

HEMIC*Hawaii Employers' Mutual Insurance Company, Inc.*

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COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
Representative Karl Rhoads, Chair
Representative Kyle T. Yamashita, Vice Chair

Testimony Related to SB 2597
Tuesday, March 16, 2010
10:00 A.M.
Conference Room 309

Dear Chair Rhoads, Vice Chair Yamashita and Committee Members:

I am Paul Naso, General Counsel of the Hawaii Employers' Mutual Insurance Company, Inc. ("HEMIC"). I am here today to represent HEMIC and its CEO/President, Bob Dove, to testify in support of S.B. 2597.

The measure has two purposes. The first purpose is to facilitate executive succession. The original legislation requires that the "administrator" be both CEO and President. S.B. 2597 amends HRS §431:14A-102 and HRS §431:14A-108(a) to specify that the administrator shall be the "CEO". Being able to split the titles and inherent responsibilities of "CEO" and "President" will allow a smoother transition of executive leadership. Please note that the change would not create an additional position. During transition HEMIC would simply have a CEO, and a "President/CFO" or "President/COO" rather than having a CEO/President, CFO, and COO.

In the same vein, the amendment to HRS §431:14A-105(b) allows HEMIC to retain a more experienced Board of Directors as executive leadership shifts. By inserting "consecutive" to the two term limitation, the bill allows Directors who have served two full terms to be re-elected by the members after sitting out a term or more. It is not in the best interests of HEMIC members for the company to have a transitioning executive staff and an inexperienced lay Board of Directors at the same time.

It is our Board's opinion, as well as Mr. Dove's and my own, that these two changes are important to achieving a seamless transition to new leadership. Ultimately, HEMIC members and Hawaii employers are better served.

The second effect of the proposed bill is to assure that the original legislative intent of Hawaii Revised Statutes (HRS) Article 14A is not misconstrued by the courts. The Legislature intended for HEMIC to provide a high level of service to Hawaii employers, especially in the area of workplace safety, and set forth the purpose of HEMIC in HRS §431:14A-101:

[§431:14A-101] Purpose. The Hawaii Employers' Mutual Insurance Company is established to provide workers' compensation coverage to employers of the State at the highest level of service with the lowest possible cost, consistent with reasonable and applicable actuarial standards and the sound financial integrity of the company. The purposes of the company are to provide the highest standard of workplace safety and loss prevention, to encourage employer involvement, and to be responsive to each policyholder's experience, practice, and operating effectiveness. (Emphasis added.)

In codifying HEMIC's purpose in HRS §431-14A-101, the Legislature did not intend to establish a higher (or lower) standard of legal liability for HEMIC than that applying to all other Hawaii workers' compensation insurers. Nor did it intend for the courts to have discretion to do so. Instead the legislature established an Oversight Council (HRS §431-14A-109.5) to assure that HEMIC was meeting its legislated purpose. Recently, however, a district court judge, during a settlement proceeding, suggested that, in spite of the findings of the Oversight Council, the "purpose" language in HRS §431:14A-101 could be construed by a court as establishing a higher legal standard for HEMIC than that applying to other insurers. She recommended a legislative clarification if the legislature did not intend for the courts to have that discretion.

I know that I do not have to explain why HEMIC would be in an untenable position if its legal obligation to third parties was higher than that of the remainder of the insurance industry. HEMIC is not seeking to limit its liability beyond the original legislative intent or to have a liability threshold different than other workers' compensation insurers. We simply believe that legislative language should be inserted to clarify the original legislative intent. The proposed amendments to HRS §431:14A-101 and 431:14A-117 make the necessary clarifications of HEMIC's purpose and liability standard. In doing so they assure that the same legal liability standards apply to all Hawaii workers' compensation insurers.

Thank you for this opportunity to present testimony in strong support of S.B. 2597 and for your long-standing support of HEMIC.

yamashita3-Mark

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 14, 2010 2:11 PM
To: LABtestimony
Cc: nyogi7@msn.com
Subject: Testimony for SB2597 on 3/16/2010 10:00:00 AM

Testimony for LAB 3/16/2010 10:00:00 AM SB2597

Conference room: 309
Testifier position: oppose
Testifier will be present: No
Submitted by: Nolan K. Yogi, Esq.
Organization: Individual
Address: P.O. Box 700964 Kapolei, Hawaii 96709-0964
Phone: (808) 672-0105
E-mail: nyogi7@msn.com
Submitted on: 3/14/2010

Comments:

Dear Sir or Madam:

I oppose Senate Bill 2597 in so far as it amends the purpose and paragraph e) of Hawaii Revised Statute, Section 431-14A-101, specifically to allow HEMIC to be shielded from liability for its own unfair claims handling of a worker's claim for injury either through the Department of Labor or by civil litigation. Our workers already face an uphill battle attempting to get appropriate medical care and loss wage benefits from HEMIC. I believe it unfair and unreasonable to now allow it unfettered freedom to bully and stonewall the injured worker regarding his or her request for benefits. The Workers' Compensation law was enacted precisely to avoid such abuses. SB 2597 falls outside the humanitarian purposes of Chapter 386.

Respectfully,

Nolan K. Yogi, Esq.

yamashita3-Mark

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 15, 2010 7:37 AM
To: LABtestimony
Cc: regoa@hawaii.rr.com
Subject: Testimony for SB2597 on 3/16/2010 10:00:00 AM

Testimony for LAB 3/16/2010 10:00:00 AM SB2597

Conference room: 309
Testifier position: oppose
Testifier will be present: No
Submitted by: ANSON REGO
Organization: Individual
Address: 85833 farrington hwy waianae hi
Phone:
E-mail: regoa@hawaii.rr.com
Submitted on: 3/15/2010

Comments:

I oppose Senate Bill 2597 in so far as it amends the purpose and paragraph e) of Hawaii Revised Statute, Section 431-14A-101, specifically to allow HEMIC to be shielded from liability for its unfair claims handling of a worker's claim for injury either through the Department of Labor or by civil litigation. I can give you many instances of injured workers already face an uphill battle and delay from obtaining a finding of compensability and getting appropriate medical care and loss wage benefits from HEMIC, as well as other carriers. There are really no financial penalties or attorneys fees which are being assessed any insurance carrier, including HEMIC, from delaying acceptance of a claim or approving medical service or even from choosing its own disability rater to do a permanent disability rating, who is also on their limited list of doctors to exam their claimants. Moreover, HEMIC has often not responded to written requests for medical care stating the rules say it has approved if treatment requests are not objected to; however, most treating doctors will not provide medical care unless assured in writing of HEMIC's approval. RESULT: DELAYED TREATMENT.

So I take this opportunity, as an injured worker's attorney, to state SB 2597 is unfair and unreasonable and would allow HEMIC the protection of LAW in egregious cases of bullying and stonewalling an injured worker. What good is that?

Aloha,

Anson Rego

March 15, 2010

The Honorable Karl Rhoades, Chair
The Honorable Kyle Yamashita, Vice-Chair
Members of the House Labor Committee
415 South Beretania Street, Room 422
Honolulu, Hawaii 96813

**Relating to: SB 2597 RELATING TO THE HAWAII EMPLOYER'S MUTUAL
INSURANCE COMPANY**

Dear Representative Rhoads and Members of the Committee:

I urge you to **STRONGLY OPPOSE SB 2597** Relating to the Hawaii Employer's Mutual Insurance Company.

My name is Patti Inoue and I am a vocational rehabilitation (VR) counselor that has worked in the VR field for the past 8 years working with injured workers in returning them back to employment. I am **strongly opposed** to the addition being recommended in SB 2597, specifically: "(e) The company shall not incur additional legal liability toward its members or beneficiaries as a result of any action taken or not taken pursuant to this chapter beyond that explicitly created by this chapter or chapter 386 and generally applicable to the acts or omissions of all issuers of workers' compensation insurance in this State."

My understanding of what is being proposed is that HEMIC or any other insurance carrier will not be held liable for any type of "bad faith" claim that may be brought forth against them. By incorporating this language, it would mean that HEMIC (or any other insurance carrier) can provide (or not provide) services to injured workers in a manner that they would not be held accountable for. I have heard many stories of injured workers who have not been treated fairly by HEMIC as well as other insurance carriers and this type of abuse will continue if the above section is included in the bill. The intent of the language will allow HEMIC and other insurance carriers to operate in a manner that can prove harmful to an injured worker by possibly withholding needed services, withholding payments to the injured worker or other service providers, etc. The injured worker is often at the mercy of the insurance carrier and this language will further erode the rights of injured workers in receiving fair and adequate treatment.

I would recommend that (e) not be included in the passage of the bill. Thank you for the opportunity to address this committee in regard to SB 2597.

Sincerely,

Patti Inoue, M.Ed., CRC 3/15/10
715 S. King Street, #410
Honolulu, Hawaii 96813
808-538-8733

March 15, 2010

House of Representatives
The Twenty-fifth Legislature 2010

Committee on Labor and Public Employment
Representative Karl Rhoads Chair,
Rep. Kyle T. Yamashita Vice Chair and Committee members

Re: RELATING TO THE HAWAII EMPLOYERS' MUTUAL INSURANCE COMPANY,
SB 2597

My name is Kirsten H. Harada, and I am a vocational rehabilitation counselor who has worked with injured workers for the past 15 years.

I am opposed to the recommended additions to SB 2597. In the years that I have been working with injured workers I have watched my clients dealing with "bad faith" decisions which include: 1) denial of medical care only to be approved, weeks, months or years later; 2) delays in temporary total disability payments; 3) denial of plans that would allow clients to return back to suitable and gainful employment. Supporting this bill would only continue to allow practices such as these to go without consequence to insurance carriers like HEMIC.

As a result I hope that you will support my objection to the following section of SB 2597 which states: **"(e) The company shall not incur additional legal liability toward its members or beneficiaries as a result of any action taken or not taken pursuant to this chapter beyond that explicitly created by this chapter or chapter 386 and generally applicable to the acts or omissions of all issuers of workers' compensation insurance in this State."** I hope that you will be able to keep the portion of the bill that allows for a better flow of their administration and eliminate the section that allows HEMIC and other insurance carriers to be insulated from suits by the injured worker who has been unfairly treated in the worker's compensation system.

Thank you for allowing me to provide testimony regarding this bill.

Kirsten H. Harada, M.Ed CRC, LMHC
Vocational Management Consultants Inc.
715 S. King Street Suite 410
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808-538-8733



LATE

Hawaii Injured Worker's Alliance

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Honolulu, Hawaii 96813

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Phone: (888) 598-8115 Neighbor Islands

Web Site: www.hawaiiinjuredworkersalliance.com

March 15, 2010

House of Representatives
The Twenty Fifth Legislature
Committee on Labor and Public Employment

SB 2597 Relating to the Hawaii Employers' Mutual Insurance Company. Clarifies that the Hawaii Employers Mutual Insurance Company shall not have any additional third-party duty nor incur any additional liability toward members or beneficiaries beyond that explicitly created by statute. Makes housekeeping amendments.

We agree with the housekeeping parts of Senate Bill 2597.

We ask the following be removed "Nothing in this article shall create any implied third-party duty or impose additional legal liability for the company toward its members or beneficiaries beyond that explicitly created by this chapter or chapter 386 and generally applicable to all issuers of worker's compensation insurance in this State." and "(e) The company shall nor incur additional legal liability toward its members or beneficiaries as a result of any action taken or not take pursuant to this chapter beyond that explicitly created by this chapter or chapter 386 and generally applicable to the acts or omissions of all issuers of workers' compensation insurance in this State"

We believe these items will insulate Hemic from bad faith lawsuits.

We believe this will create and unfair advantage for Hemic.

By removing the two items it will bring fairness.

Let SB 2597 be a bill for housekeeping amendments only.

George Waialeale
Executive Director
Hawaii Injured Workers Alliance

March 15, 2010

House of Representatives
The Twenty-fifth Legislature 2010

LATE

To: Committee on Labor and Public Employment
Representative Karl Rhoads Chair
Rep. Kyle T. Yamashita Vice Chair and Committee members

Testimony in objection of SB 2597 except for the "housekeeping" portion of the bill

As a former injured worker whose case was handled by HEMIC, I am submitting this testimony in opposition of SB 2597 except for the "housekeeping" portion of the bill. I am specifically objecting to the portion of the bill, which allows HEMIC to be insulated from suits regarding "bad faith" type of suits.

To summarize my personal experience in dealing with HEMIC, as an injured worker in the Worker's Compensation system is as follows:

- From the point my claim was submitted – waited 3 months while my case was denied "pending further investigation".
- Sent to an IME physician for further evaluation – waited another 4 months for this physician to send a copy of his report to me, despite my own efforts every few weeks to check on the status of completion.
- Seven months after submitting my claim – Dept. of Labor Hearing confirms my injury is valid & compensable. Five out of the eight months, I am only receiving TDI payments for my injury.
- For "unexplained reasons" on HEMIC's part, almost another year goes by **before I receive any form of compensation payment from HEMIC for my injury.**
- During this time, I had signed up for Vocational Rehabilitation services to assist me with vocational exploration. I successfully completed Voc. Rehab, received some computer training, acquired a job and transitioned to a new vocation.
- After finally being able to return to the workforce, and finally making the decision to settle my case and all necessary papers completed and processed, once again for "unexplained reasons" by HEMIC, it still took another 6 months before I received the agreed upon settlement payment.

As you can see from the above timeline, although my injury was found valid and compensable, I was unable to work and received no payments from HEMIC for over a year. During this time I also had to pay for my own health insurance with HMSA (\$200+ month). If it were not for my own prior savings and financial assistance from my family, I do not believe I would have been able to pay my rent and my bills. I believe I could have ended up homeless and bankrupt. It is difficult enough to deal with the pain of an injury, patiently wait for the healing process and to live day to day with uncertainty of one's future, but to have to then deal with the added financial stress and lengthy waiting, was in my opinion unnecessary and unacceptable.

After now working with the Voc. Rehab counselors that assist injured workers on a daily basis and meeting injured workers through HIWA, as the secretary of this organization, I know that other injured workers in Hawaii have gone through so many more challenges with HEMIC than myself. Therefore, I believe that any legislation that can assist HEMIC to improve their administrative process is warranted. HOWEVER, I do not believe that HEMIC should be allowed to be "different" or receive preferential treatment over the other insurance carriers who follow the statutes accordingly. They should not be allowed to insulate themselves from suits from the injured worker who believes they have been unfairly treated by HEMIC.

Thank you for allowing me the opportunity to submit this testimony and I urge you to consider removing this portion of the legislative bill, for the benefit of any current or future injured worker, who could possibly be a voter in your district, your friend or family member.

Debra A. Kawamoto