

HOUSE COMMITTEE ON LABOR

February 8, 1991 Hearing Room D 8:30 a.m. Tapes 22 - 25
MEMBERS PRESENT: Rep. Gene Derfler, Chair Rep. Kenn Mannix, Vice
Chair Rep. Sam Dominy Rep. Jim Edmunson Rep. Rod Johnson Rep. Bob Repine
. Rep. John Watt STAFF PRESENT: Victoria Dozler, Conunittee
Administrator Edward C. Klein, Committee Assistant MEASURES HEARD: HB
2433 - PUBLIC HEARING AND WORK SESSION

These minutes contain materials which paraphrase and/or summarize statements made during this session. ONLY text enclosed in quotation marks report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE 22, SIDE A 002 CHAIR DERFLER: Opens the hearing at 8:30 A.M. OVERVIEW OF THE WORKERS' COMPENSATION DIVISION. DEPARTMENT OF INSURANCE AND FINANCE -- EXHIBITS A through L - Witnesses: Larry Young, Deputy Administrator, Workers' Compensation Division Tom Mattis, Manager, Compliance Section Diane Bauer, Manager, Evaluation Section Susan Jordan, Assistant Manager, Evaluation Section Jeanne Willis, Manager, Rehabilitation Review Section Evelyn Hartin, Manager, Metical Review ant Abuse Section William Craig, M.D., Medicd Advisor Harvey Risewick, Workers' Compensation Onfl - dsman John Booton, Small Business Ombutsman

005 LARRY YOUNG, Deputy Administrator, Norkers' Compensation Division: Presents an overview of the Workers' Compensation Division (EXHIBIT A). -He refers to additional information (EXHIBIT B).
061 CHAIR DERFLER: What was your budget test biennium? YOUNG: Doesn't have it with him. -He believes it was \$19 million, but will get the exact figure. -He continues with paragraph 3, page 2. 087 REP. DOMINY: How much longer do we have until we take care of the obligation under the Handicapped Reserve? House Committee on Labor February 8, 1991 - Page 2

YOUNG: Believes the outstanding obligations are between \$57 million and \$60 million. That's paid out as expense basis so it will trail out over a considerable period of time.

-If we grant 100 percent relief to a totally disabled worker, we don't reimburse until the monies are expended.

-At one and one-half cents that would be about \$5 million a year. It would be about 12 years before we have sufficient funds to cover that. Once the obligation's covered that one and one-half cent reverts to the Reemployment Assistance Reserve.

CEIAIR DERFLER: Perhaps you could touch on those programs.

YOUNG: Refers to "Assessment Contribution Reserve" (EXHIBIT B).

-He describes "Retroactive Reserve", page 1.

-He describes "Reopened Claims Reserve", page 2.

-He continues with testimony, page 3.

206 REP. REPINE: Refers to "Workers' Compensation Claims Process" (EXHIBIT B). -Can you explain why you don't have a faster system to deliver services in more timely fashion.

-He presents an example: An employee is under the assumption they have workers' comp and is injured. They go to the Doctor and then find out they don't have workmans' comp. They get caught in the system, floundering around.

YOUNG: That is a non-compliance employer situation. We have a section that investigates whether an employer should have coverage or the employer is responsible. In the statute there are about 19 types of employment where the employer is not subject to the workers' compensation law. If we determine the claim is subject to the law, we send the claim to SAIF, who processes the claim. Any insurance company will look at the claim and determine whether or not the injury is compensable. The insurance company will investigate to determine compensability. Benefits should be paid while they are determining whether or not to accept it. The most delay would be during the investigation to determine who was responsible.

-Under the statute the prime contractor who has coverage can be responsible even though the subcontractor didn't have coverage. The statute asks us to keep it at 30 days, but we don't always accomplish that goal.

272 REP. REPINE: When one of those cases comes forward, it seems that should cause that case to have priority. Maybe we should look at the time of investigation? YOUNG: Claims have number one priority.

286 REP. DOMINY: What authority does the workers' comp system have in investigating insurance fraud?

-He relates a particular case: the Social Security Administration is telling a person they owe social security on \$11,000, which the person never received. The Workers' Comp Division is telling REP. DOMINY they have no right to audit the insurance company to find out where the money went.

-In a letter the director said they have no right to audit, but according to law they do have the right.

The captions contain material which paraphrase and/or summarize: ~
"The captioned transcript. Only the enclosed ID quotation mark report a
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refer to the tapes. House Committee on Labor February, 8, 1991- Page 3

YOUNG: Would have to look at the case. REP. DOMINY: The insurance records show he never got the workers' compensation benefits.

YOUNG: We have the audit authority to see if benefits have been paid. He needs the whole story to be able to answer.

CHAIR DERFLER: The department has always responded very quickly whenever he has had any problems. He encourages members to call the department. ,
· 337 TOM MATIIS, Manager, Compliance Section: Presents an overview of the Compliance Section (EXHIBIT C).

TAPE 23, SIDE A

020 MATTIS: Continues with page 3 of his testimony. 029 REP. DOMINY: Are you just looking for compliance in these audits? Are you

also looking for fraud and misplacement of money? MATTIS: We're looking for compliance with the workers' compensation law. -He will supply a document of all of the things we look for. REP. DOMINY: What's the average amount of time to audit a company of 1,000 employees?

043 MATTIS: We don't audit employers unless they are self-insured. We audit insurance companies. The audits can take from four to six months.

CHAIR DERFLER: Do you also audit SAIF? MATTIS: We do. 053 REP.

REPINE: Do you audit individual companies; a logging company, for example?

MATTIS: We would audit the insurance company that handles that logging company.

-The insurance companies may audit an employer to insure that the payroll-the basis for the premium-is accurate.

REP. REPINE: Who pays the waiting fees?

MATTIS: We pay for the audits. REP. REPINE: What about when an insurance company audits a smaU logging company?

068 YOUNG: The employer pays through the premium assessment. We are financed through the premium assessment. When the insurance company audits it's part of their overhead, which is built into the premium. Occasionally we audit an employer directly.

MATTIS: Continues with page 3 of testimony, "Audit also certifies "

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100 DIANE BAUER, Manager, Evaluation Section: Presents an overview of the Evaluation Section (EXHIBIT D). 162 REP. REPINE: Are the 39 positions in the Governor's budget new positions? BALLER: No; 39 total positions.

167 REP. WATT: How many positions did you have the last biennium? YOUNG: Is not certain. He believes it was 32.

179 SUSAN JORDAN, Assistant Manager, Evaluations Section: Present an overview of the Appellate Unit (EXHIBIT E). 213 CHAIR DERFLER: Is the bottleneck in completing requests for reconsideration being corrected? JORDAN: We're about three months behind getting the orders out. -We were operating under temporary rules and it took time to train staff and educate the public on how to request a reconsideration and the kind of information that is needed. -Now that permanent rules are in place and we have the form requesting reconsideration, we expect the backlog will be eliminated in July. 231 REP. DOMINY: If you did a line graph illustrating where we were before the reform and where we are today; what would the amount of time look like? YOUNG: As a result of appealing determination orders and notification of closure? REP. DOMINY: The concept was to get us through the process faster. We're still in the early stages, but it is higher, is it starting to level and go down or is it still on the way up? YOUNG: It's not as high as it was prior to the reform. The complaint was that it would take several months to

schedule a hearing. We need to be a lot closer, but once we get past d
is rush this new process with new people we'll be within 15 to 30 days
in getting a reconsideration order out. That's considerably sooner than
it was. REP. DOMINY: Would appreciate a chart of what's happening. -He
is hearing complaints that in some cases it's taking longer than it used
to. 268 REP. EDMUNSON: What percentage of reconsiderations include &
request for appointment of a panel of physicians? How is that working?
His impression is that it's a time consuming, cumbersome process. -The
law is well intended, but he believes that process is not working as
well as we hoped. JORDAN: It's still too early to tell. It is a lengthy
process. DR. CRAIG can answer the particulars. REP. EDMUNSON: What's the
process and time when there is a request for medical review?
297 JORDAN: Explains the process. -By rule the process is supposed to
take 45 days.

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proceedings, please refer to the House Committee on Labor February
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-The doctor has two weeks to examine the worker and make the report
back to the department. -It is taking that long. REP. EDMUNSON: How many
reviews have been completed? JORDAN: We've requested 45 medical arbiters
and have completed 10. CHAIR DERLER: Would hope you'd give special
consideration in working this through. We questioned whether this would
be a problem at the time we passed the bill and were assured it wouldn't
be. It appears to be a problem. 326 YOUNG: DR. CRAIG will be talking
about his.

-He refers to "Reconsideration Proceeding", page 4, EXHIBIT E, which
describes the process.

-We recognize the process and work hard to expedite it. REP. WATT: Who
is the acknowledgment for the request for reconsideration directed at?
Who is not supplying information? JORDAN: When we send an acknowledgment
letter to the parties after we receive a request for reconsideration it
acknowledges we've received a request for reconsideration. It puts them
on notice that they have 15 working days from the mailing date of the
request for reconsideration to submit any information that should have
been, but was not submitted at the time of closure. We begin our process
at the end of the 15 days. 373 REP. DOMINY: Refers to page 2 of the
testimony. Is there a larger number of requests for reconsideration
since the passage of new legislation? JORDAN: Doesn't know what it was
before. YOUNG: Is not aware it has increased. We wanted a process to
make sure the worker got all the information submitted for
reconsideration. -We might be able to supply you that information. 400
REP. DOMINY: We were supposed to be taking the attorneys out of the
system. Will that cost the system more money in some other place? Will
the staffing level have to increase in order to give people the
assistance they need? -Has there been an increase in your workload? JORDAN:
It isn't that time consuming for a review specialist. She explains the
process. -It doesn't take any more time to work with the worker as we
are with the attorneys requesting reconsideration. 434 REP. REPINE: Says
he has documents dealing with palliative care cases which indicate they
were initially dropped when this process started. Based on reevaluation
by a physician the earlier ones were approved, but later on the criteria
for approval was no longer acceptable. A letter was sent to the
physician requesting more information. Would one be suspicious that that

was used to kick in the 60 day extension? YOUNG: The palliative care process falls outside of the reconsideration process. Palliative care is only appropriate - House Committee on Labor February 8, 1991 Page ~

after the worker becomes medically stationary.

-The reconsideration process only looks at the situation at the time of the notice of closure.

-We would want to follow up on the situation you outline, because we want consistency in the palliative care process. TAPE 22, S11)E B 016 JORDAN: Continues with testimony, page 2, "Use of a medical arbiter" 037 CHAIR DERFLER: Is there a pattern developing causing reconsideration requests? JORDAN: Doesn't think so. -The pattern may be that the board won't set a hearing unless reconsideration has been requested. 043 REP. WATT: Are the six review specialists your entire staff? JORDAN: Yes. YOUNG: There is clerical support. REP. WATT: How many FTE's are assigned? JORDAN: There are eight FTE's for the Appellate Unit; a supervisor, clerical specialist and six appellate review specialists. 053 JEANNE WILLIS, Manager, Rehabilitation Review Section: Presents an overview of the Rehabilitation Review Section (EXHIBIT F). 109 CHAIR DERFLER: How much is in the Reemployment Assistance Reserve?

WILLIS: Updated yesterday, it's \$ 61 million. CHAIR DERFLER: It's growing.

-Hi has been told the program is not working correctly. Is there a problem with it?

WILLIS: The permanent rules were developed and have been in effect since December 26. It's too early to see where the program is going. Of the 2,000 eligibility worker cards we've issued since July, when the proposed permanent rules went into effect, approximately 22 percent of the workers have gone back to work. They've gone back to work at an average of 89 percent of the wage they made at the time they were originally injured.

-The early figures we are seeing indicate that the program is working. It's true the fund is continuing to grow. Part of that payout from the fund would be if the workers returning to work have subsequent injuries. To date we only have 3 claims for subsequent injuries. 140 CHAIR DERFLER: Over what period of time have the 20 percent been reemployed?

WILLIS: From July 1 to the end of December.

Chairman: During their testimony, the following information was provided: The number of workers who have returned to work after an injury is 22 percent. This is a significant increase over the 10 percent who returned to work in 1990. For complete details of the program, please refer to the House Committee on Labor February 8, 1991 Page 7

CHAIR DERFLER: Does that seem unusually low? WILLIS: We hope the number will increase.

-Many workers prefer not to use their Preferred Worker card. -It's our hope that with the education program we're implementing the figure will increase dramatically. CHAIR DERFLER: People are not informing employers they've had claims. WILLIS: Traditionally, employees don't want to tell

employers they are an injured worker. They choose not to we the cart.
-The self-insureds are becoming educated and will ask if the worker is a Preferred Worker. CHAIR DERFLER: Thinks employers would be anxious to hire that type of worker. 165 WILLIS: We're hoping to show employers this is a good program and that they are totally protected for a three year period. -We will be sending out a letter to every employer in Oregon explaining the program. CHAIR DERFLER: You're starting to promote the program? WILLIS: We're in the process of heavily promoting it. CHAIR DERFLER: YOU obviously feel it's not being used as much as it should be? WILLIS: We would like it to be higher than 20 percent. We're pleased it's working this well. CHAIR DERFLER: What complaints have you received? WILLIS: We've received very little negative feedback -We've received positive feedback on the very simple process to obtain the Preferred Worker status. CHAIR DERFLER: YOU don't think any changes are needed in the program? WILLIS: We made significant changes between September and December before our final rules were out. She explains how streamlined the system is. CHAIR DERFLER: If only 20 percent use the program, there must be a problem somewhere. WILLIS: Hopefully, with a little more time the program will be used more. 224 REP. EDMUNSON: One change in the law was the ability of workers to receive a cash settlement for an accepted claim. When the worker signs that agreement, to they implicitly waive their Preferred Worker protections? That's not a cost of the claim, but is a benefit under the law. -We've received differing opinions on the effect of such an agreement.

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WILLIS: We do not say that if you enter into a release you have no rights under the Reemployment Assistance Reserve. The only limitation is if that worker compromises away all of their permanent partial disability (PPD). By statute if they have no PPD they can not be eligible as a Preferred Worker. 262 REP. EDMUNSON: That's a sophisticated legal fiction. The basis of the compromising release is the existence of permanent disability. -If you're telling me we need to amend that statute to make clear these programs are available to workers this committee would be interested to make a change in the law. WILLIS: This has not been an issue to date. We have not denied anyone access because they have compromised away their permanent disability award. REP. EDMUNSON: Would it be helpful to amend the law to make that more clear? YOUNG: It seems it would be dependent on what the settlement states. REP. EDMUNSON: The employer at time of injury, except under limited situations, will not be the employer to benefit from Preferred Worker placement. WILLIS: It can be the employer at injury if the worker can return to their regular job. By the Bureau of Labor statute the employer must take them back to that job. REP. EDMUNSON: Perhaps we need to allow that settlement to release the rights to that employer who is a party to that agreement. My concern is for the employers down the road. -The point of the program is to make disabled workers more attractive for reemployment. My problem is the employer who is party to that agreement removing the rights of future employers. 330 REP. DOMINY: One of the problems we have with this program is that the workers don't understand they won't be held harmless when they put in an application. -What are you doing to educate the employees? WILLIS: The workers are on our agenda. It's more difficult to educate the workers. -She explains

what's being done to educate workers. REP. DOMINY: Do the three claims you mentioned deal with re-injuries or new injuries. WILLIS: In this program they have to be new injuries. REP. DOMINY: Aggravations still go back on the last claim? WILLIS: Correct. 387 REP. WATT: Have any employees agreed to take the cash benefits?

WILLIS: Does not know of any workers who tried to access this fund and could not. We will be looking at that if it's a potential problem.

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410 REP. WATT: Other members are concerned that the employee has to have every option. In the final analysis the employee has that option. The way the law is written the employee has to accept and take that responsibility for the future? WILLIS: Believes that would be true; a worker can make choices. If a worker has one percent of permanent partial disability in a compromising release they have access. REP. WATT: Do you counsel the employee to make them understand the risks they take in signing off? WILLIS: We are limited in counseling workers about what they should do, particularly when they are represented by counsel.

-If a worker asked us what it would mean if they compromised away all of their permanent disability we would tell them. By statute they need some permanent disability in order to access that fund.

CHAIR DERFLER: The program is not functioning as we thought it would. Hopefully you'll bring us some corrective measures if they're needed.

YOUNG: We recognize that.

TAPE 23, SIDE B

017 WILLIS: Continues her testimony, page 2, "As a result of new legislation " 033 REP. DOMINY: Is there any way you can do an analysis on the impact of the increased load due to the number of disputes you handle? WILLIS: We have figures which show the percentage of increase we've had over the last several months. We have no new positions to cover that workload so we are looking for ways to streamline the process. REP. DOMINY: You don't have those figures today? WILLIS: Doesn't have the percentages, but has the figures by month. We can have the figures for you. REP. DOMINY: Would like some kind of analysis to determine at what point you'll have to add an FTE if the increase continues. CHAIR DERFLER: Recesses at 10:00 A.M. - He calls the meeting back to order at 10:08 A.M.

063 EVELYN HARDIN, Manager, Medical Review and Abuse Section: Presents an overview of the Medical Review and Abuse Section (EXHIBIT G). 116 CHAIR DERFLER: The managed care organization (MCO) process doesn't seem to be working. Have only three been certified? HARDIN: Three have been certified, 14 have given notices of intent to file. We've received two new plans and applications. Nothing is preventing them from forming, they are just trying to be careful. Some that have filed notices are waiting to see what happens with the three that have

been certified.

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CHAIR DERFLER: Has received feedback the MCO's that are certified are concerned if they can function under the rules that have been set up. Some of the insurers have been saying they may not be interested in contracting with MCO's. HARDIN: Has addresses those same issues with the certified MCO's. She was assured that any processes they were experiencing problems with have been taken care of. They asked us not to change rules, but give them a chance to work under their rules. She understands that one of the MCO's has signed a number of contracts. CHAIR DERFLER: Do you know how many contracts have been written or approved? HARDIN: Is not sure of the total. 151 REP. REPINE: How many applicants or certified MCO's are from rural areas? A major concern was how many real rural areas would be able to have MCO's. HARDIN: One is from Medford, two are from Portland. We received a plan for another one in Medford. The attitude of the Klamath Falls and eastern Oregon area are to take a wait and see attitude. CHAIR DERFLER: Are you satisfied where we are in the rule making process concerning MCO's? Do you feel any changes need to be made? -He has told a lot of the other care providers that when MCO's were in place and functioning they didn't have to worry because they'd be in the process. The providers are saying that the MCO's are not working. 175 HARDIN: The permanent rules have not been in place that long. It takes time to get all the processes in place. The rules are not preventing them from going ahead. Sometimes it takes time to agree on the contracts. CHAIR DERFLER: Has heard that the advisory committee wasn't told about some of the later rules that came along. They were supposed to be involved in reviewing the rules before they were put in place. HARDIN: We met with the Management-Labor Advisory Committee and went over the rules at least twice. They made 29 suggestions for rule changes and we adopted 23. We also took some 80 pieces of testimony from the industry which outweighed the remaining six suggestions of the advisory committee. -They may be referring to language the Attorney General's Office put in to better define who may form, own and 207 YOUNG: The only rule the Management-Labor Advisory Committee didn't review was one that referred to insurance companies and certain employers not being allowed to own, form or operate a managed care organization. We asked for assistance from the Attorney General's Office to help us write the rule and because of the time frame to get the rules out the Management-Labor Advisory Committee was not able to review it. REP. DOMINY: We haven't heard how many employers got into MCO's. Have there been any complaints on how the MCO's are running? HARDIN: Hasn't received any complaints. She doesn't know how many employers are represented at this time. -The Medford MCO was meeting with employers that represented 9,000 employees. REP. DOMINY: No one has signed any contracts? House Committee on Labor February 8, 1991 Page 11

HARDIN: Is not sure how many self-insureds have signed contracts. Four insurance carriers have signed with one of the Portland MCO's. CHAIR DERFLER: We thought MCO's would be a good way to save money, but he isn't convinced it will work.

254 WILLIAM CRAIG, Medical Advisor, Workers' Compensation Division: Presents testimony on the duties of the Medical Advisor (EXHIBIT H).

322 REP. DOMINY: Presents an example where a constituent was seeing a chiropractor three times a week. His physician agreed with that. The Workers' Compensation Department was going to curtail the amount of

palliative care. The chiropractic care was eventually reduced to every other month and the individual is no longer working, because they needed the weekly care. -Where in the rules does it say that the attending physicians can not make the decision? Is someone telling the attending physician they can't make that decision? CRAIG: The attending physician requests approval of the treatment plan from the insurer. If the insurer does not agree on the treatment plan the statute and rule provide for the department to make that decision. If the case you referred to was reviewed by w; it was sent to a reviewer to see if the records meet the criteria. He refers to "Review And Report Procedure For Palliative Care Requests" (EXHIBIT II). There are guidelines in the rules which talk about this type of treatment being given twice a month. That is not a hard and fast guideline. Except for that rule there is no specific number of treatments specified. 365 REP. DOMINY: Is it better off paying this person for lost time when he had to be working? I don't think that was the intent of what we did when we changed the law. -What helped you make the decision that every other month was the most treatment this person could get? CRAIG: Is not aware of that case. We should address it specifically. 385 CHAIR DERFLER: Have you talked to the department about that case? REP. DOMINY: The person has been working through his doctor and attorney for about six months. CHAIR DERFLER: Encourages him to do a follow up.

397 YOUNG: The request we get to review is from the attending physician. We would be approving or disapproving what the attending physician is recommending Under the current rules we would not be modifying that request for approval. REP. DOMINY: The physician sent the request and it was disapproved and so he kept sending modified requests until it was finally approved for every other month. CRAIG: Is not aware of any cases where a second case for the same individual has been reviewed twice. He suspects it's an interaction going on with an insurer. -Asks him to review the criteria. He refers to the "Review And Report Procedure..."

-He continues with "Medical Treatment Disputes", page 2, EXHIBIT H. TAPE 24, SIDE A House Committee Olt Labor February 8, 1991 Page 12

004 REP. REPINE: Has many letters from chiropractors and he doesn't have the time to follow up on them. There seems to be a consistency in the cases. -Was there an attempt to extend the window of time into longer evaluations when an onslaught of documents from physicians came in? Was there a tendency to send letters requesting additional information? 025 CRAIG: The insurers and department modified and evolved their procedures when the temporary rules were in effect. -There was a period of blanket denials of palliative care. -Now about 30 percent of the requests are approved. The process where they make the decisions has been evolving. The onslaught of cases was enormous. -As far as he knows they're much more current. The new rules call for 30 days for the insurer to make a decision. We ask the attending physicians to submit a standard form. If they don't respond within 30 days the director, by rule, approves the plan for 120 days. 044 CHAIR DERFLER: It takes time to resolve all disputes. Is there a way to speed this up?

CRAIG: We are within reach of being very quick to turn around palliative care disputes. -The most delays are in the general medical service disputes. CHAIR DERFLER: Is there a way to resolve those more quickly? CRAIG: It comes down to educating people about the rules and the way in which they make requests. When we don't have enough information it takes more time.

-In the next couple of months those disputes should be settled in a more reasonable period of time. 065 YOUNG: We recognize the situation we have. -We have been approved for some interim positions to help us in the Medical Review Section. We are initiating an education process in all areas as to what the requirements are. Once everyone knows the rules the backlogs and concerns will go away.

CHAIR DERFLER: We're receiving a lot of complaints and would like you to resolve this as quickly as you can. 082 REP. DOMINY: Is there a process available for those who were denied when the temporary rules were in effect. Can they get reevaluated? CRAIG: A person can submit a new request for palliative care at any time. e. -There has been a rise in requests during the last few weeks. -There has been a rise in requests during the last few weeks. REP. REPINE: Do you notify people caught in the temporary rules and let them know the situation is now different? CRAIG: That's an appropriate thing to do. House Committee on
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REP. REPINE: Are you doing it?

CRAIG: Doesn't know the people.

REP. REPINE: Don't we know the people who made requests under the temporary rules?

CRAIG: Most cases were resolved at the insurer level and never came to the department.

-We know nothing about people who dealt with the insurance companies.

123 HARVEY RISEWICK, Workers' Compensation Ombudsman, Department of Insurance and Finance: Presents testimony on the functions of the Workers' Compensation Ombudsman (EXHIBIT 1). -He refers to additional information EXHIBIT J. -He predicts there will be an increase in staff due to their new 800 number. CHAIR DERFLER: Has anyone used the Ombudsman's services and been satisfied? 150 REP. DOMINY: Has been pleased.

-Has a problem with the structure. Once someone has retained legal counsel the Ombudsman is restricted from getting involved. That has not been helpful in some cases. We should remove that restriction.

RISEWICK: We were viewed as an adversary when we first started, but that's turning around. He's been getting inquiries from attorneys asking for help. If that restriction was removed he could help.

CHAIR DERFLER: How could we do that?

RISEWICK Lay representation, but if you open it up to everyone there will be problems. There's no ready answer.

REP. REPINE: How many people operate out of your office?

RISEWICK Myself, three other ombudsmen and an administrative assistant.

REP. REPINE: Are you looking for additional FTE's?

RISEWICK Not at this time.

195 JOHN BOOTON, Small Business Ombudsman: Presents testimony on the Small Business Ombudsman Program (EXHIBIT K). -He refers to "Typical Case Profiles" (EXHIBIT L). 238CHAIR DERFLER: How is the program allowing groups to get workers's compensation working?

BOOTON: Carriers are in the process of forming these groups.

CHAIR DERFLER: The carriers are doing it themselves? House Committee on Labor February 8, 1991 - Page 14

BOOTON: Yes.

CHAIR DERFLER: Business groups aren't doing it? BOOTON: If businesses call us with problems we suggest that if they are part of an association, one way to resolve the problem would be to get the association involved. CHAIR DERFLER: Have things settled down since the cancellations? BOOTON: Hopes we never see that happen again. There will always be employers canceled. Some issues on coverage need to be looked into. There is still a lot of animosity towards SAIP. 269 REP. REPINE: Are more insurance companies entering the market?

BOOTON: There's a wait and see attitude, but carriers are exploring the possibility.

284 REP. DOMINY: Is there someplace in the statute or rules that prohibits the ombudsman from getting involved when an attorney is retained? RISEWICK: Doesn't think so. -His job is to resolve problems. He doesn't go around the attorney. REP DOMINY: Raised the question, because he has asked the ombudsman's office to help him see what went wrong with the process. The office responded telling me to ask the questions to the attorney. RISEWICK: If they say you should get with the attorney that's probably the problem. 316 BOOTON: Refers to EXHIBIT L. Because we aren't attorneys we are wary of rendering legal opinions. As a matter of courtesy we keep attorneys informed. We don't always know they're there. CHAIR DERFLER: Does the two tiered system for the assigned risk pool seem to be functioning okay? BOOTON: It is working. He has asked the Insurance Division to conduct an investigation to ascertain how well it's doing. -There were some problems when it started. He believes it's settled down. He should know how it's doing soon.

PUBLIC HEARING ON HOUSE BILL 2433-EXHIBITS M, N & O

Witnesses: Jack Pompei, Administrator, Oregon Occupational Safety and Health Division (OR-OSHA), Department of Insurance and Finance

356 CHAIR DERFLER: Opens the Public Hearing. 360 VICTORIA DOZIER: Describes HB 2433 EXHIBIT M).

-She refers to proposed amendments submitted by OR-OSHA (EXHIBIT N).

375 JACK POMPEI, Administrator, Oregon Occupational Safety and Health Division (OR-OSHA), Department of Insurance and Finance: This is a housekeeping bill. He describes House Bill 2900 from the 1987 session.

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-He refers to line 27, HB 2433, definitions.

-He refers to the amendment. 421REP. REPINE: We have a mechanism that stimulates the assessment of fines.

-OSHA should identify and rectify problems, and not levy fines.

POMPEI: Federal law mandates the inspector must cite and penalize. We aren't given any latitude.

-If the company feels they have problems, we have an education program.

TAPE 25, SIDE A

028 REP. REPINE: Is there a fee structure?

POMPEI: We have a penalty structure and have to abide by the administrative rules.

-The Federal Government will be raising the penalties.

-Administratively, the OR-OSHA can work the rules so the small companies aren't assessed the maximum penalties.

055 REP. JOHNSON: Refers to (i), amendments. You have no choice in the penalties?

POMPEI: No we don't.

REP. JOHNSON: Paragraph (i) is someplace else and has been moved here?

POMPEI: Yes. This was put in by HB 2900.

069 CHAIR DERFLER: It's the same law, but you're transferring it from one jurisdiction to the other?

POMPEI: Correct. REP. WATI: How do the logistics work out?

POMPEI: We're already doing this, just transferring the law. There's no transfer of individuals, hiring or transferring of money.

083 REP. JOHNSON: Where is (i) currently located?

POMPEI: ORS 656.745.

DOZLER: This has no fiscal impact.

WORK SESSION ON HOUSE BILL 2433

091 CHAIR DERFLER: Opens the Work Session

REP JOHNSON: The intent of this is to make sure the insurers provide consultation services to the insured. There's another provision that self-insured employers have to establish and implement a safety program. House Committee on Labor February 8, 1991- Page 16

-A smaller penalty for a self-insured employer would be appropriate.

111 REP. EDMUNSON: Most self-insured employers are large corporations. We're dealing with the most sophisticated businesses.

He doesn't think they need a reduction in the penalty. 123 REP.
MANNIX: Is there a particular reason for the amounts of the penalties?

POMPEI: The rules on penalties have to do with probability and severity.

-Since we were operating under ORS 656 we brought it over. We could put in any amount we wanted. 141 MOTION: REP. DOMINY: Moves to adopt the amendments submitted by OR-OSHA.

REP. MANNIX: Moves to change the amount of the penalty in subsection (i) of the amendments from \$2,000 to \$2,500. REP. MANNIX: This is to be consistent. All the other fines in that range are \$2,500. Discretion can be applied.

REP. JOHNSON: Just because \$2,500 show up more than some others isn't reason to change it. -This amendment is directed at ORS 656.451. We're not talking about unsafe conditions, we're talking about a program.

-He thinks there should be a different figure for self-insured companies.

180 REP. WATT: The aggregate figure is \$10,000. The other penalties don't have aggregate penalties. REP. MANNIX: Assumes there will be a citation and then a proceeding starts. When OR-OSHA comes back and the program hasn't been started they cite again. The third time the penalty is even higher. POMPEI: As REP. WATT stated, we're giving them three months. In a three month period the amount would not exceed \$10,000. After three months we would have repeats and willfuls which are different amounts.

REP. MANNIX: Could you keep coming back each day?

POMPEI: We could, but the penalty can't exceed \$10,000. We would come back in a month.

-Willfuls and repeats are double.

220 REP. MANNIX: It makes a difference how many figures you're dealing with; this consistency makes it easier to remember. -Any self-insured employer better be sophisticated enough to have what's required by this law. REP. WATT: Whose benefit are you doing this for? REP. MANNIX: Everyone's. REP. WATT: As an employer he doesn't see a benefit. He would know what the fines were. employer he doesn't see a benefit. He would know what the fines were. 247 VOTE: The motion to amend the amendment fails 4 to 3. 247 VOTE: The motion to amend the amendment fails 4 to 3. House Committee on Labor February 8, 1991 Page 17

AYE: REP. DOMINY, REP. EDMUNSON, REP. MANNIX. NAY: REP. JOHNSON, REP. REPINE, REP. WATT, REP. DERFLER.

253 MOTION: REP. JOHNSON: Moves to amend paragraph (i) of the amendment to cut the figures in half as they relate to self-insured employers. It would be \$1,000 dollars with an aggregate of \$5,000 for self-insured employers. 261 REP. DOMINY: Does not support the motion to give an advantage to a big employer, leaving a bigger penalty to the small business. REP. JOHNSON: In what way does it increase the rate to small employers? REP. DOMINY: Who is self-insured and who isn't? REP. JOHNSON: Any one not self-insured has nothing to do with this. REP. MANNIX: If a self-insured doesn't know how to do business as well as an

insurance company they shouldn't be doing business. We should have the same penalty for both. 279 VOTE: The motion fails 6 to 1.

AYE: REP. JOHNSON NAY: REP. DOMINY, REP. EDMUNSON, REP. MANNIX, REP. REPINE, REP. WATT, REP. DERFLER. 285 MOTION: REP. MANNIX .: Moves to change the \$2,000 amount in paragraph (i) of the amendments to \$1,000. REP. MANNIX: This is to add consistency. VOTE: The motion fails 5 to 2. AYE: REP. JOHNSON, REP. MANNIX. NAY: REP. DOMINY, REP. EDMUNSON, REP. REPINE, REP. WATT, REP. DERFLER. 297 VOTE (on adoption of amendments): The motion passes 6 to 1.

AYE: REP. DOMINY, REP. EDMUNSON, REP. MANNIX, REP. REPINE, REP. WATT, REP. DERFLER. NAY: REP. JOHNSON. 308 MOTION: REP. MANNIX: Moves HB 2433 as amended to the Floor of the House with a do pass recommendation. VOTE: The motion carries 6 to 1. House Committee on Labor February 8, 1991- Page 18

AYE: REP. DOMINY, REP. EDMUNSON, REP. MANNIX, REP. REPINE, REP. WATT, REP. DERFLER.

NAY: REP. JOHNSON.

CARRIER: REP. MANNIX. CHAIR DERFLER: We'll hear HB 2474 at another time.

-He adjourns at 11:25 A.M.

Submitted by: Reviewed by: Edward C. Klein, Victoria Dozler
Committee Assistant Committee Administrator

EXHIBIT LOG:

A - Testimony on Workers' Compensation Division - Larry Young - 3 pages
B - Additional Information - Larry Young - 5 pages C - Testimony on Compliance Section - Tom Mattis - 3 pages D - Testimony on Evaluation Section - Diane Bauer - 2 pages E - Testimony on Appellate Unit - Susan Jordan - 4 pages F - Testimony on Rehabilitation Review Section - Jeanne Willis - 2 pages G - Testimony on Medical Review and Abuse Section - Evelyn Hardin - 3 pages H - Testimony on Medical Advisor - William Craig - 5 pages I - Testimony on Ombudsman for injured workers - Harvey Risewick - 1 page J - Additional information - Harvey Risewick - 4 pages K - Testimony on Small Business Ombudsman - John Booton - 3 pages L - Additional information - John Booton - 6 pages M - Preliminary Staff Measure Summary for HB 2433 - Staff - 1 page N - Amendments to HB 2433 - Jack POMPEI - 2 pages O - Brochure - Jack Pompei - 2 pages