

TESTIMONY

SB 2339



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

January 26, 2010

TESTIMONY TO THE
SENATE COMMITTEE ON LABOR
For Hearing on Thursday, January 28, 2010
2:45 p.m., Conference Room 224

BY

MARIE C. LADERTA, DIRECTOR

Senate Bill No. 2339
Relating to Workers' Compensation

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

The purpose of S.B. No. 2339, is to repeal the possibility of the director extending the due date for written decisions on the outcome of workers' compensation claims.

The Department of Human Resources Development is opposed to this bill as it removes flexibility from the hearings process. The current language is permissive and takes into account that situations may arise where either one or both parties need additional time to provide information to the director which may be essential to completing the investigation required by this section. Section 386-86 (a), Hawaii Revised Statutes, already contains the necessary checks and balances in that all parties have to agree to the extension. If one party does not, then the decision is issued within 60 days after the conclusion of the hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marie C. Laderta".

MARIE C. LADERTA



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

January 28, 2010

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

S.B. 2339 repeals the possibility of the director extending the due date for written decisions on the outcome of worker compensation claims.

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 SB 2339 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

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

January 27, 2010

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

Re: TESTIMONY IN SUPPORT OF SB 2339
TO BE HEARD 1/28/10 @ 2:45 p.m

Dear Sen. Takamine and Committee Members:

I represent injured workers in their workers' compensation claims. I support SB 2339. 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. However, I do not think the proposed amendments to HRS 386-86 go far enough.

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.

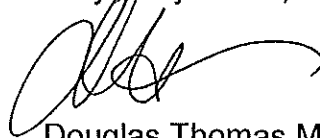
I enclose here examples of claims that were denied pending investigation. The investigations were lengthy. There were extensions to investigate. Meanwhile, the injured workers suffered physically, mentally and financially.

I pray that this Committee put a stop to this abuse by proposing the following additional amending language: **"The director shall not grant extensions of time to deny or defer compensation of claims pending investigation of claims."**

Please consider passing this bill with my proposed amendment. 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.

Island Insurance Companies

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

IP002518



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 : ██████████
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.

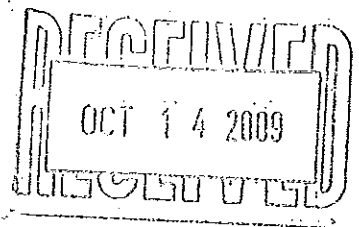
In light of the above and in compliance with Section 12-10-73, H.R.S., Employer/Carrier is respectfully requesting 120 days to evaluate the above-captioned claim. We shall inform all parties as to our position once determination has been made.

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

Sincerely,

By

██████████
Telephone (808) ██████████
Mr. Martin Olvera



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

██████████
Island Insurance Company
P.O. Box 1520
Honolulu, Hi. 96806-1520

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

Dear Ms. ██████████:

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.

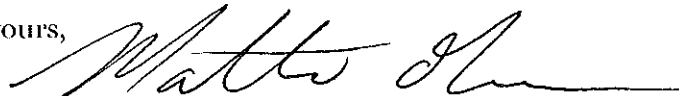
On 10/7/2009, Island Ins. stated to the Dept. of Labor that they wanted 120 days to evaluate my claim. Why do they need 120 days to evaluate a simple work comp injury? This is too much time to investigate and deny my claim pending investigation. I do not understand why I am being denied benefits. I thought 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]
[REDACTED]

Waipahu HI 96797

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

DISABILITY COMPENSATION
DIVISION

08 AUG 25 09:00

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.

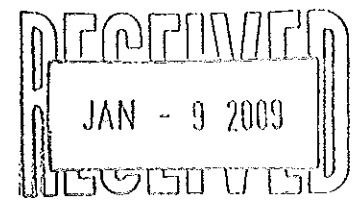
By copy of this letter, Dr. [REDACTED] and the Claimant are notified that should they disagree with this denial, a review by the Director may be requested within fourteen (14) calendar days after postmark of the Employer's denial. Failure to do so shall be construed as acceptance of Employer's denial.

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

Sincerely,

[REDACTED]
[REDACTED]
[REDACTED]

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



LINDA LINGLE
GOVERNOR



MARIE C. LADERTA
DIRECTOR
CINDY S. INOUE
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

★ August 8, 2008

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

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

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

Dear Sir/Madam:

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

██████████
██████████
██████████

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

✶ October 25, 2007

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

Re: Employee : ██████████
Employer : ██████████
Date of Injury : 9/22/06
Claim Number: ██████████
DCD Number : Pending

Enclosure: Medical authorization form

Dear Mr. Moore:

I understand that you will be representing Ms. ██████████ 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. ██████████ complete the information and return it to our office. We would also like your permission to obtain a telephone recorded interview from Ms. ██████████ 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

██████████
DICTATED BUT NOT REVIEWED

██████████
Senior Claims Technical Specialist
(808) 526-1631

SH/lp

C: Dr. ██████████
DCD

RECEIVED
OCT 26 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.

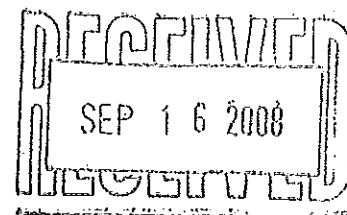
Sincerely,
Fairmont Specialty

[REDACTED]
DICTATED BUT NOT REVIEWED

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

SH/lp

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



THE SENATE
TWENTY-FIFTH LEGISLATURE, 2010
STATE OF HAWAII

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

**TESTIMONY OF ILWU LOCAL 142 RE: SB 2339
RELATING TO WORKERS' COMPENSATION**

Hearing: Thursday January 28, 2010
Time: 2:45 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 SB 2339. We support this useful bill.

Section 386-86 HRS now provides sixty days for the director of the Department of Labor and Industrial Relations to issue a decision after a hearing is concluded unless there is good cause for extending the decision and agreement by all parties. SB 2339 simply eliminates the exception that allows decisions to be issued more than sixty days after the hearing is concluded. This is a sensible, administrative improvement which should encourage all parties, including the department, to act responsibly in moving cases toward a prompt resolution.

No impairment of flexibility should occur with the enactment of this bill. If a case unexpectedly requires additional evidence—such as when the injured worker suddenly develops a new medical condition that requires evaluation—the hearing officer may continue the hearing and secure the added information. The sixty day time period for issuance of a decision will commence only once the hearing is “concluded” with the acquisition of the needed additional medical evidence.

In short, SB 2339 will encourage timely adjudication of claims without compromising the need for occasional flexibility. Accordingly, we therefore support its passage.

TESTIMONY OF ALISON POWERS

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

Thursday, January 28, 2010
2:45 p.m.

S.B. 2339

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 50% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** S.B. 2339, which would repeal the director's ability to extend the due date for written decisions on workers' compensation claims.

The ability to request an extension exists because in some instances there is not enough time to get all the information necessary in order for the director to issue a decision. Subpoenaed records may have not been received or an independent medical examination and/or report may be pending. An extension protects the claimant's best interest because the request must be supported by good cause and the claimant must consent.

Repealing this authority would result in more appeals and increase costs for both the employer and the injured worker.

For these reasons, we respectfully request that S.B. 2339 be held.

Thank you for the opportunity to testify.

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.

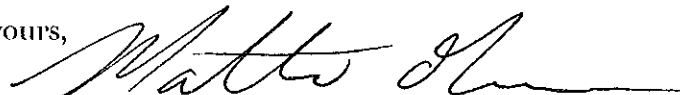
On 10/7/2009, Island Ins. stated to the Dept. of Labor that they wanted 120 days to evaluate my claim. Why do they need 120 days to evaluate a simple work comp injury? This is too much time to investigate and deny my claim pending investigation. I do not understand why I am being denied benefits. I thought 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

To: Senator Dwight Y. Takamine, Chair
Committee on Labor
Re.: SB 2339
Date: January 28, 2010
Time: 2:45pm
Place: Conference Room 224

Dear Senator Takamine,

Please consider this my support of Senate Bill 2339 relating to workers' compensation. I am an attorney who has represented injured workers for nearly 25 years before the Department of Labor & Industrial Relations.

I have seen over the years many instances of insurance carriers delaying acceptance of legitimate work injury claims to the detriment of workers. This delay has been facilitated by the director in instances where he has allowed an extension of time for written decisions on the outcome of worker's compensation claims.

Should you have any further questions of me, I can be reached at 526-4000. Thank you.

Sincerely,

T.J. Lane