SENATE

COMMERCE & LABOR

COMMITTEE

Minutes of Meeting

Wednesday, March 16, 1977

The Commerce and Labor Committee meeting was held on March 16, 1977, at 1:45 P. M.

PRESENT: Senator Wilson
Senator Blakemore
Senator Ashworth
Senator Bryan
Senator Close
Senator Young
Senator Hernstadt

ALSO PRESENT: See attached list.

The first witness was Mr. R. E. Cahill of the Nevada Resort Assn. who stated that he wanted to comment on the cumulative effect of all of these bills, not only before this committee, but before this Legislature. He stated he did not have the expertise or experience to comment on them individually. He stated that the trend that is developing is alarming. The impact of these bills on the employer is staggering in the amount of money that is involved. He asked the committee to look at the cumulative effect as a total.

S. B. 271 ALLOWS ACTION BY EMPLOYEE AGAINST NEVADA INDUSTRIAL COMMISSION IF IT FAILS TO PROVIDE NECESSARY MEDICAL ATTENTION (BDR 53-828)

Mr. John Coffin, Attorney, 3345 Idlewild Drive, Reno, stated he has a large number of Nevada Industrial Commission clients. He stated S. B. 271 would provide a cause of action against the Commission for damages resulting from a failure to provide treatment to an injured claimant.

He stated that when an injured workman is completely at the mercy of NIC he does get a choice from a panel of doctors, but he cannot seek, usually, outside medical attention, because he is off work and injured for an indefinite period of time and usually is broke.

He advised the committee about the case of Mr. Ralph Rush, a claimant in his 60's, who received metal shavings in his eyes, and later lost his eye. He stated when someone is under NIC in this State he is stuck with whatever they tell him to do. Mr. Coffin also told the committee about Mrs. Morton. He indicated

that the doctors could not tell exactly what was wrong with her. She was referred to a psychiatrist and was given a truth serum, not knowing what was being done.

Mr. Coffin told the Committee about Mr. Gene Gunderson who was sent to Southern Nevada for an examination. During the course of that examination the doctor struck the wound site, causing Mr. Gunderson to become semi-conscious. When Mr. Coffin received the medical reports later there was no mention of Dr. Metcalf having examined Mr. Gunderson.

Mr. Coffin stated that he is in favor of this bill.

SENATOR WILSON instructed NIC to furnish information to the Committee on the Rush case.

Next was Mr. Warren Goedert, Nevada Trial Lawyers Assn., who testified that as he understands the reason for the bill, and the presumption, is that there are three conditions which must be met before you are even entitled to sue. It seemed to him that if the Commission has already acknowledged that the claimant is entitled to coverage, and two physicians in that same specialty then say that he needs medical attention, and the Commission then still refuses to provide that medical attention, then certainly a presumption is in order. If they have gone through that process and still refuse to provide medical attention, then their conduct is nothing short of malicious. That seems to him to warrant a presumption. He stated he didn't have much problem if a period were put after "medical attention" and simply allow both parties to go into court and prove their cases in an appropriate manner, but once you make the claimant do these three things first, then certainly he would be entitled to a presumption if he has to carry the burden to start with.

Mr. William Crowell, Sr., Legal Advisor of Nevada Industrial Commission, stated that with regard to the comments made by Mr. Coffin, he would bring to the attention of the Committee that another side of the coin is involved. He cited a case where they went along with the claimant's desires and surgery resulted in the patient becoming a cripple.

Mr. Roland Oaks, representing the Associated General Contractors, agreed with testimony by Mr. Cahill. He stated he has served on the Labor-Management Advisory Committee to NIC for about 18 years and it was his impression that the present commissioners are probably the most qualified commissioners they have had. He

feels this will open NIC up to the same type of malpractice suits that have injured the medical profession.

Commissioner Claude Evans, NIC, made a few comments to testimony that has preceded him. He discussed the changes that have taken place within the Commission. He stated they have a good system, are concerned about getting people back to work, and doesn't believe they should come under all this criticism.

Mr. John Reiser, NIC, indicated that they will provide information on the Rush case. He discussed the Rush case with the Committee furnishing dates, etc.

CHAIRMAN WILSON indicated that another date would be set for hearing the Rush case information. Mr. Coffin asked that he be notified in order that he might appear.

Mr. Reiser discussed the rehabilitation program that Nevada now offers. He stated S.B. 271 as they see it, would put them in a position that might prohibit the best possible medical care.

Mr. Riley Beckett, Counsel for NIC, pointed out that the treating physician determines that a course is needed, and it is up to him to go ahead and take that course of treatment. He said how we are superimposing all these legal problems in areas, but the initial relationship is between the doctor and the patient. The employee goes to his own physician and that course is generally followed. He indicated that problems seem to develop on the referrals as in the Rush case. As far as requiring NIC approval for your own physician to refer you - that does not require approval. The only area where it does is when the person moves out of the State of Nevada.

Mr. Burk L. Farrell, P. O. Box 584, Fernley, Nevada, stated he was injured 7/5/73 and subsequent to that he has had two cervical surgeries and has ruptured discs in his neck. He obtained permission and had work done at the VA Hospital. He called NIC several times and his attorney contacted them. He stated there were physicians that NIC ought to take a closer look at.

Senate

S.B. 276 REDEFINES EMPLOYER FOR WORKMEN'S COMPENSATION PURPOSES. (BDR 53-838)

Steven Stucker, City of North Las Vegas, stated the only encounter they have with this type of incident relates to projects which the City sponsors where they need referees or officials for sporting events. As things now stand, the City of North Las Vegas would be responsible for the NIC of these subcontractor officials. This would effect about a $1,000 per year savings for the City. He stated he supports the bill.

Gary Bullis, Nevada Trial Lawyers Assn., cited an example of subcontractor and general contractor and discussed this at length with Committee members. Additionally, he cited cases, settlements and introduced several injured workers to the Committee. He thinks that if you rate people according to risks you are going to have a better system. He believes this is a very conservative law and likes it.

Mr. George Vargas, American Insurance Assn., submitted memorandum dated 3/11/77 (see Exhibit B) to the Committee and stated he is opposed to the bill. Discussed court decisions and indicated that the Supreme Court last year stated "if appellants contentions were to be adopted, no owner of real property in this State would dare allow a workman upon his property". The real purpose of this bill is to open up a wide field of litigation.

Mr. John Reiser, NIC, stated that regarding the uninsured employer Senator Ashworth had asked about, the existing statute states that subcontractor's employees are deemed to be employees of the prime contractor and this assures the prime contractor that he is protected against on-the job injuries. If the subcontractor has a policy and pays premiums himself, then the prime contractor doesn't pay premiums on that subcontractor's employees. If, however, the subcontractor is an uninsured subcontractor, that prime contractor is considered to be the employer so that the prime contractor now has protection and an obligation that that subcontractor is covered and does provide insurance for the employees. The prime is helping to police.

SENATOR WILSON asked that if the sub does not contribute, and is not in fact an insured member for NIC, not withstanding his general is paid, is the sub liable?

Mr. Vargas stated he loses his immunity and has the presumption of negligence against him and all his common law defenses of contributory negligence or comparative negligence or assumption of risk, or fellow servant negligence are wiped out.

Mr. Reiser said that that is only true if the prime contractor is also uninsured. In other words, the prime contractor is the primary. If he has coverage then that coverage protects both.

SENATOR CLOSE asked what the effect would be on NIC if this bill were passed. Mr. Reiser answered that as he sees it this bill would create more uninsured employers because there would be less policing on the part of the prime contractor. The employers who pay the NIC premium in effect would pay more as there would be a redistribution of additional uninsured liability.

SENATOR CLOSE asked Mr. Reiser if he thought the main thrust was to make subcontractors who are not insured available for suit and common law as well as what effect this bill will have on experience ratings. Mr. Reiser stated it will not effect a material experience rating, but it will allow more uninsured employers which would, if we pay the benefits in their behalf, have to be paid by the NIC and in turn collected from insured employers - so it would be a redistribution from uninsured to insured.

Mr. Roland Oakes, 1520 Nixon Avenue, Reno, Nevada, representing the Associated General Contractors, stated that by contract, the people he represents who build industrial and commercial buildings are required by the contract they have with the owner to carry NIC benefits and all of the other insurance benefits, and comply with all the statutes, not only on their own behalf, but on behalf of their subcontractors. Most of the Federal statutes require the general contractor to be responsible for subcontractor paying the predetermined

rate for complying with the safety regulations and other Federal statutes. He stated that if this bill passes, it appears to him that the general contractor would be exposed to common law action on behalf of the employees of the subcontractor. He said subcontractors are easily identified in his industry but not so in other industries. He is afraid it will open many lawsuits and cost the consumer more money.

Mr. Easton Blackburn, Safety Director of Titanium Metals, stated that if the negligence is on the employers then there is probable cause for suit. He was concerned about negligence on the employee's part.

S.B. 281 PERMITS LUMP SUM PAYMENTS OF WORKMEN'S COMPENSATION PERMANENT PARTIAL DISABILITY AWARDS. (BDR 53-827)

SENATOR WILSON turned the chair over to SENATOR BLAKEMORE at this time.

Mr. John Coffin, 3345 Idlewild Drive, Reno, was the first witness on S.B. 281 said he believes this bill is a step forward particularly in Section 4. He stated if an individual's disability is more than 12% he cannot get a lump sum. The greatest need for financial help is at the time the claim is closed and the rating is accomplished. Cited cases to the Committee, with facts and figures. Said people with severe injuries usually have to be retrained for some other type of employment and the need for financial help is the greatest when they are ready to go back into a new job or retraining program.

Mr. Coffin submitted copies of letters and payment compensation forms (see Exhibit A).

Mr. Gary Bullis, Attorney, 201 West Liberty Street, Reno, said rates for short term injuries are high as are the total disability rates. However, when it comes to the man in Nevada who has a serious injury, who will probably never work on the same job, that is 1% less than what they consider total,

that man is worse off, in his opinion, than in any state in the Union. Stated that Senator Ashworth's suggestion of a public defender in place of a private attorney is a very good idea.

Mr. Bullis gave the Committee examples of injuries and payments. Stated some people can't be rehabilitated.

John Reiser said S.B. 281 provides for potential increase in permanent partial disability costs by over 50% and asked if these increased benefits are to be available to everyone who has had an industrial injury on or after July 1, 1973, if the injury results in a permanent partial disability?

No one could answer this question.

John Reiser discussed the rehabilitation program that has been instituted and their personnel. He said the temporary total disability is one of the highest in the country - maximum of approximately $807.00 per month. The permanent total disability is again $807.00 per month maximum - 2/3rds of salary. Death benefits $807.00 per month.

Discussion with Committee on claimants taking lump sum and going into a small business venture on their own and dangers of not holding on to the money.

Further, Mr. Reiser stated on line 13, page 2, the bill provides that a lump sum shall be calculated without deducting any penalties. He said they understood the discounting, but not the "any other penalties".

SENATOR CLOSE indicated that he believed that mortalities should not be considered.

Mr. Reiser cited examples of payments and lump sum payments. He stated life insurance companies set up the same thing. There is a liability established for every individual that is injured.

Discussed claimants rights to reopen a case after accepting a lump sum earlier.

Mr. Bob Haley stated that the maximum as they estimate for 1978 would be $10,709,000.00 on one year's claims. Further, this group of claims (forecasting) on permanent partial disabilities that arise out of 1978 claims will cost $18,400,000. That will be increased by a maximum of 58.2% if no mortality is claimed and considered in the discount and they pay according to the formula in the bill, an additional $10,709,000 so the claims that they project as costing $28,400,000 would cost $29,100,000. That is assuming everyone elects to take the lump sum. If it applies as the bill is written today, it applies to all of the claims on which permanent partial has been granted since 1973. They made an assumption, because the bill is not explicit, that the Legislative intent would be to provide uniform benefits for all individuals who are disabled during that period of time. Would have to go back and recalculate all awards that have been settled, plus those that are outstanding and have not yet been awarded. The projected cost on those right now is $45,900,000. Again you'd have an increase if everybody elected to go 58% or another $26,758,000. The sum of the $10,709,000 and the $26,758,000 is the worst condition if all of our assumptions which are realized. A total additional cost of $37,000,000.

SENATOR CLOSE asked what happens if you put it down to a lesser like 25% or 50% rather than 12%, rather than 100% when the bill is passed. What effect would that have? Mr. Haley stated there is an option that would be open, he believes, and they would have to reprice it. If you increase the degree of disability, and don't change anything that is in the law today, it probably would cost them less. Up to the age of 58 you draw more in installment payments than you do in a lump sum.

SENATOR CLOSE stated he would like the figures to show what would happen if we increased 12% - 25% - 75% - 50%.

S.B. 282 MODIFIES HEARING PROCEDURES FOR COMPENSATION UNDER NEVADA INDUSTRIAL INSURANCE ACT. (BDR 53-826)

Mr. Steven Hess, Nevada Trial Lawyers Assn., stated that everyone that represents NIC feels that all these bills are bad and everyone that is a trial attorney thinks these are good. He stated his experience with the NIC was totally frustrating. Cited case to Committee.

Dick Bortolin, Appeals Officer, stated there is need for another appeals officer and AB 19 will handle that. Discussed time factors and transcription requirements within his department. He suggested Rules and Regulations control the time factor within his unit.

SENATOR BRYAN asked if it were possible to make these decisions without benefit of transcript shortly after the hearing and Mr. Bortolin said that within the last year the percentages of decisions from the bench have increased greatly. He further stated he hears many types of issues--not just compensation.

Mr. Reiser stated that the bill is taking the commissioners out of the adjudication of claims under this item 4 so that no hearing may be conducted by the commissioners upon contested claims. Now hearings are being conducted by the commission, and you have labor and management representation at the commission level.

SENATOR WILSON asked about the time restraints placed on department in Section 3 of the bill. Mr. Reiser stated this is more properly put into the rules and regulations. Some decisions are more difficult than others.

Mr. Bortolin stated there is such a back log of cases that they have to wait until they can set them.

There was mixed discussion at this point between Mr. Reiser, the Committee, John Coffin, Mr. Bortolin and Warren Goedert, regarding the decision making of the Committee.

SENATOR ASHWORTH asked if it is common for labor and management to be so intricately involved in other states in NIC and Mr. Reiser answered that states differ on their manner of handling this (usually depending on their size).

Mr. Gary Bullis told the Committee that it had been his particular experience that at the present time NIC has taken the standpoint that if someone doesn't file a claim to the appeals office within 30 days after a commission hearing, they are forever barred. He stated many of his clients did not know what step they were in with NIC.

Mr. Bortolin responded to Mr. Bullis on this issue stating that Mr. Bullis did not follow the procedures with regard to the 30 day rule, based on the Supreme Court decision. In other cases, he stated, you must exhaust your remedy below and those cases were not exhausted.

Mr. Coffin said that in his experience of ten years of practice before the commission, 90% or more decisions are affirmed and they did think there was a conflict of interest. Also felt that with the growth of the claims, the commissioners would be occupied and would get efficient use of their time if they didn't have the adjudication process.

Ed Greer, business manager for Clark County Schools, said he does not care who they present evidence to. He stated if you are going to wipe out the commission to be sure they have access to the people who are making the final decision. Further stated experience rate has gone up considerably.

S.B. 283 REVISES DEFINITION OF ACCIDENT, INJURY AND PERSONAL INJURY FOR PURPOSES OF INDUSTRIAL INSURANCE. (BDR 53837)

Warren Goedert, Nevada Trial Lawyers, stated he was in favor of S.B. 283. He stated that the problem is that we have held out to the working people of this state the myth that they are covered for any injury that occurs on the job that is job related. That is not a fact. All we really pay someone for

is an accident that is an unexpected, unforeseen, sudden and violent at the time producing objective signs of injury. Not all accidents are sudden and tramatic, nor unexpected or unforeseen. He cited example for Committee. He continued, saying hearts are covered under the Nevada Industrial Insurance Act. The problem that you have is if your job causes a heart attack then you are covered and you should be. If an individual simply has a heart attack while on the job then he should not be covered if it is not connected with his job.

Bob Alkire, Kennecott Copper Corporation, stated S.B. 283 is nothing more than a heart bill. Discussed pincher activity in NIC area. Stated Kennecott's premium payments in 1966 were 82¢ per 100 and NIC premiums for approximately 1200-1300 employees and the total bill was less than $75,000. The ones in between are progressive. By the second half of 1965, the premium payment was $3.43 per 100, and we were paying $475,000 for approximately the same number of employees. Had they been in full production and employment in 1976 it would have been $6.13 per 100 and the total bill would have been in excess of 1 million dollars. This bill has the potential of doubling it again.

Mr. Crowell, NIC, stated the commission has picked up every accident and every occupational disease with the exception of heart.

Roland Oaks, Associated General Contractors, Reno, stated he was against S.B. 283.

S.B. 284 MAKES NEVADA INDUSTRIAL COMMISSION RESPONSIBLE FOR COSTS OF DEPOSITIONS. (BDR 53-835)

Mr. Warren Goedert stated that if you want a fair hearing you have to produce all your witnesses with the appeals officer. To require someone who is on disability and unable to work to pay $250-300 for a doctor to come to Carson City and testify is not feasible. It is, therefore, important to be able to take depositions of doctors at times that are convenient and those kind of expert witnesses that may be needed. There is a provision that allows

for an affidavit being filed, but that doesn't give anybody the right to cross examine or to question the doctors statements or opinions. This bill would allow depositions to be taken and the Commission to pay for the cost of that deposition. It does not, in his opinion, pay attorney's fees for taking the deposition--it would pay the cost of the court reporter and the transcription of the deposition.

Mr. Reiser stated that they pay if the deposition is ordered.

Mr. Goedert stated he does not have problems receiving an order to take a deposition from the appeals officer. Where he has problems is with the reports from the Bard Group and he can't cross examine the doctor. He must bring in the treating physician which is economically unfeasible. They don't like to come to testify. He must take the Bard Group's deposition in order to figure out just exactly what they did and to limit them to what is fair, and he can't spend the money to go to San Francisco to take the deposition without some acceptance.

Daryl Capurro, Nevada Motor Transport Assn. and Nevada Franchised Auto Dealers Assn.. endorsed the testimony and statements made by Messrs. Cahill, Oakes, Vargas and Alkire.

BDR 43-922 REGULATES MOTOR VEHICLE DEALERS' FRANCHISES.

Motion for introduction by SENATOR BLAKEMORE.
Seconded by SENATOR BRYAN.
Introduction accepted unanimously.

BDR 57-1213 AUTHORIZES ADOPTION OF STANDARDS OF PROFESSIONAL CONDUCT FOR LIFE INSURANCE UNDERWRITERS.

Motion for introduction by SENATOR ASHWORTH.
Seconded by SENATOR YOUNG.
Introduction accepted unanimously.

There being no further business the meeting was adjourned at 6:10 P.M.

Respectfully submitted,

Lyndl Payne

Lyndl Lee Payne, Secretary

APPROVED BY:

Thomas R.C. Wilson, Chairman

3-16-77

SENATE

DATE ________

PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE PRINT PLEASE

TESTIFYING?	NAME	ORGANIZATION	ADDRESS	PHON
yes	Roger Meinley	Injured workman	5302 Madicera S/W	673-1820
YES	MARIA MARCI	INJURED WORKMAN	2346 [illegible] CIR. SPARKS	358-572
yes	Viola R Eisenmenger	" "	1624 Phillips St. Reno	826-467
NO	Janet Lambert	injured workman's wife	1505 Clough Reno	323-149
	CLIFFORD J. BURNITT	INJURED WORKMAN	605 LYYSKI ST. SPARKS	359-176
Yes ✓	Fardic L. Dover	Bricklayer	3625 Douglas Dr. C.C.	849-015
yes	Tommy Castle	Painter	Reno	[illegible]
	Tom [illegible]	V I W A 233	McGill	235792
✓	W. J. Crowell	Leg. Adv. NIC	575 E [illegible]	[illegible]
✓	R E CAHILL	NEV. RESORT ASSOC.	937 E SAHARA	735-26
YES ✓	JOHN REISER	NIC	CARSON CITY	5284
yes	Warren W. Goedert	NTLA	520 Sinclair	3296275
yes	Steven Hess	NTLA		
yes ✓	Gary Bullis	NTLA		
yes	John Coffin	NTLA		
yes	Edward Greer	Cl. Co. School Dist	2832 E Flamingo Las Vegas	736-54
yes	J. C. Taylor	BMI	P.O. Box 2065 Henderson	565-648
yes	Tom Case	Central	LV	385-516
✓	Roland Oakes			
✓	Claude Evans			
✓	Riley Beckett			
✓	B. L. Farrell			
	Steven Stucker	NORTH LAS VEGAS	1816 HOWARD AVE LAS VEGAS	733-8622
✓	Bob Haley			

SENATE

AGENDA FOR COMMITTEE ON COMMERCE & LABOR

Date Wednesday March 16, 1977 Time 1:30 P.M Room 213

REVISED

Bills or Resolutions to be considered	Subject	Counsel requested*
S. B. 271	Allows action by employee against Nevada industrial commission if it fails to provide necessary medical attention (BDR 53-828)	
S. B. 276	Redefines employer for workmen's compensation purposes. (BDR 53-838)	
S. B. 281	Permits lump sum payments of workmen's compensation permanent partial disability awards (BDR 53-827)	
S. B. 282	Modifies hearing procedures for compensation under Nevada Industrial Insurance Act. (BDR 53-826)	
S. B. 283	Revises definition of accident, injury and personal injury for purposes of industrial insurance (BDR 53-837)	
S. B. 284	Makes Nevada industrial commission responsible for costs of depositions (BDR 53-835)	

*Please do not ask for counsel unless necessary.

7421

LOUIS F. SELLYEI, Jr., M.D., Ltd.
SURGERY AND DISEASES OF THE EYE
1000 RYLAND, RENO, NEVADA 89502
TELEPHONE 702 / 786-4777

Submitted
3-16-77
John Coffin
Exhibit A

October 23, 1973

Mr. Al Blomdal
Nevada Industrial Commission
515 East Musser Street
Carson City, Nevada 89701

Re: RUSH, Ralph O.
Claim: 74-1492
Injured: 8-3-73

Dear Mr. Blomdal:

Mr. Ralph Rush was seen last on 10-23-73 at which time he was found to have a healing cataract incision, a corneal laceration which had healed well, and the eye was healed to the point where I was able to visualize the retina and he was found to have a retinal detachment which will require further evaluation at a retinal detachment center. He is therefore to be set up for an appointment at one of the university centers and he will be notified as soon as the appointment has been made and he is able to see the physicians in charge there.

I hope this information will be of value to you in this matter.

Sincerely yours,

L. F. Sellyei, Jr., MD

Louis F. Sellyei, Jr., M.D.

LFS:tle

Exhibit A

SURGERY AND DISEASES OF THE EYE
1000 RYLAND, RENO, NEVADA 89502
TELEPHONE 702 / 786-4777

Submitted
3-16-77
John Coffin

November 27, 1973

Mr. Al Blomdal
Nevada Industrial Commission
515 East Musser Street
Carson City, Nevada 89701

Re: RUSH, Ralph
Claim: 74-1492
Injured: 8/3/73

Dear Mr. Blomdal:

In reply to your statement that the Nevada Industrial Commission claim is to be refused on Mr. Ralph Rush unless that it is stated on my part that the retinal detachment was definitely caused by the injury, it must be stated that at this point, as it was in my last letter, that the cataract did not permit a view of the retina at the time of the injury. It is therefore impossible on anyone's part to state what exactly happened to the retina as a result of the injury. The type of retinal detachment that he has is the type that is seen frequently with injuries to eyes. I would be surprised if anyone in the world could look at the retinal detachment and say that it was definitely caused by that one particular injury. Too many changes occur to validly make that statement.

On the other hand, Mr. Rush is in fairly immediate danger of going blind if he is left untreated. A retinal detachment of this type does not resolve itself spontaneously and must surgically corrected, if it is not even too late to do this. As I have stated before, the facilities only exist in larger medical centers and he is in need of treatment at such a place.

Sincerely yours,

L. F. Sellyei MD

Louis F. Sellyei, Jr., M.D.

LFS;tle
enclosure

RECEIVED
NOV 28 1973

Exhibit B

SURGERY AND DISEASES OF THE EYE
1000 RYLAND, RENO, NEVADA 89502
TELEPHONE 702 / 786-4777

Submitted
3-16-77
John Coffin

December 13, 1973

Nevada Industrial Commission
515 East Musser Street
Carson City, Nevada 89701

Attention: Mr. Al Blomdal

Re: Ralph Rush
DI: 8/3/73

Dear Mr. Blomdal:

I am writing again regarding Ralph Rush at his request as well as that of his attorney, Mr. John T. Coffin. This is also in reply to one of your other previous requests, at which time you said it would be necessary to say that the retinal detachment which Mr. Rush has incurred is definitely caused by the injury. According to Mr. Rush his vision prior to the accident to the left eye was entirely normal. The eye was exotropic but this occurs normally in a surprisingly large percent of the population. This alone does not interfere with vision. Following the accident the vision was immediately decreased and has remained decreased since the injury. One can therefore deduct that whatever change he had to his eye was the direct result of the injury that he suffered. This fact applies whether I could see the retina at the time of the injury or not.

Sincerely yours,

Louis F. Sellyei, Jr. M.D.

Louis F. Sellyei, Jr., M.D.

LFS:tle

RECEIVED
DEC 17 1973
NEVADA INDUSTRIAL COMMISSION

Exhibit C

John Coffin
3-16-77

515 E. Musser Street
Carson City, Nv 89701

In the Matter of the Claim of:

Claimant ROBERT R. BROWN

NIC Claim No. 75-692 Date of Accident 7/3/74

ELECTION OF METHOD OF PAYMENT OF COMPENSATION

I, ROBERT R. BROWN - 526-52-7610 (name and social security number), have been advised I may elect to receive permanent partial disability compensation on an installment basis, either monthly or annually, from 9/24/75 (date) until 8/27/2006 (date) at the ~~monthly~~ (annual) rate of $ 218.28 and that if I elect the installment method of payment, that I may receive as much as $ 6,973.08 prior to the expected expiration of my entitlement on 8/27/2006 (date). I have been advised that entitlement to permanent partial disability compensation is terminated upon death from whatever cause, and that payments are suspended during periods of total disability covered by Nevada worker's compensation.

I may elect to receive the permanent partial compensation to which I am entitled in a lump sum. Such an election to receive the compensation in lump sum is irrevocable. Acceptance of lump sum compensation terminates entitlement to all worker's compensation benefits on claim no. 75-692, except reopening rights as provided in NRS 616.545.

The lump sum which I would receive would be $ 1,818.70 minus the total of installment payments which I will have received prior to the date on which the lump sum is paid.

Having received an explanation of my rights and being fully aware of the consequences of my decision, I hereby request and elect that the permanent partial compensation to which I am entitled be paid to me as follows:

Check one and sign the payment method selected.

1. On an installment basis as provided in NRS 616.

☐ _____ Date _____ Claimant

_____ Witness Address _____

2. In a lump sum calculated in the manner provided in NRS 616.

☐ _____ Date _____ Claimant

_____ Witness Address _____

C-175

John Coffin
3-16-77

515 E. Musser Street
Carson City, Nv 89701

In the Matter of the Claim of:

Claimant SUSAN FOZARD

NIC Claim No. 76-2403 Date of Accident 8-19-75

ELECTION OF METHOD OF PAYMENT OF COMPENSATION

I, Susan Fozard 557-88-9100, have been advised I may elect to receive
name and social security number
permanent partial disability compensation on an installment basis, either ~~monthly~~ or annually, from 1-25-77 until 2-1-2009 at the ~~monthly~~ (annual)
date date
rate of $ 258.00 and that if I elect the installment method of payment, that I may receive as much as $ 8,391.35 prior to the expected expiration of my entitlement on 8-2-2009. I have been advised that entitlement to permanent partial disability
date
compensation is terminated upon death from whatever cause, and that payments are suspended during periods of total disability covered by Nevada worker's compensation.

I may elect to receive the permanent partial compensation to which I am entitled in a lump sum. Such an election to receive the compensation in lump sum is irrevocable. Acceptance of lump sum compensation terminates entitlement to all worker's compensation benefits on claim no. 76-2403, except reopening rights as provided in NRS 616.545.

The lump sum which I would receive would be $ 2,150.00 minus the total of installment payments which I will have received prior to the date on which the lump sum is paid.

Having received an explanation of my rights and being fully aware of the consequences of my decision, I hereby request and elect that the permanent partial compensation to which I am entitled be paid to me as follows:

Check one and sign the payment method selected.

1. On an installment basis as provided in NRS 616.

☐ _____ _____
Date Claimant

_____ Address _____
Witness

2. In a lump sum calculated in the manner provided in NRS 616.

☐ _____ _____
Date Claimant

_____ Address _____
Witness

1076

Geo. Vargas
3-16-77
Exhibit B

Memorandum
3-11-77
Re: Inclusion of Subcontractors and Their Employees Under NIC Benefits as the Sole Remedy

---

SB 274

Prior to 1951, NRS 616.085 read as follows:

"Subcontractors and their employees shall, for the purpose of this act, be deemed to be employees of the principal contractor or other person having the work done."

The 1951 legislature (statutes 1951, 486) deleted the underscored portion.

Thereafter, and in 1957, Simon Service, Inc. v. Mitchell, 73 Nev. 9, 307 P.2d 110, was decided. Simon Service, under a local building permit, undertook construction of a building in Las Vegas, employing two carpenters and a construction engineer , and entering into separate contracts for the performance of other work. A platform installed by the Simon carpenters failed, injuring Mitchell, an employee of the separate plumbing contractor. Mitchell was awarded compensation and in this action sought to recover damages from the owner, Simon Service. The owner had industrial coverage for persons directly covered by it and the plumbing company had industrial coverage for its employees including Mitchell. The court held that an owner could also be a principal contractor or a principal employer and was in fact in such a capacity in this case. Hence, Mitchell's remedies were limited to NIC benefits. The court states that if the 1951 amendment withdrew from the protection of the act anyone not a "principal contractor", then by the same stroke it withdrew from the protection of the act an employee of anyone not a principal contractor "in view of our repeated assertions of the humanitarian purposes of the act..." (citing NIC v. Peck, 1969, Nev. 1), we find it difficult to draw such intent from the 1951 amendment." The court also held that the fact that the owner as "principal contractor" was not licensed as a contractor under the state contractors' law was wholly immaterial.

This holding and construction of the statute was reaffirmed in Titanium Metal v. District Court, 76 Nev. 72,

349 P.2d 44, decided in 1960. Titanium entered into a written contract with Atkinson Company, whereby the latter agreed to supply labor and materials for Titanium's plant expansion. Subsequently, employees of Atkinson were injured, received NIC payments, and then brought a common law action against Titanium. Titanium retained power to determine the scope of the work, to make changes therein, to require additional work, to direct the elimination of work previously ordered, etc. The court held that this case was squarely under the ruling in Simon Service, and hence Titanium was not subject to suit based on negligence.

This principle was again announced by the Supreme Court in Tahoe Construction Company v. District Court, decided in 1967, 83 Nev. 364, 432 P.2d 90. In addition to reaffirming the principle of the previous cases, this case held that the rights and remedies under the Nevada act were exclusive and conclusive to the exclusion of Arizona law, although the injured was an Arizona resident who was an employee of an Arizona subcontractor injured while performing work in Clark County.

The principle was again enunciated in Aragonez v. Taylor Steel Co., decided in 1969, 85 Nev. 718, 462 P.2d 754. This was a death case involving the death of a tile-setter's helper while the tile company was engaged as a subcontractor of the general contractor constructing the library building at the Las Vegas campus. The defendant, Taylor Steel Company, was the subcontractor for the steel work under the general contractor. The court says that since Taylor Steel was paying compensation insurance on its employees, it is only logical that NRS 616.085, making subcontractors "employees", requires that the doctrine of immunity be extended to Taylor Steel.

The same principle was reiterated in Stolte, Inc. v. District Court, decided in 1973, 89 Nev. 257, 510 P.2d 870. In this case, an employee of a subcontractor brought an action against a subcontractor working under the same principal contractor, seeking damages for personal injuries allegedly caused by an employee of the second subcontractor, Stolte, Inc., during the construction of the Hilton International in Las Vegas. All parties were covered by NIC, and it was held that the plaintiffs sole remedy lay under the act.

As recently as 1975, the court in Weaver v. Shell Oil Company, 91 Nev. 324, 535 P.2d 787, reaffirmed the

principle, but reversed the summary judgment in order that the trial court could consider the question as to whether or not the owner had retained sufficient control of the project as to be in the status of a principal employer or principal contractor within the Simon Service case doctrine.

The principle was finally affirmed in 1976, Frith v. Harrah South Shore Corp., 552 P.2d 337.

Up until possibly last week, Frith v. Harrah is the last pronouncement of our Supreme Court on this subject, and it contains some interesting language. Harrah South Shore entered into a contract with Campbell Construction Company for the construction of a hotel at Stateline, Nevada. Frith, an employee of Campbell, was injured when he fell from a scaffold while working on property owned by Harrah South Shore, and received NIC benefits. In this action, Frith claimed a right to bring damages against Harrah under common law, as well as the Nevada OSHA. The Supreme Court first held that the Nevada OSHA did not create any private civil remedy as to the claim that Harrah South Shore was liable at common law for negligence "because it retained some control over the construction project". Our Supreme Court says that since the enactment of NIC in 1913:

> "this court has held that compensation by the Nevada Industrial Commission is the sole remedy exclusive of any rights of a common law action against an employer, where an employee incurs an injury as a result of an accident which arose out of and in the course of his employment."
>
> "If Harrah could be deemed the principal contractor and the principal employer of Frith, it would not be excluded from the coverage under the Nevada Industrial Insurance Act and the insulation from common law liability just because it was the owner of the real property where the injury occurred. (citing the Simon Service and Titanium cases) If Campbell Construction Company is the bona fide employer of Frith, then both Harrah and Campbell would be insulated by the Nevada Industrial Insurance Act from any common law liability."

In a closing remark in this unanimous court decision, our Supreme Court states:

"If appellants' contentions were to be adopted, no owner of real property in this state would dare allow a workman upon his property." (emphasis supplied)

George L. Vargas

FISCAL NOTE

SB 281

BDR 53-827
A.B.
S.B. 281

Date Transmitted March 15, 1977

• STATE AGENCY ESTIMATES Date Prepared March 15, 1977

Agency Submitting Nevada Industrial Commission

Revenue and/or Expense Items	Fiscal Note 1976-77	Fiscal Note 1977-78	Fiscal Note 1978-79	Continuing
SEE BELOW				
Total				

Explanation (Use Continuation Sheets If Required)

The average age of NIC claimants who are disabled as a result of on-the-job injuries is 35.75 years. Estimate that the average permanent partial disablement is awarded 2 years after the date of accident. Age at award date would be 37.75 years.

The average pay out period under the existing statute would be 65 years - 37.75 years = 27.25 years.

When the mortality of the group is considered, the average pay out would be 23.721 years.

(Next page)

Local Government Impact YES ☐ NO ☐
(Attach Explanation)

Signature
John R. Reiser
Title Chairman

• DEPARTMENT OF ADMINISTRATION COMMENTS Date

Signature

Title

• LOCAL GOVERNMENT FISCAL IMPACT Date
(Legislative Counsel Bureau Use Only)

Signature

Title

FN-3 (Revised 8-9-76) PRINTER

In establishing the present value of awards paid on an installment basis, NIC assumes a 3 3/4% per annum rate of return on the undisbursed balance.

The intent of the language of the bill, "The lump sum shall be computed without discounting the compensation to present value, or deducting any penalties....." is not clear.

Is only the interest assumption upon which present value is based to be considered as a prohibited discount, or is the mortality factor which is related to the claimant's age also to be eliminated in computing the lump sum? In the absence of clear definition, estimates have been made with and without the mortality consideration.

No Mortality Consideration

Assuming a 3 3/4% per annum rate of return, the present value of an award paid at $1 per year for 27.25 years is $17.227.

If $27.25 were paid in lump on the date of the award, the cost of the award would be 58.2% greater than the present value of liability of $17.227.

Mortality Considered

Assuming a 3 3/4% per annum rate of return, the present value of an award paid at $1 per year for 23.721 years is $15.285.

If $23.721 were paid in lump sum on the date of the award, the cost of the award would be 55.2% greater than the present value liability of $15.285.

Therefore, the bill has the potential for increasing annual permanent partial disability costs by as much as 58.2%, or as little as 55.2%.

Assuming that AB 115 is not enacted, the estimated cost of PPD awards attributable to fiscal year 1978 claims is $18,400,000.

The range of the potential cost of SB 281 for fiscal year 1978 would be between -

$18,400,000	x	.582	=	$10,709,000
		and		
$18,400,000	x	.552	=	$10,157,000

The bill also applies to claims incurred since July 1, 1973. The intent of the bill relating to the handling of fiscal year 1974, 1975, 1976 and 1977 is not explicit, however, in estimating the potential cost of the bill it was assumed that the legislative intent would be to provide uniform benefits to all individuals who were disabled during any one fiscal year.

If this were the case, all claims which have not yet been awarded and all previously awarded claims should be revalued using the formula contained in SB 281.

FY 1974 PPD Incurred	-	$8,020,000
FY 1975 PPD Incurred	-	$9,014,000
FY 1976 PPD Incurred	-	$13,288,000
FY 1977 PPD Projected	-	$15,645,000
Total		$45,967,000

Once again the potential additional estimated cost is dependent upon the intent of the bill with regard to mortality considerations.

Total cost related to fiscal year 1974-fiscal year 1977 claims:

$45,967,000	x	.582	=	$26,753,000
		or		
$45,967,000	x	.552	=	$25,374,000

NEVADA INDUSTRIAL COMMISSION
OFFICE OF
THE COMMISSIONERS

MEMORANDUM

TO: Senator Thomas Wilson

FROM: John Reiser

SUBJECT:

DATE: March 21, 1977

The enclosed permanent partial disability provision for lump sum payment does not contain an arbitrary limit, and it gives rehabilitation counselors maximum flexibility in working out a program to promote return to gainful employment.

We recommend that the bill be drafted without a limit other than that established by the comprehensive rehabilitation evaluation to justify Commission authorization.

/dl

Enclosure

616.605 Permanent partial disability: Compensation.

1. Every employee, in the employ of an employer within the provisions of this chapter, who is injured by an accident arising out of and in the course of employment is entitled to receive the compensation provided in this section for permanent partial disability. As used in this section "disability" and "impairment of the whole man" are equivalent terms.

2. The percentage of disability shall be determined by the commission. The determination shall be made by a physician designated by the commission, or board of physicians, in accordance with the current American Medical Association publication, "Guides to the Evaluation of Permanent Impairment".

3. No factors other than the degree of physical impairment of the whole man shall be considered in calculating the entitlement to permanent partial disability compensation.

4. Each 1 percent of impairment of the whole man shall be compensated by monthly payment of 0.5 percent of the claimant's average monthly wage. Compensation shall commence on the date of the injury or the day following termination of temporary disability compensation, if any, whichever is later, and shall continue on a monthly basis for 5 years or until the 65th birthday of the claimant, whichever is later.

(a) The commission may pay compensation benefits annually to claimants with less than a 25 percent permanent partial disability.

(b) The commission may advance up to 1 year's permanent partial disability benefits to an injured workman who demonstrates a dire financial need that is not met by the ordinary monthly benefit. Monthly permanent partial disability benefits will not begin until the total advance is offset.

[(c) A claimant injured on or after July 1, 1973, and incurring a disability that does not exceed 12 percent may elect to receive his compensation in a lump sum payment calculated at 50 percent of the average monthly wage for each 1 percent of disability, less any permanent partial disability benefits already received.]

(c) Permanent partial disability awards may be paid in lump sum under the following conditions:

(1) A claimant injured on or after July 1, 1973 and incurring a disability that does not exceed 12% may elect to receive his compensation in lump sum.

(2) A claimant injured on or after July 1, 1973 and incurring a disability that exceeds 12% may, upon demonstration of a need which is substantiated by a comprehensive rehabilitative evaluation, be authorized by the commission to receive his compensation in lump sum.

(3) The spouse, or in the absence of a spouse, the dependent children of the deceased claimant injured on or after July 1, 1973, who are not entitled to compensation in accordance with NRS 616.615 are entitled to lump sum equal to the present value of deceased claimant's undisbursed permanent partial disability award.

(d) The commission shall adopt rules and regulations concerning the manner in which a comprehensive rehabilitative evaluation will be conducted and defining the factors which will be considered in the evaluation required to substantiate the need for a lump sum settlement.

(e) Lump sum payments which have been paid previously on claims incurred on and after July 1, 1973 shall be adjusted to conform to the provisions of this section.

(f) No total lump sum payment for disablement shall be less than an amount calculated by the following equation:

.5 x average monthly wage x degree of disability

5. The lump sums payable shall be equal to the present value of the compensation awarded, less any advance payments or lump sums previously paid. The present value to be calculated using monthly payments in amounts defined in paragraph 4 and

actuarial annuity tables adopted by the commission.

Such tables will be reviewed annually by a consulting actuary.

5. [(a)] Death of the employee terminates entitlement to permanent partial disability compensation.]

6. (a) [(b)] An employee receiving permanent total disability compensation is not entitled to permanent partial disability compensation during the period when he is receiving permanent total disability compensation.

(b) [(c)] An employee receiving temporary total disability compensation is not entitled to permanent partial disability compensation during the period of temporary total disability.

(c) [(d)] An employee receiving temporary partial disability compensation is not entitled to permanent partial disability compensation during the period of temporary partial disability.

7. Where there is a previous disability, as the loss of one eye, one hand, one foot, or any other previous permanent disability, the percentage of disability for a subsequent injury shall be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury.

EXAMPLE

10% IMPAIRMENT

FY 1977 claim - Maximum considered wage $1,200.

Current lump sum = 10% disability x 600 = $6,000.

Example of Current Value Lump Sums Payable Assuming 6% Discount Rate

Claimant Age	Annual Payment	Annuity Factor (No Mortality)		Present Value
25	$720	15.9488		$11,483
30	720	15.3682		11,065
35	720	14.5907		10,505
40	720	13.5504		9,756
45	720	12.1581		8,753
50	720	10.2950		7,412
55	720	7.807	(5,621)	6,000
60	720	4.4651	(3,214)	6,000

John Coffin
3-16-77

515 E. Musser Street
Carson City, Nv 89701

In the Matter of the Claim of:

Claimant SUSAN FOZARD

NIC Claim No. 76-2403 Date of Accident 8-19-75

ELECTION OF METHOD OF PAYMENT OF COMPENSATION

I, Susan Fozard 557-88-9100, have been advised I may elect to receive
name and social security number
permanent partial disability compensation on an installment basis, either ~~monthly~~ or annually, from 1-25-77 until 2-1-2009 at the ~~monthly~~ (annual)
date date
rate of $ 258.00 and that if I elect the installment method of payment, that I may receive as much as $ 8,391.35 prior to the expected expiration of my entitlement on 8-2-2009. I have been advised that entitlement to permanent partial disability
date
compensation is terminated upon death from whatever cause, and that payments are suspended during periods of total disability covered by Nevada worker's compensation.

may elect to receive the permanent partial compensation to which I am entitled in a lump sum. Such an election to receive the compensation in lump sum is irrevocable. Acceptance of lump sum compensation terminates entitlement to all worker's compensation benefits on claim no. 76-2403, except reopening rights as provided in NRS 616.545.

The lump sum which I would receive would be $ 2,150.00 minus the total of installment payments which I will have received prior to the date on which the lump sum is paid.

Having received an explanation of my rights and being fully aware of the consequences of my decision, I hereby request and elect that the permanent partial compensation to which I am entitled be paid to me as follows:

Check one and sign the payment method selected.

1. On an installment basis as provided in NRS 616.

☐ _____ _____
Date Claimant

SB281

FISCAL NOTE

BDR 53-827
A.B.
S.B. 281

John Reiser

Date Transmitted March 15, 1977

STATE AGENCY ESTIMATES

Date Prepared March 15, 1977

Agency Submitting Nevada Industrial Commission

Revenue and/or Expense Items	Fiscal Note 1976-77	Fiscal Note 1977-78	Fiscal Note 1978-79	Continuing
SEE BELOW				
Total				

Explanation (Use Continuation Sheets If Required)

The average age of NIC claimants who are disabled as a result of on-the-job injuries is 35.75 years. Estimate that the average permanent partial disablement is awarded 2 years after the date of accident. Age at award date would be 37.75 years.

The average pay out period under the existing statute would be 65 years - 37.75 years = 27.25 years.

When the mortality of the group is considered, the average pay out would be 23.721 years.

(Next page)

Local Government Impact (Attach Explanation) YES ☐ NO ☐

Signature _____

John R. Reiser

Title Chairman

DEPARTMENT OF ADMINISTRATION COMMENTS

Date _____

Signature _____

Title _____

LOCAL GOVERNMENT FISCAL IMPACT
(Legislative Counsel Bureau Use Only)

Date _____

Signature _____

Title _____

PRINTER

establishing the present value of awards paid on an installment basis, NIC assumes a 3 3/4% annum rate of return on the undisbursed balance.

The intent of the language of the bill, "The lump sum shall be computed without discounting the compensation to present value, or deducting any penalties....." is not clear.

Is only the interest assumption upon which present value is based to be considered as a prohibited discount, or is the mortality factor which is related to the claimant's age also to be eliminated in computing the lump sum? In the absence of clear definition, estimates have been made with and without the mortality consideration.

No Mortality Consideration

Assuming a 3 3/4% per annum rate of return, the present value of an award paid at $1 per year for 27.25 years is $17.227.

If $27.25 were paid in lump on the date of the award, the cost of the award would be 58.2% greater than the present value of liability of $17.227.

Mortality Considered

Assuming a 3 3/4% per annum rate of return, the present value of an award paid at $1 per year for 23.721 years is $15.285.

If $23.721 were paid in lump sum on the date of the award, the cost of the award would be 55.2% greater than the present value liability of $15.285.

Therefore, the bill has the potential for increasing annual permanent partial disability costs by as much as 58.2%, or as little as 55.2%.

Assuming that AB 115 is not enacted, the estimated cost of PPD awards attributable to fiscal year 1978 claims is $18,400,000.

The range of the potential cost of SB 281 for fiscal year 1978 would be between -

$18,400,000	x	.582	=	$10,709,000
		and		
$18,400,000	x	.552	=	$10,157,000

The bill also applies to claims incurred since July 1, 1973. The intent of the bill relating to the handling of fiscal year 1974, 1975, 1976 and 1977 is not explicit, however, in estimating the potential cost of the bill it was assumed that the legislative intent would be to provide uniform benefits to all individuals who were disabled during any one fiscal year.

If this were the case, all claims which have not yet been awarded and all previously awarded claims should be revalued using the formula contained in SB 281.

FY 1974 PPD Incurred	-	$8,020,000
FY 1975 PPD Incurred	-	$9,014,000
FY 1976 PPD Incurred	-	$13,288,000
FY 1977 PPD Projected	-	$15,645,000
Total		$45,967,000

Once again the potential additional estimated cost is dependent upon the intent of the bill with regard to mortality considerations.

Total cost related to fiscal year 1974-fiscal year 1977 claims:

$45,967,000	x	.582	=	$26,753,000
		or		
$45,967,000	x	.552	=	$25,374,000