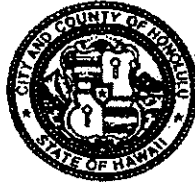


DEPARTMENT OF HUMAN RESOURCES

CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET 10TH FLOOR • HONOLULU, HAWAII 96813
TELEPHONE: (808) 768-8500 • FAX: (808) 768-5583 • INTERNET: www.honolulu.gov/hr

PETER B. CARLISLE
MAYOR



NOEL T. ONO
DIRECTOR

February 1, 2011

The Honorable Karl Rhoads, Chair
and Members of the Committee on Labor
and Public Employment
The Honorable Angus L.K. McKelvey, Chair
and Members of the Committee on Economic
Revitalization and Business
The House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Rhoads and McKelvey and Members:

Subject: House Bill No. 464
Relating to Workers' Compensation

The City and County of Honolulu strongly opposes House Bill No. 464, which amends 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 his treating physician. This results in the employer having to subpoena medical records, thus delaying the employer's ability to review the records and/or have them reviewed by medical experts prior to making a determination on whether to accept or deny the claim.

HRS Section 386-85 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.

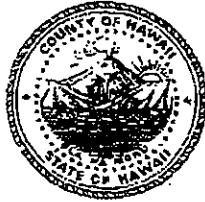
We respectfully urge your respective committees to file House Bill No. 464.

Yours truly,

A handwritten signature in black ink, appearing to read "Noel T. Ono".

Noel T. Ono
Director

William P. Kenoi
Mayor



Ronald K. Takahashi
Director of Human Resources

Sharon Teriano
Deputy Director of Human Resources

County of Hawai'i
Department of Human Resources

Aupuni Center * 101 Puuahi Street, Suite 2 * Hilo, Hawai'i 96720 * (808) 961-8361 * Fax (808) 961-8617
Jobs Information: Job Hotline (808) 961-8618

January 28, 2011

The Honorable Karl Rhodes, Chair
And Members of the Committee on Labor & Public Employment
House of Representatives
State Capitol
Honolulu, HI 96813

Dear Chair Rhodes and Members of the Committee:

Re: House Bill No. 464 Relating to Workers' Compensation

I am Ronald K. Takahashi, the Director of Human Resources of the County of Hawai'i. I am testifying in opposition to HB 464.

The purpose of H.B. No. 464 is to amend Section 386-86(b) to require an employer who denies compensability on a workers' compensation claim to submit a written report to the Director of Labor and the claimant within thirty days of its denial, describing employer's investigation of the claim, along with supporting details. This bill also prohibits extension of the due date for the employer's written report.

The County of Hawai'i, Department of Human Resources is strongly opposed to this bill for the reasons listed below:

1. In most cases, it is not possible to complete an investigation within 30 days, as it is difficult to immediately obtain medical records. The release of medical records has been greatly slowed due to current privacy laws.
2. While physicians are required to submit medical reports in accordance with 386-96, Hawai'i Revised Statutes, they are not required to include information that relates to the same or similar injuries sustained by claimant(s) in the past, nor are they required to provide information on any medical conditions which may have relevance to the injured employee's recovery.

Hawai'i County is an Equal Opportunity Provider and Employer.

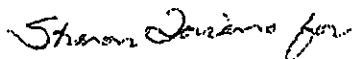
In order for the County to obtain these particular medical reports, we would have to issue a subpoena. Subpoena of these medical records requires a consent to release information, and if it is not provided by the injured employee in a timely manner (due to incapacitation, negligence, lack of cooperation, etc.), the employer would be unable to complete its investigation within the proposed 30 day timeframe. In such a case, the claim could be determined to be compensable and unnecessarily increase the cost of workers' compensation. This bill will not allow for the flexibility needed by employers to conduct thorough and complete investigations.

3. This bill would give the individual making a claim for workers' compensation an unfair advantage by requiring the employer to disclose any evidence that it had developed prior to a hearing.
4. This bill is unnecessary, as Hawai'i Administrative Rules, 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. The extensions are not granted unless the employer has explained, to the satisfaction of the director, the steps they have taken to investigate the claim, and the time it will take to complete its investigation.

We respectfully request and urge the Committee to table this bill.

Thank you.

Sincerely,



Ronald K. Takahashi
Director of Human Resources

HOUSE OF REPRESENTATIVES
TWENTY-SIXTH LEGISLATURE 2011
STATE OF HAWAII

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

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

COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS

Rep. Angus L.R. McKelvey, Chair
Rep. Issac W. Choy, Vice Chair

TESTIMONY OF ILWU LOCAL 142 RE: H.B. 464
RELATING TO WORKERS' COMPENSATION

Chair Rhoads and Chair McKelvey, Vice Chair Yamashiro, Vice Chair Choy,
Members of the Committee on Labor and Public Employment, and Members of the
Committee on Economic Revitalization:

Thank you for the opportunity to present testimony regarding H.B. 464. We
support this bill.

H.B. 464 requires an employer who denies or fails to accept a claim to submit a
written report of its investigation and reasons for denying the claim within 30 days of the
denial. This is an excellent proposal which will result in significant improvements to
both the employer and employee, because it will compel a speedier resolution of claims.
The employee will benefit because there will no longer be extended delay without
compensation or complications in securing immediate care. However, the employer and
insurers, too, will obtain cost reductions because unnecessary delay will be reduced, and
this in turn will eliminate periods of lost time that occur while waiting for medical
treatment and intervention.

Employers and insurers have become habituated to delay and developed an
unhealthy tolerance of it. They have also become accustomed to letting a highly
restricted group of physicians and examiners set the schedule for evaluations in accord
with their personal convenience. These unbalanced priorities do not correspond to the
public interest or the needs of employers or employees.

The legislature should seize the initiative by adopting H.B. 464 and requiring that
employer's substantiate their denial of claims within 30 days. Medical examiners
seeking to obtain business will modify their behavior and practices to conform to the
needs of the community and its interest as embodied in this bill and adapt to the need for
greater speed in the evaluation and adjudication process. They will learn to abbreviate
their sometimes onerously long and unnecessarily detailed reports.

The ultimate result of reforming and accelerating the process will be more expeditious adjudication, more expeditious medical care and rehabilitation, and more expeditious resumption of work by injured workers. All of these changes will translate into lower costs for both employers and insurers, shorter duration of disability for employees, and a healthier workplace and economy for all. Accordingly, H.B. 464 should promptly be adopted.



To: House Committee on Economic Revitalization & Business

Hearing: February 1, 2011, 9:00 a.m.
Conference Room 309

Re: HB 464, Relating to Workers' Compensation

From: Society for Human Resource Management - Hawaii Chapter

The Society for Human Resource Management – Hawaii Chapter (“SHRM Hawaii”) represents more than 1,300 human resource professionals in the State of Hawaii. On behalf of our members, we would like to thank the Committee for giving us an opportunity to comment on HB 464, relating to workers’ compensation.

We are opposed to HB 464 which requires an employer who denies a workers’ compensation claim, or indicates compensability is not accepted, to submit a written report to the Department of Labor and Industrial Relations and the claimant that describes the employer’s investigation of the claim.

HB 464 expands Hawaii Administrative Rules (“HAR”) Section 12-10-73, Compensability denied or not accepted, which requires a written report be submitted to the director within 30 calendar days supporting the denial. The director may grant extensions for filing the employer’s written report upon showing of good cause in writing. After review, the director may schedule hearing. HB 464 would require employer’s written report to describe employer’s internal investigation and supporting details and would deny any extension for filing which ultimately expedite hearing.

We are concerned HB 464 will preclude a full and fair investigation of workers’ compensation claims. Workers’ compensation claims are generally denied pending investigation only where denial is appropriate or claimant failed to timely report the work injury. Investigation of a workers’ compensation claim requires claimant’s cooperation in obtaining statements, signed authorizations to release information and other required discovery. Such investigation is often delayed by claimant’s failure to cooperate. In addition, orders for discovery cannot be obtained from the director without a claim number first being assigned to the claim. Due to existing furlough days and other issues there is frequently a delay ranging from several weeks to a month in assigning a claim number which impedes employer’s investigation. The director should continue to have the discretion to grant an extension for filing upon showing of good cause. Forcing employers to hearing without the ability to properly investigate a claim is extremely prejudicial to the employer and will result in an increase of appeals to the Labor Appeals Board at considerable cost in time and money to all parties concerned.

We would be pleased to further discuss this proposed bill with you. Thank you for this opportunity to provide you with this input.

SHRM Hawaii, P. O. Box 3120, Honolulu, Hawaii (808) 447-1840



Testimony by: Derrick Ishihara, PT
HB 464, Relating to Workers' Compensation
Hse LAB/ERB, Tuesday, Feb. 1, 2011
Room 309, 9:00 am Position: Support

Chair Rhoads and McKelvey, and Members of the Hse LAB/ERB 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 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 Worker's Alliance

715 South King Street Suite #410
Honolulu, Hawaii 96813
Phone: 538-8733 (Oahu)
Phone: (888) 598-8115 Neighbor Islands
Web Site: www.hawaiiinjuredworkersalliance.com

January 31, 2011

The Twenty-Sixth Legislature, State of Hawaii
Regular Session 2011
House of Representatives
Committee on Labor and Public Employment
And
Committee on Economic Revitalization & Business

January 31, 2011

HB 464 RELATING TO WORKERS COMPENSATION

Requires an employer who denies a workers compensation claim, or indicates compensability is not accepted, to submit a written report to DLIR and the claimant that describes the employer's investigation of the claim.

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

Your pass of this bill would be greatly appreciated.

George Waialeale
Executive Director
Hawaii Injured Workers Alliance



**Before the House Committee on Labor & Public Employment
and
House Committee on Economic Revitalization & Business**

DATE: Tuesday, February 1, 2011

TIME: 9:00 A.M.

PLACE: Conference Room 309

Re: HB 464 Relating to Workers' Compensation

Thank you for the opportunity to testify. On behalf of the business owners who make up the membership of the National Federation of Independent Businesses in Hawaii, we oppose HB 464 Relating to Workers' Compensation in its current form.

The National Federation of Independent Business is the largest advocacy organization representing small and independent businesses in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed.

We are concerned about the possible unintended consequences of requiring an employer who denies a workers' compensation claim, or indicates compensability is not accepted, to submit a written report to the Department of Labor and Industrial Relations and the claimant that describes the employer's investigation of the claim. We believe that such legislation will add costs to business which ultimately hurts employees and the economy as a whole.



Property Casualty Insurers
Association of America

Shaping the Future of American Insurance

2600 South River Road, Des Plaines, IL 60018-3206

January 31, 2011

To: The Honorable Karl Rhoads, Chair
House Labor & Public Employment Committee

The Honorable Angus L.K. McKelvey, Chair
House Economic Revitalization & Business Committee

From: Samuel Sorich, Vice President

Re: **HB 464 – Workers Compensation**
PCI Position: Oppose

Date: Tuesday, February 1, 2011
9:00 a.m.; Conference Room 309

Aloha Chair Rhoads, Chair McKelvey and Committee Members,

The Property Casualty Insurers Association of America (PCI) is opposed to HB 464 because the report called for in the bill would impose unreasonable restrictions on an employer's effort to defend a claim for compensation benefits.

HB 464 would require an employer to submit a new report that details the employer's internal investigation of a claim. In order to handle a claim in a fair manner, an employer often continues investigating the claim after making a decision about whether the claim is compensable. The mandated disclosure of the details of the investigation called for in HB 464 would undermine legitimate claim investigation and would unreasonably disadvantage an employer's effort to resolve claims in a fair manner. In addition, HB 464's provision that an employer must submit the report within 30 days without any possibility of an extension fails to account for circumstances when there are good reasons for granting more time to submit the proposed report.

PCI asks for a NO vote on HB 464.



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

Alison Powers
Executive Director

TESTIMONY OF LINDA O'REILLY

HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

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

HOUSE COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS

Representative Angus L.K. McKelvey, Chair
Representative Isaac Choy, Vice Chair

Tuesday, February 1, 2011
9:00 a.m.

HB 464

Chair Rhoads, Chair McKelvey and members of the Committees, my name is Linda O'Reilly, Workers' Compensation Claims Manager at First Insurance. I am here representing 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 40% of all property and casualty insurance premiums in the state.

Hawaii Insurers Council opposes HB 464, which would require an employer who denies compensability or indicates compensability is not accepted to submit a written report to the Director of Labor & Industrial Relations and the claimant within thirty calendar days of the employer's denial of, or indication not to accept, compensability. Furthermore, there would be no extension of the due date for the employer's written report.

The thirty day requirement with no extension prohibits due process for the employer. Although every attempt is made to have all the necessary information in order for an employer to make a decision, there are circumstances outside their control that may cause information to be absent. Subpoenaed records may have not been received or an independent medical examination (IME) and/or

report may be pending. On some occasions, an IME cannot be scheduled or needs to be rescheduled because the injured worker failed to submit to the examination.

Requiring an employer to make a determination with insufficient information may result in more appeals and increased costs and delays for both the employer and the injured worker.

We respectfully request that HB 464 be held.

Thank you for the opportunity to testify.

yamashita2 ----

From: mailinglist@capitol.hawaii.gov
Sent: Monday, January 31, 2011 11:03 AM
To: LABtestimony
Cc: lhamano@vmchawaii.com
Subject: Testimony for HB463 on 2/1/2011 9:00:00 AM

Testimony for LAB/ERB 2/1/2011 9:00:00 AM HB463

Conference room: 309
Testifier position: support
Testifier will be present: No
Submitted by: Laurie Hamano
Organization: Vocational Management Consultants Inc.
Address: 715 S. King Street Suite 410 Honolulu, Hawaii
Phone: 808 5388733
E-mail: lhamano@vmchawaii.com
Submitted on: 1/31/2011

Comments:

This testimony is for 2 bills HB 463 and HB 464. Thank you.

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 31, 2011

VIA EMAIL: LABTestimony@Capitol.hawaii.gov

TO: House Labor Committee
Hon. Rep. Karl Rhoads, Chair

Re: TESTIMONY IN SUPPORT OF HB 464
TO BE HEARD 2/1/11 @ 9:00 a.m-12:00 p.m

Dear Rep. Rhoads and Committee Members:

I represent injured workers in their workers' compensation claims. I support HB 464. The intention of the bill is to protect the rights of injured workers by expediting the investigation of claims: when the employer denies compensability or indicates compensability is not accepted, the employer, within thirty calendar days, shall submit a written report to the director and to the claimant that describes the employer's internal investigation and supporting details that substantiate the employer's denial of, or indication to not accept, compensability.

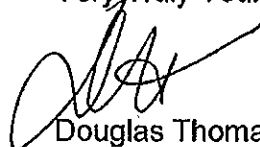
Employers and insurance carriers have the right to investigate claims. However, they do not have the right to abuse this process while investigating claims. Stall tactics such as denying or deferring compensability of the claims pending their investigations hurt the injured worker. The injured worker 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.

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.



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

(Handwritten: "E" in a circle, "New", "Annie Aea")

March 4, 2010

Annie Aea
91-1054 Hoakalei St
Kapolei HI 96707

Employer: ~~XXXXXXXXXXXXXXXXXXXX~~
Employee: Annie Aea
Date of Injury: 02/16/10
Claim No.: 710-670630
Our File No.: 1834753-0042
DCD Case No.:

ENCLOSURE:

1. Copy of our letter to DCD
2. Copy of our letter to Workstar
3. Highlights of Workers' Compensation Law

Dear Ms. Aea:

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.

Upon completion of our investigation, we will promptly advise you of our position regarding your claim.

Thank you for your patience.

Sincerely,




(808) 541-5547

EO:rp
C3-3

cc: Oahu DCD

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:

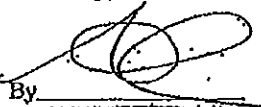
We are denying the above noted claim pending further evaluation. According to the WC-1 it is not known as to how Claimant was injured. We are awaiting the statements from Employer, co-workers and Claimant to determine how, where and when Claimant was injured and whether his injury/injuries was related 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

RECEIVED
OCT 14 2009
ISLAND INSURANCE

Claims Office 1165 Bethel St. • P.O. Box 1520 • Honolulu, Hawaii 96806-1520 • Phone (808) 531-1311 • Fax (808) 539-9238

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@
hawaiiintel.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.

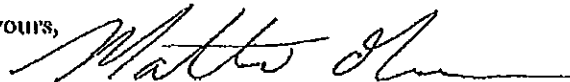
On 10/7/2009, Island Ins. stated to the Dept. of Labor that they wanted 120 days to evaluate my claim. Why do they need 120 days to evaluate a simple work comp injury? This is too much time to investigate and deny my claim pending investigation. I do not understand why I am being denied benefits. I thought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

LINDA LINGLE
GOVERNOR



MARIE C. LADERTA
DIRECTOR

CINDY S. INOUE
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
236 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]



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.

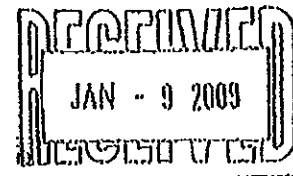
By copy of this letter, Dr. [REDACTED] and the Claimant are notified that should they disagree with this denial, a review by the Director may be requested within fourteen (14) calendar days after postmark of the Employer's denial. Failure to do so shall be construed as acceptance of Employer's denial.

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.





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) 531-9799 • 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: 08/102/108
Claim No.: [REDACTED]
Our File No.: [REDACTED]
DCD Case No.:

DISABILITY COMPENSATION
DIVISION

108 AUG 25 10 10

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.



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 UMBAYASHI
BAIN & MATSUNAGA
ATTORNEYS AT LAW
A LAW CORPORATION

10TH FLOOR
CENTRAL PACIFIC PLAZA
220 SOUTH KING STREET
HONOLULU, HAWAII 96813

★ August 8, 2008

TELEPHONE:
(808) 536-1000
TELECOPIER:
(808) 520-7177
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 UMBAYASHI
BAIN & MATSUNAGA

██████████
██████████
██████████

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



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.

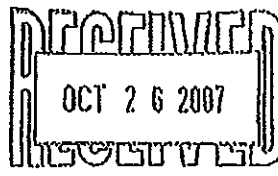
Sincerely,
Fairmont Specialty

[REDACTED]
DICTATED BUT NOT REVIEWED

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

SH/lp

C: Dr. [REDACTED]
DCD





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.

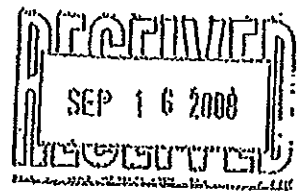
Should you have any questions or concerns please do not hesitate to contact me.

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



LAW OFFICES OF
STANFORD H. MASUI

A LIMITED LIABILITY CORPORATION

Seven Waterfront Suite 400 • 500 Ala Moana Blvd. • Honolulu, HI 96813
Phone: (808) 543-8346 • FAX: (808) 521-7620

Jan. 30, 2011

TESTIMONY IN SUPPORT OF HB 464

ENDING DELAYS IN WORKERS' COMPENSATION

Under the present statute and as practiced by the Department of Labor and Industrial Relations, extensions of time "to investigate" denials of compensability are routinely granted. Most frequently, such extensions are not for the purpose of investigation but to obtain an "independent" medical examination. The parentheses are purposeful, as it is well known that a select cadre of reliably-biased examiners are chosen to provide an after-the-fact justification for denial of compensability.

Often no investigation whatsoever is conducted, and the delay is an appalling failure of the present law. The following is one of many, many cases of delay experienced by my injured worker clients.

Eric (pseudonym), was a manual laborer in construction, who tried to represent himself in the face of a denial of compensability by HEMIC. His employer did not doubt that Eric had injured himself as Eric had so reported a few days after the accident. He continued working despite his injury, but was disabled after the injury was confirmed and a certificate of disability issued by his treating physician. A month after the doctor's report was sent to HEMIC liability was denied, and no disability payments or treatment were approved. A routine extension "for investigation" was requested and granted. Eric retained my services when he had exhausted temporary disability payments (TDI).

Six months elapsed before a hearing was scheduled. HEMIC appeared by its adjuster **without further documentation or reason for denial** and requested a continuance which was unfortunately granted by the hearing officer over claimant's strenuous objection.

It was not until over six months thereafter and a **second hearing** that the Director of Labor and Industrial Relations issued a decision recognizing compensability. Partial payments were made, but a **third hearing** was necessitated by failure to continue payments for disability for a period of five months. A third request at the third hearing was made for attorney fees for "unreasonable defense" and finally awarded, but the case was appealed by HEMIC.

The pattern of unpaid disability and delayed treatment is a regular occurrence in my practice and that of other workers' compensation practitioners. Many of my clients lose their residences and are driven to psychological treatment and anger management

**LAW OFFICES OF
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as a result of injuries which are not of their fault and experience great difficulty returning to productive employment. This glaring defect in the law needs to be corrected.

The committee is urged to pass this bill.

/s/

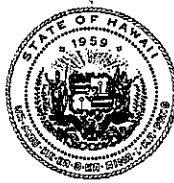
STANFORD H. MASUI

yamashita2 ----

From: Joseph Zuiker [zuikerlw@pixi.com]
Sent: Monday, January 31, 2011 9:15 AM
To: LABtestimony
Subject: Strong Support for HB 464

This bill will expedite treatment for injured workers and that will save employers and insurance carriers hundreds of thousands of dollars in reduced weekly benefit payments during the next year.

Speed up work comp. claims. Please pass this important bill.



LATE

**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8842 / Fax: (808) 586-9099
Email: dhir.director@hawaii.gov

February 1, 2011

To: The Honorable Karl Rhoads, Chair
and Members of the House Committee on Labor & Public Employment (LAB)

The Honorable Angus L.K. McKelvey, Chair
and Members of the House Committee on Economic Revitalization & Business

Date: Tuesday, February 1, 2011

Time: 9:00 a.m. – 12:00 p.m.

Place: Conference Room 309, State Capitol

From: Dwight Y. Takamine, Interim Director
Department of Labor and Industrial Relations

Testimony in SUPPORT

to

H.B. No. 464 Relating to Workers' Compensation

I. OVERVIEW OF PROPOSED LEGISLATION

HB 464 proposes to amend Section 386-86, HRS, by requiring the employer to submit a written report to the director and the claimant within thirty calendar days of their denial of, or indication to not accept, compensability of a workers' compensation claim. The report shall describe the employer's internal investigation and supporting details that substantiate the employer's denial of, or indication to not accept, compensability. The due date for the employer's written report shall not be extended.

II. CURRENT LAW

Section 12-10-73, Hawaii Administrative Rule, currently requires the employer to submit a written report to the director and the injured employee within thirty calendar days supporting their denial of compensability of a workers' compensation claim. Failure to submit a written report to support the denial shall indicate acceptance of the injury by the employer. The director may grant extensions for filing the employer's written report upon

showing of good cause in writing.

Based on the employer's report, the director then determines whether or not the claim should be accepted. If the claim should be accepted, the employer is given thirty calendar days to request a hearing. If the director believes the denial of compensability is proper, the employee is given the option to file a claim for industrial injury that then results in a workers' compensation hearing to be held.

III. HOUSE BILL

The Department supports this proposed amendment to Section 386-86, HRS, to expedite the processing of workers' compensation claims. However, the Department would like to point out that Section 12-10-73, Hawaii Administrative Rules, states "Failure to submit a written report to support the denial shall indicate acceptance of the injury by the employer." Also, the director may grant extensions for filing the employer's written report upon showing of good cause in writing.

NEIL ABERCROMBIE
GOVERNOR



LATE
SUNSHINE P. W. TOPPING
INTERIM DIRECTOR

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

JANUARY 31, 2011

TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
HOUSE COMMITTEE ON ECONOMIC REVITALIZATION & BUSINESS
For Hearing on Tuesday, February 01, 2011
9:00 a.m., Conference Room 309

BY

SUNSHINE P.W. TOPPING
INTERIM DIRECTOR

House Bill No. 464
Relating to Workers' Compensation

(WRITTEN TESTIMONY)

TO CHAIRPERSONS KARL RHOADS, ANGUS L. K. McKELVEY AND MEMBERS OF THE COMMITTEES:

The purpose of H.B. No. 464, is to amend HRS Section 386-86(b) 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, describe its internal investigation and supporting details, and 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 would also give the individual making a claim an unfair advantage by requiring the employer to divulge the evidence that it developed prior to a hearing.

4. This bill is unnecessary as Hawaii Administrative Rules 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 Committees to hold this bill.

LATE



**Testimony to the House Committees on Labor & Public Employment and
Economic Revitalization and Business
Tuesday, February 1, 2011; 9:00 a.m.
Conference Room 309**

RE: HOUSE BILL NO. 464 RELATING TO WORKERS' COMPENSATION

Chairs Rhoads and McKelvey, Vice Chairs Yamashita and Choy, and Members of the Committees:

My name is Jim Tollefson and I am the President and CEO of The Chamber of Commerce of Hawaii ("The Chamber"). I am here to state The Chamber's opposition to House Bill No. 464, relating to Workers' Compensation.

The Chamber is the largest business organization in Hawaii, representing more than 1,100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of its members, which employ more than 200,000 individuals, to improve the state's economic climate and to foster positive action on issues of common concern.

This measure requires an employer who denies a workers' compensation claim, or indicates compensability is not accepted, to submit a written report to DLIR and the claimant that describes the employer's investigation of the claim.

The Chamber believes that this measure is not a balanced approach because it denies an employer a full and fair investigation of workers' compensation claims. These claims are generally denied pending investigation only where denial is appropriate or claimant failed to timely report the work injury. Many times, investigations are delayed due to the claimant's failure to cooperate, such as not providing statements or signed authorizations to release information and other required discovery.

Furthermore, orders for discovery cannot be obtained from the director without a claim number first being assigned to the claim. However, due to the current furlough situation and limited staff, a claim number is difficult to obtain, which ultimately hinders the employer's investigation. Therefore, the director should continue to have the discretion to grant an investigation for filing upon showing of good cause.

Forcing employers to a hearing without the ability to properly investigate a claim is not a fair and balanced approach. We believe this will have a financial impact on all parties concerned due to an increase of appeals to the Labor Appeals Board.

For these reasons, The Chamber of Commerce of Hawaii respectfully requests that this measure be held.

Thank you for the opportunity to testify.