

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

SELECT COMMITTEE ON WORKERS' COMPENSATION

Call to Order: By CHAIRMAN CHASE HIBBARD, on February 12, 1993,
at 3:45 P.M.

ROLL CALL

Members Present:

Rep. Chase Hibbard, Chairman (R)
Rep. Jerry Driscoll, Vice Chairman (D)
Rep. Steve Benedict (R)
Rep. Ernest Bergsagel (R)
Rep. Vicki Cocchiarella (D)
Rep. David Ewer (D)

Members Excused: Rep. Cocchiarella

Members Absent: None

Staff Present: Paul Verdon, Legislative Council
Evy Hendrickson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 511, HB 487, HB 456
Executive Action: None

CHAIRMAN HIBBARD said that on February 15 the committee would hear HB 534 and HB 604, by REP. ROYAL JOHNSON, general revisions of workers' compensation. The committee would assemble a package of workers' compensation bills to go to the labor committee to be heard as a package.

HEARING ON HB 511

Opening Statement by Sponsor:

CHAIRMAN HIBBARD, House District 46, Helena, said the frustration leading to the introduction of this bill was the lack of solid objective data about what was really happening in the system. The study groups involved have asked about the cause of growth, but no one seems to be able to answer. Adverse court decisions and medical costs have escalated, but the state needs to know what is really driving the increase in the unfunded liability and what can be learned and applied to the new fund to prevent the same escalation from occurring. If the problem could be defined, the solution would follow. There must be good solid management

data in the workers' comp system to accomplish this. The bill provides that the Department of Labor will set up a workers' compensation data-base to acquire information critical to the management of the system. He then reviewed HB 511 section by section.

Proponents' Testimony:

Chuck Hunter, representing the Department of Labor and Industry, said states like Oregon and Washington have had successful turn arounds in their systems because they control their costs both in dollars and usage. They have systems that are predictable and easy for people to understand, resolve claims quickly and informally, are run by workers and employers and not by special groups, and have good management data.

This bill provides data base housed in the Department of Labor that would provide consistent information on medical cost usage including rehabilitation, indemnity cost, payments made to workers to replace lost wages, claimant accident information, insured performance data and litigation and court decisions data.

This would enable the department to pinpoint objectively where the problems are; to know what effect proposed solutions would have on dollar costs and on workers and employers; and to measure the effects of changes made.

Jacqueline Lenmark, representing the American Insurance Association, said they supported the bill.

Rose Hughes, Executive Secretary of the Montana Health Care Association, said she also served on Governor Stephens' task force on workers' compensation and agreed with other proponents.

Russell Hill, Montana Trial Lawyers Association, supported HB 511. He encouraged the committee to look at litigation to determine whether this causes inefficiencies in the system or reflects inefficiencies in what is supposed to be a self-administering system.

David Owen, employed by and representing the Montana Chamber of Commerce, urged the committee to be cautious when working through this legislation.

Don Judge, representing the Montana State AFL-CIO, reiterated the previous testimony. Mr. Judge said they had worked with the committee and the Fund to discuss the confidentiality, and he was informed by the sponsor that they would work with AFL-CIO if amendments are necessary.

Jim Murphy, representing the State Fund, believed that an ongoing continual monitoring of the system is necessary. He suggested that, if the bill receives a do pass, the committee seek input

from various people including the State Fund.

Mona Jamison, representing the Montana Chapter of the American Physical Therapy Association, strongly supported the bill and said the data base would be absolutely critical in developing needed management information.

Bill Crivello, Manager of Crawford Health and Rehabilitation, reiterated Ms. Jamison's testimony.

Robert Olsen, Montana Hospital Association, said they also supported the creation of the data base even though the fiscal note indicates a large sum of money.

Mike Micone, representing the Montana Motor Carriers Association, said he was part of the Governor's task force and believed it was necessary that a good management data base system be developed in the state.

Paul Svrcek, Missoula, immediate past chairman of the Interim Legislative Committee on Workers Compensation, said that, had this information been available, it would have made the committee's work a lot easier. He supported this proposal.

Opponents' Testimony:

Oliver Goe, representing the Montana Municipal Insurance Authority (MMIA), Montana School Groups Insurance Authority (MSGIA) and Montana Association of Counties (MACO), said these are self-insurers who provide coverage for cities, towns, counties, and school districts throughout Montana. They have very successful programs and have saved a tremendous amount of tax dollars. Mr. Goe said they oppose this bill because of its underlying costs. The concept of the bill is very good, but they already receive the data. All self-insured entities keep close track of claims and claims management, medical costs and benefits.

George Wood, Executive Secretary of the Montana Self Insurers Association, expressed concern about the cost of what they believe would be quite an elaborate system. Another concern is the cost of compliance.

Questions From Committee Members and Responses: None

Closing by Sponsor:

CHAIRMAN HIBBARD said that almost everyone felt the bill was a good idea even though it involves a great deal of money. If this could lead to making better decisions and identifying problems at the beginning or preventing problems before they occur, this might be the cheapest investment the state could ever make.

CHAIRMAN HIBBARD said if the state would develop system-wide data, it would be much easier to find out where problems exist and then attempt to change the law, the benefits, rehabilitation, utilization, or whatever is wrong in order to benefit everyone.

HEARING ON HB 487

Opening Statement by Sponsor:

REP. RAY BRANDEWIE, House District 49, Bigfork, explained the purpose of HB 487. EXHIBIT 1

Proponents' Testimony: Roger Tippy said he was not representing any particular group. REP. BRANDEWIE had asked him to research the constitutionality of various proposals presented this session. EXHIBIT 2

Harlee Thompson, manager of Intermountain Truss in Helena and a delegate from the Montana Building Industry Association to the Coalition for Workers' Comp System Improvement. EXHIBIT 3

Don Allen, on behalf of the Coalition of Workers' Comp System Improvement, supported HB 487. Mr. Allen said there was a strong feeling among the coalition that unless the state was able to address this issue, it would not be able to get a handle on the total set of problems facing the state as far as workers' comp. Harlee Thompson offered amendments. Mr. Allen went through the amendments section by section. EXHIBIT 4

Mr. Allen said the intent of the amendments was to delete words that would continue to cause problems in terms of tort decisions.

Oliver Goe, representing MMIA, MACO & MSGIA, said they favored HB 487 but that he had a problem with one of the amendments. The problem would arise in court where there could be argument as to whether a particular limitation on benefits agreed to by the legislature would in fact be actuarially sound or necessary. He suggested inserting the words "and place limits on the duration of level of benefits" which should take care of the problem.

CHAIRMAN HIBBARD informed Mr. Goe that, if he was going to submit an amendment to delete the language, to see Paul Verdon, the committee's staff person.

Nancy Butler, representing the State Fund, said they supported the bill; however, they had the same concern as Mr. Goe.

Casey Emerson, representing King Tool and the Montana Manufacturers Association, said he was in favor of the bill but was more in favor of the amendment. EXHIBIT 5

Nancy Griffin, Montana Building Industry Association, supported the legislation and reminded the committee that this issue had been approved by voters years ago. Through a technicality it was thrown out by special interest groups. Ms. Griffin urged the committee to again let the voters of Montana have their say on the issue.

Charles Brooks, representing the Montana Retailers Association, supported HB 487 and said it was another step in the direction of solving some of the problems in the system.

George Wood, Executive Secretary of the Montana Self Insurers Association, supported the legislation with the amendments that had been proposed and requested a do pass.

Jacqueline Lenmark, representing the American Insurance Association, supported the bill with the amendments proposed.

Opponents' Testimony:

Russell Hill, representing the Montana Trial Lawyers Association, said the language in the bill as written essentially adds nothing to current law. The legislature already does, and has for years, set eligibility criteria. The legislature or the Fund is empowered to set actuarially sound limits whether they have done so or not.

He said the two amendments mentioned by proponents make significant changes in the law and described what those changes would do. Mr. Hill urged the committee to seriously consider the proposed amendments.

Don Judge, representing the Montana State AFL-CIO, said the bill should be in the judiciary committee as this law would affect everyone. If someone is covered by workers' comp, he is already granted a limited liability. It's a question of when they're not covered under workers' comp that the change in the statute would apply. People who are not covered by workers' comp should have the right to full legal redress. He encouraged the committee to give a do not pass.

Questions From Committee Members and Responses:

Roger Tippy addressed the exclusive remedy under workers' comp before and after the amendment. Mr. Tippy did not believe the proposed amendment to the constitutional section would change the remedy except that the words "immediate employer" would come out. He did not know what the legal implications of that would be. Mr. Tippy said he didn't have practical experience in that area.

Closing by Sponsor:

REP. BRANDEWIE said the intent of the legislation was to keep some control over how much is spent and how much can be earned by trial lawyers. He said there must be some kind of legislation offered the people to let them decide whether they want to amend the constitution in this fashion.

HEARING ON HB 456

Opening Statement by Sponsor:

REP. BENEDICT said he represented the Joint Select Interim Committee on Workers' Compensation as their Vice Chairman and he also represents ratepayers in the workers' comp system in the State Fund. He said the bill would authorize the executive to negotiate the liquidation of the old fund. He then reviewed the bill section by section.

Proponents' Testimony:

Paul Svrcek, Missoula, and the immediate past chairman of the interim committee on workers' compensation, said he also served on the Governor's task force on workers' compensation. He said this proposal would allow the state to enter into a partnership with the capital, creativity, technology, and private sector participation and expertise needed to chart a new course.

EXHIBIT 6

Riley Johnson, representing the National Federation of Independent Business (NFIB), said they polled their members in 1993; of the 8,600 Montana small business members, three out of four favored the infusion of a private entity into the workers' compensation problem. This is because NFIB members have lost faith in the state's ability to handle the old fund debt and the recurring problems developing in the new fund.

He said NFIB is convinced that the answer lies outside of state government and HB 456 gives Montana's chief executive the opportunity to seek that outside solution and get on with the real solution to the \$500 million debt before it increases. NFIB urged a do pass.

David Owen, Montana Chamber of Commerce, supported the legislation and said George Wood of the Self Insured Group also asked to be noted as supporting the bill.

Charles Brooks, Montana Retail Association, the Montana Tire Dealers, the Montana Hardware Implement Association and the Montana Office Equipment Dealers, said his associations had advised him to express their total frustration with the system and total lack of confidence in the way the system is being managed.

Mr. Brooks said if they saw that the management of the fund was solved and they had some assurances that it would move forward in a business-like manner, they would be in the forefront to look at some additional rate increases.

Jacqueline Lenmark, American Insurance Association, conveyed their compliments and expressions of support for this proposal. She said the association believes that insurance properly belongs in the private sector. Ms. Lenmark, as a representative of the Centre Re Insurance Company, Alexsis Inc. and Uhlemeyer Services Inc., indicated their support for passage of the bill.

She said she was asked by Greg VanHorzen who represents the State Farm Insurance Company to add their endorsement to this bill.

Opponents' Testimony:

Leo Heyenrath, Senior Partner and Claims Management Consultant with Heyenrath and Associates, appeared as an independent party and had no interest on either side. He said he was there merely out of respect to his clients which include Montana Hospital Association, the Montana Municipal Insurance Authority, and for the people of the state of Montana. EXHIBITS 7, 8 and 9

Mr. Heyenrath said it would be very difficult and not in the best interest of Montana to pass this legislation. He said the pitfall of selling this program to private industry would be that this body would no longer have control of those assets.

Chris McCoy, Claims Examiner with the State Fund, said she had been with the division of workers' compensation for six years which allowed her a unique and informed perspective on this issue. Ms. McCoy said when the agency was the DWC, the administrator was a political appointee subject to change with each new governor, which in turn led to divergent philosophies and a change in direction with each new administration. She said political pressure was exerted at the time to keep rates artificially low resulting in the unfunded liability and lack of staff to adequately manage the claims received. Also, a series of adverse court decisions which expanded benefits beyond anything anyone anticipated allowed the unfunded liability to grow to its present proportions.

Ms. McCoy said workers' compensation is governed by a board of directors, with a CEO without ties to the political process, and a mandate to run the program based on sound business principles and in the most cost-effective manner. She said that, unfortunately, in the short-term, policyholders have had to pay for past rates that were artificially depressed with a sharp increase in the present. She said HB 456 appears to offer hope for an overnight solution. EXHIBIT 10

Kevin Bartsch, claims examiner for the State Fund, presented

testimony in opposition to HB 456. EXHIBIT 11

Jim Adams, Associate Director for the Montana Public Employees Association (MPEA), appeared in opposition to the bill. MPEA believes that any legislation that would give the executive branch the power in this bill was unacceptable. The thought of handing the Governor \$400 million to pay an international corporation to take a liability off our hands is unacceptable.

Questions From Committee Members and Responses:

REP. DRISCOLL asked Jacqueline Lenmark if she knew of any company that would be willing to take on the old fund. Ms. Lenmark said, in regard to there being no upper limits, she was not aware of any company that could honor that request and she had inquired of several. Ms. Lenmark said the first working proposal presented to the interim committee tried to accommodate that concern. That was the reason the extra layers of coverage were provided in that first proposal because there isn't an ability within the insurance industry to give unlimited coverage. She said the companies with whom they were dealing were not permitted by their charters to do that.

REP. BENEDICT said it leaves the executive branch free to do whatever it wants in terms of taking care of the old fund.

REP. EWER then asked if the committee is not really contemplating the Governor talking to the Zurich people. REP. BENEDICT said again to refer to section 1. He said the members of the select committee that worked on the bill tried to work on the flexibility for the executive to do whatever is deemed in the best interests of the state. If that included deciding that the Zurich proposal was not necessarily in the best interest of the state and using a third party administrator and retaining the management that's available in the State Fund or some combination, that would be up to the executive in this bill.

REP. EWER said Mr. Heyenrath acknowledged that there is a claims management problem in the new fund so why shouldn't the state take a look at privatization. Mr. Heyenrath said there isn't a reason, however, why the State Fund cannot do as good a job, if not better, than any private enterprise. Mr. Heyenrath said the State Fund in Montana had claims management inventories of over 800 files of injured workers. He said there are lawyers, doctors, rehab providers, medical bills, and legislation attached to all the benefits and that's an impossibility for anybody.

REP. EWER asked Mr. Heyenrath if he believed the state had what it takes to make an assessment of a premium offered by an insurance company to take over the liability of the old fund. Mr. Heyenrath said he had looked at the numbers from all sides and he did not see why any legislation would be introduced with a \$400 million cap authorizing the Governor to basically negotiate

with anybody.

REP. BERGSAGEL asked Mr. Heyenrath if he had been in contact with the State Fund. Mr. Heyenrath said he had a brief meeting and tour with the director of the State Fund to familiarize himself with the overall layout. Other than that, the only contact he had with any members of the committee or with State Fund had been in the past two days.

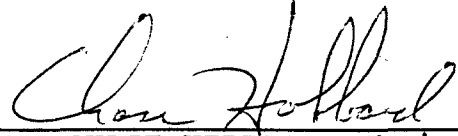
REP. BERGSAGEL asked Mr. Heyenrath if he had worked for Zurich and whether this was the same company that had presented the proposal. Mr. Heyenrath said it was the same company and he had worked for them for two years as the claims manager in the California office and had left the company on good terms.

Closing by Sponsor:

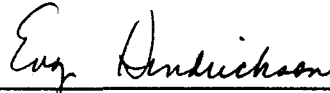
REP. BENEDICT closed on his bill and said he empathized with the employees of the State Fund and government in general. Difficult decisions have to be made about where to go in state government. He said the bill is not meant in anyway as an indictment of those people employed by the Fund but it is a proposal to correct a system that is out of control. REP. BENEDICT said the joint select committee heard many proposals and hundreds of Montana citizens testified, including representatives of the State Fund, during the eighteen months they met. He asked the legislators on the panel to ask people if they think the state belongs in the insurance business. He feels the input would be overwhelming support for HB 456 and he urged a do pass.

ADJOURNMENT

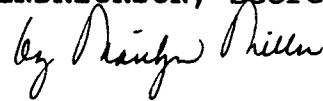
Adjournment: 6:20 p.m.



REP. CHASE HIBBARD, Chairman



EVY HENDRICKSON, Secretary



CH/eh

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
SELECT COMMITTEE ON WORKERS COMPENSATION

ROLL CALL

DATE 9-12-93

[illegible]

HR:1993

wp.rollcall.man

HOUSE BILL 487 IS INTENDED TO GUARANTEE THAT OUR EFFORTS TO REFORM THE WORKERS' COMP SYSTEM WILL, WHEN TESTED IN THE COURTS, BE JUDGED BY THE RATIONAL BASIS TEST OF THE EQUAL PROTECTION CLAUSE, AND THAT THE COURTS WILL CUT US A LITTLE SLACK IN LOOKING FOR A RATIONAL BASIS FOR OUR LEGISLATION. THE AMENDMENT IS PATTERNED AFTER THE WELFARE AMENDMENT WE WROTE IN 1987 AND THE PEOPLE VOTED FOR IN 1988. YOU MAY RECALL THAT FOR A WHILE MANY EFFORTS MADE IN THE APPROPRIATIONS COMMITTEE TO PUT SOME LIMITS ON WELFARE WOULD BE DECLARED UNCONSTITUTIONAL A FEW MONTHS LATER AS DENIALS OF EQUAL PROTECTION. THEN THE AMENDMENT WENT INTO ARTICLE TWELVE, SECTION THREE OF THE CONSTITUTION, DEALING WITH WELFARE, THAT "THE LEGISLATURE MAY SET ELIGIBILITY CRITERIA FOR PROGRAMS AND SERVICES, AS WELL AS FOR THE DURATION AND LEVEL OF BENEFITS AND SERVICES." SINCE THEN, OUR APPROPRIATIONS ACTS HAVE NOT BEEN HELD UNCONSTITUTIONAL. THEY MUST STILL DRAW LINES ON A RATIONAL BASIS TO SATISFY EQUAL PROTECTION STANDARDS, BUT THAT RATIONAL BASIS CAN BE INFERRED FROM OUR OVERALL BUDGET SITUATION AND OUR COMMITTEE DISCUSSIONS.

I AM CONCERNED THAT THE COURTS MAY INCREASE THE SCRUTINY OF OUR WORK COMP LEGISLATION, EITHER EXPLICITLY OR BY SETTING HIGH LEVELS OF PROOF FOR THE RATIONAL BASIS FOR WHAT WE DO. WITH THIS AMENDMENT IN THE CONSTITUTION WE LET THE PEOPLE SAY IF WE SHOULD HAVE AS MUCH DISCRETION IN LIMITING COMP BENEFITS AS WE NOW HAVE IN LIMITING WELFARE BENEFITS.

The rational basis standard for workers' comp legislative classifications used to be fairly relaxed:

In applying the Equal Protection Clause to social and economic legislation, great latitude is given to state legislatures in making classifications. Perfection in making classifications is neither possible nor necessary; neither is mathematical nicety nor perfect equality. Rather, where the goals of a classification are legitimate and the classification is rationally related to the achievement of those goals, the statute should be constitutionally upheld.

McClanathan v. State Fund, 186 Mont. 56 (1980)

Several years later, the way this standard was applied began to shift:

In the present case there is nothing **on the face of the statute** to indicate what the state interest may be in excluding from Workers' Compensation coverage the employer's family members who reside in the employer's household unless specifically elected by the employer. Nor is there any **legislative history** from which to glean a possible **governmental objective** for this classification.

Cottrill v. Cottrill Sodding Service, 229 Mont. 40 (1987)

While the courts have not switched from the rational basis test to a higher level of scrutiny such as the "middle-tier" standard they developed for welfare, *Butte Community Union v. Lewis*, 229 Mont. 212 (1987), the level of proof suggested in *Cottrill* suggests a trend away from other rational-basis opinions, in which the rational basis could be inferred from the social and political environment in which legislation was developed.

Robert Duffy

Homebuilders Assoc. of Billings
252-7533

S.W. Montana Home Builders Assoc.
585-8181

Falls Homebuilders Assoc.
HOME



EXHIBIT 3

Flathead Home Builders Assn
752-2522

Missoula Chapter of NAHB
273-0314

Helena Chapter of NAHB
449-7275

Nancy Lien Griffin, Executive Director
Suite 4D Power Block Building • Helena, Montana 59601 • (406) 442-4479

HB 487

Submitting to Voters Constitutional Amendment Allowing Legislature to Set Worker's Compensation Benefits and Eligibility Criteria

Recommend:
Do Pass

Mr. Chairman: Ladies & Gentlemen of the Committee:

I am Harlee Thompson, manager of Intermountain Truss in Helena, and a delegate from the Montana Building Industry Association to the Coalition for Worker Compensation System Improvement (CWCSI).

HB 487 is a critical component of this committee's efforts to implement real change in Montana's Work Comp system. We have seen in previous legislative sessions attempts to control the number of injury cases which find their way to Montana's court system. These attempts have virtually all met with failure, because of court rulings which are counter to legislative and public intent.

This proposed constitutional amendment allows the people of Montana to determine which political entity should hold authority for the determination of worker's compensation benefits and eligibility criteria. You have seen the voters of Montana in a near state of rebellion concerning the amount of public debt created, in part, by a high number of court settlements in excess of scheduled benefit payments. It is the Legislature, and the Montana voters who elect them,--not the court system-- that has responsibility for this liability.

It has become impossible for insurer's to predict in a sound actuarial manner rates and benefit liabilities when the establishment of those criteria is subject to the whims of the court system, where the party with the best attorney is most likely to prevail.

It is not the intent of this legislation to limit the rights of workers to full compensation for the full extent of their injury. It is an attempt to let the people of Montana give to the Legislature authority to set benefit criteria which are in realistic proportion to revenues received. This legislation does not limit the rights of the worker to sue for negligence or any other civil tort action, it only prevents the court from legislating Work Comp benefits and eligibility criteria.

EXHIBIT 4
DATE 2-12-93
HB 487

Amend House Bill 487, first reading bill, as follows:
Proposed by Rep. Brandewie

1. Title, page 1, line 9
Following: "SERVICES,"
Insert: "DELETING THE IMMEDIATE EMPLOYER LIMITATION;"
2. Page 1, line 18
Following: "deprived of"
Strike: "this full"
3. Page 1, line 20
Following: "his"
Strike: "immediate"
4. Page 1, line 21
Following: "such"
Strike: "immediate"

Don Allen

Ever since we adopted the new Constitution in 1972 it has caused a lot of problems dealing with Civil Rights Tort Cases.

These Tort problems have nearly ruined Worker Comp in Montana & ~~that has~~ ^{many} WC rates have driven companies out of Montana. ruined some companies & in general driven Montana's economy down, down, down.

One of the changes from the old Constitution ~~was~~ to the new was a paragraph that was added by Wade DeHood, a lawyer from Anaconda. This paragraph contained the word full in the phrase - full legal redress. Every one needs or has a right to a redress of but the word full really doesn't belong. The word full in this context is so open ended that nearly any thing goes in a Civil right law suit - as ~~judged~~ ^{decided} by our ~~own~~ Supreme Ct. in the mid 80s.

Not only is ^{the word} full open ended but it also makes it impossible for you legislators to set any direction in W.C. cases.

Again - as our Supreme Ct. ~~decided~~ ^{ruled} in the mid 80s - if a plaintiff didn't

after talking to ~~the~~ ^{the} ~~legislature~~ ^{legislature} of Montana I don't think the people in Montana will give you that when you find the trouble you must be able to act on them.

like the legislative direction & the result
caused by the law - he could just
appeal ~~the~~ ^{the} claim that he had ~~not~~ not
gotten full legal review so the Supreme
Ct. would ~~throw the~~ declare the law
unconstitutional and W.C. in stuck again.

So its good to see that the Legislature
is thinking about correcting that part of the
Constitution

I'm sure that you are aware of the
fact that the Legislature & then the
Liberty Coalition tried to ~~correct~~ correct
this in 1986.

The coalition put Initiative #30 on the
ballot & the Lawyer fought it, took a
Technical, but it did get voted on &
passed in 1986 by a 55% to 45% vote
of the people of Mo. even with the opposition
of the Lawyers.

However - the Lawyer then went to
the Supreme Ct & got the Amendment
declared invalid on a Technicality.

So again we still had the problem.

As a consequence of this Supreme Ct.
ruling - many of the laws passed by

of that time

The just recessed Legislature were declared unconstitutional. Some were W.C. laws.

~~As a~~

As a result of this our W.C. got worse & worse. There was a direct correlation between the Supreme Ct. decision & the ~~loss~~ money lost by W.C.

And many of those S.Ct. decisions were based on that ^{word} full in full legal ~~redress~~ phrase.

With that word full in the Constitution your Legislature will never be able to get control of the W.C. program, so ~~it~~ ~~must be eliminated~~. The word full must be amended out of the Constitution.

1. We can't let our W.C. drive people out of business & businesses out of the State
2. We can't let the economy of Mt. go down, down, down

3. We can't let the state suffer from the shortage of money that this causes
4. We can't have the word W.C. in the nation ^{even worse} than Calif.

~~So we must amend the Constitution,~~

~~Correct W.C. & get everything moving again.~~ These things have been going on for years & getting worse year by year.

So - Amend the Constitution & then you will be able to ~~the~~ correct the problem with W.C.

H. E. ...

EXHIBIT 6
DATE 2-12-93
HB 456

STATEMENT OF
PAUL SVRCEK
RE HB 456
ALLOW GOVERNOR TO CONTRACT WITH
PRIVATE COMPANY TO TAKE OLD/NEW WORK COMP FUND

Mr. Chairman and members of the committee:

My name is Paul Svrcek. I reside in Missoula. I am the immediate past Chairman of the Interim Committee on Workers' Compensation. I was also a member of the Governor's Task Force on Workers' Compensation. I do not speak in an official capacity for either of those groups here today.

Mr. Chairman, in the early part of this century, when the social contract of workers' compensation was established, Montana was a national leader in adopting the reforms. Indeed, we were seen as a model for many years, even decades. Our system generally worked well, but through inappropriate politics, a lack of resources, inertia, judicial and legislative tinkering, neglect, mismanagement, and a myriad other factors, some within and some outside our control, our system has fallen into serious disarray.

My own involvement in the issue is nearly 10 years old. My education began before I even entered the Legislature. I have watched as we have applied incremental therapies one after another with little or no effect. The most significant of these is probably the first, Senate Bill 315, enacted in 1987, in which we significantly reduced benefits, diminished attorney involvement, strengthened arbitration, and made other changes. We enacted a payroll tax. We created a quasi-autonomous board. We separated the two funds. We established a medical deductible program. We

tried to bond our way out of the debt. We lowered claims management ratios and made many other changes along the way in the last 10 years.

And where are we today? In the last four years, the unfunded liability has gone from \$200 million to nearly half a billion dollars, and in a frighteningly familiar pattern the new fund seems to be hemorrhaging unabated as well. Applying more incremental therapies at least on their own will not work. It is time for radical surgery. It is time to chart an entirely¹ new course in workers' compensation in Montana.

I have served on two interim legislative committees. I served on the Governor's Task Force. I have sat through countless meetings; I have listened to probably hundreds of experts and thousands of hours of testimony and discussion. I have studied this problem from more angles, considered more proposals and suggestions, than I could possibly remember. Mr. Chairman, I am more confident than I have ever been in the last decade that the proposal embodied in House Bill 456 is the vehicle on which Montana can hasten its return to workers' compensation health.

Now, lest I be accused of being some sort of shill, let me say that my tenure as a legislator is generally marked by skepticism, mistrust, and sometimes even disdain for the insurance industry. Usually justifiably so, if I may say so. In fact, many of the industry representatives and legislators that are here today can verify that. In spite of those sentiments, I hope you will join me in endorsing the wisdom and foresight of this proposal. It is in

the private sector that I have found that the creativity, the strength, the capital, the expertise, and the partnership exists that Montana so desperately needs. Now you may ask about other states who have turned their system around without private intervention. Oregon and Washington are frequently mentioned, but there are significant differences between Montana and both of those states. For instance, Oregon had vast capital reserves to rely upon and invest in their reforms. Washington is a monopoly state, where, by the way, workers pay part of their workers' compensation premium. Montana has none of the advantages of these states.

I have spoken to this Committee in the past regarding the various pieces of the work comp puzzle that need to be fit together to accomplish this monumental task. I view this particular proposal as a centerpiece around which we can add improved safety, fraud control, early return to work, managed care, and other needed reforms to rebuild our work comp system to health, strength, balance, vitality, and effectiveness. This proposal allows us to create a partnership with the capital, creativity, technology, private sector participation, and expertise that we need to chart our new course.

Of course, ultimately we may find that we are unable to consummate the transaction contemplated within House Bill 456. Perhaps all the parties involved will ultimately be unable to come to a mutually beneficial agreement. I pray that does not happen. After all, the train is right in front of us. I don't believe that it will happen. The Interim Legislative Committee was made up of

DATE 2/12/93
HB 456

a group of skeptics just like myself -- especially skeptical about the plausibility and possibility of this particular idea. I hope the fact that we ultimately had a very strong vote from that Committee in favor of this proposal will help to convince you that it is in Montana's best interest to allow this proposal to go forward. It is incumbent upon you to give it the momentum it needs to facilitate its full development and success.

Public-private partnership, reinventing government: these are the latest buzz words that might well be regarded as so much more empty rhetoric. We, you, have the opportunity to give life and real tangible meaning to these concepts. You can help bring Montana full circle. As we lead the nation into the 20th century in workers' compensation, we can once again be a model to follow and lead the nation into the 21st century. Members of the Committee, this may well be a once in a century opportunity. I implore you to take the next step in this new course and endorse House Bill 456.

Submitted to House Select Committee on Workers' Compensation for hearing on House Bill 456, Friday, February 12, 1993, 3:00 o'clock p.m.

HEYENRATH & ASSOCIATES

CLAIMS MANAGEMENT CONSULTANTS — AUDITORS

EXHIBIT 7

DATE 2-2-93

HB 456

☐ 1142 MANHATTAN AVE., SUITE 240
MANHATTAN BEACH, CALIFORNIA 90266-5398
(213) 546-1108

☐ WEST 1616 DEAN AVENUE
SPOKANE, WASHINGTON 99201-1825
TEL (509) 325-9726 • FAX (509) 325-2431

HEYENRATH & ASSOCIATES

Heyenrath and Associates was formed in 1980 to meet specific needs of clients insuring and self-insuring their Workers' Compensation, General Liability and Property exposures.

As an independent auditing and consulting firm, there are no financial affiliations with any service firm or insurer which Heyenrath and Associates might be in a position to audit or evaluate.

We have a combined total of over 75 years of claims-legal management experience and have extensive training and experience in all aspects of claims management. This accounts for our full understanding of all types of insured and self-insured programs.

Heyenrath and Associates has conducted claims audits and claims management consulting services in all state, as well as some federal jurisdictions. We have extensive experience in providing qualitative input to actuaries of major U.S. accounting firms.

We stay abreast of all new laws and judicial interpretations to better study and apply claims management techniques.

Heyenrath and Associates is an equal opportunity employer.

EXHIBIT 7
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PROFILE

LEO HEYENRATH

EXPERIENCE

Heyenrath & Associates - Senior Partner since 1980. Provides independent claim auditing and consulting services for corporations and governmental entities, insuring and self-insuring their Workers' Compensation, General & Auto Liability and Property exposures.

Heyenrath & Associates has conducted Workers' Compensation, General & Auto Liability and Property claims administration audits in all State as well as some Federal jurisdictions.

Regain - One year as Regional Manager. Responsible for providing Vocational Rehabilitation services through professional vocational counselors.

CNA Insurance Company - Two years as Claims Manager. Managed a direct reporting service office handling all claims for Southern California. Responsible for local as well as national accounts. Staff of 40 professional, technical, and clerical personnel. Annual reported claims, approximately 10,000. Responsible for all office operations, including training, hiring, quality control, and coordination with other offices.

Republic Indemnity Company of America - Two years as Claims Supervisor. Responsible for case management and training of Workers' Compensation claims unit, handling approximately 1,500 indemnity claims.

Zurich-American Insurance Company - Two years as Claims Supervisor. Supervised and trained claims personnel. Responsible for all Workers' Compensation claims for southern California, New Mexico and Arizona.

Fremont Indemnity Company - Two years as Senior Claims Examiner. Handled all aspects of case management in all reserve size categories for General Liability and Workers' Compensation claims.

Industrial Indemnity Company - Four years as Claims Adjuster, Investigator and Claims Examiner. Responsible for adjusting all types of Workers' Compensation and General Liability claims.

**ACADEMIC
BACKGROUND**

BA, Business and Administration
College of Business and Administration
Heerlen, Holland

**PROFESSIONAL
ASSOCIATIONS**

Workers' Compensation Claims Association
California Manufacturers' Association
So. California Council of Self-Insured Employers
National Rehabilitation Association
Public Agency Risk Management Association
Public Risk and Insurance Management Association

CLIENTS

HEYENRATH & ASSOCIATES

EXHIBIT 7
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FINANCIAL AND INSURANCE FIRMS

ADVANCED RISK MANAGEMENT TECH., CA.
AVIATION OFFICE OF AMERICA, TX.
BOWKER INSURANCE BROKERS, CA.
BUCHALTER, NEMER, FIELDS & YOUNGER, CA.
COOPERS AND LYBRAND, CA.
GROCERS AND MERCHANTS INSURANCE SERVICE, CA.
HANBURY INSURANCE BROKERS, CA.
HOFFMAN BROWN INSURANCE BROKERS, CA.
HOUSTON CASUALTY COMPANY, TX.
KINDLER AND LAUCCI INSURANCE BROKERS, CA.
LLOYDS OF LONDON, U.K.
LOCKWOOD, DIPPLE & GREEN, MA.
MANUFACTURERS LIFE INSURANCE COMPANY, ONT., CAN.
NORTH AMERICAN LIFE & CASUALTY COMPANY, INC., IL.
PINEHURST ACCIDENT REINSURANCE GROUP, NJ.
NRG AMERICA LIFE REASSURANCE CORPORATION, PA.
REDWOOD - NATIONAL INSURANCE COMPANY, CA.
RUPP AND JOHNSON, INC., CA.
SPRINGFEILD INSURANCE COMPANY, CA.
SUN LIFE OF CANADA, ONT., CAN.
GEORGE G. ZIMMERMAN & COMPANY, NJ., TX.

PUBLIC ENTITIES

CITY OF ANAHEIM, CA.
CITY OF BEVERLY HILLS, CA.
CITY OF COLORADO SPRINGS, CO.
CITY OF COMPTON, CA.
CITY OF FREMONT, CA.
CITY OF GARDENA, CA.
CITY OF HAYWARD, CA.
CITY OF HUNTINGTON BEACH, CA.
CITY OF LODI, CA.
CITY OF PASADENA, CA.
CITY OF SACRAMENTO, CA.
CITY OF ST. PAUL, MN.
CITY OF SAN BERNARDINO, CA.
CITY OF SANTA ANA, CA.
CITY OF SANTA MONICA, CA.
CITY OF SPOKANE, WA.
CITY OF TORRANCE, CA.

PUBLIC ENTITIES (CONT.)

CITY OF VISALIA, CA.
CITY OF WHITTIER, CA.
CONTRA COSTA COUNTY, CA.
KING COUNTY, WA.
ORANGE COUNTY RAPID TRANSIT DISTRICT, CA.
PINNELAS COUNTY, FL.
STATE OF MAINE
STATE OF WISCONSIN

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PUBLIC AUTHORITIES/FUNDS

ASSOCIATION OF CALIFORNIA WATER AGENCIES, CA.
AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY, CA.
BIG INDEPENDENT CITIES EXCESS POOL, CA.
CENNTINELLA SO. BAY UNIFIED SCHOOL DISTRICT, CA.
CENTRAL COAST CITIES SELF INSURANCE FUND, CA.
CENTRAL REGION SCHOOLS INSURANCE GROUP, CA.
LOS ANGELES UNIFIED SCHOOL DISTRICT, CA.
MONTANA HOSPITAL ASSOCIATION, MT.
MONTANA MUNICIPAL INSURANCE AUTHORITY, MT.
NORTHERN CALIFORNIA CITIES INSURANCE FUND, CA.
NORTHERN CALIFORNIA SPECIAL DISTRICTS INSURANCE AUTHORITY, CA.
OAKLAND HOUSING AUTHORITY, CA.
PORT AUTHORITY OF SEATTLE, WA.
REDWOOD EMPIRE MUNICIPAL INSURANCE FUND, CA.
SANTA CLARA COUNTY SCHOOLS' INSURANCE GROUP, CA.
SCHOOLS EXCESS LIABILITY FUND, CA.
SCHOOLS INSURANCE AUTHORITY, CA.
SCHOOLS LINKED FOR INSURANCE MANAGEMENT, CA.
VENTURA UNIFIED SCHOOL DISTRICT, CA.
WEST SAN GABRIEL VALLEY SCHOOLS SELF INS. AUTH., CA.
YOLO COUNTY PUBLIC AGENCY RISK MGT.INS. AUTH., CA.

CORPORATIONS

ALPHA BETA COMPANY, CA.
AMERICAN MEDICAL INTERNATIONAL, INC., CA.
AMERICAN STORES COMPANY, UT.
BUCHALTER, NEMER, FIELDS & YOUNGER, CA.
CLEVELAND WRECKING CO., CA.
D.S.I. CORPORATION, CA.
GEORGE M. RAYMOND CO., CA.
GRANITE CONSTRUCTION CO., CA.
H.R.T. INDUSTRIES, CA.
LOCKHEED CORPORATION, CA.
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CA.
MODEL GLASS, CA.

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CORPORATIONS (CONT.)

N.I. INDUSTRIES, CA.
NORRIS INDUSTRIES, CA.
RAPID AMERICAN CORP., NY.
REMOVAL INCORPORATED, CA.
RUTAN AND TUCKER, CA.
RYDER SYSTEM, INC. FL.
STANWILL COMPANIES, CA.
TENNECO WEST, CA.
WRIGHT SCHUCHART, INC., WA.

EXHIBIT 7
DATE 2/12/93
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REFERENCES

HEYENRATH & ASSOCIATES

Mr. Bob Worthington
Insurance Coordinator
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Attorney at Law
Browning, Kaleczyc, Berry & Hoven
139 North Last Chance Gulch
Helena, MT 59624
(406)449-6220

Mr. Dick Brown
Senior Vice President
Montana Hospital Association
1720 Ninth Avenue
Helena, MT 59604
(406)442-1911

Mr. Alec Hansen
Executive Director
Montana League of Cities and Towns
208 N. Montana Avenue, Suite 201
Helena, MT 59624
(406)442-8768

Mr. Tom Vance, ARM
President
Association of California Cities
Excess Liability (ACCEL)
c/o City of Anaheim
200 South Anaheim Boulevard
Anaheim, CA 92803
(714)254-5193

Ms. Joni Vaughan
Workers' Compensation Manager
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Seattle, WA 98124
(206)447-7706

Mr. Michael Simmons
Senior Vice President
Sedgwick James of California
600 Montgomery Street, 7th Floor
San Francisco, CA 94111
(415)983-9643

Mr. Lee Van Slyke, FCAS, ASA, MAAA
Principal Actuary
Oakley Van Slyke, Inc.
22661 Puntal Lane
Mission Viejo, CA 92692
(714)380-8031

Mr. Anthony Burns
Chairman - President & CEO
Ryder System, Inc.
3600 N.W. 82nd Avenue
Miami, FL 33166
(305)593-3726

Mr. Frederick Kist, FCAS, MAAA
Partner
Coopers & Lybrand
1155 Peachtree Street
Atlanta, GA 30309-3630
(404)870-1356

UP FRONT PROFIT MARGIN CENTRE RE INVESTED 16 YR. BASIS

EXHIBIT 8
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	5.50%
FY94	\$32,300,000
FY95	\$34,076,500
FY96	\$35,950,708
FY97	\$37,927,996
FY98	\$40,014,036
FY99	\$42,214,808
FY00	\$44,536,623
FY01	\$46,986,137
FY02	\$49,570,374
FY03	\$52,296,745
FY04	\$55,173,066
FY05	\$58,207,585
FY06	\$61,409,002
FY07	\$64,786,497
FY08	\$68,349,754
FY09	\$72,108,991

Heymann + Assoc.

DATA BASED ON TILLINGHAST ACTUARIAL STUDY 16 YEAR PAYOUT

EXHIBIT 9
DATE 2-12-93
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	BENEFIT	EXPENSES		5.50%	FUND	6.00%
	PAYMENTS	AT 6%	BALANCE	INTEREST	BALANCE	
\$307,700,000	\$49,219,977	\$2,953,199	\$255,526,824	\$14,053,975	\$269,580,800	FY 94
\$269,580,800	\$41,422,433	\$2,485,346	\$225,673,021	\$12,412,016	\$238,085,037	FY 95
\$238,085,037	\$36,334,675	\$2,180,081	\$199,570,281	\$10,976,365	\$210,546,647	FY 96
\$210,546,647	\$32,602,601	\$1,956,156	\$175,987,890	\$9,679,334	\$185,667,224	FY 97
\$185,667,224	\$28,986,241	\$1,739,174	\$154,941,808	\$8,521,799	\$163,463,608	FY 98
\$163,463,608	\$26,443,646	\$1,586,619	\$135,433,343	\$7,448,834	\$142,882,177	FY 99
\$142,882,177	\$24,034,130	\$1,442,048	\$117,405,999	\$6,457,330	\$123,863,329	FY 00
\$123,863,329	\$21,925,526	\$1,315,532	\$100,622,271	\$5,534,225	\$106,156,496	FY 01
\$106,156,496	\$19,864,352	\$1,191,861	\$85,100,283	\$4,680,516	\$89,780,799	FY 02
\$89,780,799	\$16,175,201	\$970,512	\$72,635,086	\$3,994,930	\$76,630,015	FY 03
\$76,630,015	\$12,658,910	\$759,535	\$63,211,571	\$3,476,636	\$66,688,207	FY 04
\$66,688,207	\$9,483,823	\$569,029	\$56,635,355	\$3,114,945	\$59,750,299	FY 05
\$59,750,299	\$6,653,346	\$399,201	\$52,697,753	\$2,898,376	\$55,596,129	FY 06
\$55,596,129	\$4,277,273	\$256,636	\$51,062,220	\$2,808,422	\$53,870,642	FY 07
\$53,870,642	\$2,454,046	\$147,243	\$51,269,353	\$2,819,814	\$54,089,167	FY 08
\$54,089,167	\$1,053,127	\$63,188	\$52,972,853	\$2,913,507	\$55,886,360	FY 09
	\$333,589,307	\$20,015,358				

Hegenboth + Assoc.

EXHIBIT 10
DATE 2-12-93
HB 456

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE. MY NAME IS CRIS MCCOY. I, ALONG WITH SEVERAL OF MY COWORKERS, HAVE TAKEN ANNUAL LEAVE TO COME HERE TODAY TO REGISTER OUR OPPOSITION TO HB 456. WE ARE NOT HERE TODAY, HOWEVER, TO SPEAK TO YOU AS STATE FUND EMPLOYEES, BUT AS CONCERNED CITIZENS OF THIS STATE. I FEEL, HAVING PERSONALLY BEGUN MY EMPLOYMENT IN THIS SYSTEM WITH THE DIVISION OF WORKERS' COMPENSATION SIX YEARS AGO, AND ALL OF US HAVING BEEN A PART OF ITS EVOLUTION TO THE PRESENT SCMIF, ALLOWS US A UNIQUE AND INFORMED PERSPECTIVE ON THIS ISSUE.

THOSE OF YOU NOT NEW TO THIS PROCESS WILL RECALL THAT WHEN WE WERE THE DWC, THE ADMINISTRATOR WAS A POLITICAL APPOINTEE SUBJECT TO CHANGE WITH EACH NEW GOVERNOR, WHICH, IN TURN, LED TO DIVERGENT PHILOSOPHIES AND A CHANGE IN DIRECTION WITH EACH NEW ADMINISTRATION. POLITICAL PRESSURE EXERTED AT THE TIME TO KEEP RATES ARTIFICIALLY LOW GAVE BIRTH TO THE UNFUNDED LIABILITY. LACK OF STAFF TO ADEQUATELY MANAGE CLAIMS RECEIVED AND A SERIES OF ADVERSE COURT DECISIONS WHICH EXPANDED BENEFITS BEYOND ANYTHING ANYONE ANTICIPATED ALLOWED THE UNFUNDED LIABILITY TO GROW TO ITS PRESENT PROPORTIONS.

TODAY WE ARE GOVERNED BY A BOARD OF DIRECTORS, WITH A CEO WITHOUT TIES TO THE POLITICAL PROCESS, AND A MANDATE TO RUN THIS PROGRAM BASED ON SOUND BUSINESS PRINCIPLES AND IN THE MOST COST EFFECTIVE MANNER. THIS HAS, UNFORTUNATELY IN THE SHORT-TERM, MEANT OUR POLICYHOLDERS HAVE HAD TO PAY FOR THE SINS OF THE PAST WHEN RATES WERE ARTIFICIALLY DEPRESSED WITH SHARP INCREASES IN THE PRESENT. YOU MUST BEAR IN MIND, HOWEVER, THAT THIS SITUATION

WOULD HAVE OCCURRED REGARDLESS OF WHO ADMINISTERED THIS PROGRAM. SIMPLY LOOK AT OUR COMPETITORS IN THE INDUSTRY AND THE INCREASES THEY'VE HAD TO IMPLIMENT. THIS CURRENT SITUATION WASN'T CREATED OVERNIGHT AND WON'T BE SOLVED OVERNIGHT. HB 456, AT LEAST ON THE SURFACE, APPEARS TO OFFER US HOPE FOR AN OVERNIGHT SOLUTION.

BASED ON OUR EXPERIENCE, IT IS OUR UNANIMOUS OPINION ENACTMENT OF THIS BILL WON'T RESULT IN THIS HOPED FOR OVERNIGHT SOLUTION, AND IS NOT IN THE BEST INTERESTS OF THE CITIZENS OF THIS STATE. WITHOUT QUESTION, THE PEOPLE OF MONTANA CANNOT AFFORD THE PRICE TAG BEING DISCUSSED TO FINANCE A PROPOSED BUYOUT, NOR SHOULD THEY HAVE TO. IN ADDITION, WE DO NOT FEEL THE PROPOSAL AS PRESENTED HAS BEEN SUFFICIENTLY INVESTIGATED TO ENSURE OUR CITIZENS ARE PROTECTED AND PROVIDED FOR, NOR HAVE ANY LONG-TERM GUARANTEES BEEN ASKED FOR OR GIVEN. IF A PRIVATE ENTITY WERE TO PURCHASE THE "FUND" AND LATER ELECTS TO LEAVE THIS STATE AS MANY OTHER COMPANIES HAVE DONE, WHAT THEN? THE PROBLEMS CURRENTLY BEFORE THIS BODY WOULD PALE IN COMPARISON.

WE ON THE OTHER HAND, HAVE A VIABLE ORGANIZATION IN PLACE WITH A COMMITMENT TO THIS STATE AND ITS FUTURE. WE HAVE CHOSEN TO LIVE HERE, TO WORK HERE, TO PAY TAXES HERE, TO BE CONCERNED AND PRODUCTIVE CITIZENS AND TO RAISE OUR FAMILIES HERE. WE HAVE BEEN MONTANANS THROUGH THE GOOD TIMES AND BAD TIMES. WE HAVE A VESTED INTEREST IN HER FUTURE AND THE FUTURE OF THIS SYSTEM.

WHO, BETTER THAN WE, KNOW THAT A SYSTEM OUT OF CONTROL IMPACTS AND JEOPARDIZES THE FUTURE OF EVERY MONTANAN, AS WELL AS THE ECONOMIC FUTURE OF OUR CHILDREN? WHO, BETTER THAN WE, CAN RELATE TO THE DIVERSE NEEDS OF THE PEOPLE OF THIS STATE AND CAN PROVIDE THE SERVICE YOU'VE MANDATED IN THE MOST COST-EFFECTIVE

MANNER? LADIES AND GENTLEMEN, THE ANSWER IS NOT IN AN OUT-OF-COUNTRY ORGANIZATION, BUT RIGHT HERE WITHIN OUR OWN BORDERS. HAVE FAITH IN YOURSELVES AND THE PEOPLE WHO LIVE HERE. GIVE US THE SAME TOOLS AND CONSIDERATION YOU'RE PROPOSING TO GET THE JOB DONE, AND WE WILL DELIVER.

THE BOTTOM LINE IS, WE STRONGLY FEEL WE ARE THE BEST CANDIDATES FOR THIS JOB, AND RESENT THE IMPLICATION THAT THE CITIZENS OF THIS STATE LACK THE INTELLIGENCE, ABILITY OR EXPERTISE TO SOLVE OUR OWN PROBLEMS WITHOUT OUTSIDE HELP. PLEASE, FOR THE SAKE OF THE PEOPLE AND FUTURE GENERATIONS OF MONTANANS, DON'T BE PENNYWISE AND POUND FOOLISH. TO PARAPHRASE OUR PRESIDENT, THERE IS NOTHING WRONG WITH MONTANA THAT CAN'T BE FIXED BY WHAT IS RIGHT WITH MONTANA.

THANK YOU.

EXHIBIT 10
DATE 2/12/93
HB 456

MR. CHAIRPERSON, MEMBERS OF THE COMMITTEE, MY NAME IS KEVIN BARTSCH, AND I AM HERE TO OPPOSE HOUSE BILL 456. I AM A CLAIMS EXAMINER FOR THE STAE FUND AND I AM USING MY PERSONAL VACATION TIME TO BE HERE AND REPRESENT MANY OF THE INDIVIDUALS WHO WORK CLOSELY WITH THE CLAIMS AND KNOW THE PROBLEM AREAS. WE ARE NOT MANAGEMENT. WE ARE IN OPPOSITION TO THIS BILL.

RECENTLY, I HEARD SOMEONE COMMENT ON THE CURRENT WORKERS' COMPENSATION SITUATION BY SAYING PEOPLE ARE LOOKING FOR A 'SILVER BULLET' TO SOLVE THESE PROBLEMS. WHILE WE AGREE AN EASY SOLUTION MAY BE DESIRABLE IT IS SIMPLY NOT REALISTIC OR PLAUSIBLE. THE NUMBER OF PROBLEMS FACING THE STATE FUND IN REDUCING THE UNFUNDED LIABILITY AND IN PREVENTING FUTURE DEFICITS ARE WELL UNDERSTOOD BY THIS COMMITTEE. MEDICAL COST CONTAINMENT, FRAUD, LACK OF OPERATING AUTONOMY AND LAWS THAT DO NOT DIRECTLY ADDRESS THESE ISSUES ALL CONTRIBUTE GREATLY TO THE PROBLEM. AS YOU KNOW, THERE ARE MANY BILLS BEING CONSIDERED BY THIS LEGISLATURE WHICH WILL ADDRESS THOSE PROBLEMS. THIS PLAN DOES NOT.

WE ARE AWARE YOU ARE OVERLOADED WITH FIGURES AND STATISTICS REGARDING THE ISSUES AND PROBLEMS WITH THE STATE FUND. HOWEVER, WE WOULD LIKE YOU TO CONSIDER THIS. THERE ARE APPROXIMATELY 22,000 CLAIMS FILED WITH THE STATE FUND EVERY YEAR. OF THOSE, APPROXIMATELY 4400 RESULT IN ONGOING, WAGE LOSS, BIWEEKLY BENEFIT PAYMENTS. OF THESE 4400, ONLY 1000 (OR 4

EXHIBIT 11
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PERCENT) OF ALL CLAIMS FILED REMAIN ON WAGE LOSS BENEFITS LONGER THAN 90 DAYS. THEREFORE, 96 PERCENT OF INJURED WORKERS IN MONTANA RETURN TO WORK WITHIN 90 DAYS. THE SYSTEM SERVES ITS INTENDED PURPOSE FOR THOSE INJURED WORKERS AND THEIR EMPLOYERS. THAT LEAVES 4% OF THE ORIGINAL 20,000 WHICH TAKE UP THE MAJORITY OF THE CLAIMS EXAMINERS TIME AND THE POLICY HOLDERS PREMIUM DOLLARS.

I' D LIKE TO SHARE WITH YOU AN EXAMPLE OF ONE OF THESE CLAIMS AND HOW THE LAWS PROVE TO BE INADEQUATE IN DEALING WITH THEM. I HAVE A CLAIMANT WHO SUFFERED A BACK INJURY, WAS TREATED AND REACHED MEDICAL STABILITY AND THEN WAS RELEASED TO ALTERNATE FORMS OF EMPLOYMENT BY HIS TREATING PHYSICIAN. HE WAS TOLD BY THAT PHYSICIAN THAT HE COULD NEVER RETURN TO THE TYPE OF WORK HE WAS PERFORMING WHEN HE WAS INJURED. THIS INDIVIDUAL SETTLED HIS CLAIM WITH HIS EMPLOYER AND THE STATE FUND FOR \$48,000. SUBSEQUENTLY, WITHIN 6 MONTHS, THIS INDIVIDUAL WAS BACK AT WORK WITH THE SAME EMPLOYER DOING EXACTLY THE SAME WORK. HE REINJURED HIS BACK, IS NOW BACK ON WAGE COMPENSATION AND THE RESERVES (OR THE MONEY POTENTIALLY NEEDED TO TREAT HIM AND RESOLVE HIS CLAIM) ARE CLOSE TO \$100,000. THERE IS NOTHING IN THE STATUTES TO PREVENT THIS FROM HAPPENING.

WE REALIZE SOME PEOPLE FEEL AN OUTSIDE SOURCE CAN ELIMINATE THESE ABUSES. THIS IS SIMPLY NOT TRUE. WE DID NOT CREATE THE PROBLEMS. WHAT DID CREATE THE PROBLEMS IS THE LACK OF LAWS

WITH THE STRENGTH AND TEETH TO CURB THE ABUSE. IT IS IMPORTANT TO STATE THAT ANY PRIVATE ENTITY COMING IN TO MANAGE MONTANA'S WORKERS' COMPENATION CLAIMS WILL BE JUST AS SHACKLED AS THE STATE FUND HAS BEEN BY THE LAWS THAT HAVE ALLOWED THIS KIND OF ABUSE. NO MATTER HOW GOOD THIS PROPOSAL MAY SOUND ANY AGENCY ADJUSTING MONTANA CLAIMS WILL BE COPING WITH THE SAME NUMBERS AND STATUTORY RESTRAINTS AS WE HAVE BEEN.

THE PUBLIC PERCEPTION HAS BEEN THAT THE STATE FUND EMPLOYEES HAVE FAILED THE SYSTEM. BUT THE OPPOSITE IS TRUE. THE SYSTEM IS FAILING US, THE INJURED WORKER, THE EMPLOYER AND THE TAXPAYERS OF MONTANA. WE ARE SURE THE PUBLIC HAS BEEN LEAD TO BELIEVE THAT LAWS ARE IN PLACE WHICH WOULD PREVENT THE ABUSE WHICH HAS SUBMERGED THE SYSTEM IN DEBT. ENFORCEMENT LAWS ARE NOT IN PLACE.

THE ONE COMMON THREAD IN ALL OF THE DISCUSSIONS ABOUT WORKERS' COMPENSATION IS THE DESIRE FOR THE BEST PROGRAM FOR THE EMPLOYERS AND THE EMPLOYEES OF THE STATE OF MONTANA. WE WANT THIS AS WELL, AND BELIEVE WE CAN ACCOMPLISH THIS GIVEN ACCESS TO THE SAME RESOURCES A PRIVATE ENTITY ENJOYS. THERE ARE SEVERAL OTHER BILLS CURRENTLY BEING CONSIDERED BY THIS LEGISLATURE REGARDING WORKERS' COMPENSATION ISSUES. WE URGE YOU TO DEFEAT THIS UNREALISTIC PROPOSAL AND TURN YOUR CONSIDERABLE EFFORTS AND ATTENTION TO THOSE BILLS WHICH WILL

HELP US ACHIEVE THE GOALS WE ALL HAVE FOR THE STATE OF
MONTANA.

EXHIBIT 11
DATE 2/12/93
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DATE 2-12-93

~~HOUSE~~ SENATE COMMITTEE ON Senat Work Comp

BILLS BEING HEARD TODAY: _____

Name	Representing	Bill No.	Check One	
			Support	Oppose
John Thomas	Self	456		X
Kathy Oliver	Self	456		X
Ed Glenn	Self	456		X
Don Mac Millan	Self	456		X
Maureen Barbach	Self	456		X
Bernice Emerson	Self	487	X	
Davidell Owen	MT Chamber of Commerce	487	✓	
Don Judge	MT STATE AFL-CIO	487		X
Paul Swartz	self	HB 511 HB 456	X	
Chas / sgr Brooks	MT RETAIL ASSOC	HB 511 HB 456 HB 487	X	
Paul Rogumil	Self	456		
Don Call	CWCST	HB 487	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Select

WORKMAN Camp

COMMITTEE

BILL NO.

DATE 2-12-73

SPONSOR(S)

487-456-511

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Charles L. Hunter	DOLZ (511)	✓	
George Wood	Mt. St. Mary's Assn 511 456	✓	✓
Jaqueline Denmark	AIA	✓	
Jaqueline Denmark	Center for Wholeness 456 Alexis, Inc. Services	✓	
Kelly Johnson	WFE 427 456	✓	
Rose Hughes	Mt. Health Care Assn	all ✓	
Greg Van Horssen	State Farm Ins. Co 456	✓	
Mona Jamison	Mt. Cal Soc. of PT. Cent.	HB 511	
Bill Crivello	Crawford Health & Rehab. I.	511	
Doni Judge	MT STATE AFL-CIO	HB 511	
Jim Murphy	State Manual	511	
Mike Micone	MICA	456 511	
Joe Joe	MICA - MICO MICA	427	
Nanny Butler	State Fund	487	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

SELECT

WORKMAN Comp

COMMITTEE

BILL NO.

DATE 2-12-93

SPONSOR(S) 487-456-511

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Russell B Hill	MTLA	HB 511	HB 487
David Owen	MT chamber of commerce	HB 456	
Leo HeyenRATH	HeyenRATH & ASSO		HB 456
Charles R. Snooks	MT RETAIL ASSOC.	456 487	511
Roxanne Verware	Se G.		
Ray Carnicoat	MACO		
Bill Christenson	MSG-WCRRP		511
Danny Black	MTA		
LEON BRISAN	CARPENTERS UNION		511 456
HARLIN Thompson	MBLA	511 487	511
George	MTA MSGIA MACO		511
CURT DRAKE	Centre Re		
Lat Smalley	STATE FUND	487 511	
Carla Smith	State Fund		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

DATE 2-12-93SENATE COMMITTEE ON Select Workers Comp.BILLS BEING HEARD TODAY: 487, 456, 511

Name	Representing	Bill No.	Check One	
			Support	Oppose
KEVIN J. BARTSCH	SELF - TESTIMONY	456		X
CRISTINE MCCOY	SELF - TESTIMONY	456		X
Ann Komac	Self	456		X
Carol Morris	Self	456		X
Debbie Svaldi	Self	456		X
John Svaldi	self	456		X
Jim Adams	MPEA - Testimony	456		X
Alan W. Hulse	Alexsis	456	X	
Loren Wiles	Alexsis	456	X	
Paula Vidrine	Alexsis	456	X	
Quen P. Voigt	Alexsis	456 511	X	
C.D. CASEY Emerson	Mont. Mfg.	487	X	
Robert Olson	MT Hospital Assoc.	511	X	
Brunetta Ricci	Self	456		X
Daniel Muel	Self	456		X
Lance M. Tanco	SELF	456		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2/12

~~House~~ SENATE COMMITTEE ON Select Work Comp

BILLS BEING HEARD TODAY: HB 487

Name	Representing	Bill No.	Check One	
			Support	Oppose
Nancy Gussman	Mont. Building Industry Assoc	HB 487	<input checked="" type="checkbox"/> Amend	<input type="checkbox"/>
Roger Tippy	self	487	<input checked="" type="checkbox"/>	<input type="checkbox"/>

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY