DAVID Y. IGE
GOVERNOR

JAMES K. NISHIMOTO
DIRECTOR

RANDY BALDEMOR
DEPUTY DIRECTOR

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

February 26, 2015

TESTIMONY TO THE
SENATE COMMITTEE ON JUDICIARY AND LABOR

For Decision Making on Tuesday, March 3, 2015
9:15 a.m., Conference Room 016

BY

JAMES K. NISHIMOTO
DIRECTOR

Senate Bill No. 1174, S.D. 1
Relating to Workers' Compensation

WRITTEN TESTIMONY ONLY

CHAIRPERSON JOSH GREEN AND MEMBERS OF THE SENATE COMMITTEE ON HEALTH:

Thank you for the opportunity to provide comments on S.B. 1174, S.D. 1.

The purposes of S.B. 1174, S.D. 1, are to provide that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties; and to provide a process for appointment in the event that there is no mutual agreement.

The Department of Human Resources Development ("DHRD") has a fiduciary duty to administer the State's self-insured workers' compensation program and its expenditure of public funds. In that regard, DHRD respectfully submits these comments on the bill.

First, an independent medical examination conducted by a physician of the employer's choice is the primary tool that is available to the employer to help overcome the statutory presumption that a claim is for a covered work injury, to show that ongoing medical treatment may be unreasonable or unnecessary, and to determine whether a

requested medical treatment, e.g., surgery, is reasonable and related to the work injury. Amending the statute in this fashion would deprive the employer of a very fundamental right to conduct its discovery, using physicians of its choice, to evaluate whether the employer is liable for the claim or medical treatment. We note that the workers' compensation law allows an employee to select any physician of his or her choice as the attending physician—and make a first change of physician—without having to seek mutual agreement from the employer. An IME physician, as selected by the employer which is paying for the examination, provides an alternative medical opinion and serves as a check and balance to the attending physician when objective evidence indicates that a claim may not be compensable or a contemplated treatment regimen may be unnecessary, unreasonable, or even harmful to the employee.

Second, if the parties are unable to agree on a physician to perform an examination, this bill requires that the parties alternatively strike names of physicians from a list whereby the last remaining physician would conduct the examination. We believe this would add another layer of delay to an already complex claims process when compensability of a claim or further medical treatment are at issue.

Third, this bill would require that any mutually agreed upon physician examine the employee within forty-five calendar days of selection or appointment, or as soon as practicably possible. In our experience, the employer often has to wait ninety days or more for an available appointment. The bill is silent as to what would happen if there is no qualified physician available to perform the evaluation within the forty-five days or "as soon as possible" requirement. These unresolved issues may lengthen the process and make it more burdensome.

Fourth, the appropriate check and balance for any perceived "highly partisan" IME opinion is the Director of the Department of Labor and Industrial Relations, who has original jurisdiction to hear and resolve all controversies and disputes arising out of Chapter 386, the Hawaii Workers' Compensation Law. If the Director believes that an IME opinion is not based on any objective medical evidence, he can simply not credit the report and issue a ruling on a disputed medical issue based on other evidence in the record.

Finally, the bill would make the claimant's attending physician the sole arbiter as to when an injured worker attains medical stability. This would have the unintended consequence of potentially lengthening certain claims because employers would lose the ability to challenge ongoing disability and medical treatment when the medical evidence indicates the claimant has reached medical stability and could possibly return to work.

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LIEUTENANT GOVERNOR

ELAINE N. YOUNG
ACTING DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.labor.hawaii.gov
Phone: (808) 586-8844 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

March 3, 2015

To: The Honorable Gilbert S.C. Keith-Agaran, Chair,
The Honorable Maile S.L. Shimabukuro, Vice Chair, and
Members of the Senate Committee on Judiciary and Labor

Date: Tuesday, March 3, 2015
Time: 9:15 a.m.
Place: Conference Room 016, State Capitol

From: Elaine N. Young, Acting Director
Department of Labor and Industrial Relations (DLIR)

Re: S.B. No. 1174 S.D. 1 Relating to Workers' Compensation

I. OVERVIEW OF PROPOSED LEGISLATION

SB 1174 SD 1 proposes to repeal Section 386-79, Hawaii Revised Statutes (HRS), relating to medical examinations by employer's physician, and to replace it with new language that proposes:

- Independent Medical Examinations (IMEs) and permanent impairment rating examinations be performed by physicians selected and mutually agreed upon by the employer and employee;
- If no agreement as to physician can be reached, the parties shall jointly prepare a list of 5 physicians and by elimination, choose one physician to perform the IME;
- The selected physician shall be currently licensed pursuant to chapter 453 or 442 and shall conduct the examination within 45 calendar days or as soon as practicably possible after the selection;
- The employer shall pay for the IME; and
- The use of an out-of-state physician is allowed under certain circumstances.

The Department supports the intent of this measure that will bring a greater assurance of impartiality in the IME and permanent impairment rating processes and, importantly, has the potential to reduce the number of Workers' Compensation medical disputes. The Department notes that as currently drafted the process might be challenging for pro se clients, as they may not have access to or lists of doctors that perform IMEs. Moreover, the department believes further deliberation on the design and process of the selection process needs to occur, but does not have any suggestion at this time.

The intent of this measure is to reduce the adversarial nature of the increasingly contentious workers' compensation system and reduce the bias of either party's physician through a mutual selection of a physician to perform the IME. Currently, both the employee and the employer often choose doctors who are highly partisan to their side, further exacerbating the adversarial nature of the workers' compensation system.

The workers' compensation system was designed to be more informal and outside the normal legal process, but unfortunately it has developed into a formal, adversarial legal process. The proposal is an attempt to return the workers' compensation system to its original design.

II. CURRENT LAW

Currently, Section 386-79, HRS, specifies that the employee, when ordered by the director, shall submit to the examination by a qualified physician designated and paid by the employer. If an employee refuses to attend the examination, or obstructs in any way the examination, the claimant's rights to benefits are suspended for the period during which the refusal or obstruction continues.

III. COMMENTS ON THE SENATE BILL

1. Reduction in number of disputes. Decisions on issues of compensability and permanent disability rely primarily on the doctors' reports that are submitted by the parties. In contested cases, the parties' primary concern is to have doctors' reports that support their position and they would therefore seek IME doctors who will likely support their positions.

   Employers or Insurance Companies, however, have an economic advantage over claimants, so creating a mechanism that would limit this dynamic of "shopping for medical experts" could possibly reduce the number of disputes, especially for cases related to the issues of compensability and permanent disability.

2. Fair and Impartial. Where there are disagreements about medical examinations and permanent impairment rating examinations, the Department believes the mechanism set forth in the measure will provide a fairer and more impartial method of dispute resolution as well as reduce the number of disputes.

3. Out-of-State claimants. The measure also provides for IMEs for claimants living out-of-state. The measure allows for physicians who are licensed in and who reside in the state of the claimants' residence to be selected to perform IMEs and rating examinations for out-of-state claimants if that state's physician licensing requirements are equivalent to a physician's license under chapter 442 or 453. Currently, the employer is responsible for locating these out-of-state physicians and for scheduling the examinations in the state where the claimants currently reside. The employer will continue to be responsible for arranging and paying for travel arrangements for claimants who must return to Hawaii for an IME.

4. Medical records to IME physician. The Department recommends the measure stipulate that the employer shall send the claimant's medical records to the IME physician as is the current practice.

5. The Department points out that this proposal only allows physicians currently licensed pursuant to chapters 453 (medicine) and 442 (chiropractics) to perform IMEs. It does not apply to dentists (chapter 448) and psychologists (chapter 465), who are also considered "physicians" under the workers' compensation law.

6. Medical stability. The Department has concerns about the language in Section 1, Subsection (f) which relies on medical stability to be determined solely by the injured employee's attending physician. Employers would lose the ability to challenge ongoing disability and medical treatment when the medical evidence indicates the claimant has reached medical stability. This may result in lengthening of certain claims.

DEPARTMENT OF HUMAN RESOURCES
CITY AND COUNTY OF HONOLULU
650 SOUTH KING STREET, 10TH FLOOR • HONOLULU, HAWAII 96813
TELEPHONE: (808) 768-8500 • FAX: (808) 768-5563 • INTERNET: www.honolulu.gov/hr

KIRK CALDWELL
MAYOR

CAROLEE C. KUBO
DIRECTOR

NOEL T. ONO
ASSISTANT DIRECTOR

March 3, 2015

The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members of the Committee
on Judiciary and Labor
The Senate
State Capitol, Room 016
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members of the Committee:

SUBJECT: Senate Bill No. 1174, SD 1
Relating to Workers' Compensation

The City and County of Honolulu **strongly opposes** SB 1174, SD 1, which would require independent medical examinations and permanent impairment rating examinations to be performed by physicians mutually agreed upon by employers and employees. Although the vast majority of workers' compensation claims proceed without controversy or disagreement, there are certain workers' compensation claims where an independent medical examination is necessary.

The Hawaii Workers' Compensation Law permits a claimant to secure medical treatment from any physician practicing in the State of Hawaii. Occasionally, questions arise concerning diagnosis, treatment, or disability status. While employers have no say in an employee's choice of physician, they currently have the right to obtain an independent opinion from a physician or specialist regarding the progress of a claim. SB 1174, SD 1, would significantly restrict an employer's ability to obtain such independent examinations by mandating that only physicians agreed upon by claimants be used for employer requested medical examinations, or, if both parties cannot reach a consensus, mutually creating a list of five physicians before alternately striking names to arrive at a final physician. This alternative process will most certainly delay the final disposition of the claim with respect to compensability or future medical treatment.

Most employers and insurance carriers have no problem using mutually agreed upon physicians for permanent impairment ratings, but to require mutual agreement for an employer to conduct an independent medical evaluation takes away from the very independence and purpose of the evaluation. The concept of an independent medical examination is incongruous with the words upon mutual agreement as proposed in this bill.

Hawaii's workers' compensation law already weighs heavily in favor of the claimant. Under the presumption clause, any claim filed is deemed compensable unless the employer presents substantial evidence to the contrary. During the hearing process at the Disability Compensation Division (DCD) and the Labor and Industrial Relations Appeals Board (LAB), issues of doubt are resolved in favor of the claimant. The only way an employer can determine whether a claim is truly compensable or check on a claimant's medical progress is the right to select an independent medical examiner. To change this as proposed is unfair and inequitable to employers.

Finally, the bill allows only the attending physician to make the finding of medical stability. In most instances, this is self-serving and will undoubtedly prolong treatment, delay an employee's return to work and dramatically increase the cost of a claim.

Based on the foregoing, we respectfully urge your committee to file SB 1174, SD 1.

Thank you for the opportunity to testify.

Sincerely,

Carolee C. Kubo

Carolee C. Kubo
Director

cc: Mayor's Office

Chamber of Commerce HAWAII
The Voice of Business

Testimony to the Senate Committee on Judiciary and Labor
Tuesday, March 3, 2015 at 9:15 A.M.
Conference Room 016, State Capitol

RE: SENATE BILL 1174 SD1 RELATING TO WORKERS' COMPENSATION

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** SB 1174 SD1, which provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties and provides a process for appointment in the event that there is no mutual agreement.

The Chamber is the largest business organization in Hawaii, 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.

SB 1174 SD1 seeks to replace the existing employer requested examinations in workers compensation claims disputes with a new system for obtaining "independent medical examinations".

Under the bill, an independent medical examination (IME) process is replaced with a new program. First the IME must be conducted by a mutually agreed upon physician. Should there not be a mutually agreed upon physician, a process of 3-2 selection will be set into motion with the employer being allowed 3 physicians on the list and the employee 2, with the employee being able to remove a physician from the list first. The bill also allows, with the Director's approval, an out of state physician to be used to conduct the IME should that specialty not be available. Lastly, the bill removes among other things, the loss of wage payments to the employee during the time of not cooperating or submitting to an IME.

The Chamber **opposes** this bill for the following reasons.

First, the bill is fundamentally unfair. If the employer has reason to question the treating physician's proposed course of action, the employer's only tool to objectively evaluate the treating physician's plan of action is the employer requested examination. As you all know, Hawaii is one of a few states that has presumption in its workers' compensation law. Essentially an employee cannot be denied treatment or compensation if they claim they were injured on the job. The burden is on the employer to prove otherwise. That is why the IME is so critical to provide balance in the law.

An IME is used as a second opinion when compensability is in question or when medical progress is stagnant. If an injured worker has been treated for some time, there is a point where additional medical treatment will not be curative. The injured worker is either ready to return to work in full capacity, is partially disabled, or is permanently disabled. If the IME process is restricted, it may greatly prolong the period the injured worker continues to get treatment that is not medically curative.

Second, the bill will likely create more delays and costs in the workers' compensation system and place upward pressure on premium rates. The bill does not set forth a timeline in which the employee or employer must remove a physician from the list. This could add months to the process of getting an IME. Also, under existing law, if the employee does not submit to an employer's IME, the employee's right to claim compensation for the work injury is suspended. While this provision is added at a later part of the bill it appears it will take effect after the selection process.

Third, there is no consensus on the problem which the bill seeks to solve. The bill is based upon the erroneous presumption that employers routinely abuse their limited right to discovery through employer requested examinations. The results of these examinations are subject to review and appeal by the employee and must be credible enough to withstand the scrutiny of DLIR's review. For this reason, and also since employers are only allowed one examination under most circumstances under the existing law, there is already a strong incentive for the employer to obtain a credible report on the first try.

In fact, it would be counter-productive for businesses to want employees not to get better and return to work. Additionally, businesses genuinely care and do everything they can to create a positive, healthy and safe work environment and provide benefits and assistance to employees.

The Chamber and the members they represent, respectfully request that you hold SB 1174 SD1. Thank you for the opportunity to submit testimony.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcahawaii.org
Website: www.gcahawaii.org

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

Uploaded via Capitol Website

March 3, 2015

TO: HONORABLE GIL KEITH-AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD1 RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SD1)

HEARING
DATE: Tuesday, March 3
TIME: 9:15 a.m.
PLACE: Conference Room 016

Dear Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately five hundred eighty general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The 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.

The GCA is **strongly opposed** to S.B. 1174, SD1, Relating to Workers' Compensation, which would require that an employee and employer mutually agreed upon physician for an "independent medical examination" commonly known as an IME or permanent impairment rating for worker's compensation claims.

In order to avoid any confusion, the commonly referred to Independent Medical Examination or IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is really the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

The GCA is opposed to this measure because it requires the selection of an Employer Medical Examination to be mutually agreed upon. The process has been erroneously referred to as an Independent Medical Examination or IME. The proposed change will add to compensation costs and delay the delivery of medical treatments in certain cases. The added costs and delays do not benefit either the employer or the injured worker. The IME process is the employer's only safeguard against improper practices by an employee that may be taking advantage of his or her worker's compensation benefits. The passage of this bill may likely lead to more contested workers' compensation claims because of the added burden placed on the employer to further defend against potentially fraudulent cases.

S.B. 1174, SD1 remains at odds with the interests of GCA members and other business organizations and for those reasons, the GCA opposes this measure. The GCA believes the current system that is in place works. We believe this legislation is unnecessary.

GCA **strongly opposes** S.B 1174, SD1 and respectfully requests that this Committee defer the measure. Thank you for the opportunity to express our concerns on this measure.

Grace Pacific LLC
A SUBSIDIARY OF ALEXANDER & BALDWIN, INC.
GP Roadway Solutions • GPRM Prestress • GLP Asphalt • Maui Paving

Via E-mail: JDLTestimony@capitol.hawaii.gov
Via Fax (808) 586-7348

March 3, 2015

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **OPPOSITION TO S.B. 1174, SD1, RELATING TO WORKERS' COMPENSATION.**

Grace Pacific respectfully opposes S.B. 1174, S.D. 1, which would require "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an IME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the proposed bill would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system may increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system.

For these reasons, we respectfully request that that this bill be held by this Committee. Thank you for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc: moore4640@hawaiiantel.net
Subject: Submitted testimony for SB1174 on Mar 3, 2015 09:15AM
Date: Saturday, February 28, 2015 4:19:52 PM

SB1174
Submitted on: 2/28/2015
Testimony for JDL on Mar 3, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Douglas Moore	Hawaii Injured Workers Association	Support	No

Comments: Aloha: the Hawaii Injured Workers Association strongly supports mutually agreed IME's & the passage of this bill. The workers compensation system has become less fair & more litigious/costly to our injured workers due to IME's not being mutually agreed. Most PPD evaluations presently are by mutual agreement. This is fair & less litigious/costly to all parties. And just like mutually agreed PPD evaluations, mutually agreed IME's will be fairer and cause less litigation/costs to all parties. The workers compensation system is supposed to be fair; otherwise, the system should be eliminated & the tort system should be re-instituted. Mutually agreed IME's will make work comp more fair again for our injured workers. Please pass this bill. mahalo

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

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

Alison H. Ueoka
Executive Director

TESTIMONY OF JANICE FUKUDA

COMMITTEE ON JUDICIARY AND LABOR
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Tuesday, March 3, 2015
9:15 a.m.

SB 1174, SD1

Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the Committee, my name is Janice Fukuda, Assistant Vice President, Workers' Compensation Claims at First Insurance, testifying on behalf 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 thirty-six percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council opposes SB 1174, SD1, which amends Section 386-79, Medical Examination by Employer's Physician.

Our members believe this bill will substantially increase workers' compensation costs, which will translate into a higher cost of doing business, limiting business' ability to compete, adversely affect employees by limiting job availability, pay, and benefits and ultimately find its way into the costs of goods and services in Hawaii.

The current system regarding Independent Medical Examinations (IMEs) has been in place for some time and we believe it is working. It appears that this legislation is prompted by claims that IME physicians are biased toward the employer. We do not believe this is true. Employers seek access to clinical expertise to help return the injured worker to the job. Currently, there are numerous safeguards in place to ensure the IME is objective and unbiased. Injured workers are able to obtain opinions or

comments from their treating physician or other doctors regarding the IME opinion if they disagree. Injured workers are also able to obtain their own rating and if the hearings officer relies on it, the employer has to pay for it. Finally, there is an appeals process that provides further due process to both sides if an agreement cannot be reached.

The current system provides an approach for the employer and injured worker to resolve medical treatment disputes in an efficient manner. The proposal to mandate mutual agreement will increase workers' compensation costs and delay the delivery of medical treatment in certain cases. This is detrimental to the injured worker and does not benefit the employer. The mandate also denies employers due process to investigate whether the alleged injury is a compensable consequence of a work related event or exposure.

This bill requires mutual agreement between the employer and employee of an IME physician. If there is no agreement, the IME physician is chosen from a joint list of five physicians with the employer choosing the first and alternating with the employee. Then each may strike a physician until only one remains who shall be the IME physician. The proposed process will delay the ability to secure an examination in a timely manner and may hinder the ability to expeditiously resolve conflicts. The process will always end with the employer not having the opportunity to obtain an IME with a physician of their choice. Furthermore, only one IME is allowed unless another is approved by the Director.

An IME is used as a second opinion when compensability is in question or when medical progress is stagnant. If an injured worker has been treated for some time, there is a point where additional medical treatment will not be curative. The injured worker is either ready to return to work in full capacity, is partially disabled, or is

permanently disabled. If the IME process is restricted, it may greatly prolong the period the injured worker continues to get treatment that is not medically curative.

There are very few cases where mutual agreement cannot be reached. However, if the law is changed to *require mutual agreement*, we believe many cases *will not have mutual agreement* because there is no incentive to do so. If there is no mutual agreement, the physicians who are licensed under Chapter 453 are a very broad pool, however, we believe the result of having inexperienced physicians perform IMEs will not serve the injured worker or the employer and ultimately increase appeals and costs. Subsequently, if an IME is not performed at a high standard, the employer may not be able to get another one if the Director does not approve it. This leaves the injured worker in limbo and the employer must keep paying for medical treatment that may be unnecessary.

The bill also allows *only* the treating physician to say the injured worker has reached medical stability. This definition differs than that of "medical stabilization" in the administrative rules. The difference is the rules definition has an additional part that says if an injured worker refuses to get recommended treatment by the treating physician, he or she has reached medical stabilization. There is no need for a new truncated definition. By allowing only the treating physician to say when the injured worker has reached medical stability or stabilization, the injured worker will continue to be in limbo as long as the treating physician says so. This disallows the IME physician from saying the injured worker has reached medical stability or stabilization. Again, this will leave the injured worker in limbo with continued treatment which may be unnecessary and the employer will have to pay for it. The existing language in the Administrative Rules addresses medical stability in a manner that is fair to both injured workers and employers.

The provision to require impairment IMEs to be separate from treatment IMEs presents an inconvenience to the injured worker and does not correspond to better outcomes. A comprehensive examination often takes several hours and this requirement will add costs to the system by requiring two separate examinations that could be addressed in one visit. IMEs are performed to address various aspects of an injured worker's injury and recovery such as primary and secondary diagnosis, appropriate treatment, utilization and measurement of the degree of physical impairment. *In many cases, it is important to obtain a baseline impairment rating to later determine the effectiveness of treatment.* It is beneficial for the injured worker to have one physician review the medical records and conduct the physical examination in a comprehensive manner. It is also more cost effective if treatment and impairment are addressed by a single IME instead of requiring two. The suggestion that two separate examinations benefits the injured worker is not substantiated by evidence and will only add costs and delay the delivery of benefits. Requiring prior written consent from the injured worker to allow for an Impairment rating during the IME exam will delay the process and add cost.

The bill also limits IMEs to one per case, unless approved by the Director. There is no measurable benefit to the injured worker by limiting IMEs to one per case. In fact, such a restriction may harm the injured worker. Several IMEs may be necessary in some cases to clarify the diagnosis, establish a baseline, determine whether there has been improvement or deterioration, explain a change in the condition, or impairment. A subsequent IME may be necessary if the injured worker develops new symptoms or conditions secondary to the work injury. The bill does not allow for any exceptions for an ordered IME for impairment ratings. In the event that an injured worker is ordered to attend an impairment examination and the physician determines that the injured worker is not at maximum medical improvement, or is a no-show for the appointment, the injured worker is precluded from obtaining a subsequent impairment rating. Neither an employer nor an injured worker should be restricted in securing an IME.

Section (b) requires the employer to promptly provide the employee or employee's representative a copy of the report of the independent medical examination. This may be problematic and not in the best interest of the injured worker for certain types of examination reports that should be reviewed in the presence of the injured worker's treating physician or the concurrent medical provider. Mandating dissemination of all reports may create an inherent risk for the Independent examiner, the file handler and others involved with the injured worker's claim.

For these reasons, we respectfully request that SB 1174, SD1 be held.

Thank you for the opportunity to provide comments.

HEALY TIBBITTS BUILDERS, INC.
General Contractors – Hawaii License No. AC-15669
99-994 Iwaena Street • Suite A • Aiea, Hawaii 96701
Telephone (808) 487-3664 • Facsimile (808) 487-3660

SENT VIA E-MAIL: JDLTestimony@capitol.hawaii.gov

March 1, 2015

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD1, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SD1)

HEARING
DATE: Tuesday, March 3, 2015
TIME: 9:15 a.m.
PLACE: Conference Room 016

Dear Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee:

Healy Tibbitts Builders, Inc. is a general contractor in the State of Hawaii and has been actively engaged in construction work in Hawaii since the early 1960's.

First and foremost, to avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is really the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

Healy Tibbitts Builders, Inc. is in **strong opposition to S.B. 1174, S.D. 1 Relating to Workers' Compensation,** which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works.

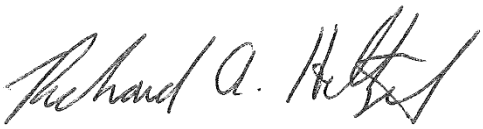
Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's

only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

Let's not make it harder to do business in Hawaii. Please do not pass this bill.

For these reasons, we respectfully request that that the proposed bill be held by this Committee.

Very truly yours,
Healy Tibbitts Builders, Inc.



Richard A. Heltzel
President

The Twenty-Eighth Legislature
Regular Session of 2015

THE SENATE
Committee on Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
State Capitol, Conference Room 016
Tuesday, March 3, 2015; 9:15 a.m.

STATEMENT OF THE ILWU LOCAL 142 ON S.B. 1174, SD1
RELATING TO WORKERS' COMPENSATION

The ILWU Local 142 supports S.B. 1174, SD1, which provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by mutual agreement of the parties and provides a process for appointment in the event that no agreement can be reached.

In the workers' compensation arena, independent medical examinations and examinations for permanent impairment ratings are performed by physicians who are expected to be unbiased and will provide their opinions based on the physical examination of the patient and a review of the medical records. Consideration about who pays their fees should not enter the picture, but the perception of bias will exist if the examiner is both selected and paid for by the insurance company or employer.

Mutual agreement regarding the selection of the IME physician will serve to minimize or even eliminate negative perceptions about the examiner and will provide reassurance to the injured worker that the examination will be conducted fairly.

The process for appointment of an examiner, as outlined in the bill, appears fair. However, the only concern is that a claimant who is not represented may not be able to suggest names of prospective IME physicians for consideration, either initially or when there is no agreement. We suggest that the Department consider facilitating the process by:

(1) sending a letter once a year to each physician in the state asking if the physician is willing and interested to perform Independent Medical Examinations or examinations for permanent impairment;

(2) prepare a list of the physicians who have expressed interest, including practice specialty, number of years practicing in Hawaii and elsewhere, number of IME and rating exams performed and when, and any other pertinent information; and

(3) provide the list with information on each physician to the claimant and the insurer or employer.

With this information, the claimant will be better able to suggest physicians to be considered.

The section in the bill requiring separation of the IME from the permanent impairment rating is essential. Ratings for permanent impairment should occur only after the injured worker is determined by his attending physician to be "medically stable"—i.e., "no further improvement of the employee's work-related condition can reasonably be anticipated from curative health care or the passage of time." An absurdity occurs when an injured worker is referred to an examiner for both an IME to determine compensability and a permanent impairment rating. How can the examiner determine if there is permanent impairment when the disability has yet to be acknowledged and no treatment has been provided? Nevertheless, this occurs all the time.

The ILWU urges passage of S.B. 1174, SD1. Thank you for the opportunity to provide testimony on this matter.

JADE PAINTING, INC.
HAWAII

Since 1974

Via E-mail: JDLTestimony@capitol.hawaii.gov
Via Fax (808) 586-7348

March 3, 2015

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD1, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SD1)

HEARING
DATE: Tuesday, March 3, 2015
TIME: 9:15 a.m.
PLACE: Conference Room 016

Dear Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee,

We are a concerned business entity operating in the construction industry on these islands for 40 years. We always strive to offer our best to both our customers and employees. However, as a business, we are troubled with S.B.1174, SD1 Relating to Workers' Compensation.

First and foremost, to avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is really the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

JADE PAINTING, INC. is in **strong opposition to S.B. 1174, S.D. 1 Relating to Workers' Compensation,** which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

Let's not make it harder to do business in Hawaii, please do not pass this bill.

For these reasons, we request that that the proposed bill be held by this Committee.

Thank you,

Christine McGurk
Office Manager/Treasurer

MEMBER
Painting & Decorating
Contractors Association of Hawaii

94-1410 Moaniani St. • Waipahu, HI 96797 • Phone: 677-5233 • Fax: 677-6500
License C-7155 • www.jadepainting.com

JAYAR CONSTRUCTION, INC.
1176 Sand Island Parkway ▼ Honolulu, Hawaii 96819
Tel (808) 843-0500 ▼ Fax (808) 843-0067
Contractor's License ABC-14156

March 27, 2015

To: **Honorable Gil Keith Agaran, Chair, Honorable Maile Shimabukuro, Vice Chair and members of the Senate Committee on Judiciary and Labor**

Via Fax: (808)586-7348

Subject: **Strong opposition to S.B. 1174, Relating to Workers' Compensation.**

Dear Chair Keith Agaran, Vice Chair Shimabukuro and Members of the Committee,

Jayar Construction, Inc. is a locally owned General Contractor that has been in business for over 25 years. We are a union shop and currently have approximately 120 employees.

Jayar Construction, Inc. is **strongly opposed** to **S.B. 1174, Relating to Workers' Compensation**, which would require independent medical examinations (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employer and employee. We believe there is nothing wrong with the current procedures.

Under the current system employees select their treating physician who treats and provides their medical opinion. If the employer disagrees with the treatment or diagnosis they can, at their own cost, elect to have an Employer Medical Examination on the employee. There is also an appeal process if the parties cannot agree.

The proposed bill would take away the employer's only tool to evaluate the treating physician's proposed plan of action. We feel that worker's compensation claims that misuse the system would significantly increase if this bill passes. It will likely create more delays and costs for workers' compensation and place upward pressure on premiums.

The current law is effective in maintaining a good balance between the need to take care of injured employees and the employer's desire to curb costly abuses of the system. For these reasons, we respectfully request that the proposed bill be held by this Committee.

Sincerely,

Stephen Yoshida,
CFO & Human Resource Manager

KING & NEEL, INC.

1164 Bishop Street * Suite 1710 * Honolulu, Hawaii 96813
Phone: (808) 521-8311
Fax: (808) 526-3893

Via E-mail: JDLTestimony@capitol.hawaii.gov
Via Fax (808) 586-7348

March 3, 2015

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD1, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SD1)

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King & Neel, Inc. is in **strong opposition to S.B. 1174, S.D. 1 Relating to Workers' Compensation,** which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer s only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

Let's not make it harder to do business in Hawaii, please do not pass this bill.

For these reasons, we request that that the proposed bill be held by this Committee.

Thank you for the opportunity to offer our comments on this matter.

Sean K. Spencer, Assistant Vice President

LYZ Inc.
general contractor license #ABC 21576

Via E-mail: JDLTestimony@capitol.hawaii.gov
Via Fax (808) 586-7348

February 27, 2015

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY AND LABOR

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LYZ, Inc. is in **strong opposition to S.B. 1174, S.D. 1 Relating to Workers' Compensation,** which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

Let's not make it harder to do business in Hawaii, please do not pass this bill.

For these reasons, we request that that the proposed bill be held by this Committee.

James N. Kurita
Vice President/ Chief Operating Officer

Doing Business Since 1972

94-116 Pupuole Place, Waipahu, HI 96797
Email: info.mshiroma@mshiroma.com
Ph. (808) 678-8535
Fax: (808) 678-2625

EPA Certified Lead Abatement
Contractor's License #BC-15857

Via E-mail: JDLTestimony@capitol.hawaii.gov
Via Fax (808) 586-7348

March 3, 2015

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY AND LABOR

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HEARING
DATE: Tuesday, March 3, 2015
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PLACE: Conference Room 016

Dear Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee,

My name is Glenn H. Shiroma and I am the owner/president of M. Shiroma Painting Co., Inc. My company is a family owned and operated business offering quality painting services in Hawaii since 1972. We have worked on a number of commercial and high-rise re-paint projects in the islands. Our commitment to a tradition of excellence carries itself throughout every aspect of our business - building relationships with our customers, our training and hiring philosophy for all of our craftsmen and support staff, and our pledge to guarantee you satisfaction.

First and foremost, to avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is really the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

M. Shiroma Painting Co., Inc. is in **strong opposition to S.B. 1174, S.D. 1 Relating to Workers' Compensation**, which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

Let's not make it harder to do business in Hawaii, please do not pass this bill.

For these reasons, we request that that the proposed bill be held by this Committee.

Sincerely,

M. Shiroma Painting Co., Inc.
Glenn H. Shiroma, President

MSIG *Mechanical Contractors Workers' Compensation Self-insurance Group*

c/o King & Neel, Inc. *1164 Bishop Street, Suite 1910, Honolulu, Hawaii 96813*
*Telephone: (808) 521-8511 * FAX: (808) 526-3893*

Via E-mail: JDLTestimony@capitol.hawaii.gov
Via Fax (808) 586-7348

March 3, 2015

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY AND LABOR

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The Mechanical Contractors Workers' Compensation Self-Insurance Group is in **strong opposition to S.B. 1174, S.D. 1 Relating to Workers' Compensation,** which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

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For these reasons, we request that that the proposed bill be held by this Committee.

Thank you for the opportunity to offer our comments on this matter.

Sam Fujikawa, Chairman

TESTIMONY IN SUPPORT OF S.B. NO. 1174, S.D. 1
RELATING TO WORKERS' COMPENSATION
COMMITTEE ON JUDICIARY AND LABOR
Tuesday, March 3, 2015, 9:15 a.m.

Mr. Chairman, members of the Committee, I am attorney Paul D. Schmeding. I have been in practice since 1986. Since 1990, I have devoted a substantial portion of my legal practice to representing injured workers. I strongly support S.B. No. 1174 SD1 relating to Workers' Compensation and Medical Examinations.

I. MUTUAL CHOICE OF A PHYSICIAN HAS PROVEN TO BE EFFECTIVE. THERE IS NO LEGITIMATE ARGUMENT AGAINST GETTING A FAIR AND CORRECT OPINION.

The use of agreed upon physicians has proven to be feasible. Under present practice, after the condition of an injured worker has stabilized, the worker is sent to a physician for a "rating" examination to measure the extent of the permanent impairment. For many years, the practice has been to require that the employer/carrier and the injured worker agree on a physician to conduct the "rating" examination, and the practice has proven to be workable. Most of the time, the agreed upon physician prepares a report which is satisfactory to all parties, simply because, more often than not, the examination is fair and correct. The proposed bill merely incorporates the practice of using an agreed upon "rating" physician, to also be used when an employer/carrier desires the opinion of a nontreating physician. The use of an agreed upon physician will greatly expedite cases and result in fairer treatment of injured workers.

II. AGREED UPON IMEs ARE NEEDED TO HELP PREVENT UNNECESSARY DELAYS IN INITIATING PAYMENTS TO AND CARE FOR INJURED WORKERS.

The problem which this bill would correct is unnecessary delays in initiating payments and care for injured workers. The unnecessary delay is caused by the practices of some insurers in selecting their "favored" physicians to examine injured workers.

The workers' compensation system is supposed to be a "no-fault" system which provides immediate medical care and compensation. The workers' compensation statute provides that there is a presumption that an injury is work related and pursuant HRS 386-31 (b), an injured worker is supposed to start receiving his benefit payment by the 10th day after the employer is notified of the employee's disability. An injured worker is also supposed to receive prompt medical care. Unfortunately, although there is the statutory presumption and although an injury may have been witnessed, and although an employer does not contest the injury, the start of payments and care is very often delayed by several months. The longer it takes to receive medical care, the longer it takes for an injured workers to get better, the longer it takes before an injured worker can return to work, and the higher the amount of indemnity payments.

Often, the cause of the delay is the employer/carrier's choice of their favored physician who, very predictably, will argue that:

a. there was no injury,

b. that any medical condition was pre-existing, or
c. that if there was an injury, it was a very temporary condition which has since resolved.

The use of agreed upon physicians will serve to reduce the abuse of the system by employers/carriers.

III. CARRIERS ARE ABUSING THE SYSTEM AND DENYING PROMPT COMPENSATION TO INJURED WORKERS.

The use of agreed upon physicians is necessary because employer/carriers are abusing the system by choosing their "favored" physicians who produce reports which predictably favor the employer/carrier.

The workers compensation statute provides in HRS 386-31 (b) that an injured worker is supposed to start receiving his benefit payment by the 10th day after the employer is notified of the employee's disability. An injured worker is also supposed to receive prompt medical care. Unfortunately, the start of payments is very often delayed by several months. The longer it takes to receive medical care, the longer it takes for an injured workers to get better, the longer it takes before an injured worker can return to work, and the higher the amount of indemnity payments.

One major cause of delay in treatment is the use of "employer medical examinations." The enactment of this bill would reduce delays in treatment, and reduce total indemnity payments and benefit both employers and employees. (In this testimony, the term "employer" refers to workers' compensation carriers and adjusters.)

IV. "EMPLOYER MEDICAL EXAMINATIONS" RESULT IN LONGER PERIODS OF DISABILITY AND HIGHER INDEMNITY PAYMENTS.

One factor which prevents timely receipt of medical care is the use of "employer medical examinations." The phrase "Independent Medical Examination" (IME) should not be used in this context because it is a misnomer. Examinations by physicians chosen by an employer are too frequently not "independent", nor "medical". If employer medical examinations were truly "independent" examinations, and had the goal of restoring an employee's health and getting an employee back to work, then there would be no problem.

Unfortunately, too often the goal of an employer directed medical examination is not altruistic. The goal is often to enable an employer to escape liability or to delay benefits, although an employee has been injured on the job and is entitled to treatment. An employer can attempt to escape liability if the employer can obtain a physician's opinion in its favor.

If an employer delays long enough, the injured employee may give up and seek care outside of workers' compensation. If a case does reach a hearing, the fallacies in the report of the employer's physician can be pointed out, and the result is that the Department of Labor subsequently confirms that there was a work injury or that a certain medical procedure is appropriate. Unfortunately, that result too frequently can take over 1/2 year to obtain during which time the injured employee may be without income and without medical treatment..

A. "EMPLOYER MEDICAL EXAMINATIONS" AT THE BEGINNING OF A CASE ARE OFTEN DEVASTATING

TO INJURED WORKERS.

The use of "employer medical examinations" results in delays which often have devastating consequences to injured workers.

After an injury is reported by a worker, the workers' compensation statute allows an employer to contest the claim. The employer can contest the claim even though the injury was witnessed and is obvious.

§12-10-73 of the Administrative Rules requires the employer to support a denial with a "report" within 30 days of the denial, however, the Rule also provides that the employer can request extensions of time. Since the calendar of the employer's physician is often full, the physician frequently cannot see the worker until months after the injury, and therefore the employer requests extensions for months after the injury.

There are also administrative delays. The Department of Labor can take months to schedule a hearing. A notice of hearing is not issued until one month prior to a hearing. A decision on a hearing is frequently not issued until 60 days after the hearing (60 days is the maximum period allowed under §386-86). Even if a hearing was scheduled today, there would be no Department of Labor decision until 90 days from today.

Therefore, it would not be uncommon for an injured worker to have to wait for more than a half year before a determination is made that a work injury was suffered.

All this time, the worker might be without medical care and without income. He might be without a personal health plan because he is a new employee or is a parttime employee. His personal health plan might deny coverage because the employee is claiming a work injury. His personal health plan coverage will end after 3 months because the employer can stop paying for the worker's health insurance and the employee will not be able to afford to pay COBRA premiums for his coverage . He might be not be eligible for TDI coverage, nor have any available sick leave.

All too often, the devastating results are that the injured worker and his family lose their health coverage and are evicted from their residence because of delays caused by the employer seeking the report by one of its physicians.

B. "EMPLOYER MEDICAL EXAMINATIONS" IN THE MIDDLE OF CASES ARE ALSO DEVASTATING.

"Employer medical examinations" can also have a devastating impact in the middle of a case. Such examinations are often scheduled to contest the need for surgery. The resulting delays are the same as stated above. The injured worker has to endure the pain and suffering during the extensive period of delay. The delay also results in higher indemnity payments.

V. THERE ARE POWERFUL FINANCIAL INCENTIVES FOR AN EMPLOYER'S PHYSICIAN TO PROVIDE OPINIONS IN EMPLOYER'S FAVOR.

The financial rewards to an employer's physician who consistently provides opinions in favor of an employer can be substantial. The fees which a worker's doctor can charge are limited by the Workers' Compensation Medical Fee Schedule. However, the Department of Labor has applied that Fee Schedule only to cases in which the Department of Labor has ordered a worker to attend an examination.

Therefore, there is no limit to the fees which can be charged by employer's physicians for examinations which have not been ordered.

Information regarding the amount of money earned by a particular employer's physician from a particular insurance company is not readily available. It would seem to be an easy matter to have a subpoena issued for a federal income tax Form 1099 issued by an insurance carrier, however, the Department of Labor has refused to issue such subpoenas requested by injured workers.

In any event, employer's physicians are apparently paid more than $2,000.00 per examination. Three examinations per week yields $6,000.00. 50 weeks a year yields an income of $300.000.00. Employer's physicians can do more than 3 examinations per week.

The financial incentives for an employer's physician to provide reports favoring employers are very powerful and are reflected in reports from certain employers' physicians who consistently issue opinions in employers' favor. Current law unjustly allows employer's physicians generate reports with impunity and without liability.

VI. AN EMPLOYER'S PHYSICIAN SHOULD NOT BE ALLOWED TO RENDER AN OPINION WITH IMPUNITY.

A basic general rule in society is that a person should be responsible for his actions. There is no sound reason to allow employer's physicians to deviate from this general rule.

Presently, an employer can readily obtain a physician's opinion to fit its needs because the employer's physician can presently state any opinion with impunity. The employer then uses that opinion to deny coverage or to deny treatment. The employer's physician is also free to opine on what care is appropriate or whether a worker's condition is stable. There is no requirement for the employer's physician to explain why a worker could do his job for years, but is not able to do his job after the injury.

It is the freedom from liability that allows the employer's physician to give employer's the opinions they want without responsibility for the devastating consequences to the injured worker. The employer's physician also is empowered because of a Hawai‘i U.S. District Court decision which held that the employer's physician had no duty to the injured worker.

Although the employer's physician knows that his opinion will directly affect the worker, the employer's physician does not feel any obligation to the worker. The reason that an employer's physician is free to opine is that he claims that he has no doctor-patient relationship with the worker. The employer's physician knows that the impact of his opinion can be devastating to the worker, however, he claims that he is under no duty to the worker, and therefore is not liable for any consequences.

Although there is no liability for IME reports, there are a few physicians who are known to generate fair reports. The requirement that a physician be agreed upon would reduce the number of time that employers are able to abuse the system by relying on their favored physicians who generate reports to fit employers' needs, as opposed to providing fair evaluations..

VI. CONCLUSION.

There are physicians who conduct employer's examinations who properly consider

the facts and who provide opinions which are medically sound. Attorneys representing injured workers will readily agree to have their clients examined by such physicians. Responsible insurance carriers will utilize the services of such physicians because those carriers know that proper medical treatment with a correct diagnosis will result in getting the injured worker back to work sooner, which is the correct and fair result.

The problem with employers' examinations lies with certain physicians and insurance carriers who are willing to use improper opinions to unfairly deny benefits to injured workers. The inherent disparity of the financial resources of insurance carriers versus an injured worker, who is frequently without income, makes the playing field inherently uneven in favor of the carrier. The workers' compensation system certainly does not need the unrestrained opinions of employers' physicians to allow carriers to deny benefits to injured workers.

Thank you for considering my testimony.

Paul D. Schmeding

PSIG *PDCA of Hawaii Workers' Compensation Self-insurance Group*

c/o KING & NEEL, INC. *1164 Bishop Street, Suite 1710, Honolulu, Hawaii 96813*
Telephone: (808) 521-8511 • FAX: (808) 526-3693

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Dear Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee,

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The PDCA of Hawaii Workers' Compensation Self-Insurance Group is in **strong opposition to S.B. 1174, S.D. 1 Relating to Workers' Compensation**, which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

Let's not make it harder to do business in Hawaii, please do not pass this bill.

For these reasons, we request that that the proposed bill be held by this Committee.

Thank you for the opportunity to offer our comments on this matter.

Herbert Hirota, Chairman

Property Casualty Insurers
Association of America
Advocacy. Leadership. Results.

To: The Honorable Gilbert Keith-Agaran, Chair
The Honorable Maile Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

From: Mark Sektnan, Vice President

Re: SB 1174 SD1 – Relating to Workers' Compensation
PCI Position: OPPOSE

Date: Tuesday, March 3, 2015
9:15 AM, Conference Room 016

Aloha Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) is opposed to SB 1174 SD1, which is unnecessary and unfair, and would result in significant administrative delays. PCI is a national trade association that represents over 1,000 property and casualty insurance companies. In Hawaii, PCI member companies write approximately 42.2 percent of all property casualty insurance written in Hawaii. PCI member companies write 43.2 percent of all personal automobile insurance, 65.2 percent of all commercial automobile insurance and 75 percent of the workers' compensation insurance in Hawaii.

SB 1174 SD1 would replace the existing employer requested examinations in workers compensation claims with a new, complicated system for obtaining "independent medical examinations". Instead of the existing system that allows an employer to obtain an examination of a claimant to evaluate the merits of a claim, SB 1174 SD1 would require first that the employer and employee reach a mutual agreement on the physician who conducts the examination.

The term "independent medical examination" is typically used to describe the examinations contemplated by Hawaii Revised Statutes § 386-79, but its use in this bill ignores the important function of the employer requested examination and strips out the employer's right to discovery of facts in workers compensation proceedings. This is neither fair nor prudent.

The employer requested examination is intended to establish a procedure for the employer to access his right to discovery of a claimant's physical condition and course of treatment. The

effect of this bill is to do away with the employer's right altogether at the option of the injured employee.

Under the existing law there are many protections for the employee built in. The employer is limited to only one employer requested examination unless good and valid reasons exist with regard to the progress of the employee's treatment. Therefore the employer has an incentive to obtain a credible examination - on the first try - that will withstand scrutiny on appeal before the DLIR's Disability Compensation Division. Also the report of the employer requested examination must be given to the employee, who has a right to challenge the report and to offer evidence that disputes the report's findings, so there is a check against employer abuse.

Finally, the selection process set forth in SB 1174 SD1 would be stalled by built-in delays. The employer would have to first try to reach a mutual agreement. If the parties are unable to reach an agreement, the bill requires the employer and employee to develop a list of five physicians and then cross off names much as a jury is selected. This could be a very cumbersome and time consuming process. Once a physician is appointed to take the case, the examination is supposed to take place within 45 days. No doubt, that is an optimistic estimate as currently delays in finding willing and able physicians are already widespread. This means that examinations would be additionally burdened by these new administrative delays.

PCI respectfully requests that the Committee vote to hold SB 1174 SD1 for the remainder of the session.

RALPH S. INOUYE CO LTD
GENERAL CONTRACTOR
2831 Awaawaloa Street
Honolulu, Hawaii 96819
T: 808.839.9002
F: 808.833.5971
License No. ABC-457
Founded in 1962

Via E-mail: JDLTestimony@capitol.hawaii.gov
Via Fax (808) 586-7348

March 3, 2015

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD1, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SD1)

HEARING
DATE: Tuesday, March 3, 2015
TIME: 9:15 a.m.
PLACE: Conference Room 016

Dear Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee,

My name is Lance M. Inouye and I am President of Ralph S. Inouye Co., Ltd. (RSI), a State of Hawaii General Contractor and member of the General Contractors Association of Hawaii (GCA).

First, to avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is really the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

Ralph S. Inouye Co., Ltd. (RSI), a State of Hawaii General Contractor, is in **strong opposition to S.B. 1174, S.D. 1 Relating to Workers' Compensation,** which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

Please do not pass this bill. Thank you for the chance to express our views in this matter.

Testimony to the Senate Judiciary Committee

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Tuesday, March 3, 2015 at 9:15 am.
Conference Room 415, State Capitol

RE: SENATE BILL 1174, SD1
RELATING TO WORKER'S COMPENSATION

Chair Agaran, Vice-Chair Shimabukuro and Members of the Judiciary Committee,

Retail Merchants of Hawaii (RMH) opposes SB 1174, SD1. This measure would establish protocols for a mutual agreement between employers and employee when selecting a physician to conduct physical examinations on an employee filing a workers compensation claim.

As a non-profit trade organization representing over 3000 storefronts throughout the State, our retailers would be highly affected by this bill. As employers, we have the responsibility of selecting and paying for a qualified physical to conduct medical examinations on our employees for workers compensations claims. However our employees have the opportunity and freedom to appeal the physician's diagnosis if they do not agree with the original diagnosis or decision.

Should SB 1174 pass, the laws would weigh too heavily in favor of an employee since employers are not able to independently appeal the physician's decision or request a second opinion. Furthermore, most business – like those RMH represents, have an established system in place that works in conjunction with their human resources department.

Changing the employee physical examination processes will require retailers to manage communication across multiple medical practices and with so many employees would create more opportunities for errors, delays in service and a greater cost to our company.

We respectfully request this committee to oppose this measure as, we believe the current law is favorable for all parties involved – both employees and employers.

Thank you for the opportunity to provide testimony.

Retail Merchants of Hawaii
210 Ward Avenue, Suite 121
Honolulu, Hawaii 96814
(808) 592-4200

ROBERT M. KAYA BUILDERS, INC.

525 Kokea Street, Bldg. B-3 • Honolulu, Hawaii 96817 • Phone: (808) 845-6477 • Fax: (808) 845-6471 • E-mail: rmkaya@hawaii.rr.com
Building and Improvement Specialist Since 1937
Serving Hawaii for Over a Half Century

February 27, 2015

Via Fax (808) 586-7348

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD1, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SD1)

HEARING
DATE: Tuesday, March 3, 2015
TIME: 9:15 a.m.
PLACE: Conference Room 016

Dear Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee,

First and foremost, to avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is really the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

ROBERT M. KAYA BUILDERS, INC. is in **strong opposition to S.B. 1174, S.D. 1 Relating to Workers' Compensation,** which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

Let's not make it harder to do business in Hawaii. Please DO NOT pass this bill.

For these reasons, we request that that the proposed bill be held by this Committee.

Yours truly,

ROBERT M. KAYA BUILDERS, Inc.

Scott I .Higa
President

Rons Construction Corporation

Via E-mail: JDLTestimony@capitol.hawaii.gov

March 3, 2015

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD1, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SD1)

HEARING
DATE: Tuesday, March 3, 2015
TIME: 9:15 a.m.
PLACE: Conference Room 016

Dear Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee,

First and foremost, to avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is really the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

Rons Construction Corporation is in **strong opposition to S.B. 1174, S.D. 1 Relating to Workers' Compensation,** which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

Let's not make it harder to do business in Hawaii, please do not pass this bill.
For these reasons, we request that that the proposed bill be held by this Committee.

Very truly yours,
Rons Construction Corporation

Kevin M. Oshiro, VP
2045 Kamehameha IV Road
Honolulu, HI 96819 | (808) 841-6151

S & M SAKAMOTO, INC.

GENERAL CONTRACTORS

Via E-mail: JDLTestimony@capitol.hawaii.gov
Via Fax (808) 586-7348

March 3, 2015

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD1, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SD1)

HEARING
DATE: Tuesday, March 3, 2015
TIME: 9:15 a.m.
PLACE: Conference Room 016

Dear Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee,

First and foremost, to avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is really the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

S & M Sakamoto, Inc. is in **strong opposition to S.B. 1174, S.D. 1 Relating to Workers' Compensation,** which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

500 ALAKAWA STREET, SUITE 220E • HONOLULU, HI 96817 • PH. (808) 456-4717 • FAX (808) 456-7202
CONTRACTOR LICENSE NO. BC-3641

S & M SAKAMOTO, INC.

GENERAL CONTRACTORS

Let's not make it harder to do business in Hawaii, please do not pass this bill.

For these reasons, we request that that the proposed bill be held by this Committee.

Very truly yours,
S & M Sakamoto, Inc.

Gerard Sakamoto
President

500 ALAKAWA STREET, SUITE 220E • HONOLULU, HI 96817 • PH. (808) 456-4717 • FAX (808) 456-7202
CONTRACTOR LICENSE NO. BC-3641

Testimony to the Senate Committee on Judiciary and Labor
Tuesday, March 3, 2015
9:15 a.m.
State Capitol - Conference Room 016

RE: SENATE BILL 1174; RELATING TO WORKERS' COMPENSATION

Aloha Chair Keith-Agaran, Vice Chair Shimabukuro and members of the committees:

We are Melissa Pannell and John Knorek, the Legislative Committee co-chairs for the Society for Human Resource Management – Hawaii Chapter ("SHRM Hawaii"). SHRM Hawaii represents nearly 1,000 human resource professionals in the State of Hawaii.

We are writing to respectfully **oppose** SB 1174, which provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. It also provides a process for appointment in the event that there is no mutual agreement.

Human resource professionals are keenly attuned to the needs of employers and employees. We are the frontline professionals responsible for businesses' most valuable asset: human capital. We truly have our employers' and employees' interests at heart. We respectfully oppose this measure for the potential decrease in the number of physicians who conduct these examinations, and the possibility of increased denial of workers' compensation claims.

These changes would undermine the value of multiple years of experience by severely curtailing the number doctors allowed to perform independent medical examinations or ratings. The quality of the IMEs and rating exams could suffer, and the cost to the workers' compensation system may increase. Beyond these unintended costs and consequences, we would further cite the potential strain that these prescribed policies may place on the employee/employer relationship.

We will continue to review this bill and, if it advances, request to be a part of the dialogue concerning it. Thank you for the opportunity to testify.

From:	ssurfacing@aol.com
To:	JDLTestimony
Cc:	Sen. Gilbert Keith-Agaran; Sen. Maile Shimabukuro; Sen. Laura Thielen; Sen. Will Espero; Sen. Sam Slom; Sen. Mike Gabbard; Sen. Les Ihara, Jr.
Subject:	OPPOSITION TO SB 1174, SD1 IME Bill
Date:	Friday, February 27, 2015 5:55:53 PM

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD1, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SD1)

HEARING
DATE: Tuesday, March 3, 2015
TIME: 9:15 a.m.
PLACE: Conference Room 016

Dear Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee,

First and foremost, to avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is really the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

SPECIALTY SURFACING CO. HI, INC. is in **strong opposition to S.B. 1174, S.D. 1 Relating to Workers' Compensation,** which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

Let's not make it harder to do business in Hawaii, please do not pass this bill.

For these reasons, we request that that the proposed bill be held by this Committee.

Aloha,
Matt Lanin
President
Specialty Surfacing Co. HI, Inc.
440 Seaside Avenue #901

Honolulu, HI 96815
808-333-4790 (Tel)
866-333-3109 (Fax)
ssurfacing@aol.com

"Serving All Islands Since 1976"

TOMCO CORP.
General Contractors

February 27, 2015

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD1, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SD1)

HEARING
DATE: Tuesday, March 3, 2015
TIME: 9:15 a.m.
PLACE: Conference Room 016

Dear Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee,

First and foremost, to avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is really the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

TOMCO CORP. is in **strong opposition to S.B. 1174, S.D. 1 Relating to Workers' Compensation,** which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works.

Under the current system, employees select their treating physician who treats and provides its medical opinion. The employer then has its chance to disagree (if it so chooses), at its own cost, by opting to do an EME. There is also an appeal process if the parties cannot agree. The existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not. The current process is fair and it works. If this bill passes, the employer's only tool to evaluate the treating physician's plan of action would be taken away. It is our opinion that worker's compensation claims that misuse the system would increase significantly, resulting in more costs to construction employers and ultimately to taxpayers that hire them. We respectfully feel the current law strikes a good balance between the need to take care of injured employees and the employers desire to curb costly abuses of the system. No changes are needed.

Let's not make it harder to do business in Hawaii, please do not pass this bill.

For these reasons, we request that that the proposed bill be held by this Committee.

500 Ala Kawa St., Suite #100A Honolulu, Hawaii 96817
Telephone #: (808) 845-0755 Fax #: (808) 845-1021
Lic# ABC 16941

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc:
Subject: *Submitted testimony for SB1174 on Mar 3, 2015 09:15AM*
Date: Monday, March 02, 2015 9:18:19 AM

SB1174
Submitted on: 3/2/2015
Testimony for JDL on Mar 3, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Adam Yonamine	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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Via E-mail: JDLTestimony@capitol.hawaii.gov
Via Fax (808) 586-7348

March 3, 2015

TO: HONORABLE GIL KEITH AGARAN, CHAIR, HONORABLE MAILE SHIMABUKURO, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON JUDICIARY AND LABOR

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD1, RELATING TO WORKERS' COMPENSATION.** Provides that an independent medical examination and permanent impairment rating examination shall be conducted by a qualified physician selected by the mutual agreement of the parties. Provides a process for appointment in the event that there is no mutual agreement. (SD1)

HEARING
DATE: Tuesday, March 3, 2015
TIME: 9:15 a.m.
PLACE: Conference Room 016

Dear Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee,

First and foremost, to avoid any confusion, what has been commonly referred to as an Independent Medical Examination or an IME should be correctly referred to as an Employer's Medical Examination (EME) as referenced in law pursuant to Section 386-79, Hawaii Revised Statutes. It is really the employer's requested examination of an injured worker who the employer may feel is not receiving appropriate treatment and also to determine permanent impairment rating. It is not an "independent" medical exam.

Akira Yamamoto Painting, Inc. is in **strong opposition** to **S.B. 1174, S.D. 1 Relating to Workers' Compensation,** which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians mutually agreed upon by the employers and employees. We believe this is unnecessary as the current procedure in place works.

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Let's not make it harder to do business in Hawaii, please do not pass this bill.

For these reasons, we request that that the proposed bill be held by this Committee.

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc:
Subject: Submitted testimony for SB1174 on Mar 3, 2015 09:15AM
Date: Monday, March 02, 2015 4:46:11 PM

SB1174
Submitted on: 3/2/2015
Testimony for JDL on Mar 3, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Alan Ogawa	Individual	Support	No

Comments: In fairness to the injured worker, I support this bill

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc:
Subject: Submitted testimony for SB1174 on Mar 3, 2015 09:15AM
Date: Thursday, February 26, 2015 6:38:59 AM

SB1174
Submitted on: 2/26/2015
Testimony for JDL on Mar 3, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
ANSON REGO	Individual	Support	No

Comments: Strongly support SB 1174 1. This bill does ensure fairness without costs to the State or the insurance carrier or the insured and provides a simple selection method between the parties which is workable and will not delay the system or again, increase costs. 2. a) Those that opposed the bill that suggest or state that the current system is fair are wrong. For example there is no appeal process as such to provide further due process if an agreement cannot be reached on a rater or examiner. The employer simply picks its favorite doctor and the state Department of Labor normally approves in almost all cases the employer's choice, even in the partial permanent disability rating situations. b) Those that oppose the bill who say that the current system has build up trust and reduce the confrontation between employer and employee are simply wrong. Ask the injured worker after they see the completed IME report chosen by the employer if they trust their employer, who really is outside this system which encourages its insurance carrier or the carrier's attorney to choose the hired repeatedly used physician. c) Those that say that this is the employer's only tool to objectively evaluate a treating physician's plan are simply wrong as the bill provides various doctors from the community to be utilized to evaluate a treating physician, rather than the favored well-known few who are making a living by their relationship to an employer's representative or attorney, including some so-called IMEs whom are actually consulting with the employer's counsel or adjuster to find out what they want and/or acting as consultants submitting many reports and opinions to employer's who are paying and selecting them, and therefore cannot be fair independent observers. I too am a small business person and would not want any of my employees to be subjected under how the system now operates. I know how it operates. d) Those that oppose the bill that state under the current system the employees have the right to seek their own medical opinions if they disagree don't realize that the cost thereof can be between $1000-$3000, not including testimony. Their own treating physicians do not want to get involved in the legal issues by giving opinions or reviewing hundreds of pages of records. They are many treating physicians who do not want to testify. So, there is no viable alternative for most employees who are now injured and out of work and often not being paid while the IME denial of compensability or denial of treatment process is going for months through the system. 3) It saddens me that both this City and County of Honolulu and State would support this system now existing which treats its own employees badly.

These government entities should not be afraid of the newly proposed system outlined in this bill which will create happier employees nor should it oppose this bill thinking it can balance its budget on the woes of its injured workers who now bear the unfairness of the current system. Those are strong words, but I expect better of our City and State. All of my statements above are true. I have practiced now almost 40 years as a claimant's attorney. The current IME system has worked poorly in many cases, not just a handful. It needs to be changed; this bill is artfully drawn to do that. If the system is changed, I suspect I will have fewer clients because the system will work smoother and employees will not as often seek out attorneys, but that's okay. I do other work, like trusts and wills and real property, unlike a few often chosen IME doctors whose primary income now has to be IMEs. This bill will allow them to continue to do IMNEs without practicing medicine but now requires them to be cognizant that they must be fair to all sides or will not be chosen by their favorite referral sources. Mahalo, Anson Rego, Waianae Attorney

Committee on Judiciary and Labor
Senator Gilbert S. C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Measure Title: Relating to Workers Compensation

In Support of SB 1174, SD1

I am a vocational rehabilitation counselor, my name is Beverly Tokumine, M. Ed.,CRC and a member of the International Association of Rehabilitation Professionals.

I am in support SB 1174.

Please support this SB 1174, which will allow the injured workers to have a fair review and to help them to return to the community as a productive member in a timely manner.

Submitted by,

Beverly Tokumine, M.Ed. CRC, LMHC
Senior Rehabilitation Specialist

Vocational Management Consultants, Inc.
715 S. King Street Suite 410
Honolulu, HI 96813
#538-8733

TESTIMONY IN SUPPORT OF S.B. NO. 1174, S.D. 1
RELATING TO WORKERS' COMPENSATION
COMMITTEE ON JUDICIARY AND LABOR

Tuesday, March 3, 2015, 9:15 a.m.

Mr. Chairman, members of the Committee, I am attorney Jacob Merrill. I have been in practice since 1989. Since 1992, I have devoted a portion of my legal practice to representing injured workers. I strongly support S.B. No. 1174 SD1 relating to Workers' Compensation and Medical Examinations.

I. MUTUAL CHOICE OF A PHYSICIAN HAS PROVEN TO BE EFFECTIVE. THERE IS NO LEGITIMATE ARGUMENT AGAINST GETTING A FAIR AND CORRECT OPINION.

The use of agreed upon physicians has proven to be feasible. Under present practice, after the condition of an injured worker has stabilized, the worker is sent to a physician for a "rating" examination to measure the extent of the permanent impairment. For many years, the practice has been to require that the employer/carrier and the injured worker agree on a physician to conduct the "rating" examination, and the practice has proven to be workable. Most of the time, the agreed upon physician prepares a report which is satisfactory to all parties, simply because, more often than not, the examination is fair and correct.

The proposed bill merely incorporates the practice of using an agreed upon "rating" physician, to also be used when an employer/carrier desires the opinion of a non-treating physician. The use of an agreed upon physician will greatly expedite cases and result in fairer treatment of injured workers.

II. AGREED UPON IMEs ARE NEEDED TO HELP PREVENT UNNECESSARY DELAYS IN INITIATING PAYMENTS TO AND CARE FOR INJURED WORKERS.

The problem which this bill would correct is unnecessary delays in initiating payments and care for injured workers. The unnecessary delay is caused by the practices of some insurers in selecting their "favored" physicians to examine injured workers.

The workers' compensation system is supposed to be a "no-fault" system which provides immediate medical care and compensation. The workers' compensation statute provides that there is a presumption that an injury is work related and pursuant HRS 386-31 (b), an injured worker is supposed to start receiving his benefit payment by the 10th day after the employer is notified of the employee's

disability. An injured worker is also supposed to receive prompt medical care.

Unfortunately, although there is the statutory presumption and although an injury may have been witnessed, and although an employer does not contest the injury, the start of payments and care is very often delayed by several months. The longer it takes to receive medical care, the longer it takes for an injured workers to get better, the longer it takes before an injured worker can return to work, and the higher the amount of indemnity payments.

Often, the cause of the delay is the employer/carrier's choice of their favored physician who, very predictably, will argue that:

a. there was no injury,
b. that any medical condition was pre-existing, or
c. that if there was an injury, it was a very temporary condition which has since resolved.

The use of agreed upon physicians will serve to reduce the abuse of the system by employers/carriers.

III. CARRIERS ARE ABUSING THE SYSTEM AND DENYING PROMPT COMPENSATION TO INJURED WORKERS.

The use of agreed upon physicians is necessary because employer/carriers are abusing the system by choosing their "favored" physicians who produce reports which predictably favor the employer/carrier.

The workers compensation statute provides in HRS 386-31 (b) that an injured worker is supposed to start receiving his benefit payment by the 10th day after the employer is notified of the employee's disability. An injured worker is also supposed to receive prompt medical care. Unfortunately, the start of payments is very often delayed by several months. The longer it takes to receive medical care, the longer it takes for an injured workers to get better, the longer it takes before an injured worker can return to work, and the higher the amount of indemnity payments.

One major cause of delay in treatment is the use of "employer medical examinations." The enactment of this bill would reduce delays in treatment, and reduce total indemnity payments and benefit both employers and employees. (In this testimony, the term "employer" refers to workers' compensation carriers and adjusters.)

IV. "EMPLOYER MEDICAL EXAMINATIONS" RESULT IN LONGER PERIODS OF DISABILITY AND HIGHER

INDEMNITY PAYMENTS.

One factor which prevents timely receipt of medical care is the use of "employer medical examinations." The phrase "Independent Medical Examination" (IME) should not be used in this context because it is a misnomer. Examinations by physicians chosen by an employer are too frequently not "independent", nor "medical". If employer medical examinations were truly "independent" examinations, and had the goal of restoring an employee's health and getting an employee back to work, then there would be no problem.

Unfortunately, too often the goal of an employer directed medical examination is not altruistic. The goal is often to enable an employer to escape liability or to delay benefits, although an employee has been injured on the job and is entitled to treatment. An employer can attempt to escape liability if the employer can obtain a physician's opinion in its favor.

If an employer delays long enough, the injured employee may give up and seek care outside of workers' compensation. If a case does reach a hearing, the fallacies in the report of the employer's physician can be pointed out, and the result is that the Department of Labor subsequently confirms that there was a work injury or that a certain medical procedure is appropriate. Unfortunately, that result too frequently can take over 1/2 year to obtain during which time the injured employee may be without income and without medical treatment..

A. "EMPLOYER MEDICAL EXAMINATIONS" AT THE BEGINNING OF A CASE ARE OFTEN DEVASTATING TO INJURED WORKERS.

The use of "employer medical examinations" results in delays which often have devastating consequences to injured workers.

After an injury is reported by a worker, the workers' compensation statute allows an employer to contest the claim. The employer can contest the claim even though the injury was witnessed and is obvious.

§12-10-73 of the Administrative Rules requires the employer to support a denial with a "report" within 30 days of the denial, however, the Rule also provides that the employer can request extensions of time. Since the calendar of the employer's physician is often full, the physician frequently cannot see the worker until months after the injury, and therefore the employer requests extensions for months after the injury.

There are also administrative delays. The Department of Labor can take months to schedule a hearing. A notice of hearing is not issued until one month prior to a

hearing. A decision on a hearing is frequently not issued until 60 days after the hearing (60 days is the maximum period allowed under §386-86). Even if a hearing was scheduled today, there would be no Department of Labor decision until 90 days from today.

Therefore, it would not be uncommon for an injured worker to have to wait for more than a half year before a determination is made that a work injury was suffered. All this time, the worker might be without medical care and without income. He might be without a personal health plan because he is a new employee or is a part-time employee. His personal health plan might deny coverage because the employee is claiming a work injury. His personal health plan coverage will end after 3 months because the employer can stop paying for the worker's health insurance and the employee will not be able to afford to pay COBRA premiums for his coverage . He might be not be eligible for TDI coverage, nor have any available sick leave.

All too often, the devastating results are that the injured worker and his family lose their health coverage and are evicted from their residence because of delays caused by the employer seeking the report by one of its physicians.

B. "EMPLOYER MEDICAL EXAMINATIONS" IN THE MIDDLE OF CASES ARE ALSO DEVASTATING.

"Employer medical examinations" can also have a devastating impact in the middle of a case. Such examinations are often scheduled to contest the need for surgery. The resulting delays are the same as stated above. The injured worker has to endure the pain and suffering during the extensive period of delay. The delay also results in higher indemnity payments.

V. THERE ARE POWERFUL FINANCIAL INCENTIVES FOR AN EMPLOYER'S PHYSICIAN TO PROVIDE OPINIONS IN EMPLOYER'S FAVOR.

The financial rewards to an employer's physician who consistently provides opinions in favor of an employer can be substantial. The fees which a worker's doctor can charge are limited by the Workers' Compensation Medical Fee Schedule. However, the Department of Labor has applied that Fee Schedule only to cases in which the Department of Labor has ordered a worker to attend an examination. Therefore, there is no limit to the fees which can be charged by employer's physicians for examinations which have not been ordered.

Information regarding the amount of money earned by a particular employer's physician from a particular insurance company is not readily available. It would

seem to be an easy matter to have a subpoena issued for a federal income tax Form 1099 issued by an insurance carrier, however, the Department of Labor has refused to issue such subpoenas requested by injured workers.

In any event, employer's physicians are apparently paid more than $2,000.00 per examination. Three examinations per week yields $6,000.00. 50 weeks a year yields an income of $300.000.00. Employer's physicians can do more than 3 examinations per week. There is at least one employer physician who has earned more than $1 million from one workers' compensation insurer.

The financial incentives for an employer's physician to provide reports favoring employers are very powerful and are reflected in reports from certain employers' physicians who consistently issue opinions in employers' favor. Current law unjustly allows employer's physicians generate reports with impunity and without liability.

VI. AN EMPLOYER'S PHYSICIAN SHOULD NOT BE ALLOWED TO RENDER AN OPINION WITH IMPUNITY.

A basic general rule in society is that a person should be responsible for his actions. There is no sound reason to allow employer's physicians to deviate from this general rule.

Presently, an employer can readily obtain a physician's opinion to fit its needs because the employer's physician can presently state any opinion with impunity. The employer then uses that opinion to deny coverage or to deny treatment. The employer's physician is also free to opine on what care is appropriate or whether a worker's condition is stable. There is no requirement for the employer's physician to explain why a worker could do his job for years, but is not able to do his job after the injury.

It is the freedom from liability that allows the employer's physician to give employer's the opinions they want without responsibility for the devastating consequences to the injured worker. The employer's physician also is empowered because of a Hawai'i U.S. District Court decision which held that the employer's physician had no duty to the injured worker.

Although the employer's physician knows that his opinion will directly affect the worker, the employer's physician does not feel any obligation to the worker. The reason that an employer's physician is free to opine is that he claims that he has no doctor-patient relationship with the worker. The employer's physician knows that the impact of his opinion can be devastating to the worker, however, he claims that he is under no duty to the worker, and therefore is not liable for any consequences.

Although there is no liability for IME reports, there are a few physicians who are known to generate fair reports. The requirement that a physician be agreed upon would reduce the number of time that employers are able to abuse the system by relying on their favored physicians who generate reports to fit employers' needs, as opposed to providing fair evaluations..

VI. CONCLUSION.

There are physicians who conduct employer's examinations who properly consider the facts and who provide opinions which are medically sound. Attorneys representing injured workers will readily agree to have their clients examined by such physicians. Responsible insurance carriers will utilize the services of such physicians because those carriers know that proper medical treatment with a correct diagnosis will result in getting the injured worker back to work sooner, which is the correct and fair result.

The problem with employers' examinations lies with certain physicians and insurance carriers who are willing to use improper opinions to unfairly deny benefits to injured workers. The inherent disparity of the financial resources of insurance carriers versus an injured worker, who is frequently without income, makes the playing field inherently uneven in favor of the carrier. The workers' compensation system certainly does not need the unrestrained opinions of employers' physicians to allow carriers to deny benefits to injured workers.

Thank you for considering my testimony.

JACOB MERRILL

JOSEPH F. ZUIKER
Attorney at Law
A Law Corporation
1188 Bishop Street, Suite 1111
Honolulu, Hawaii, 96813

Tele: 523-1142 Facsimile 534-0023

February 26, 2015

Honorable Members
Senate Committee on Judiciary and Labor
Capitol
State of Hawaii
Honolulu, Hawaii 96813

Chairman Gilbert S.C. Keith-Agaran	(586-7348)
Vice-Chairman Maile S.L. Shimabukuro	(586-7797)
Senator Will Espero	(586-6361)
Senator Mike Gabbard	(586-6679)
Senator Les Ihara, Jr.	(586-6251)
Senator Sam Slom	(586-8426)

Re: **Please Pass SB 1174 Pass it Now and:**

1. End IME Abuse
2. Make Hawaii a "Mandatory Cooperation" State

1. Senate Bill 1174 (the **Mandatory Cooperation Bill**) will help injured workers and small businesses by mandating cooperation in the selection of medical examiners, thereby allowing all parties in a claim to have confidence in the opinions of the medical examiners and allowing all parties to receive prompt medical assessments of injuries before costs escalate due to inaction.

2. Please understand what every working person, parent and every child in Hawaii already knows; **cooperation leads to faster resolution of problems in all aspects of life (including resolving work injury claims)**.

Please pass Senate Bill 1174 now because SB 1174 will do the following:

1. Speed up work injury claims through mutual selection of medical examiners. (No more fights over doctor bias. No more doctors getting millions of dollars from one or two insurance companies and then claiming that they are "independent medical examiners".)

2. Cut workers compensation costs for Hawaii's small businesses by getting injured workers properly diagnosed, properly treated and back to work faster. (Faster return to work means less weekly benefit costs for our business community and that reduces insurance premiums for these employers.)

3. Publicize a very progressive pro-business piece of legislation to Hawaii's perennial business climate critics on the Mainland. ("Mandatory cooperation" is a big deal for Hawaii and our business reputation on the Mainland.)

Submitted by:

JOSEPH F. ZUIKER
Attorney at Law - A Law Corporation
1188 Bishop Street, Suite 1111
Honolulu, Hawaii, 96813
Tele: 523-1142 Facsimile 534-0023

JOSEPH F. ZUIKER
Attorney at Law
A Law Corporation
1188 Bishop Street, Suite 1111
Honolulu, Hawaii, 96813

Tele: 523-1142

Facsimile 534-0023

February 24, 2015

Chairman Gilbert S.C. Keith-Agaran (Fax 586-7348)

Vice-Chairman Maile S.L. Shimabukuro (586-7797)

Please Pass SB 1174 Pass Now - End IME Abuse and Make Hawaii a "Mandatory Cooperation" State

1. Senate Bill 1174 (the **Mandatory Cooperation Bill**) will help injured workers and small businesses by mandating cooperation in the selection of medical examiners, thereby allowing all parties in a claim to have confidence in the opinions of the medical examiners and allowing all parties to receive prompt medical assessments of injuries before costs escalate due to inaction.

2. Please understand what every working person, parent and every child in Hawaii already knows; **cooperation leads to faster resolution of problems in all aspects of life (including resolving work injury claims)**.

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3. Publicize a very progressive pro-business piece of legislation to Hawaii's perennial business climate critics on the Mainland. ("Mandatory cooperation" is a big deal for Hawaii and our business reputation on the Mainland.)

Submitted by:

JOSEPH P. ZUIKER

Attorney at Law - A Law Corporation
1188 Bishop Street, Suite 1111
Honolulu, Hawaii, 96813
Tele: 523-1142 Facsimile 534-0023

From: Kimo
To: JDLTestimony
Subject: OPPOSITION TO SB 1174, SD1 IME Bill)
Date: Saturday, February 28, 2015 7:25:58 AM

Because it would require that a mutually agreed upon physician be chosen by the employer and employee for the independent medical examination and permanent impairment rating examination for worker's compensation claims. S.B. 1174, SD1

Thank you very much,

Kimo Pierce
Hawaii Plumbing Group LLC.
2027 Republican st.
Honolulu, Hawaii 96819
808-842-9999
888-390-1514 (fax)
BC-33636
www.HawaiiPlumbingGroup.com
Membership: GCA - BIA - HBR - LEAD SAFE FIRM

HAWAII PLUMBING GROUP LLC

March 2, 2015

Committee on Judiciary and Labor
Senator Gilber S.C. Keith Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Relating to: Relating to Worker's Compensation

In Support of SB 1174 SD1

My name is Kirsten Harada. I am a avocational counselor who has been in practice for 20 years. I assist injured workers' in their return to work process. I would support a bill that would require that independent medical examinations and permanent impairment rating examinations be conducted by a qualified physicians selected by the mutual agreement of the parties. This not only allows for the fair treatment of injured workers but also gives them an opportunity to have an objective and impartial evaluation..

I would therefore urge you to support SB 1174 SD1, Relating to Worker's Compensation.

Sincerely,

Kirsten Harada, M.Ed., CRC, LMHC
Rehabilitation Specialist

To: COMMITTEE ON JUDICIARY AND LABOR
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

From: Lanelle Yamane, MS, CRC, LMHC
Vocational Rehabilitation Counselor
120 Pauahi Street, Room 206B
Hilo, HI 96720

HEARING DATE: Tuesday, March 03, 2015
TIME: 9:15 am
PLACE: Conference Room 016, State Capitol, 415 South Beretania Street

Subject: **Testimony in SUPPORT of SB 1174 "**Relating to Workers' Compensation"

My name is Lanelle Yamane and I am a Vocational Rehabilitation Counselor in Hawaii. I have worked as a counselor for the past nine years in both the public and private vocational rehabilitation systems. I currently provide vocational rehabilitation services to injured workers in our worker's compensation system.

From my observation when servicing clients, I have noticed that the outcomes of independent medical exams have been weighted heavily in favor of the interests of the employer/insurance carrier and not towards the health interests of the injured employee. Without the necessary treatment, the injured worker is not able to achieve maximum medical improvement and their successful return to employment is greatly hindered because of non-treatment.

I have attached signed petitions of Hawaii residents who support **SB 1174.**

The language of **SB 1174** helps to lay out a process of greater equity in the system with a method of mutual agreement in the selection of the independent medical examiner and permanent impairment evaluator.

Please pass **SB 1174** from your committee.

Thank you for the opportunity to have my comments considered.

Sincerely,

Lanelle Yamane, MS, CRC, LMHC
Vocational Rehabilitation Counselor

Enclosure: Petitions

Committee on Judiciary and Labor
Senator Gilbert S. C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Measure Title: Relating to Workers Compensation

In Support of SB 1174, SD1

My name is Laurie H. Hamano. I am a vocational rehabilitation counselor and am President of the International Association of Rehabilitation Professionals in the Private Sector as well as business owner. I have been able to see the workers compensation system deal with injured workers from both sides of the spectrum.

The IARPS membership support SB 1174 and should this measure pass both sides of the perspective of workers compensation would hopefully reap the benefits; 1) reducing the amount of costly IME's 2) focusing on fairness in the system so that the injured workers are heard and medically taken care of, 3) reducing the amount of delay on the injured workers' medical benefits and vocational rehabilitation benefits as this measure will encourage those who are already working in the field to consider doing these medical evaluations.

Please support this SB 1174 as this is one way to help the workers compensation system move forward and allowing the injured workers have a fair review to help them return to the community as a productive member.

Laurie H. Hamano, M.Ed. CRC, LMHC
President of Vocational Management Consultants, Inc.
And
President of International Association of Rehabilitation Professionals

My address and phone number is:
715 S. King Street Suite 410
Honolulu, HI 96813
#5388733

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc:
Subject: Submitted testimony for SB1174 on Mar 3, 2015 09:15AM
Date: Monday, March 02, 2015 9:59:40 AM

SB1174
Submitted on: 3/2/2015
Testimony for JDL on Mar 3, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
laurie hamano	Individual	Support	No

Comments: Attached please find the signatures of 17 Big Island citizens who are in support of SB 1174 and SB 766. Thank you for this opportunity to provide our support.

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: Leon Rosner
To: JDLTestimony
Subject: Senate Bill 1174
Date: Sunday, March 01, 2015 11:03:49 PM

Chair Agran and Members of the Senate Judiciary and Labor Committee

I would like to support Senate Bill 1174 regarding Workers' Compensation. This change in the law would require both the employer and injured worker to agree on an Independent Medical Examiner (IME).

The way the law works now is to get biased doctors for the insurance companies to say that you are not injured, don't need treatment, or can go back to work, no matter what your injury is or if you cannot possibly work. Most injured workers like me want to work and don't want to have the case drawn out. The insurance companies are making it very difficult to get the treatment needed and allow us to go back to work. They use the IME system to discourage and fight injured workers right to benefits.

I personally had an IME by an insurance company doctor. The doctor's report ignored my injuries and I had trouble getting medical care after this. It was a battle but eventually had MRI and surgery.

Thank you for changing the law to require IME's by mutual consent.

Sincerely yours,

Leon Rosner

Kealakekua, HI.

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc:
Subject: *Submitted testimony for SB1174 on Mar 3, 2015 09:15AM*
Date: Monday, March 02, 2015 11:39:58 AM

SB1174
Submitted on: 3/2/2015
Testimony for JDL on Mar 3, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Leona Tadaki-Kam	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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From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc:
Subject: *Submitted testimony for SB1174 on Mar 3, 2015 09:15AM*
Date: Monday, March 02, 2015 9:21:04 AM

SB1174
Submitted on: 3/2/2015
Testimony for JDL on Mar 3, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Lily Miyahira	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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Dear _____ (Senator Keith-Agran and Members of the Senate Judiciary and Labor Committee

And your Senator and representative)

I would like to support Senate Bill 1174 regarding Workers' Compensation. This change in the law would require both the employer and injured worker to agree on an Independent Medical Examiner (IME).

The way the law works now is to get biased doctors for the insurance companies to say that you are not injured, don't need treatment, or can go back to work, no matter what your injury is or if you cannot possibly work. Most injured workers like me want to work and don't want to have the case drawn out. The insurance companies are making it very difficult to get the treatment needed and allow us to go back to work. They use the IME system to discourage and fight injured workers right to benefits.

(add any comments you wish)

In my case I just wanted to get treatment and go back to work. I was being told pain meds and going on disability was what they would offer for my torn rotator tears on both arms that occurred when I slipped on shaved ice and fell backwards at work. I waited three years to get this get surgery going. The left arm is completed and works great. The right arm was just operated on in Feb. of 2015. With the right medical IME Examiner this would not have happened. This change in the law requiring both the employer and injured worker to agree on a an IME would be fair to the injured worker to help them get the needed help and treatment they are entitled too. Thank YOU.

Thank you for changing the law to require IME's by mutual consent.

/s/ electronically, ___Paulette Murray 3/2/15_____
(date)

LAW OFFICES OF

MASUI MASUI

Stanford H. Masui ● Erin B.J.H. Masui
Seven Waterfront Plaza, Suite 400 • 500 Ala Moana Blvd. • Honolulu, HI 96813
PH. 543-8346 • FAX 543-2010
d

Feb. 23, 2015

SENATE COMMITTEE ON JUDICIARY AND LABOR SB 1174

MUTUALLY AGREED IME'S

Chair Agran and members of the committee:

This bill and similar versions have been before the Legislature for several years. The employers and insurance representatives who oppose this bill have done so on several grounds one of which is to provide the employers with a "tool" to challenge workers compensation claims. The law has provided the injured workers with the presumption of compensability (work connection unless disproved). However, the present law allows so-called independent examinations only where there is concern over the course of treatment or where major surgery is contemplated. The argument that IME's should be used to challenge compensability is in fact the purpose of the majority of IME's which have been performed, and not due to concern over treatment, nor to evaluate surgery.

One example from my practice involves hard-working middle-aged woman who slipped and fell at work. She was diagnosed by MRI (magnetic reasonance imaging), with torn rotator cuffs to both shoulders. The employer accepted shoulder injuries as compensable.

Two doctors who treated her recommended surgery, including an orthopedic surgeon. The injured worker was referred to an "independent" consultant retained by the insurance carrier. The consultant ascribed the injuries to a pre-existing degenerative shoulder condition, although no medical records supported this theory.

The carrier refused to cover the surgery on the ground of "pre-existing injury", i.e., that it was not related to work. Note that although compensability of the shoulder injury was accepted, the specific injury of a rotator cuff tear was challenged as non-work related by use of a non-treating physician. To add insult to injury, the opinion of the consultant was argued as a physician of the employee's own choice since it was not ordered by the Department of Labor and Industrial Relations (DLIR).

LAW OFFICES OF

MASUI MASUI

Stanford H. Masui ● Erin B.J.H. Masui
Seven Waterfront Plaza, Suite 400 • 500 Ala Moana Blvd. • Honolulu, HI 96813
PH. 543-8346 • FAX 543-2010

The DLIR ruled in favor of the injured worker. The case was appealed by the employer who succeeded in setting aside the order, for a new hearing. An IME examiner, who is well-known for his insurance bias (and nicknamed, "Dr. DooLittle") was hired to support the theory of pre-existing injury, and diagnosed "fibromyalgia" as the cause of the shoulder pain and injury. (Fibromyalgia is thought to be systemic rheumatoid condition causing joint pain throughout the body).

The DLIR rejected this new diagnosis and regurgitation of the discredited theory of pre-existing injury. and ruled again in favor of the injured worker. The carrier has not responded to a new request for surgery and a new treatment plan and no explanation has been provided. Presumably, the carrier has continued to adhere to the "advice" of its "independent physicians". It is almost one and one-half years since the injury date and the worker continues to receive temporary disability despite a desire for a surgical procedure and desire to return to work.

Another outstanding case comes to mind involving another of my clients who injured in 2006 and was subjected to no less than *five* IME reports (only three involved actual face-to-face examinations) for the same injuries. A *first hearing* was held on the carrier's denial of a treatment plan.

"Dr. DooLittle" (the same doctor I referenced previously) in his first report evaluated the injured worker with work injuries at 5% *permanent impairment* to the back, and 5% *permanent impairment* to the neck, and psychological injuries (a psych evaluation). However the report said that no further treatment was needed, and was used as a basis to terminate disability and vocational rehabilitation. This was the *second of four hearings* at the DCD (Disability Compensation Division level)

An employer directed video-tape was used to follow the injured worker around for several weeks and obtained only 40 minutes of physical activity, allegedly showing the worker involved in activities beyond his reported capabilities.

Dr. Doolittle and a psychologist were provided the vido-tape and issued reports supporting the theory that the injured worker was engaged in workers compensation fraud, and the worker's benefits were cut off. Dr. DooLittle did a 180º turn-around and said that there was "no impairment," as did the psychologist. The

LAW OFFICES OF

MASUI MASUI

Stanford H. Masui ● Erin B.J.H. Masui
Seven Waterfront Plaza, Suite 400 • 500 Ala Moana Blvd. • Honolulu, HI 96813
PH. 543-8346 • FAX 543-2010

injured worker was found "guilty" of fraud at a *third hearing* of his case. We appealed.

Two years elapsed before a *hearing on appeal*, and decision was issued by Labor and Industrial Relations Appeals Board essentially rejecting Dr. DooLittle's second report. The injured worker was cleared of the fraud charge. No benefits were paid, and no treatment was performed for the injured worker in the meantime.

A *fourth hearing* was held with the carrier using Dr. DooLittle's second report and same discredited opinion to deny any award of permanent impairment an appeal is still pending.

The injured worker has since his own finally secured lighter duty part-time work and has since resumed treatment. However, his experience with employer-directed IME abuses and delayed treatment is not unique and isolated but recurs with disturbing regularity. Implementing a change to require mutually-agreed IME's is revenue neutral, will not cost more, but should result in cost-saving as it will require less litigation over which physicians should perform IME's, and disputes over the use of IME's for litigation gamesmanship.

This type of legal-medical maneuvering and obstruction can be minimized by fair and objective medical evaluations. Access to quality medical care should not be entrusted to non-medical personnel such as insurance adjusters and defense attorneys. The humanitarian policy of the workers compensaton law of expedient and cost saving return to the workforce are undermined by the unilateral ability of employers and carriers to hire the same discredited medical "experts" again and again to delay and obstruct treatment.

If possible, it is important that testimony be taken on this bill. If not this session, I am hopeful that this matter can be revisited. Thank you for your consideration.

Very truly yours,

/s/ Stanford H. Masui

STANFORD H. MASUI

Please do whatever to pass this.

Attached is a Consumer Reports article from 2000 regarding the IME racket. It's only gotten worse in the ensuring 15 years. IME's owe no duty of care (so no malpractice insurance is required for this cottage industry) to the claimant, restrict recording of IME's (so they can say whatever they want in a report) and seldom if ever show up for hearings to undergo cross examination of their opinions.

And the Department of Labor doesn't even allow questioning (interrogs/rfp) of cases in which they have testified, %, etc., all things the federal courts have as mandatory disclosures.

FRCP Rule 26

Rule 26. Duty to Disclose; General Provisions Governing Discovery

(a) Required Disclosures. * * *

(2) *Disclosure of Expert Testimony.*

(A) *In General.* In addition to the disclosures required by Rule 26(a)(1), a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence 702, 703, or 705.

(B) *Witnesses Who Must Provide a Written Report.* Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) the facts or data considered by the witness in forming them;

(iii) any exhibits that will be used to summarize or support them;

(iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and

(vi) a statement of the compensation to be paid for the study and testimony in the case.

Mahalo,

Timothy P. McNulty

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc:
Subject: Submitted testimony for SB1174 on Mar 3, 2015 09:15AM
Date: Wednesday, February 25, 2015 4:53:37 PM

SB1174
Submitted on: 2/25/2015
Testimony for JDL on Mar 3, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Vlad Devens	Individual	Comments Only	No

Comments: I fully support this bill and believe it will restore balance between all concerned parties, prevent the potential abusive use of "IME's" and reduce the number of disputes between claimant and employer thus lessening the burden on the Dept. of Labor.

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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From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc:
Subject: Submitted testimony for SB1174 on Mar 3, 2015 09:15AM
Date: Wednesday, February 25, 2015 6:13:42 PM
Attachments: 2015-02_SB1174 SD1_whm testimony_mutual IME.wpd

SB1174
Submitted on: 2/25/2015
Testimony for JDL on Mar 3, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Wayne Mukaida	Individual	Support	No

Comments:

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From: William Kruger
To: JDLTestimony
Subject: Senate Bill 1174 SD1 workers compensation; medical examination
Date: Monday, March 02, 2015 2:56:37 PM

Dear Senator Keith-Argon and Members of the Senate Judiciary and labor committee

Senator Green and Representatives Espero, Riviere and Ruderman

I would like to support Senate Bill 1174 regarding Workers Compensation. This change in the law would require both the employer and injured worker to agree on an Independent Medical Examiner (IME).

The current law works against the injured worker. It allows the insurance companies to use biased doctors to say that you are not injured, don't need treatment, or can go back to work, no matter what your injury is or if you can not possibly work. The insurance companies and their lawyers are manipulating the current law and making it very difficult for injured workers to get the medical treatment needed that allow them to get back to work. The law also fails the injured worker who is considered the hostile and does not provide fair representation in sound medical judgement and allows the insurance companies to use doctors who are not qualified in chronic pain management. They use the IME system to discourage and fight injured workers and their families right to benefits.

Thank you for changing the law to require IME's by mutual consent

/s/electronically, William A. Kruger 3/2/2015

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc:
Subject: *Submitted testimony for SB1174 on Mar 3, 2015 09:15AM*
Date: Monday, March 02, 2015 9:21:43 AM

SB1174
Submitted on: 3/2/2015
Testimony for JDL on Mar 3, 2015 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Yvonne Ferguson	Individual	Support	No

Comments:

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