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 18, 2015

To: The Honorable Della Au Belatti, Chair,
The Honorable Richard P. Creagan, Vice Chair, and
Members of the House Committee on Health

Date: Wednesday, March 18, 2015
Time: 10:00 a.m.
Place: Conference Room 329, State Capitol

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

Re: S.B. No. 1174 S.D. 2 Relating to Workers' Compensation

I. OVERVIEW OF PROPOSED LEGISLATION

SB1174SD 2 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 five 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 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.

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

March 17, 2015

TESTIMONY TO THE
HOUSE COMMITTEE ON HEALTH

For Hearing on Wednesday, March 18, 2015
10:00 a.m., Conference Room 329

BY

JAMES K. NISHIMOTO
DIRECTOR

Senate Bill No. 1174, S.D. 2
Relating to Workers' Compensation

WRITTEN TESTIMONY ONLY

TO CHAIRPERSON DELLA AU BELATTI AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide comments on S.B. 1174, S.D. 2.

The purposes of S.B. 1174, S.D. 2, 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 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—even where the physician is willing to undertake the examination—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.

Committee on Health
Representative Della Au Belatti, Chair
Representative Richard P. Creagan, Vice Chair

Measure Title: Relating to Workers Compensation

In Support of SB 1174, SD2

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 sending a written testimony scheduled for hearing on *Wednesday, March 18, 2015 at 10:00 a.m* .

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

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: HLTTestimony@capitol.hawaii.gov

March 16, 2015

TO: HONORABLE DELLA AU BELATTI, CHAIR, HONORABLE RICHARD CREAGAN, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON HEALTH

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, 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. Effective 1/7/2059. (SD2)

HEARING
DATE: Wednesday, March 18
TIME: 10:00 a.m.
PLACE: Conference Room 329

Dear Chair Au Belatti, Vice Chair Creagan 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.

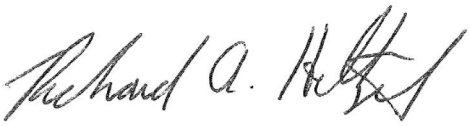
Healy Tibbitts Builders, Inc. is in **strong opposition to S.B. 1174, S.D. 2 Relating to Workers' Compensation,** which would require the commonly referred to "independent medical examinations" (IME) and permanent impairment rating examinations for workers compensation claims to be performed by physicians 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, t he 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.

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

Very truly yours,
Healy Tibbitts Builders, Inc.



Richard A. Heltzel
President

LYZ Inc.
general contractor license #ABC 21576

Via E-mail: HLTTestimony@capitol.hawaii.gov
Via Fax (808) 586-9608

March 18, 2015

TO: HONORABLE DELLA AU BELATTI, CHAIR, HONORABLE RICHARD CREAGAN, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON HEALTH

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, 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. Effective 1/7/2059. (SD2)

HEARING
DATE: Wednesday, March 18
TIME: 10:00 a.m.
PLACE: Conference Room 329

Dear Chair Au Belatti, Vice Chair Creagan and Members of the Committee,

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LYZ, Inc. is in **strong opposition to S.B. 1174, S.D. 2 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.

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

James N. Kurita
Vice President/ Chief Operating Officer

1065 Ahua Street
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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 18, 2015

TO: HONORABLE DELLA AU BELATTI, CHAIR, HONORABLE RICHARD CREAGAN, VICE CHAIR AND MEMBERS OF THE HOUSE 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. Effective 1/7/2059. (SD2)

HEARING

DATE: Wednesday, March 18
TIME: 10:00 a.m.
PLACE: Conference Room 329

Dear Chair Au Bellati, Vice Chair Creagan 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, SD2, 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, SD2 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, SD2 and respectfully requests that this Committee defer the measure. Thank you for the opportunity to express our concerns on this measure.

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

To: The Honorable Della Au Belatti, Chair
The Honorable Richard P. Creagan, Vice Chair
House Committee on Health

From: Mark Sektnan, Vice President
Property Casualty Insurers Association of America

Re: **SB 1174 SD2 - Relating to Workers' Compensation**
PCI Position: OPPOSE

Date: March 18, 2015
10:00 a.m., Room 329

Aloha Chair Belatti, Vice Chair Creagan and Members of the Committee:

The Property Casualty Insurers Association of America (PCI) is opposed to SB 1174 SD2 which would require examinations to be conducted by a physician agreed to by both parties. PCI is a national trade association that represents over 1,000 property and casualty insurance companies. In Hawaii, PCI member companies write approximately 34.6 percent of all property casualty insurance written in Hawaii. PCI member companies write 42.2 percent of all personal automobile insurance, 43.5 percent of all commercial automobile insurance and 58.9 percent of the workers' compensation insurance in Hawaii.

SB 1174 SD2 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 SD2 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 SD2 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. All this means that examinations would be additionally burdened by these new administrative delays.

PCI respectfully requests that the Committee vote to hold SB 1174 SD2 for the remainder of the session.

S & M SAKAMOTO, INC.

GENERAL CONTRACTORS

Via E-mail: HLTTestimony@capitol.hawaii.gov
Via Fax (808) 586-9608

March 18, 2015

TO: HONORABLE DELLA AU BELATTI, CHAIR, HONORABLE RICHARD CREAGAN, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON HEALTH

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, 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. Effective 1/7/2059. (SD2)

HEARING
DATE: Wednesday, March 18
TIME: 10:00 a.m.
PLACE: Conference Room 329

Dear Chair Au Belatti, Vice Chair Creagan 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. 2 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.

1928 HAU STREET • HONOLULU, HAWAII 96819 • PH. (808) 456-4717 • FAX (808) 456-7202
CONTRACTOR LICENSE NO. BC-3641

S & M SAKAMOTO, INC.

GENERAL CONTRACTORS

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

1928 HAU STREET • HONOLULU, HAWAII 96819 • PH. (808) 456-4717 • FAX (808) 456-7202
CONTRACTOR LICENSE NO. BC-3641

FOREST CITY
MILITARY COMMUNITIES
HAWAII

March 18, 2015

Via E-mail: HLTTestimony@capitol.hawaii.gov
Via Fax (808) 586-9608

TO: HONORABLE DELLA AU BELATTI, CHAIR, HONORABLE RICHARD CREAGAN, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON HEALTH

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, 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. Effective 1/7/2059. (SD2)

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DATE: Wednesday, March 18
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Forest City Hawaii is in **strong opposition to S.B. 1174, S.D. 2 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.

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

Sincerely,

James C. Ramirez
Senior Vice President, Construction

5173 Nimitz Road • Honolulu, HI 96818 • P: **808 839 8771** • F: **808 836 7008**

Chamber of Commerce HAWAII
The Voice of Business

Testimony to the House Committee on Health
Wednesday, March 18, 2015 at 10:00 A.M.
Conference Room 329, State Capitol

RE: SENATE BILL 1174 SD2 RELATING TO WORKERS' COMPENSATION

Chair Belatti, Vice Chair Creagan, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** SB 1174 SD2, 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 Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

SB 1174 SD2 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 SD2. Thank you for the opportunity to submit testimony.

creagan1 - Dannah

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 17, 2015 9:47 AM
To: HLTtestimony
Cc: randy@kauaichamber.org
Subject: *Submitted testimony for SB1174 on Mar 18, 2015 10:00AM*

SB1174
Submitted on: 3/17/2015
Testimony for HLT on Mar 18, 2015 10:00AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Randall Francisco	Kauai Chamber of Commerce	Oppose	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.

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

TESTIMONY IN OPPOSITION OF SB1174 SD2
RELATING TO WORKERS' COMPENSATION

TO THE HOUSE COMMITTEE ON HEALTH

Hawaii State Capitol
Conference Room 329
March 18, 2015
10:00AM

Aloha Chair Belatti, Vice Chair Creagan, and Members of the Committee,

The Maui Chamber of Commerce **opposes** SB1174 SD2, relating to workers' compensation, which would require that an employee and employer mutually agree upon a physician for an "independent medical examination" commonly known as an IME or permanent impairment rating for worker's compensation claims.

The Maui Chamber of Commerce believes in a creating a strong economic environment that supports job growth while also protecting our environment and preserving our quality of life. We have approximately 500 members, 95% of whom are small businesses with 25 or fewer employees.

SB1174 SD2 seeks to replace the existing employer requested examinations in workers compensation claims disputes with a new system for obtaining "independent medical examinations" (IME). We believe this is unnecessary, as the current program in place works. In Hawaii, an employee cannot be denied treatment or compensation in workers' compensation law if they claim they were injured on the job. This leaves it up to the employer to prove otherwise. 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 as a second opinion. There is also an appeal process if the parties cannot agree. The IME system is critical to provide balance. The existing law provides employers a chance to get a medical opinion of its own choosing but SB1174 SD2 does not.

The Maui Chamber of Commerce and the members we represent respectfully request that you hold SB1174 SD2.

Thank you for the opportunity to testify.

Sincerely,

Pamela Tumpap

Pamela Tumpap
President

95 Mahalani Street • Suite 22A •Wailuku • Hawaii •96793 • *t* 808-244-0081 • *f* 808-244-0083 • MauiChamber.com

Commercial Sheetmetal Co. Inc.
94-142 LEOLEO STREET • WAIPAHU, HAWAII 96797
PHONE: (808) 671-4002 • FAX: 676-7965

Via Fax (808) 586-9608

March 17, 2015

TO: HONORABLE DELLA AU BELATTI, CHAIR, HONORABLE RICHARD CREAGAN, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON HEALTH

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, 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. Effective 1/7/2059 (SD2)

HEARING

DATE: Wednesday, March 18
TIME: 10:00 a.m.
PLACE: Conference Room 329

Dear Chair Au Belatti, Vice Chair Creagan and Members of the Committee;

We are a specialty contractor that has a high potential of risks for accidents because of the type of work we do as in any other construction trade. Changing this would be in the favor of the injured employee and the employer would be misrepresented.

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.

Commercial Sheetmetal Co., Inc. is in **strong opposition to S.B. 1174, S.D.2 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.

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

Thank you for the opportunity to express our concerns regarding this matter.

Glenn T. Saito, President

creagan1 - Dannah

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 17, 2015 9:59 AM
To: HLTtestimony
Cc: moore4640@hawaiiantel.net
Subject: Submitted testimony for SB1174 on Mar 18, 2015 10:00AM

SB1174
Submitted on: 3/17/2015
Testimony for HLT on Mar 18, 2015 10:00AM in Conference Room 329

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

Comments: Aloha: the Hawaii Injured Workers Association (HIWA) strongly supports the passage of SB 1174 for mutually agreed work comp medical examinations IMEs). It is a matter of fairness. Mutually agreed evaluations for an injured worker's permanent partial disability (PPD) have been working for years usually resulting in fair evaluations. There is every reason to believe mutually agreed IMEs also will result in fairness. Mutual agreement should make the system less adversarial and decrease costly litigation. Mutual agreement is a win-win for the injured workers and for their employers. As for Senate committee concerns, we think they can be worked out. Physicians eligible to be mutually agreed evaluators can register with the Dept. of Labor which can give the physicians adequate opportunity to be noticed & decide if they want to participate or not. We also think that over time, as the new mutually agreed IME system becomes more acceptable, then this should reduce the need for the Dept. of Labor to involve itself in the selection process. Random selection can be replaced by mutual agreement which is more fair. HIWA respectfully requests this committee to please pass SB 1174. mahalo & aloha

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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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 HEALTH
Representative Della Au Belatti, Chair
Representative Richard P. Creagan, Vice Chair

Wednesday, March 18, 2015
10:00 a.m.

SB 1174, SD2

Chair Belatti, Vice Chair Creagan, 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, SD2, 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, SD2 be held.

Thank you for the opportunity to provide comments.

Hawaii Restaurant Association
2909 Waialae Avenue #22
Honolulu, Hawaii 96826
www.HawaiiRestaurant.org

Phone: (808) 944-9105
Email: info@HawaiiRestaurant.org

Date: March 17, 2015

To: Chair Belatti, Vice Chair Cregan, Members of the House Committee on Health

From: Hawaii Restaurant Association

Subject: SB 1174 SD2 Relating to Workers' Compensation

The Hawaii Restaurant Association opposes SB 1174 SD2 that provide that an independent medical examination and permanent impairment rating be conducted by a qualified physician selected by a mutual agreement of parties and provides the process for appointment in the event that there is no mutual agreement.

With Hawaii's presumption factor in our workers compensation law, we feel that the current process allowing the employer to request a independent Medical Examination if they question a treating physician's course of action, it provides a balance in the law.

This bill will likely create delays in treatment and getting our employees back to work and increase the overall costs to everyone. We want our employees that are injured to be treated promptly and get well and that's why we feel that this bill is counter-productive.

Thank you very much for allowing us to share our point of view.

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

MARCH 17, 2015

HOUSE COMMITTEE ON HEALTH SB 1174

MUTUALLY AGREED IME'S

Chair Au Bellati 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).

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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 worke r's benefits were cut off. Dr. DooLittle did a 180º turn-around and said that there was "no impairment," as did the psychologist. The

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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 compensation 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.

PLEASE APPROVE THIS BILL. Thank you for your consideration.

Very truly yours,

/s/ Stanford H. Masui

STANFORD H. MASUI, Co-Chair Workers' Compensation Section, Hawaii Association for Justice

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

March 17, 2015

To: **Honorable Della Au Belatti, Chair, Honorable Richard Creagan, Vice Chair and Members of the House Committee on Health**

Via Fax: (808)586-9608

Subject: **Strong opposition to S.B. 1174, SD2, Relating to Workers' Compensation.**

Dear Chair Au Belatti, Vice Chair Creagan 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 existing law provides employers a chance to get a medical opinion of its own choosing while the new law would not.

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

PVT LAND COMPANY LIMITED

87-2020 Farrington Hwy Waianae, HI 96792 Phone:(808)668-4561 Fax:(808)668-1368

March 16, 2015

TO: HONORABLE DELLA AU BELATTI, CHAIR, HONORABLE RICHARD CREAGAN, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON HEALTH

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, RELATING TO WORKERS' COMPENSATION.**

Dear Chair Au Belatti, Vice Chair Creagan and Members of the Committee,

PVT Land Company, Ltd. is the only C&D landfill and also a recycling plant in the Island of Oahu with over 45 full-time workers and 30 temporary workers.

PVT Land Company, Ltd. is in **strong opposition to S.B. 1174, S.D. 2 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.

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

Aloha,

Ben Yamamoto

creagan1 - Dannah

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2015 11:53 AM
To: HLTtestimony
Cc: gwen@kala-hawaii.us
Subject: *Submitted testimony for SB1174 on Mar 18, 2015 10:00AM*

SB1174
Submitted on: 3/16/2015
Testimony for HLT on Mar 18, 2015 10:00AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Gwen L Keliihoomalu	Individual	Support	No

Comments:

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creagan1 - Dannah

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2015 10:34 AM
To: HLTtestimony
Cc: regoa@hawaii.rr.com
Subject: Submitted testimony for SB1174 on Mar 18, 2015 10:00AM

SB1174
Submitted on: 3/16/2015
Testimony for HLT on Mar 18, 2015 10:00AM in Conference Room 329

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

Comments: I have read the amended bill. I must commend the committee and Senate for writing a fair bill which is neutral cost effective. 1) In fact re costs, this bill will actually save money in the workers compensation system. How can one continue to litigate and argue against a mutually agreed rater and examiner? The unfair examiner has been the main reason for months and years of litigation in a system which was envisioned to be neutral and fair and straightforward. It hasn't been and those who simply want to keep the current system saying it is working, either is unaware or downright misleading this committee. 2) You have an opportunity to help the helpless and voiceless injured worker. They are often pro se and cannot understand the system which they assume will work fairly when they get injured. If they see me, I tell them straight up---the IME system will be used by most carriers and self insured employers to thwart your claim in many different ways, and you have no say and will be ordered to attend and see their same doctors, who they often use on a continuing employment arrangement. To prove I know, I sometimes then ask for the initial of the last name of the appointed IME or PPD doctor if they have already attended an IME and then 90% of the time I name to the employee's amazement the much used so called independent examining doctor. It is a corrupted system. 3) Again I read opponents to the bill stating there is an appeal process. I am sorry to report that that is in reality untrue. When an appeal is made to the DCD by the claimant even who has an attorney, almost 100% of the time the DCD rules the doctor chosen by the employer is to be seen and orders the employee to attend otherwise face sanctions and cut off of monetary benefits for months while awaiting a hearing and decision. But Employees cannot go without medical care and weekly compensation for months while awaiting a DCD decision under this present statute and then lose the appeal despite allegations of unfairness. Some appeal process, isn't it? I strongly support this bill. Thank you. Anson Rego Waianae----Claimants attorney nearly 40 years

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creagan1 - Dannah

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 16, 2015 11:56 AM
To: HLTtestimony
Cc: ogawaa@ymail.com
Subject: Submitted testimony for SB1174 on Mar 18, 2015 10:00AM

SB1174
Submitted on: 3/16/2015
Testimony for HLT on Mar 18, 2015 10:00AM in Conference Room 329

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

Comments: Let's level the playing field and treat injured workers with fairness, please pass this bill

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Bruce Berger,LMHC,CRC,CSAC

HI & NATIONAL SUBSTANCE ABUSE CERTIFICATION, NATIONAL DISABILITY & REHABILITATION CERTIFICATION

Berger & Associates Bruce Berger,LMHC,CRC,CSAC 345 Queen St. Ste 712 Honolulu, Hi 96813

Licensed Counselor LMH#56 BBergerHonolulu@aol.com Direct(808) 277-9919 FAX(808)734-3974

To: COMMITTEE ON JUDICIARY AND LABOR
The Honorable Gilbert Keith-Agaran, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair
Honorable Senator of Committee
Conference Room 016
State Capitol
415 Beretania Street
Honolulu, Hi 96813

From: Bruce Berger,LMHC,CRC,CSAC

Re: Strong Support for Passage of SB 1174, SD l, Relating to Workers' Compensation

Dear Mr. Agaran & Ms. Shimabukuro:

Please reference the testimony above by injured worker; **Elaine Harris** who has articulated the merits why SB 1174 should be supported and approved. This is one way that the workers compensation system can be improved and I strongly suggest that you support this bill on behalf of injured workers as well as the benefit of employers.

Very truly yours,

Bruce Berger,LMHC,CRC,CSAC
Vocational Rehabilitation Counselor

Bruce Berger,LMHC,CRC,CSAC

HI & NATIONAL SUBSTANCE ABUSE CERTIFICATION, NATIONAL DISABILITY & REHABILITATION CERTIFICATION

Berger & Associates Bruce Berger,LMHC,CRC,CSAC 345 Queen St. Ste 712 Honolulu, Hi 96813

Licensed Counselor LMH#56 BBergerHonolulu@aol.com Direct(808) 277-9919 FAX(808)734-3974

WE SIGNED BELOW, DO SUPPORT SB 766 THAT REQUIRES A PHYSICIAN TO BE ACTIVELY TREATING PATIENTS (ATLEAST 10 PER MONTH) AND SB 1174 THAT SUPPORTS A MUTUALLY AGREED UPON INDEPENDENT MEDICAL EVALUATION

IME

Name (Print)	Signature	Telephone	Address	E-mail
Cody Owens	C. Owens	286 6429	Honolulu Hi	
Gail P. Pacheco	Gail P. Pacheco	381-2826	369 Hobron Lane #6 Honolulu, Hawaii 96815	N/A
Alan Beyah	Alan Beyah	926-6096	254 Ohua ave. Honolulu, Hawaii 96815	N/A
Chevante Kaaina		291-6696	Kaneohe, Hi 96744	N/A
Tyson Garcia		485-9976	waipahu HI 96797	
Franklin Figueroa			98-1040 Moanalua Aiea, Hi	N/A
Carl Kaikaina		699-8695	[redacted] Honolulu, Hi. 96814	N/A
~~DENISE JACOB~~	~~[illegible]~~	6374853	WAIALUA	N/A
BERNICE SALES	Bernice Sales	233-9108	Honolulu, Hi	NA
Aileen Loyd	Aileen Loyd	277-2244	[redacted] P.O. Box 37582 Honolulu, HI 9682[illegible] Mailing address 37	NA

Name (Print)	**Signature**	**Telephone**	**Address**	**E-mail**
Margie Preciado	Margie Preciado	293-2747	Honolulu HI 96815	
HUGH T. DICKSON	Hugh T. Dickson	808-388-758	369 HOBRON Ln. #33 Honolulu, HI, 96815	

WE SIGNED BELOW, DO SUPPORT SB 766 THAT REQUIRES AN IME PHYSICIAN TO BE ACTIVELY TREATING PATIENTS (AT LEAST 10 PER MONTH) AND SB 1174 THAT SUPPORTS A MUTUALLY AGREED UPON INDEPENDENT MEDICAL EVALUATION.

Name (Print)	Signature	Telephone	Address	E-mail
BENJAMIN A. WATTS	Benjamin A Watts	756-5814	1555 KINO'OLE ST HILO, HI 96720	
Frankie Pang	Frankie Pang	896 8846	P O Box 2408 Kamuela HI 96743	

WE SIGNED BELOW, DO SUPPORT SB 766 THAT REQUIRES AN IME PHYSICIAN TO BE ACTIVELY TREATING PATIENTS (AT LEAST 10 PER MONTH) AND SB 1174 THAT SUPPORTS A MUTUALLY AGREED UPON INDEPENDENT MEDICAL EVALUATION.

Name (Print)	Signature	Telephone	Address	E-mail
Jorden Hanawahine	Jorden Hanawahine	(808) 938-0564	144 Mikihala St	
Adam Pacheco Jr.	Adam Pacheco Jr	809-769-9976	HCR-1 BOX 4208 Keaau, HI 96749	mauiekeahunta1@yahoo
Lucinda Chavez		808-313-2408	P.O. Box 553, Pahoa, HI 96778	plumeria1c@yahoo.com
Ikaika Ostrye IKAIKA STONE	Ikaika Ostrye	(808) 679-1711	1065 KAWAIAHAO ST 96814	

WE SIGNED BELOW, DO SUPPORT SB 766 THAT REQUIRES AN IME PHYSICIAN TO BE ACTIVELY TREATING PATIENTS (AT LEAST 10 PER MONTH), SB 1174 THAT SUPPORTS A MUTUALLY AGREED UPON INDEPENDENT MEDICAL EVALUATION, AND SB803 THAT SUPPORTS THE IME DOCTOR HAVING THE APPROPRIATE SPECIALTY TO CONDUCT AN IME.

Name (Print)	Signature	Telephone	Address	E-mail
Amie Lou Asuncion		518-2402	2033 Kuckle St #PH #10 Honolulu HI 96819	amie.lou@gmail.com
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ERIC BRUCE		(808)391-9211	1415 ERNEST ST. #2 HON, HI 96822	EBSSJOINT@HOTMAIL.COM
Reese Nishimura		2845147	1275 Ala Ali, St	
CARRIE NOBORIKAWA	Carrie S. Noborikawa	354.4225	1275 Ala Ali St	
Sheena Soares	Sheena N. Soares	354-5891	P.O. Box 62226 Hon., HI 96839	snohealani.soares@gmail.com
Elijah Dixon		808-312-2471	98-259 Ualo St Aiea, HI 96701	Elidixon22@gmail.com
Kirsten Yonamine		538-8733	715 S. King St. #410	kharada@vmchawaii.com
Leona Tadaki Nikaido	Leona Nikaido	595.6248	822 Eleoka St	Ltadaki-kane@vmchawaii.com
Lily Miyahira	Lily Miyahira	595-8239	3191 Aloha Aina Pl. Hon 96817	Lmiyahira@vmchawaii.com
Adam Yonamine		538-8733	715 S. King St. #410	ayonamine@vmchawaii.com

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Name (Print)	Signature	Telephone	Address	E-mail
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Mary Rillanos	Mary Rillanos	808-7750863	PO Box 1157 Honokaa Hi 9673	
Gilbert De Motta	Gilbert De Motta	808 959-4683	2617 Kilauea Ave Hilo HI; 96720	
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GARY LABRADOR	Gary Labrador	(808) 756-6534	P.O.Box 5515 KAILUA, KONA	glabrador1228@yahoo.com

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ROBERT G. WALLING	Robert G Walling	226-0149	737 TWIN VIEW DR Honolulu HI 96817	N/A
Richard Diaz	Richard Diaz	22-3858	1329 wilder Ave. APT #7 Honolulu Hawaii 96822	Con3fdbs@gmail.
Lauren Habano	Lauren Habano	397-4800	PO BOX 8259 Hon-HI 96830	

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Name (Print)	Signature	Telephone	Address	E-mail
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Richard ALLGIRE	Richard Allgire	808-957-0443	1634 MAKIKI ST 1106	dallgire12@yahoo.com
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WAYNE H. MUKAIDA

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March 16, 2015

COMMITTEE ON HEALTH
Rep. Della Au Belatti, Chair

Re: S.B. No. 1174, SD2, Relating to Workers' Compensation
Hearing: March 18, 2015, 10:00 a.m.

Chair Belatti and members of the Committee, I am attorney Wayne Mukaida. I have been in practice since 1978. Since 1989, I have devoted a substantial portion of my legal practice to representing injured workers.

I strongly support S.B. No. 174, SD2 relating to Workers' Compensation because it will allow decisions of the Department of Labor and Industrial Relations to be based on fair and impartial medical facts and opinions.

Please indulge me in reciting 3 scenarios:

Scenario A. Imagine a workers' compensation statute under which an impartial physician examines the injured worker and gives his diagnosis. The impartial physician is chosen by agreement between the employer/carrier and the injured worker. The system is less litigious, and decisions can be made based on unbiased information. This sounds fair and reasonable and is the way WC should work.

Scenario B. Now imagine that the workers' compensation statute in Scenario A was amended to provide that:

a. An employer can deny a worker's compensation claim pending an examination of the injured worker by a physician chosen by the employer/carrier. The employer/carrier can choose its favored physician to examine the injured worker.

b. The employer/carrier's physician can give his diagnosis and opinions with zero liability to the injured worker because there is no doctor/patient relationship.

c. The employer/carrier can use the services of its favorite physician repeatedly, even if that physician might not have expertise related to the injury.

d. The employer/carrier's physician is paid more than $2,000.00 for each exam and report. If the physician sees 10 injured workers per week, the employer/carrier will pay him more than $1,000.000.00 per year ($2,000.00 x 10 visits x 50 weeks/year = $1,000.000.00).

The amendment is enacted, and visit after visit by injured workers, the physician opinions that either:

(1) There was no injury;

(2) If the injury cannot be denied, then the injury was only temporary;

(3) If the injury is longer lasting, then the injured worker had a pre-existing injury, and now the work injury has resolved and the injured worker is back to his pre-work injury condition. The physician is not required to explain how the injured worker was able to do his work prior to the work injury.

The employer/carrier's physician objected to any recording of the examination and the Department of Labor refused to issue an order allowing a recording, so there is no effective way for the injured worker to demonstrate to the Department how the exam was superficial and unfair.

The Department of Labor repeatedly denies requests of injured worker workers to obtain records from the employer/carrier's physician which would demonstrate how much the physician's practice is devoted to conducting such examinations, and which would be strong evidence of bias.

In order to contest the opinion of the employer/carrier's physician, the injured worker has to hire his own physician. However, the injured worker has no income because the employer/carrier denied his claim. The injured worker has not worked for more than 3 months, and so the employer stops paying for the personal health plan of the injured worker.

The injured worker has no income, no medical care for his injury. He and his family have been evicted from their home. Since there is no medical evidence to support the claim, the Department of Labor rules that there was no work injury.

Scenario C. Scenario B is fundamentally unjust and unfair, and so injured workers ask their legislators to amend the statute back to having an impartial physician

chosen by agreement of the parties.

The strongest argument that the employer/carriers can muster against the amendment is that since the injured worker is allowed to choose his attending physician, the employer/carrier needs to have the right to choose its own physician.

The employer/carrier's argument is very facile; they have no cogent argument against using an impartial physician. The employer/carriers do not suggest how objective and fair facts can be discovered.

There is no reasonable basis to object to having a fair and impartial physician conduct an examination as under Scenario A, however year after year, the Legislature refuses to amend the statute to provide for the mutual choice of a physician.

The present reality. It is incredible that the present status of Hawaii's workers' compensation system is reflected by reading the above scenarios in reverse order. SB1174 reflects Scenario C and Scenario B describes the present mess. The fair and just system under Scenario A would result if SB1174 is enacted.

Conclusion.

Please move S.B. No. 1174, SC2 towards passage so that all parties in the workers' compensation system can benefit from fair and impartial medical evaluations.

Thank you for considering my testimony.

WAYNE H. MUKAIDA

Edie A. Feldman, Esq.
1164 Bishop Street, Suite 124
Honolulu, Hawaii 96813
Tel. No. (808) 528-1777

March 16, 2015

To the Committee on Health:

Rep. Della Au Belatti, Chair
Rep. Richard P. Creagan, Vice Chair

Rep. Mark J. Hashem
Rep. Jo Jordan
Rep. Bertrand Kobayashi
Rep. Dee Morikawa
Rep. Marcus R. Oshiro
Rep. Beth Fukumoto Chang
Rep. Andria P.L. Tupola

Re: **Hearing on S.B. 1174**
Date: Wednesday, March 18, 2015
Time: 10:00 a.m.
Place: Conference Room 329

Dear Committee Members,

Thank you for allowing me to submit written testimony on SB 1174. The purpose of this bill is to foster an amicable resolution by allowing the injured worker and the employer/insurer to mutually choose a physician to conduct permanent partial disability ratings and independent medical evaluations. I fully support this bill.

I have worked as a workers' compensation attorney for nearly 16 years. Initially, my practice was limited to defending employers and insurance companies against claims filed by injured workers. However, I began representing both injured workers and defense/insurance company clients. Over the past ten years, my practice has been limited to representing injured workers (claimants). I became aware of how difficult it is for someone injured on the job to navigate his/her way through the legal system, and felt compelled to help those most in need of representation.

Senate Bill 1174 fosters a truth-seeking function and will ensure the integrity of the workers' compensation system by allowing both sides equal input regarding the choice of the examining physician.

The statutory presumption that an injury is work-related applies only to the beginning of any new claim. After the initial presumption favoring the injured worker, there are no other presumptions applied with favor an injured worker. Once a claim is found to be

work-related, i.e. compensable, the employee and the employer (and its insurer) *theoretically* stand on equal footing. However, because an insurance company has a lot more resources than an individual injured worker, in reality, the employer/insurer holds a lot more power.

Not only will a mutual decision on a the choice of a rating physician be cost-effective, agreements will also promote the expeditious resolution of controversies over medical treatment and facilitate an amicable resolution of a claim.

The employers and the insurance industry which oppose this bill want to foster their business relationships with a select group of medical examiners who provide them with favorable medical opinions. It is well known that the medical examiners selected by the insurance industry do not provide any medical treatment to patients. Instead, their practices are designed solely to evaluate workers injured on the job for the benefit of the insurance companies.

In order to maintain client satisfaction and their repeat business, medical examiners continually provide the requesting insurance companies with opinions labeled as "independent," but are nevertheless biased against the injured employee.

These ongoing business relationships between medical examiners (whose goals are to serve the needs of the insurance industry) and insurance companies (which repeatedly hire them) continue to thrive. There is no limit on the amount that an independent medical examiner may charge an insurer for a favorable opinion and insurers often spend a lot of money to obtain opinions to suit their needs. Treating physicians for the injured workers, however, are only paid an amount allowable under the workers' compensation medical fee schedule. The discrepancies in payment amounts are huge.

A person who suffers an injury to his or her body or mind should not be turned into a pawn in the workers compensation system—yet unsuspecting workers become just that when they are forced to attend a medical examination with a physician whose sole goal is to provide a favorable opinions for insurance companies.

This bill allows the parties to make an important decision together and provides a reasonable solution if an agreement cannot be reached. The time has come for medical examinations to be truly independent.

Thank you very much for allowing me to submit this testimony. You may contact me should you have any questions.

Sincerely,

Edie A. Feldman

The Twenty-Eighth Legislature
Regular Session of 2015

HOUSE OF REPRESENTATIVES
Committee on Health
Rep. Della Au Belatti, Chair
Rep. Richard P. Creagan, Vice Chair
State Capitol, Conference Room 329
Wednesday, March 18, 2015; 10:00 a.m.

STATEMENT OF THE ILWU LOCAL 142 ON S.B. 1174, SD2
RELATING TO WORKERS' COMPENSATION

The ILWU Local 142 supports S.B. 1174, SD2, 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.

We also understand the concern raised by the Senate Committee on Judiciary and Labor that the claimant may not obtain an independent examiner if the employer picks first among five choices. The process may be more fair and less biased if five names are suggested by the employer and five names by the claimant, then the Department randomly picks the final list of five names from which names will be alternately struck by the employer and the claimant. This is not a perfect solution but may provide a more neutral process of determining an independent medical examiner if the parties are unable to mutually agree.

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, SD2. Thank you for the opportunity to provide testimony on this matter.

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

Hon: Rep. Della Au Belatti, Chair: **FAX: 586-9608**

Hon: Rep. Richard P. Creagan, Vice Chair

Please Pass SB 1174, SD2 (SSCR765) Pass Now - End IME Abuse -

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.

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".) Mandates mutual cooperation is selecting IME doctors who examine injured workers in Hawaii.

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

To: COMMITTEE ON HEALTH

Rep. Della Au Belatti, Chair
Rep. Richard P. Creagan, Vice Chair
Rep. Mark J. Hashem
Rep. Marcus R. Oshiro
Rep. Jo Jordan
Rep. Beth Fukumoto Chang
Rep. Bertrand Kobayashi
Rep. Andria P.L. Tupola
Rep. Dee Morikawa

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

DATE: Wednesday, March 18, 2015
TIME: 10:00 a.m.
PLACE: Conference Room ~~359~~ **329**
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

creagan1 - Dannah

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 17, 2015 10:44 AM
To: HLTtestimony
Cc: lmiyahira@vmchawaii.com
Subject: Submitted testimony for SB1174 on Mar 18, 2015 10:00AM

SB1174
Submitted on: 3/17/2015
Testimony for HLT on Mar 18, 2015 10:00AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Lily Miyahira	Individual	Support	No

Comments: I am in support of this bill because it allows for the fair treatment of injured workers and gives them an objective and impartial evaluation.

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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creagan1 - Dannah

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 17, 2015 11:22 PM
To: HLTtestimony
Cc: lho@hawaiipublicpolicy.com
Subject: Submitted testimony for SB1174 on Mar 18, 2015 10:00AM

SB1174
Submitted on: 3/17/2015
Testimony for HLT on Mar 18, 2015 10:00AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
NFIB Hawaii	NFIB Hawaii	Oppose	No

Comments: The National Federation of Independent Business is the largest advocacy organization representing small and independent business in Washington, D.C., and all 50 state capitals. In Hawaii, NFIB represents more than 1,000 members. NFIB's purpose is to impact public policy at the state and federal level and be a key business resource for small and independent business in America. NFIB also provides timely information designed to help small businesses succeed. We respectfully oppose SB 1174 on the grounds that it alters the employer-employee balance in addressing workers' compensation matters.

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

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Louanne Ondo		808 8960648	HCR 2 Box 6418 Keaau HI 96749	Louanne0576@gmail
Sean Ishida		808-345-8036	113 Anela St. Hilo, HI 96720	
Blandina Ishida		808-640-2419	113 Anela St. Hilo, HI 96720	
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Annette Schlegelmilch				
Camille Boyce		(808)959-1395	434 Pohakulani Street Hilo, Hawaii 96720	hilogirl12222@yahoo.com
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Howard Okamura		(808)333-1878	P.O. Box 7556 Hilo, HI 96720	
Tanisha Cobb	Tanisha Cobb	8085575438	PO BOX 1523 Kealakekua HI 96749	Tanishacobb98@gmail.com

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Brenda CADAOAS		808-313-0511	HC1 BOX 5159 Keaau HI 96749	Kittynchar@aol.com
Annette Schlegelmilch				
Camille Boyce		(808)959-1395	434 Pohakulani Street Hilo, Hawaii 96720	hilogirl12222@yahoo.com
Kari Lynne Martin		808.990.5747	144 Leimamo St. Hilo, HI 96720	ilimaz1@aol.com

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Name (Print)	Signature	Telephone	Address	E-mail
Hans Raimi Heuken	Hans R. Heuken	808 965 7799	RR 2 Box 4616, Pahoa, 96778	Hrainerk@yahoo.com
Howard Okamura		(808)333-1878	P.O. Box 7556 Hilo, HI 96720	
Tanisha Cobb	Tanisha Cobb	8085575438	PO BOX 1523 Kealakekua HI 96749	Tanishacobb98@gmail.com

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

March 17, 2015

Via E-mail: HLTTestimony@capitol.hawaii.gov
Via Fax (808) 586-9608

TO: HONORABLE DELLA AU BELATTI, CHAIR, HONORABLE RICHARD CREAGAN, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON HEALTH

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, 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. Effective 1/7/2059. (SD2)

HEARING
DATE: Wednesday, March 18
TIME: 10:00 a.m.
PLACE: Conference Room 329

Dear Chair Au Belatti, Vice Chair Creagan 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. 2 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.

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: HLTTestimony@capitol.hawaii.gov

March 18, 2015

TO: HONORABLE DELLA AU BELATTI, CHAIR, HONORABLE RICHARD CREAGAN, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON HEALTH

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, 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. Effective 1/7/2059. (SD2)

HEARING
DATE: Wednesday, March 18
TIME: 10:00 a.m.
PLACE: Conference Room 329

Dear Chair Au Belatti, Vice Chair Creagan 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. 2 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.

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,
Hon., HI 96819 (808) 841-6151

Doing Business Since 1972

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Ph. (808) 678-8535
Fax: (808) 678-2625

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

Via E-mail: HLTTestimony@capitol.hawaii.gov
Via Fax (808) 586-9608

March 18, 2015

TO: HONORABLE DELLA AU BELATTI, CHAIR, HONORABLE RICHARD CREAGAN, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON HEALTH

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, 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. Effective 1/7/2059. (SD2)

HEARING
DATE: Wednesday, March 18
TIME: 10:00 a.m.
PLACE: Conference Room 329

Dear Chair Au Belatti, Vice Chair Creagan 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. 2 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.

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

TOMCO CORP.
General Contractors

March 17, 2015

TO: HONORABLE DELLA AU BELATTI, CHAIR, HONORABLE RICHARD CREAGAN, VICE CHAIR AND MEMBERS OF THE HOUSE COMMITTEE ON HEALTH

SUBJECT: **STRONG OPPOSITION TO S.B. 1174, SD2, 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. Effective 1/7/2059. (SD2)

HEARING
DATE: Wednesday, March 18
TIME: 10:00 a.m.
PLACE: Conference Room 329

Dear Chair Au Belatti, Vice Chair Creagan 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. 2 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.

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

creagan1 - Dannah

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 17, 2015 11:55 AM
To: HLTtestimony
Cc: tasymons56@gmail.com
Subject: *Submitted testimony for SB1174 on Mar 18, 2015 10:00AM*

SB1174
Submitted on: 3/17/2015
Testimony for HLT on Mar 18, 2015 10:00AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Toni Symons	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.

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

I strongly support, and my organization, Work Injury Medical Association of Hawaii supports SB 1174. This is our number one legislative change that we feel will improve the process of caring for injured workers in the State of Hawaii. Our organization represents the majority of physicians still treating patients injured on our state. Our best estimates are that less than 100 of the over 3000 licensed physicians regularly accept Workers Compensation and a majority of those are part of WIMAH.

SB 1174 addresses what has become a blatant abuse of a system that is meant to provide an "independent" physician to represent the Insurer or Employer's interest. Current, approximately 10 physicians have become highly paid "hit men" for certain insurers, and nearly 90 %of the time or higher rule against the injured worker. These individuals average $3000-5000 dollars for usually spending less than 1 hours with a patient who has often had numerous office visits with a practicing attending physician, Specialists Physicians practicing and treating patients daily as well as Physical Therapists, Acupuncture professionals and Doctors of Chiropractic.

In this 1-hour, lives of workers injured in Hawaii usually at no fault of their own are ruined. One letter from this so called "independent" physician becomes the ruling that decides all future care, immediately, regardless of the opinion of a team of dedicated professional who have usually spent 30-50 hours with an injured worker over months or even years. And this is even worsened by the fact that the majority do not even treat patients! They only perform these high paying exams with a regular path worn to certain insurance carriers.

At this point, the worker is now no longer being compensated and has lost health insurance. They are forced to find an attorney and file an appeal with the Department of Labor that in 2013-14 would take 9 months. The injured worker has already been suffering financially making less than 2/3 of their normal wage, and has depleted saving. It is not unusual that they are forced to live with family or in some cases become homeless. And their pain and injury is still present. Many are forced to give up and remain injured the rest of their lives. They often (in my practice well over 50%) must file for welfare benefits and demand on state assistance to survive.

Unfortunately, most cannot afford to challenge these ruling. If the injured worker can persist and survive this ordeal, the majority of these one sided and baseless IME exams are over turned at the Labor Appeals Board or with the initial hearing. At last count, my practice has won our past 24 consecutive appeals. That means the employers must pay the employee's back wages and continue to provide care. All of this occurs after creating more suffering for our injured workers in our state. Most gains of the initial treatment are lost and must be restarted. This delay further increases the cost of Workers Compensation to all parties including the taxpayers who recently had to increase funding to the DOL to support the appeals process driven by these prolific producers one-sided IME's.

We have more than 100 qualified physicians to perform IME exams, yet some insurance carriers resort to flying an Orthopedic Surgeon from the mainland. I recently testified as an expert in Federal Court where one such expert under oath admitted to seeing 24-36 IME exam patients in 2 days and receiving approximately $64,000. He does this 3-4 times per year.

There is unfortunately no due process allowed by our Medical Board to rid our state of these physicians since our courts have stated that no doctor patient relationship exists and the IME doctor is not practicing medicine. They are immune from Malpractice Claims and the MCCP process also. Please consider this since most of us cannot understand how this group can be so insulated from any reasonable action or oversight.

Fortunate, SB1174 may allow the majority of the outstanding IME physicians that do exist in our state to provide fair exams and reports. The distinction between the truly professional and"independent" physicians is remarkable. Reports are often 50-100 pages, and well thought out and defend the medical opinion with logic with best practice evidence. There are at least 50 IME providers in our state that I never in over 22 years of caring for an injured work had to appeal. This allows for a realistic and speedy consensus on future treatment, and usually eliminates appeals or costly legal proceedings. Most importantly, the worker receives the necessary care to ultimate return to the work force in our state.

Please support the injured workers of our state, and help stop this devastating process *that unfortunate occurs daily*.

Sincerely,
Scott J Miscovich MD
President
Work Injury Medical Association of Hawaii

DENNIS W. S. CHANG

Attorney at Law, A Limited Liability Law Corporation

WORKER'S RIGHTS - LABOR LAW
WORKER'S COMPENSATION
SOCIAL SECURITY DISABILITY
LABOR UNION REPRESENTATION
EMPLOYEES RETIREMENT SYSTEM
BODILY INJURIES

March 17, 2015

HOUSE OF REPRESENTATIVES
THE TWENTY-EIGHT LEGISLATURE
REGULAR SESSION OF 2015

COMMITTEE ON HEALTH
Representative Della Au Belatti, Chair
Representative Richard P. Creagan, Vice Chair
Members of the Committee

DATE:	Wednesday, March 18, 2015
TIME:	10:00 AM
PLACE:	Conference Room 329 State Capitol 415 south Beretania Street

STRONG SUPPORT OF SB 1174, SD 2

I. Introduction.

For whatever reasons, the legislators believe that the "independent medical examination" process (IME), which the employer also uses to rate a permanent impairment (see prior testimony included as Exhibit 1), is merely infrequently of abused or there is only a perception of abuse. As a labor lawyer with a heavy emphasis in handling workers' compensation claims, I can sincerely attest to the fact that the employer designated medical examinations are absolutely abusive as I have previously testified. This is not merely a perception. An apt illustration is the following email, which was recently sent to my attention.

> The insurance company . . . that has been caring for me is now slowly stopping my treatments due to a misleading IME report from a man named, Dr.. . . Due to the report, I'm losing my ability to function in the real world. His reports [sic] is very misleading and nearly states my leg barely has any scarring! [sic]My ankle [is significantly] disfigured, and as a 21 year old woman, I am haunted by the ugly scar that's forever with me. Please help me. It has almost been a year [10 months when she contacted me] and I'm losing my mind. I just need help. I want to continue my treatments.
>
> I am still coping with pain both physical and mental till today. I have not returned to work, and luckily, the company has decided to continue to pay my weekly benefits. They once stopped payments and then randomly decided to start it again.

> It is almost a year since my injury and I am going to be rated for my disfigurement. The doctor they are sending me to is Dr. . . . and he is the same man who wrote I have no scarring in my IME report... I am scared... He will destroy me and I know for a fact I will not receive any compensation from the company because of him.

She suffered significant burns from a work accident, and her employer forced her to fill out paperwork of the accident, rather than rushing her to the emergency room or calling 911. She was in agony as the hot oil continued burning her, resulting in increasing large bubbling of her skin. Ultimately, she called her father, who rushed her to Tripler for emergency care. This is a frequent desperate cry for help brought to my attention by potential clients, who contact my office. The above passage also contains a number of violations, which never gets brought to the attention of the Department of Labor and Industrial Relations.

The injured worker was prematurely sent to an IME without securing an order from the director as required by § 386-79. Sending her to the same doctor, who has already prejudged her case, within one year is also another violation of the current terms of the section. *Pro se* injured workers who are unrepresented have no idea that § 386–79 requires an order from the director for an IME, and that generally employers and their representatives cannot have two or more consecutive examinations by physicians designated by themselves within a one-year period.

Moreover, the injured worker should have been given a choice in selecting a physician to conduct the follow-up examination to determine the extent of her permanent impairment rating consistent with long-standing custom and practice, which should be followed but as a general rule purposefully ignored (custom and practice was in place long before I began practicing). The latter is vital to have a mutually agreed upon neutral physician because the determination of the extent of the percentage of permanent impairment calculates into in a monetary award for all injured workers.

II. Strong Support for SB 1174, SD 2.

Over the years, many proposed IME bills have gone before the Legislature only to be killed even though abuses and "perceptions of unfairness" have been demonstrated by injured workers and those who handle and litigate workers' compensation. We have repeatedly pointed out the obvious. In this regard, I incorporate my prior written original and supplemental testimony before the Committee on Judiciary and Labor. **Exhibit 1.**

SB 1174, SD 2 rectifies much of the abusive practice (or "perception of unfairness" for those who find more comfort with these latter words) Litigation and battle of the experts, or processing claims using § 386-79 to reduce the payment of benefits to injured workers and to increase profits are never part of the Grand Bargain when first past 100 years ago. It would be most appropriate to have a minor change in the 100th anniversary of the Grand Bargain in 2015.

However, SSCR 206 does identify some pertinent considerations, which should be address to reduce the adversarial process and highly partisan physicians. Here are some previous suggestions that will facilitate identifying physicians who are willing and capable of maintaining a list for the selection process.

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. Indicate your experience serving as an expert in the last ten years by percentage for the employers or its representatives as opposed to serving as an expert for injured workers or their representatives.

3. Indicate the number of patients, who are injured workers, you have been currently treating under the worekrs' compensation process for the past year.

4. Indicate whether you are willing to share your previous expert reports, if any, for review upon request of the general public after a redaction of confidential information, including protected information under HIIPA.

5. Prepare a list of the physician who have expressed interest, including practice specialty, numbers of years practicing in Hawaii and elsewhere, number of IME and rating exams performed and when, and any other pertinent information; and

6. Provide the list with information on each physician to the claimants and the employers.

If the physicians are willing to be placed on the list, we will have a listing of willing nominees.

Another concern raised in SSCR 206 is whether we will ever get a nominee used for the IME and/or rating process. With due respect, the proposed bill already allows the parties to mutually agree to a physician. The alternative section process contained in SB 1174, SD 2, is a last resort only if the parties are unable to reach a mutual agreement.

Overall SB 1174, SD 2 is an excellent alternative to the current abusive adversarial process, and I strongly urge that it be passed. Thank you for the opportunity to provide testimony and suggestions to enhance the passage of the proposed bill.

Respectfully yours,

Dennis W.S. Chang
Labor and Workers' Compensation Attorney

March 1, 2015

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

Date: Tuesday, March 3, 2015
Time: 9:15 am
Place: Conference Room 016
State Capitol
415 Beretania Street

From: Dennis W.S. Chang, Labor and Workers' Compensation Attorney
Dillingham Transportation Building
735 Bishop Street Suite 320
Honolulu, Hawaii 96813

Re: Strong Support for Passage of SB 1174, SD 1, Relating to Workers' Compensation

I. Current Statutory Provision and Abusive Practices.

Section 386-79, HRS, currently provides that after a work injury and during the period of disability, an injured worker, when ordered by the Director of Labor and Industrial Relations, "shall submit" to an examination at a reasonable time and place before a qualified physician (or surgeon) for extremely limited purposes: "where the employer [inclusive of self insured employers and insurance carriers] is dissatisfied with the progress of the case or where major and elective surgery, or either, is contemplated, . . .[or] good and valid reasons exist with regard to the medical progress of the employee's treatment." This is the process more commonly referred to as an "independent medical examination" ("IME"). If the employee refuses to attend the examination, or obstructs in any way the examination as ordered by the Director, the employee's rights to benefits under the workers' compensation statute are suspended for the period during which the refusal or obstruction continues.

However, as repeatedly disclosed session after session for more than a decade, in the actual practice in claims handling use of the IME process has been increasing abusive, in particular, for the unrepresented injured workers. As stressed over the years, the designated physician (or surgeon), who is paid handsomely, is beholden to the employer. Inevitably, the

result is bias reports, which are detrimental to injured workers. Trickery is used when the employer (inclusive of its representatives, whether attorney, insurance carrier or third party administrator), bypass the mandatory statutory requirements of section 386-79 by merely sending a letter directing them to appear for an examination before a designated physician. Fear tactics are often added. Injured workers are warned that if they fail to appear as directed, they will be responsible for an outrageous no-show fee. Recently, a potential client informed me that she was informed that all of her benefits would be terminated if she failed to appear at an examination as directed by the employer's representative.

Claims are denied and wholesale benefits are terminated based on the bias physician designated reports. Aside from the economic incentive, the designated physician is unaccountable to the injured workers and immune from medical malpractice and other lawsuits. The result is obvious economic ruin and undue emotional distress for injured workers and their families because of bias rather than independent expert reports. These are real life regular occurrences.

The employer also fails to send cover letters, which it transmits to its designated physician, to injured workers and their representatives who have no idea what is asked in the IME process. Oftentimes, injured workers or their representatives are left to blindly guess as to what the designated physician is asked to address. Similarly, the employer may likely sneak in a question in the IME process to the designated physician and ask for a determination of what is the extent of the injured workers' permanent impairment rating for the work injuries. That is not allowed under section 386-79, but a vital portion of the workers' compensation process because the rating is used to ultimately determine the monetary amount to be awarded to injured workers. Or, the cover letter may contain assumptions or medical summaries, which may be erroneous. A review of the cover letter is essential by injured workers or their representatives before any employer designated examination. The employer designated physician also will summarily dismiss any input from injured workers or their representatives by claiming that he was retained by the employer.

Reason and fairness dictate a joint selection of a fair physician to conduct an IME/ rating. Injured workers or their representatives have presented countless abusive practices, which warrant amending section 386-79, and no reason to document them. There is no reason to repeat all of the abusive practices of the employer because the Legislature has been presented with cogent arguments for approximately two decades on the compelling need to amend section 386-79. It is long overdue to insert a sense of reason and fairness into the statute and rebuke the lie that the "IME" is sacrosanct for the employer. The litany that Section 386-79 is absolutely required because an employee has the benefit that a claim is presumed to be work related is utter nonsense because a jointly selected physician, who is not beholden to the employer, can make an sincere independent determination on any disputed issue in the workers' compensation process.

II. SB 1174, SD 1 Should be Fully Embraced as Consistent With the Humanitarian Purpose of the Workers' Compensation Law, Chapter 386, HRS.

SB 1174, SD 1 will curb a substantial abusive practices by adopting an orderly process of having more true independent medical examinations. We will be much closer to having "independent physicians," a misnomer as now applied by an employer. There will be substantial cost savings by the avoidance of unnecessary protracted litigation. In turn, there should be expedited claims processing as intended by the Grand Bargain, which stripped injured workers of the right to file lawsuits for their personal injuries to make them whole for their damages following work injuries, and in exchange, they were provided with highly limited statutory benefits under the Workers' Compensation Law pursuant to Chapter 386, HRS. This is akin to the no-fault law with less monetary benefits, which should be unquestionably promptly paid.

Under the rules of statutory construction, the operative word "independent" is required to be given its plain, simple meaning. As defined in the Webster's Dictionary, the most common definition of "independent" is "not subject to control by others." Another common meaning is "not looking to others for one's opinion or for guidance in conduct." At least during nearly the last decade of legislative sessions, a substantial number of bills have been proposed with the hopes of securing that "independent" medical examination pursuant to section 386–79. Under the rules of statutory construction, unambiguous words contained in statutes like "independent" must be given its plain, simple meaning, consistent with the underlying purpose of the enabling statutes. *Bailey's Bakery, Ltd. v. William Borthwick*, 38 Haw. 16; 1948 Haw. LEXIS 34 (1948).

Consistent with the foregoing discussion, SB 1174, SD 1 should be passed without hesitation. The mantra of opposition speaks volumes of the disingenuous antics, which an employer views as a means to avoid the Grand Bargain and rob injured workers of their meager statutory entitlements under Chapter 386. This proposed bill requires the mutual selection of physicians to conduct "IMEs" pursuant to section 386-79, like the objective process of selecting arbitrators to resolve labor disputes between unions and employers contained in collective bargaining agreements, which have worked ideally for decades in both the public and private sectors. We know that this process will work, and work well by ending abusive practices, trickery and other undue advantage for an employer or its representatives.

III. Conclusion.

This year is the 100th anniversary of the Grand Bargain. I do have a suggestion. The Chair should consider adding another subsection which requires that "the list of physicians also be practicing physicians with patients, unless agreed to by the parties." It is shameful that certain designated "independent" physicians have depended their entire livelihood or nearly all of their livelihood on income from conducting so-called "IMEs." I also applaud the individuals drafting and introducing the proposed bill, which should be passed without any reservations.

Perhaps, one undeniable elementary consideration is to view the critical need to amend section 386-79 because injured workers can never secure experts like the employers or their representative who have nearly infinite resources to engage in prolonged litigation by hiring

their designated physicians to conduct examinations and circumvent section 386-79 by having their other highly paid physicians to conduct records review and generate bias reports as well to overwhelm injured workers.

BIA-HAWAII
BUILDING INDUSTRY ASSOCIATION
THE VOICE OF THE CONSTRUCTION INDUSTRY

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Testimony to the House Committee on Health
Wednesday, March 18, 2015
10:00 a.m.
Hawaii State Capitol - Conference Room 329

RE: H.B. 1174, S.D. 2, RELATING TO WORKERS' COMPENSATION

Chair Belatti, Vice-Chair Creagan, and members of the Committee:

My name is Gladys Marrone, Chief Executive Officer for the Building Industry Association of Hawaii (BIA-Hawaii), the Voice of the Construction Industry. We promote our members through advocacy and education, and provide community outreach programs to enhance the quality of life for the people of Hawaii. BIA-Hawaii is a not-for-profit professional trade organization chartered in 1955, and affiliated with the National Association of Home Builders.

BIA-Hawaii is **strongly opposed** to S.B. 1174, S.D. 2, which would require that the independent medical examination (IME) and permanent impairment rating examination for workers' compensation claims be performed by physicians mutually agreed upon by employers and employees, or appointed through the recommended process. It would also amend the workers compensation laws of the State of Hawaii to allow the benefits of an injured employee to be suspended for any refusal to submit to an examination not just unreasonable refusals.

The current statutes have numerous safeguards in place to allow injured employees full disclosure of an employer/insurance carrier's IME report, the right to seek their own medical opinion if they disagree, and an appeal process if the parties cannot agree. A majority of IME's are conducted today under the current statutes without incident or dispute. Permanent impairment rating examinations are currently performed by mutual agreement between parties, without any need for mandate by legislation.

Both changes to the system may be at the expense of finding the best available care for injured claimants in a timely manner. Simply finding qualified physicians to conduct these reviews is time consuming and results in delays due to a shortage of such professionals. Furthermore, the arbitrary process prescribed to appoint an IME physician does nothing to create a mutually agreeable choice as a physician chosen by the employer will be selected 100% of the time using this proposed method.

The ability for an employer to select an IME ensures there is a check and balance system for overall medical care for the injured worker because injured workers select their own treating physician. Without it, the system would be one-sided and costs for any employer, whether private or government, could quickly escalate, resulting in an inequitable, unaffordable, and unsustainable program.

If the intent of this bill is to build trust and reduce confrontation in the workers' compensation system, it will fail at both objectives. Instead, this bill will compel claimants to rely more heavily on plaintiffs' attorneys to navigate increasingly complex procedures.

Honorable Jill N. Tokuda, Chair
Senate Committee on Ways and Means
March 02, 2015
S.B. 970
Testimony of BIA-Hawaii