLOYER: State/Dept. of [redacted]
D/INJURY: 6/9/09
CASE NO.: [redacted]

Investigation of Ms. [redacted]'s claim is anticipated to require more than 30 days. Pursuant to 12-10-73 of the Administrative Rules, we request an extension of 90 days from the date of this letter.

We sent a questionnaire was sent to the Claimant on 6/24/09 but have not received a response to date. As such, we do not have a detailed description of the above-mentioned industrial injury, or details about who she treated with or her past medical history. We would however, like the opportunity to investigate the circumstances of this case. An Independent Psychiatric Evaluation has been scheduled for 7/30/09.

Please notify this office should this request be denied.

Sincerely,

[redacted]

Employee Claims Division

c: [redacted]

BROADSPIRE

a Crawford Company

December 13, 2007

State of Hawaii
Department of Labor
75 Aupuni Street
Hilo, HI 96813

12-1073 NOTICE

RE: [redacted]
Date of injury: 11/12/2007
Claim:# [redacted]

This letter is to request an additional 90 days to investigate the compensability of the above referenced claim. According to the medical reports which are attached, the employee sustained a specific injury on 10/25/2007. It is not clear whether the employee is claiming the injury to be work related, but in the event he is, it was not reported to the employer on a timely basis. As a result of the injury on 10/25/2007 the employee was totally disabled from work by Dr. [redacted], ongoing from that date, until 1/25/2008. The employee failed to notify the employer of the fact he was taken off work by Dr. [redacted] and continued to work until Monday 11/12/2007. The statement of Dr. [redacted] was not provided to the employer until 11/30/2007.

In addition to the above facts, and based on the medical information provided, the employee appears to have a chronic back condition for which he has received treatment in the past, and it appears the employee's current complaints are a continuation of the effects of his pre-existing condition.

Respectfully submitted,

[redacted]
Claim Examiner

Cc: Attorney [redacted] – 220 S. King St. 10th floor, Honolulu, HI 96813
[redacted] – [redacted]
[redacted] – 1320 Harbor Bay Parkway, Ste 135, Alameda, CA 94502

KESSNER UMEBAYASHI
BAIN & MATSUNAGA
ATTORNEYS AT LAW
A LAW CORPORATION

19TH FLOOR
CENTRAL PACIFIC PLAZA
220 SOUTH KING STREET
HONOLULU, HAWAII 96813

TELEPHONE:
(808) 536-1900
TELECOPIER:
(808) 529-7177
E-MAIL:
lawyers@kdubm.com

August 8, 2008

State of Hawaii
Disability Compensation Division
830 Punchbowl Street, Room 209
Honolulu, Hawaii 96813

Re: Claimant : [redacted]
Employer : [redacted]
Carrier : [redacted]
D/A : November 12, 2007
Case No. : [redacted]
File No. : [redacted]

Dear Sir/Madam:

This office represents [redacted] and [redacted], adjusted by [redacted] in connection with a workers' compensation claim brought by Claimant [redacted] Please find enclosed an original copy of an independent medical evaluation report, dated July 29, 2008, by [redacted], M.D. Please include Dr. [redacted]'s report with your file for Mr. [redacted]'s claim. By copy of this correspondence, we are providing Dr. [redacted]'s report to Mr. [redacted] attorney, Douglas Moore, M.D.

We will be providing Employer and Insurance Carrier's position in the near future. Thank you for your attention to the foregoing. Should you have questions or concerns, please feel free to contact the undersigned directly.

Very truly yours,

KESSNER UMEBAYASHI
BAIN & MATSUNAGA

[redacted]

[redacted]

Enclosure: Orig. IME report by Dr. [redacted] dated 07/29/08
cc: [redacted] - [redacted] & Company (w/o encl.) ([redacted])
— Douglas Moore, Esq. (w/encl.)

Fairmont Specialty
a division of Crum & Forster

Crum & Forster Indemnity Company
United States Fire Insurance Company
The North River Insurance Company

October 25, 2007

Douglas Moore
Attorney at Law
1188 Bishop St. #1009
Honolulu, HI 96813

Re: Employee : [redacted]
Employer : [redacted].
Date of Injury : 9/22/06
Claim Number: [redacted]
DCD Number : Pending

Enclosure: Medical authorization form

Dear Mr. Moore:

I understand that you will be representing Ms. [redacted] regarding the above workers compensation claim.

Please be advised that we are denying liability for the above workers compensation claim pending investigation.

Enclosed you will find a medical authorization form. Please have Ms. [redacted] complete the information and return it to our office. We would also like your permission to obtain a telephone recorded interview from Ms. [redacted] regarding her condition.

Please contact me at your earliest convenience to discuss the details of this claim. By copy of this letter, we are notifying the medical provider that we are unable to honor payment on any bills pending investigation.

Thank you for your consideration of this letter. Should you have any questions please do not hesitate to contact me.

Sincerely,
Fairmont Specialty
[redacted]
DICTATED BUT NOT REVIEWED

[redacted]
Senior Claims Technical Specialist
(808) 526-1631

SH/lp

C: Dr. [redacted]
DCD

RECEIVED
OCT 2 6 2007

Fairmont Specialty
a division of Crum&Forster

Crum & Forster Indemnity Company
United States Fire Insurance Company
The North River Insurance Company

September 15, 2008

Pacific Guardian Life
1440 Kapiolani Blvd.
Honolulu, HI 96814
Attn: Gary Fujitani

Re: Employee : [redacted]
Employer : [redacted]
Date of Injury : 9/22/06
Claim Number: [redacted]
DCD Number : [redacted]

Dear Mr. Fujitani:

Please be advised that we have accepted liability for the above workers compensation claim. We will be sending you a check under separate cover for $1938.24 for reimbursement of TDI benefits.

Should you have any questions or concerns please do not hesitate to contact me.

Sincerely,
Fairmont Specialty
[redacted]
DICTATED BUT NOT REVIEWED

[redacted]
Senior Claims Technical Specialist
(808) 526-1631

SH/lp

C: [redacted], Esq./Wong & Oshima
Douglas Moore, Esq.
DCD

RECEIVED
SEP 16 2008

DENNIS W. S. CHANG

ATTORNEY-AT-LAW

WORKER'S RIGHTS - LABOR LAW
WORKER'S COMPENSATION
SOCIAL SECURITY DISABILITY
LABOR UNION REPRESENTATION
EMPLOYEES RETIREMENT SYSTEM
BODILY INJURIES

COMMITTEE ON LABOR
Senator Dwight Y. Takamine, Chair
Brian T. Taniguchi, Vice Chair

Testimony Related to HB 1390 HD2 SD1

DATE: Thursday, March 18, 2010
TIME: 3:00 p.m.
PLACE: Conference Room 224
State Capitol
415 South Beretania Street

Dear Honorable Senators Takamine and Taniguichi and other distinguished members:

My name is Dennis W. S. Chang and I have been practicing as a labor attorney for more than three decades. Throughout my entire career, a large concentration of my legal work has been representing injured workers under the State's workers' compensation system.

I unequivocally, wholeheartedly, and respectfully ask that you support the proposed bill to expedite the processing of the payment of benefits to injured workers. Since the recent ruling of the Intermediate Court of Appeals taking away the right of the Director of Labor and Industrial Relations to issue sanctions, there is no other mechanism to expedite the payment of benefits under the workers' compensation system. Currently, the system allows extensions after extensions pending investigations while injured workers who are truly entitled to workers' compensation benefits just languish at the mercy the insurance carriers or wait for a hearing. This can take up to a year at times. Unnecessary pain, undue emotional distress and economical ruin occur daily by the needless delay in the payment of benefits.

One would think that there are alternative schemes to "carry the injured worker." This is undoubtedly a misnomer. Temporary Disability Insurance does not pay for work injuries and many times even if you should be entitled to payments, you do not meet the requisite requirements of the number of weeks worked prior to the work injury. Or, it could be that you have already used the TDI benefits for a prior non-work related injury. State and County workers suffer just as well by the needless delay in the payment of benefits pending outrageous investigations. Most government workers usually do not qualify because they have sick leave however nominal. Private medical plans are terminated by the delay and without income injured workers cannot pay for any COBRA, which is already cost prohibitive even if you are receiving wage loss benefits under the workers' compensation law. Many injured workers are in the middle class and are forced to tap out what little savings and retirement benefits that they may have. They over extend their credit cards using one to pay another while drawing out monies for daily living expenses. They do not qualify for public assistance since many own a home. In the end, they are forced into bankruptcy or lose their home altogether.

The foregoing are merely a couple of illustrative examples of our unsustainable broken workers' compensation system. The point is that there is rampant abuse in the delay of the payment of rightful benefits pending "an investigation" even when benefits should be promptly paid. This causes needless physical pain with no medical treatment, undue emotional

DILLINGHAM TRANSPORTATION BUILDING

735 BISHOP STREET ● SUITE 320 ● HONOLULU, HAWAI'I 96813 ● TELEPHONE: (808) 521-4005

harm, and economic ruin to not only the injured worker but his or her families. The social costs are far too great to not pass HB No. 1390 as amended, which merely requires that workers' compensation carriers justify or promptly pay rightful benefits as due.

There is a more sinister plot of profiling that causes the insurance carriers to automatically deny claims pending an investigation. See Exhibit 1, attached hereto. If injured workers fail into one of these categories, they will most likely have their claims, however legitimate, denied pending an investigation time and time again.

I beg you to pass the bill as amended. The proposed bill is critically long overdue. We cannot morally allow the unfortunate injured workers to fall through the system. The passage of the bill will serve as a small step towards curbing a portion of the social ills in Hawai`i. Thank you for allowing me to provide my testimony.

Very truly yours,

Dennis W. S. Chang

Enclosure: Exhibit1

Claim Fraud Warning Signs

September 17, 2006 - HEMIC

HEMIC Connection, Volume 1, Number 1

Watch for these warning signs. Especially in combination, they are the most typical characteristics of fraudulent claims, although legitimate claims may have them too.

Look for these signs:

THE EMPLOYER

- Is cutting back hours or downsizing and laying off employees
- Notified employee of poor performance, tardiness, etc.

THE EMPLOYEE

- Is involved in seasonal work that is about to end
- Has taken unexplained or excessive time off prior to claimed injury
- Is disgruntled, soon to retire, or facing imminent firing or layoff
- Is experiencing financial difficulties
- Has a history of drug or alcohol abuse
- Has other family members who receive workers' compensation or unemployment benefits
- Has a history of filing questionable claims over the years
- Is unusually familiar with workers' compensation procedures and laws
- Is never home, or the spouse or relative always calls in
- Participates in contact sports or other activities where he or she could easily get hurt

THE INJURY

- Occurred late Friday or early Monday
- Occurred just before or after a holiday
- Was not witnessed
- Occurred in an area where the employee does not work
- Is vague or the details are contradictoryo Is described in different, possibly conflicting ways–one way to the employer and another way to the doctor and still another way later on after the First Report was filed
- Is rumored to have never really - occurred or to have occurred off work.

If you suspect fraud, call the HEMIC Fraud Hotline. Callers may remain anonymous.

Related Articles

HIMI Gets Underwriting Authority From Lloyd's
HEMIC Insurance Managers, Inc. (HIMI) now has the authority to underwrite Excess & Surplus Property on behalf of Lloyd's of London, the world's leading insurance market. (more)

Official Disability Guides
Medical Providers can now treat using the Official Disability Guides (ODG's) and the Utilization Review (UR) Advisor. (more)

The Faces of Business Fraud
Fraud has many faces; unfortunately many of them appear friendly at first glance. What may seem like a "harmless" understanding, is often both unethical and illegal. (more)

EXHIBIT "1"

Testimony by: Derrick Ishihara, PT
HB 1390,hd2, Proposed sd1, Relating to Workers' Compensation
Sen LBR, Thursday, March 18, 2010
Room 224, 3:00 pm Position: Support

Chair Takamine and Members of the Sen LBR Committee:

I am Derrick Ishihara, P.T., Legislative Committee member of the Hawaii Chapter – American Physical Therapy Association (HAPTA) and small business owner of a private practice clinic. HAPTA represents 250-300 physical therapists and physical therapist assistants employed in hospitals, nursing homes, the Armed Forces, the Department of Education and Department of Health (DOH) systems, and private clinics throughout our community. Physical therapists work with everyone, from infants to the elderly, to restore and improve function and quality of life. We are part of the spectrum of care for Hawaii, and provide rehabilitative services for infants and children, youth, adults and the elderly. Rehabilitative services are a vital part of restoring optimum function from neuromusculoskeletal injuries and impairments.

We support this measure because it will facilitate timely review of work injury claims by requiring a written response within respective and specified time frames for claims that have been denied compensability by the DLIR or employer. Currently, there is no time frame and the injured worker has no assurance of timely investigation or decision-making by DLIR.

I can be reached at 593-2610 if you have any questions. Thank you for the opportunity to testify.

HAWAII INJURED WORKERS ALLIANCE
715 SOUTH KING STREET SUITE #410
HONOLULU, HAWAII 96813

March 18, 2010

The Twenty-Fifth Legislature, State of Hawaii
The Senate
Committee on Labor

HB 1390 HD2 SD1Requires an employer who denies compensability, or indicates compensability is not accepted, to submit a written report to the director and claimant within thirty days of its denial of, or indication not to accept, compensability that substantiates its denial of compensability; prohibits the due date for the employer's written report to be extended.

The Hawaii Injured Workers Alliance strongly supports this measure.

We believe this bill will bring the responsible parties to move claimants case forward toward a prompt resolution.

We believe this will only work if the director will not grant extensions of time to deny or defer compensation of claims pending investigation of claims.

We believe that HB 1390 HD2 SD1 will settle claims in a timely manner.

We agree this is a positive step for injured workers in the State of Hawaii.

Your passage of this bill would be greatly appreciated.

George M. Waialeale
Executive Director
Hawaii Injured Workers Alliance
383-0436