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February 22, 2016

To: The Honorable Sylvia Luke, Chair,
The Honorable Scott Y. Nishimoto, Vice Chair, and
Members of the House Committee on Finance

Date: February 24, 2016
Time: 3:00 p.m.
Place: Conference Room 308, State Capitol

From: Linda Chu Takayama, Director
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. No. 2715 HD1 Relating to Workers' Compensation**

## I. OVERVIEW OF PROPOSED LEGISLATION

HB2715 HD1 proposes to repeal the Hawaii Employers' Mutual Insurance Company (HEMIC) and add a new chapter to the Hawaii Revised Statutes (HRS) that would: establish the State Workers' Compensation Insurance Company (a public corporation attached to the Department of Labor & Industrial Relations (DLIR)) to provide workers' compensation insurance; and require employers to either obtain coverage from this public corporation or become self-insured. The bill also requires DLIR to submit a report on the transition and implementation plan for establishing the public corporation, including proposed legislation, if any, to the legislature no later than twenty days prior to the convening of the regular session of 2017.

DLIR supports the repeal of HEMIC, but respectfully opposes the establishment of a monopolistic state fund.

## II. CURRENT STATUS

Pursuant to section 386-121, HRS, Employers shall obtain workers compensation coverage by either obtaining coverage from any authorized insurer approved to provide such coverage in the State or through self-insurance, by providing proof to the director of the employer's solvency and financial ability to pay compensation.

## III. COMMENTS ON THE HOUSE BILL

HEMIC was created by the Legislature in 1996 in response to a tumultuous time in the property and casualty insurance market when workers compensation insurance was only available, if at all, at high premium costs. In exchange for making it the insurer of last resort, the Legislature provided HEMIC with some exemptions from certain surplus requirements and obligatory participation in the insurance guaranty fund. Within a short period of time, HEMIC no longer required the exemptions. In fact, its history is a true success story as it is now the top workers compensation carrier in the state and returns a good dividend to its mutual member policyholders.

HEMIC has demonstrated that it can compete with the best in the industry and no longer needs the provisions of the state statute. HEMIC can and should now stand on its own. The Insurance Commissioner has authority to establish assigned risk pools to serve as insurers of last resort for other property and casualty lines, including automobile and property. Workers' Compensation should be no different.

The rest of the industry in Hawaii is engaged in a healthy and robust marketplace. There are more than 150 insurers (some of them are subsidiaries) that offer competitive rates. There does not appear to be a compelling need to subsume the entire market into a single monopolistic state fund at this time.

We note that there are only four (4) states with a monopolistic fund: Ohio, North Dakota, Washington and Wyoming. Two other states have dismantled their monopolistic funds and gone in the other direction: Nevada privatized in 1999 and West Virginia converted in 2008.

DAVID Y. IGE
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DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2016

Wednesday, February 24, 2016
3:00 p.m.

**TESTIMONY ON HOUSE BILL NO. 2715, H.D. 1 – RELATING TO WORKERS' COMPENSATION.**

TO THE HONORABLE SYLVIA LUKE, CHAIR, AND MEMBERS OF THE COMMITTEE:

My name is Gordon Ito, State Insurance Commissioner ("Commissioner"), testifying on behalf of the Department of Commerce and Consumer Affairs ("Department").

This bill creates a State workers' compensation insurance company and repeals statutory language enabling the Hawai`i Employers Mutual Insurance Company ("HEMIC"). The Department submits the following comments.

The workers' compensation insurance market has been very stable for the past few years. The repeal of HEMIC and the creation of a new insurer to take its place may cause instability and uncertainty within the market and amongst employers. It is not clear or certain that the proposed company will be able to immediately present itself as a viable insurance alternative to employers.

The Department also notes that one of the effects of this proposed bill, if it becomes law, is that per Act 261, Section 10 (SLH 1996), the Commissioner's assigned risk pool is reactivated. Section 10 states:

> SECTION 10. In the event that the Hawaii employers' mutual insurance company's certificate of authority is revoked by the insurance

commissioner, section 431:   -118 and section 431:   -110 of this Act, and the amendments made pursuant to this Act to section 431:14-116, Hawaii Revised Statutes, shall be repealed, and upon such repeal, section 431:14-116, Hawaii Revised Statutes, shall be reenacted in the form which it existed prior to the effective date of this Act.

Section 431:14-116, Hawaii Revised Statutes, is the Commissioner's assigned risk pool for employers who are unable to procure workers' compensation insurance. The passage of this bill means that there will be a State insurer of last resort in the Department of Labor and Industrial Relations as well as the Commissioner's assigned risk pool in existence at the same time.

We thank this Committee for the opportunity to present testimony on this matter.

HAWAII INSURERS COUNCIL
A trade association of property and casualty insurance companies

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1003 Bishop Street
Honolulu, Hawaii 96813
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**Alison H. Ueoka**
President

# TESTIMONY OF ALISON UEOKA

COMMITTEE ON FINANCE
Representative Sylvia Luke, Chair
Representative Scott Y. Nishimoto, Vice Chair

Wednesday, February 24, 2016
3:00 p.m.

## HB 2715, HD1

Chair Luke, Vice Chair Nishomoto, and members of the Committee on Finance, my name is Alison Ueoka, President of 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 sixty-three percent of all workers' compensation insurance premiums in the state.

Hawaii Insurers Council **opposes** this bill. This bill would create a monopolistic state fund, replacing HEMIC and all voluntary workers' compensation insurers in the state, which would be detrimental to both business and the injured worker.

Over the past 20 years, the trend in our country has been to move away from monopolistic state funds, and as of this date, there are only four (4) monopolistic states remaining in the U.S. They are Ohio, North Dakota, Washington State and Wyoming. Of importance, the reason states have moved away from these types of state funds is because the private marketplace is competitive and therefore, better able to provide insurance and naturally keep costs down. The Hawaii workers' compensation marketplace is competitive and stable while providing a high level of benefits to injured workers. While the rest of the nation's claim costs are divided roughly at 60% for medical costs and 40% for indemnity benefits, Hawaii's medical and indemnity costs are the opposite, which assists in controlling overall premiums.

According to the Oregon Department of Consumer and Business Services study of workers' compensation nationwide premiums, the 2014 median value of workers' compensation premiums paid was $1.85 per $100 of payroll, a drop of 2 percent from the median study in 2012. National rates range from a low of 88 cents to a high of $3.48. Hawaii was ranked 15 in the 2006 report and is now ranked 27, and our premiums paid are at the median. Most important, while states have realized the high cost of workers' compensation insurance, some have moved to reduce benefits – Hawaii has not.

As many of you are aware, in the early 1990's Hawaii's workers' compensation marketplace was in turmoil. Premiums were very high, insurers could not obtain the rates needed to pay claims, and businesses were being nonrenewed and placed into an assigned risk pool. Because the losses of the assigned risk pool were assessed to insurers based on the premiums written in their companies, insurers pulled back and the downward spiral had a fast and detrimental impact on Hawaii. The creation of HEMIC in 1996 was not only a successful example of the effective synergy of government and business working together, it was an effective means of stabilizing the marketplace. Specifically, HEMIC served to put a stop to the downward spiral of insurers exiting this line of business. Even though HEMIC's book of business initially contained a lot of the workers' compensation risks in the state, a competitive marketplace over the years served to depopulate this book of business, and to develop HEMIC into a competitive private mutual insurance company, all of which has been very healthy for the state, for the businesses, for the consumers and for insurers.

The laws relating to HEMIC continue to have a stabilizing effect on the marketplace as they require HEMIC to write only workers' compensation insurance and require them to take all comers in exchange for an appropriate price for the risk.

As stakeholders, we appreciate and understand the frustration of the Legislature, and some stakeholders in this complicated system, however, this bill will not end the frustration and it will not help to improve the system. Rather, as the Hawaii workers' compensation marketplace is currently competitive and very stable, any large-scale systemic changes, would reverse this stability, and have detrimental effect on the health of the state.

In the alternative, we believe the environment is opportune to take a comprehensive look at Hawaii's workers' compensation system again through an objective closed claims study like the Tillinghast study that was conducted in Hawaii in 1993. Reforms of the 1990s were based on the findings of this study and all stakeholders were bound by its unbiased findings. We believe this type of approach is appropriate and would serve to show where cost drivers exist, where backlogs are slowing the process, and what, if any, inequities exist as to either the injured worker or insurer. Of course, the closed claim study must include the appropriate Departments of the State since many of the cases brought before the Legislature in testimony are state workers. In addition, judicial decisions on workers' compensation state claims must also be included, as they affect the entire marketplace, most recently in the 2014 Hawaii Supreme Court decision in Van Ness v State of Hawaii Department of Education, a vog case involving a public school teacher.

Hawaii Insurers Council and it members are committed to working with stakeholders, the Legislature and the Administration in further streamlining the system and using data from a comprehensive study to further improve workers' compensation insurance in Hawaii.

Thank you for the opportunity to testify.

## Testimony to the House Committee on Finance
## Wednesday, February 24, 2016 at 3:00 P.M.
## Conference Room 308, State Capitol

**RE: HOUSE BILL 2715 HD 1 RELATING TO WORKERS' COMPENSATION**

Chair Luke, Vice Chair Nishomoto, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **opposes** HB 2715 HD 1, which repeals HEMIC and establishes a public corporation attached to DLIR to provide workers' compensation insurance. Also requires employers to obtain work comp coverage only from the public corporation or be self-insured.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 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 members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

Over the past two decades, the national trend has been to move away from monopolistic state funds, and as of this date, there are only four (4) monopolistic states remaining in the U.S. The reason states have moved away from these types of state funds is because the private marketplace is competitive and therefore, better able to provide insurance and naturally keep costs down. The Hawaii workers' compensation marketplace is competitive and stable while providing a high level of benefits to injured workers. While the rest of the nation's claim costs are divided roughly at 60% for medical costs and 40% for indemnity benefits, Hawaii's medical and indemnity costs are the opposite, which assists in controlling overall premiums.

In a national review of workers compensation premiums, Hawaii was ranked 15 in the 2006 report and is now ranked 27, and our premiums paid are at the median. Most important, while states have realized the high cost of workers' compensation insurance, some have moved to reduce benefits – <u>Hawaii has not</u>.

As you may know, in the early 1990's Hawaii's workers' compensation marketplace was in turmoil. Premiums were very high, insurers could not obtain the rates needed to pay claims, and businesses were being non-renewed and placed into an assigned risk pool. The creation of HEMIC in 1996 served to put a stop to the downward spiral of insurers exiting this line of business.

As stakeholders, we appreciate and understand the frustration of the Legislature, and some stakeholders in this complicated system, however, this bill will not end the frustration and it will not help to improve the system. Rather, as the Hawaii workers compensation marketplace

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is currently competitive and very stable, any large-scale systemic changes, would reverse this stability, and have detrimental effect on the health of the state. We hope that there would be some form of an overall study first, to research some of the problems that frustrate some of those in the system.

Thank you for the opportunity to testify.

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Advocacy. Leadership. Results.

To: The Honorable Sylvia Luke, Chair
The Honorable Scott Nishimoto, Vice Chair
House Committee on Finance

From: Mark Sektnan, Vice President

Re: **HB 2715 HD1 Relating to Workers' Compensation**
**PCI Position: OPPOSE**

Date: Wednesday, February 24, 2016
3:00 PM, Room 308; Agenda #2

Aloha Chair Luke, Vice Chair Nishimoto and members of the Committee:

The Property Casualty Insurers Association of America (PCI) is strongly **opposed** to **HB 2715 HD1** which would eliminate the Hawaii Employers' Mutual Insurance Company (HEMIC) and destroy the private workers' compensation insurance market in Hawaii. Rather than the proposed solution in HB 2715 HD1, PCI would recommend an extensive study of the Hawaii workers' compensation system to determine the problems in the system and develop solutions that will benefit both Hawaii's injured workers and the employers who pay the premiums.

In Hawaii, PCI member companies write approximately 42.7 percent of all property casualty insurance written in Hawaii. PCI member companies write 44 percent of all personal automobile insurance, 65.2 percent of all commercial automobile insurance and 75 percent of the workers' compensation insurance in Hawaii.

There is no sound public policy purpose for a state fund, which will enmesh the state in the insurance business, not merely regulating marketplace participants and ensuring injured workers' receive benefits owed them, but in actually operating an insurance company. Moreover, the Department of Labor and Industrial Relations under this proposal will be regulating the Department of Insurance.

Workers' compensation insurance is one of the most difficult lines of insurance to administer due to its "long tail." A typical auto insurance claim is open for about 18 months. A workers' compensation claim may be open for decades. Take the example of a 19-year old hurt on the job who may receive medical care and benefits for forty or more years. These types of cases can run into the millions of dollars. Under this bill, the state would have to ensure appropriate pricing of the policy and ensure it sets aside enough money to pay the claim, however long the claim takes. Add to this the risk of adverse court decisions, which can fundamentally alter the benefit structure, and the state could face a huge new unfunded liability. In addition, serious financial obligations would be placed on Hawaii taxpayers in order to create a state fund. Additional taxpayer subsidies may be required to assure that injured workers would get their benefits for years to come. For example, the state fund in Washington, which is the model for this legislation, has typically operated at a loss ratio of 136%. This means for every dollar the fund takes from employers through premiums, it spends $1.36 in medical care and benefits. Clearly this could put the state at substantial risk.

Historically, state funds have been established when there was a market crisis. This is not the case in Hawaii. Employers have significant choice, with 148 companies' actively writing in Hawaii. This proposal is out of sync with the trend in the rest of the country. No state fund has been established since 1997 (Hawaii) and, except for the extraordinary circumstances of the financial crisis 20 years ago, the trend has been toward privatizing existing funds, including Nevada in 2000, West Virginia in 2005 and Arizona in 2013.

None of these issues the bill is trying to address are likely to be solved by the creation of a single state run workers' compensation insurer. PCI would recommend a "closed claim" study of the workers compensation system to determine what the actual issues are with the workers' compensation system in Hawaii. While it is easy to say that "recommended medical treatments are delayed or denied," it is important to look deeper into the issue to determine if the issue is inappropriate denial by the workers' compensation carrier or whether the recommended treatment is not consistent with evidence based medicine. Workers' compensation insurers have been recognized as leaders in efforts to stop the over prescribing of opioids and other addictive drugs. Much of the crisis is being driven by a small number of doctors who prescribe the vast majority of these drugs.

Many states have set up research organizations to conduct on-going studies of their workers' compensation system in order to track problems and to develop solutions. Hawaii is strongly encouraged to take this approach before eliminating the existing system.

For these reasons, PCI asks the committee to hold HB 2715 HD1 in committee.

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GCA of Hawaii
GENERAL CONTRACTORS ASSOCIATION OF HAWAII
**Quality People. Quality Projects.**

Uploaded via Capitol Website

February 24, 2016

TO: HONORABLE SYLIVA LUKE, CHAIR, HONORABLE SCOTT NISHIMOTO, VICE CHAIR, HOUSE COMMITTEE ON FINANCE

SUBJECT: **OPPOSITION TO H.B. 2715, HD1, RELATING TO WORKERS' COMPENSATION.** Repeals HEMIC. Establishes a public corporation attached to DLIR to provide workers' compensation insurance. Requires employers to obtain worker's compensation insurance coverage only from the public corporation or be self-insured. Requires DLIR to create a transition and implementation plan for the established public corporation.

HEARING
DATE: Wednesday, February 24, 2016
TIME: 3:00 p.m.
PLACE: Conference Room 308

Dear Chair Luke and Vice Chair Nishimoto and Members,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred seventy general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

H.B. 2715, HD1, Relating to Workers' Compensation, proposes to repeal HEMIC and completely overhaul the existing workers compensation system by transferring such responsibility to the Department of Labor and Industrial Relations, furthermore, if an employer was to opt out of such coverage, it must qualify to become self-insured. While we understand the need to make improvements to the workers compensation system, this measure may be a bit extreme and such adoption would be premature. GCA recognizes the importance of ensuring an employee's well-being and ability to return to work, however, this measure would reduce choice for the employer and instead force the employer to use a state run system, which could be detrimental to the employee. The lack of participation from private insurance carriers would result in a monopolistic state system. Most states are moving away from this type of system as there are only three other states besides Washington that recognize such a monopolistic system, North Dakota, Ohio and Wyoming.

It is our understanding that in Washington state, in order to obtain workers compensation coverage, the employer (unless statutorily exempted) has two options:

1. Participate in the state monopolistic workers compensation insurance program administered by the Washington State Fund in the Department of Labor & Industries; or
2. Meet standards set by Washington State (Employer must have $25 million in assets) to be a self-insured employer. (About 400 employers in Washington are self-insured, but they are the largest

employers covering between one-fourth and one-third of the total workforce.)

What this could mean for employers that do not have the $25 million in assets, is that they will literally be forced to opt in to the state system and forego the ability to find a more competitive rate from someone else.

Recently, in Washington State workers compensation rates for construction workers were expected to increase at least 2% on average, but may be larger for other particular work classifications, based on type of work. In June 2012, the Washington State Department of Labor and Industries disclosed that the workers comp system faced a $3.1 billion gap in funding and thus to eliminate the gap a 19% annual surcharge over and above annual break even premium increases would be implemented over the next ten years. *AGC Skeptical of 19 Percent Workers' Comp Hike, June 12, 2012, Accessed online on February 6, 2016 at* http://www.agcwa.com/posts/2579. The Association of General Contractors of Washington identified that "the $3.1 billion gap refers not just to what is needed to cover costs but the amount needed to significantly grow reserves as well." *Id.* This measure should be of concern to all Hawaii employers because they would no longer have a choice and instead be forced to use the state system, which currently lacks efficiency. Also given the fact that other monopolistic systems are facing gaps of funding is troublesome.

GCA has concerns regarding this measure because it will not necessarily improve the system. Rather, because Hawaii workers compensation marketplace is currently competitive and stable, any large-scale systemic changes, would reverse this stability, and have detrimental effect on the health of the state, which could ultimately hurt the injured worker. As an alternative, we believe that it is an opportune time to take a comprehensive look at Hawaii's workers' compensation system through an objective closed claims study that could be based on collaborative findings whereby stakeholders could identify unbiased findings.

Thank you for the opportunity to share our concerns regarding this measure.

WAYNE H. MUKAIDA
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February 23, 2016

COMMITTEE ON FINANCE
Rep. Sylvia Luke, Chair
Rep. Scott Y. Nishimoto, Vice Chair

Re: H.B. No. 2715,HD1
Hearing: 2/24/2016, 3:00 p.m.

Chairmen, and members of the Committees, I am attorney Wayne Mukaida. I have been in practice since 1978. Since 1989, I have devoted a substantial portion of my legal practice to representing injured workers. I oppose H.B. No. 2715,HD1 relating to establishing a public corporation attached to DLIR to provide workers' compensation insurance.

The purposes of the bill to reduce delay and arbitrary and capricious denials of medical treatment and vocational rehabilitation plans are laudatory. However, forming one corporation to handle all workers' compensation insurance does nothing to implement the purposes. If the workers' compensation statute, HRS Chapter 386, stands largely unamended, the bill would be akin to moving problems from one carrier to another.

Inquiries to State employees regarding how their workers' compensation claims were handled by the Department of Human Resources Development or by the Department of Education would reveal that those State entities are not immune from charges of unfair denials of medical care and VR plans.

Requiring the mutual selection of medical examiners would have gone a very long way in curbing arbitrary denials of medical care. Amending HRS § 386-25 is required to strengthen protection of vocational rehabilitation benefits. The VR Unit at the Disability Compensation Division is in very serious need of guidance. Unfortunately, the H.B. No. 2715 does not address these issues.

I urge that the bill be held.

Thank you for considering my testimony.

WAYNE H. MUKAIDA

LATE

The Twenty-Eighth Legislature
Regular Session of 2016

HOUSE OF REPRESENTATIVES
Committee on Finance
Rep. Sylvia Luke, Chair
Rep. Scott Y. Nishimoto, Vice Chair
State Capitol, Conference Room 308
Wednesday, February 24, 2016; 3:00 p.m.

**STATEMENT OF THE ILWU LOCAL 142 ON H.B. 2715, HD1**
**RELATING TO WORKERS' COMPENSATION**

The ILWU Local 142 **opposes** H.B. 2715, HD1, which repeals HEMIC and establishes a public corporation attached to DLIR to provide workers' compensation insurance. Requires employers to obtain workers' compensation coverage only from the public corporation or be self-insured.

H.B. 2715, HD1 will establish a public corporation as a monopoly to sell workers' compensation insurance to all employers who are unable or choose not to self-insure. This corporation must be built from scratch and must determine premiums, pay claims, invest money, and develop workplace safety and health programs for almost all employers while remaining financially solvent.

We do not believe that creating a monopoly will eliminate the problems currently facing injured workers—e.g., delayed compensability determination, lack of physicians willing to treat workers' compensation claimants, independent medical examinations that are not unbiased, and unreasonable opposition to treatment plans and VR plans, to name a few. As difficult as the current system may be today, competition among insurers may actually work to keep premiums reasonable and level the playing field.

Instead of establishing a new public corporation to provide workers' compensation insurance to all employers but a few, a comprehensive review of the workers' compensation system may be in order. The review could study closed claims and how they were handled to determine if the law as originally enacted is being followed or if the law is being circumvented to the detriment of the injured worker.

The ILWU urges that H.B. 2715, HD1 be held. We have no comment with regard to the repeal of HEMIC. Thank you for the opportunity to share our views and concerns.