

To: The Honorable David Ige, Chair, Michelle Kidani, Vice-Chair, and members of the Senate Committee on Ways and Means

Date: Thursday, March 29, 2012

Time: 9:00 a.m.

Place: Conference Room 211

State Capitol

From: Derrick Ishihara

RE: H.B. 2099 SD 1 Relating to Worker's Compensation

Position: Support

Dear Chair Ige, Vice-Chair Kidani, and Committee Members,

I support this bill which would reverse a recent change to the long-held precedent that attorney's fees are included as penalties against any party who brings, prosecutes, or defends frivolous and groundless claims before the Labor Appeals Board. Currently attorney fees are not included in "whole cost of the proceeding".

Returning to the previous interpretation of the statute would make a party think twice about filing appeals which may have dubious merit if attorney fees are part of the sanctions. This would reduce the work load on the LAB and allow more pressing issues to be heard and decided upon sooner and having cases resolved quicker.

In cases where employers and insurance carriers bring forth meritless cases for appeal, the injured worker is liable for the costs of his/her attorney's assistance no matter the outcome. This is simply wrong!

Please give back "teeth" to the sanctions by passing HB 2099.

Thank you for considering this testimony,

Derrick Ishihara

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March 28, 2012

VIA CAPITOL WEBSITE:

TO: Senate Ways & Means
Hon. Senator David Y. Ige, Chair
Hon. Senator Michelle N. Kidani, Vice Chair

Re: TESTIMONY IN SUPPORT OF HB 2099, HD1, SD1
TO BE HEARD 3/29/2012 @ 9:00 a.m

Dear Senator Ige and Committee Members:

I support HB 2099, HD1, SD1, to amend HRS § 386-93(a) to clarify that the term "whole costs" includes reasonable attorney's fees. The intent of HRS 386-93(a) is to deter parties who bring, prosecute, or defend workers' compensation proceedings without reasonable ground. Such deterrence is necessary and appropriate to discourage frivolous workers' compensation claims, unreasonable claims handling, and improper appeals. As an attorney representing our injured workers for over 20 years, I have seen many and repeated instances of unreasonable conduct in denying legitimate claims, denying proper medical treatment, forcing injured workers to bad medical exams, forcing injured workers to unnecessary hearings, and the filing of frivolous appeals. Until 2008, injured workers were able to deter such unreasonable conduct at both the DCD and the LIRAB levels by obtaining as sanctions the awards of reasonable attorney's fees under HRS 386-93(a) "whole costs". Such deterrence was good public policy. In 2008, the Hawai'i Intermediate Court of Appeals in the *Kelly vs. Metal-Weld* case changed decades of such public policy deterrence which goes back to the Hawai'i Supreme Court's 1940 decision in *Ilaga v. Yuen Lin Ho*.

The 2008 *Kelly* decision changed long-held public policy precedent to the detriment of injured workers. The LIRAB, as a direct result of *Kelly* no longer awards to injured workers reasonable attorneys fees to deter parties who bring, prosecute, or defend workers' compensation proceedings without reasonable ground. In my work comp practice, this result has had a negative ability for my injured workers to obtain an award of reasonable attorney's fees at the DCD level, and even if they are able, then to enforce the awards at the LIRAB. Without this fee shifting to the injured workers, they are forced to pay attorney's fees to fight the unreasonable conduct of other parties which they can ill afford unlike insurance carriers and large employers. And unfortunately as a result, I believe I see much more unreasonable conduct being committed. This situation begs to be changed so that unreasonable conduct will not go without sanction and sound public policy will again be followed.

I am happy to see that the Director of the DLIR, the Hon. Dwight Takamine, supports HB 2099, HD1,SD1.

Help deter unreasonable conduct by supporting HB 2099, HD1, SD1. 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