

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 & PUBLIC EMPLOYMENT

Rep. Karl Rhoads, Chair
Rep. Kyle T. Yamashita, Vice Chair

LATE

Testimony Related to SB 2597 (SSCR2385)

DATE: Tuesday, March 16, 2010
TIME: 10:00 AM
PLACE: Conference Room 309
State Capitol
415 South Beretania Street

Dear Chair Rhoads and Other Honorable Members of the Committee:

My name is Dennis W. S. Chang and I have been practicing as a labor attorney for over three decades. A large concentration of my legal work has been representing injured workers under the State's workers' compensation system. Under the workers' compensation statute, there are essentially only one deterrent factor to curb abuses by insurance companies who outrageously deny or delay the rightful benefits to injured workers. Under HRS §386-93(a), we were allowed the right to request sanctions such as the assessment of attorney's fees and costs for such bad faith acts. The only other deterrent factor is suing insurance companies like HEMIC for bad faith.

Recently, as many of you may know, the state ICA in the *Kelley* decision, struck down over thirty years of consistent application of HRS § 386-93(a) allowing the assessment of attorney's fees and costs even if the Director of Labor and Industrial Relations found that insurance companies defended a case without a reasonable basis. There is no longer any deterrent factor that can be used under the workers' compensation statute to prevent ongoing abuse by adjusters representing the insurance industry, including HEMIC, which is one of the biggest, if not the biggest, workers' compensation carriers in the State of Hawaii.

I stand in strong opposition to any tampering with the statute creating HEMIC that purports to limit "additional" liability towards injured workers and their families. The proposed legislation is misguided and gives the notion that all it seeks is equal footing with other insurance carriers when it comes to bad faith lawsuits. This is absolutely wrong. The language, if adopted, will insulate HEMIC from any bad faith lawsuits. If this occurs, HEMIC will be allowed to run amok and not have a single worry in its ongoing abusive practices. The Director of Labor and Industrial Relations no longer has the power in light of the *Kelley* decision to assess attorney's fees and costs for unreasonable conduct by the adjusters. The deterrent factor of a bad faith lawsuit will be stripped if the proposed language is adopted. HEMIC is misleading the Legislature, will be placed on a pedestal, and will be the only carrier in the entire State that will be insulated through the legislature from any bad faith lawsuits. This is unconscionable when HEMIC was and should be held accountable.

HEMIC is a creature established by the Legislature. In the beginning, the intent was laudable to help not only small businesses but have a insurance carrier that would be accountable to workers who are injured. It has grown rapidly and taken a large share of the

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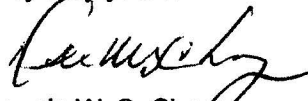
Hawai'i workers' compensation market since most small businesses are no longer able to get insurance coverage and are forced to buy into HEMIC's insurance policies. Now HEMIC asks that the legislature give it additional protection with clear protection from any liability for wrongdoing no matter how gross the bad faith acts may be. This would in essence violate the equal protection clause when other insurance carriers can be sued for bad faith. Moreover, and worse, HEMIC will be unaccountable to anyone.

I have carefully read the prior testimony of Bob Dove, the CEO and President of HEMIC, and the proposed testimony a number of times and conferred with my colleagues. He himself claims that HEMIC was created by the State Legislature to provide the "highest level of service" and "highest standard of workplace safety and loss prevention." If that is the case, before taking any action, is it more prudent to request that the auditor's office conduct an audit to determine if HEMIC is indeed carrying out its legislative mandate or making increasing profits by trampling the rights of injured workers? What has the Oversight Council done to provide safety? Why is HEMIC making so much profits and getting increasingly sued for bad faith? These questions should call for caution in changing any language since the only deterrent for its abusive practices is bad faith lawsuits. Any change in the legislation will insulate it from bad faith lawsuits.

I have spoken with many of my colleagues who also have devoted their careers to representing injured workers for nominal compensation. All agree that this proposed amended language, if adopted by the Legislature, will insulate HEMIC from any bad faith lawsuits. It would lower the legal duty and the legal liability of HEMIC for its bad faith acts contrary to the previous testimony of Mr. Dove.

I thank you for accepting my testimony and ask that you allow for the housekeeping portion relating to the terms of the directors and the like be passed, but delete the portion beginning with "[n]othing in this article shall create any implied liability, duty or imposed additional legal liability for the company. . ." This language, if included, will shield HEMIC from any liability for bad faith lawsuits and reduce its liability to only paying compensation under chapter 386. This will be the case no matter how outrageously HEMIC's adjusters handle and adjust particular claims.

Very truly yours,



Dennis W. S. Chang

LATE TESTIMONY

March 16, 2010

House of Representatives
Committee on Labor and Public Employment

Representative Karl Rhoads, Chair
Representative Kyle T. Yamashita, Vice Chair and Committee Members

My name is Sandra Aken and I oppose SB2597.

The Hawaii employers' mutual insurance company (HEMIC) should be held at the same standards as other insurance companies. The request to be exempt from liabilities because of "any action taken or not taken" must not be accepted.

Should SB2597 pass, injured workers like me will have no other alternatives to hold this insurance company accountable for their actions. As someone who is currently seeking a workmen's compensation claim, employees who have been treated unfairly need to have justice served.

I would be more than happy to answer any questions. Thank you for allowing me the opportunity to testify against SB2597.

Mahalo,
Sandra Aken