# SB2123
# LATE
# TESTIMONY

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**Friday, January 31, 2014 – 10:30am**
**Conference Room 016**

**The Senate Committee on Judiciary & Labor**

To: Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

From: Gail Lerch
Executive Vice President
Human Resources & Organizational Effectiveness

**Re: SB 2123 Relating to Workers' Compensation**
**Testimony in Strong Opposition**

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My name is Gail Lerch, Executive Vice President, Human Resources & Organizational Effectiveness for Hawai'i Pacific Health (HPH). HPH is a nonprofit health care system and the state's largest health care provider anchored by its four nonprofit hospitals: Kapi'olani Medical Center for Women & Children, Pali Momi Medical Center, Straub Clinic & Hospital and Wilcox Memorial Hospital on Kauai. HPH is committed to providing the highest quality medical care and service to the people of Hawai'i and the Pacific Region through its four affiliated hospitals, 49 outpatient clinics and service sites, more than 5,400 employees and 1,300 physicians on staff,

We write in strong opposition to SB 2123 which requires independent medical examinations and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by employers and employees.

Employees are currently entitled to various protections established under HRS Chapter 386. The role of an Independent Medical Examiner (IME) described in this chapter provides an opportunity for an employer to objectively evaluate the merits of a claim and to develop an appropriate care plan for an employee suffering from a work related injury. To expedite this process, the IME is selected by the employer who typically has more experience than an employee in identifying a physician willing and capable in evaluating workplace related injuries. Employees also have the option of appealing an IME determination and have their claims adjudicated by the DLIR Disability Compensation Division, further ensuring that the IME process remain fair and objective.

Both employers and employees seek an expedited claims resolution process to facilitate a timely return to full employment. The added step of requiring employer and employee to first *mutually* select an IME, followed by a process of selection and then elimination from a list of 5 physicians will only result in protracting the claims resolution process. Moreover, given the existing shortage of physicians willing to participate in workers compensation cases in Hawaii, the practical feasibility of this process occurring in a timely manner is questionable.

Given the existing statutory protections already afforded to employees and the unintended consequence of further protracting the workers compensation claims process, we urge you to hold SB 2123. Thank you for the opportunity to provide this testimony.

ISLAND PRINCESS

*Hawaii's Finest Macadamia Nuts ~ Chocolates ~ Confections*

January 29, 2014

Senate Committee on Judiciary and Labor

Regarding Senate Bill 2123: Modifications to the IME process in Workman Compensation cases

In April of 2012 we submitted testimony to the House on measure HB 466. Like SB 2123, that measure sought to change the procedures for selecting an Independent Medical Examiner employed in Workman's Compensation cases. Our testimony is on record in the House journals and our stand on modifications to the IME procedures remains the same.

My name is David Schell. I am the General Manager of the agricultural holdings of Island Princess in Kea'au on the Big Island. Our company employs about 60 people here and another 90 people in our facility on Oahu.

As with most businesses, we take the safety of our employees seriously and try our best to provide training and a safe environment for them to work in. Unfortunately, accidents do happen and when they do we want our employees treated effectively and efficiently so that they can return to the workplace as quickly as possible. I believe we have an honest and healthy attitude about the realities of the state WC program – we understand its strengths and its weaknesses. We are, on occasion, disappointed by the decisions our insurer makes, but we respect their understanding of actuarial costs and we know that the best way we can help the company and our employees is to focus on prevention.

That being said, we also understand that there are individuals who will, for any number of reasons, seek to take advantage of the WC program. It is simply a fact of life and in the long run we all end up paying for those people who will act dishonestly with higher base premiums. Therefore, it is incumbent on all businesses to discourage fraud by examining the circumstances of an accident and questioning any evidence they find inconsistent or contradictory. This is not cynical, suspicious behavior and does not in any way indicate a systematic distrust of employee's intentions. It is simply good, responsible business.

We evaluate every accident that occurs in our company and the vast majority of those we find the injury to be legitimate - a result of improper actions, poor training, or unsafe conditions. (Those factors that we can correct by training, repairs or modifications and discipline we act on.) Naturally, on occasion, we will find incongruous details. One of those details may be the conclusions arrived at by the injured employee's physician. This is especially the case with "soft tissue" injuries to the back, neck and shoulder. As is our right, we can request an inquiry by the insurance company if we feel there is something amiss. In turn, our insurance company can also request an independent medical evaluation be conducted if they find similar

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issues. We do not have anything to do with the choice of the physician to do this work and I doubt if our carrier would honor our request even if we tried to influence their decision.

We do not see any problem with the current protocol. What we do see in this legislative rerun is an effort to alter the balance in the system to favor the employee. From our perspective this is back door unionizing – another effort by pro-labor advocates to curry concessions from employers – they can not gain in regular negotiations - by altering state law.

Please ask yourselves a few questions:

1. Who is pushing to have the current system modified?
2. What evidence is there that the current system needs modification?
3. What evidence is there that the physicians chosen for IMEs are in anyway inferior to the physicians treating the injured?
4. What evidence is there that there is systematic impartiality being practiced by IME physicians?
5. If there is no evidence for these things, why are you wasting people's time and money rehashing this?

Now, you may consider as evidence of bias on the part of the physician conducting an IME the fact that they will often dispute the physician treating the injured. This is no more valid than assuming the exact opposite – that there is a conspiracy to defraud WC between the injured and their physician. So, you can see, that is not credible evidence at all.

Additionally, an injured employee is currently well within their rights to request a hearing if a conflicting diagnosis results from the IME. Therefore, an injured employee is already given a substantial measure of protection without having to have a voice in choosing the physician who conducts the IME.

And, finally, if it is the conclusion of this body that there is indeed collusion in the choices of IME physicians on the part of the employer and their insurance carriers, what on earth leads you to believe that, by allowing an injured employee a voice in that process, the injured employee will not do likewise and choose a physician they believe to be sympathetic to their claims? To arrive at any different conclusion would necessarily indicate that you believe employees to be some-how more honest and trustworthy than employers.
Which is actually the bottom line here and in all similar proposals. Fostering distrust between employees and their employers. It is the bread and butter of pro-union activists and it does nothing but damage to the people of this state.

Please do not be seduced by these David and Goliath fairytales. You do not have to protect employees today as was, perhaps, necessary in the past. Indeed, the pendulum swing may well require that you begin considering ways to protect employers. After all, private sector business is what is holding this state – this country – together.

Thank you for your time.

David Schell
GM, Island Princess Kea'au Operations

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**Subject:** *Submitted testimony for SB2123 on Jan 31, 2014 10:30AM*
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**SB2123**
Submitted on: 1/30/2014
Testimony for JDL on Jan 31, 2014 10:30AM in Conference Room 016

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---|---|---|---|
| Javier Mendez-Alvarez | Individual | Support | No |

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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