MEMORANDUM

State of Alaska
Department of Law

TO: The Honorable Ed Flanagan
Commissioner
Dept. of Labor & Workforce Development

DATE: August 20, 2001

A.G. FILE NO: 661-01-0197

TELEPHONE NO: (907) 269-5178

SUBJECT: Calculation of Penalties under AS 23.30.155(m)

FROM: Toby N. Steinberger
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INTRODUCTION

You have requested an opinion regarding how the Department of Labor and Workforce Development (the "department") should assess penalties under AS 23.30.155(m) when an independent adjuster files an incomplete annual report that reports on claims that it adjusted for a number of insurers. It is our opinion that this statute is susceptible to two reasonable interpretations. We suggest that the department request through the Office of the Governor that the legislature amend the statute to clarify its intent. In the meantime, if AS 23.30.155(m) is not amended to address the issue, the department should adopt a regulation specifying how the department calculates penalties assessed against an independent adjuster that files an incomplete annual report that covers claims it has adjusted for more than one insurer.

GENERAL BACKGROUND

Alaska Statute 23.30.155(m) provides that an insurer or adjuster is required to file an annual report on or before March 1 of each year in which the insurer or adjuster is required to report all payments it has made on workers' compensation claims and all claims it has denied. Alaska Statute 23.30.155(m) further provides that an insurer or adjuster shall pay a civil penalty of $1,000 if it files an incomplete annual report. Alaska Statute 23.30.155(m) provides in pertinent part:

> On or before March 1 of each year the insurer or adjuster shall file a verified annual report on a form prescribed by the board stating the total amount of all compensation by type, the number of claims received and the percentage controverted, medical, and related benefits, vocational rehabilitation expenses, legal fees, including a separate total of fees paid to attorneys and fees paid for the other costs of litigation, and penalties paid on all claims during the preceding calendar year. . . If the annual report is incomplete when filed, the insurer or adjuster shall pay a civil penalty of $1,000.

(Emphasis added.)

We understand that the majority of annual reports that are filed with the department are from independent adjusters. For example, in 1998, 11 adjusters reported on behalf of 101 insurance companies; 25 insurance companies filed their own annual report. The department has no regulation setting out how the department calculates penalties under AS 23.30.155(m) to address this issue. Historically, the department has not assessed more than one $1,000 civil penalty against an independent adjuster that files an incomplete annual report covering a number of insurers.

In a recent audit performed by the division of legislative audit, it opined that when an adjuster files an annual report on behalf of more than one insurer, the Commissioner of Labor and Workforce Development should consider information that the adjuster supplies for any one insurer as a distinct annual report. Thus, according to the division of legislative audit, if an adjuster submits annual information regarding ten insurers for which it has adjusted claims and incompletely reports on behalf of six of those insurers, the department should assess a penalty of $6,000 against the adjuster.

ANALYSIS

When interpreting a statute, the goal is to determine the legislature's intent. We have examined the legislative history of the 1988 amendments to the Workers' Compensation Act, when the legislature amended AS 23.30.155(m). Under prior law, employers were required to submit one year after a claimant's injury and every year thereafter a report summarizing the compensation payments that the employer made to that claimant. Neither the insurer nor the adjuster had a responsibility to file these reports. In addition, the statute did not contain a penalty provision if an employer failed to provide the information. In 1988, the legislature amended AS 23.30.155(m) to require insurers and adjusters to annually submit claim information, presumably because, collectively, insurers and adjusters had information

regarding all claims. According to the legislative history, the legislature's purpose of amending subsection (m) was to "adequately assess the efficiency and costs of the workers' compensation system." Section 1(e), ch. 79, SLA 1988.[1] However, the legislative history is silent regarding how the department should assess penalties under subsection (m) when an adjuster reports annually on claims that it adjusts on behalf of a number of insurers.

It is our opinion that the statute is susceptible to two reasonable legal interpretations. Either legal interpretation would promote the legislature's goal to encourage timely and accurate reporting by insurers and adjusters. On one hand, the statute could reasonably be legally construed to mean that an adjuster is required to file only one report, in which it reports all payments it has authorized or denied on all claims for which it was responsible for adjusting throughout the year. On the other hand, the statute could reasonably be construed to mean that the adjuster is simply the agent for the insurer. Under this construction, as an agent for an insurer, the adjuster would be required to file an individual annual report on behalf of each insurer on whose behalf it is making the report. The only difference between the interpretations is the amount of penalty that the department can collect. One interpretation would allow for multiple penalties.

Since subsection (m) is ambiguous, the department should seek clarification from the legislature. In the meantime, especially if the statute is not amended to address the issue, the department should adopt a regulation giving notice how the department calculates penalties for adjusters who provide claims information annually on behalf of many insurers. Please note that the department cannot legally change the current method for calculating the penalties until a new regulation establishing a new method has been adopted and is in effect under AS 44.62. *See* AS 44.62.240 and the definition of a "regulation" under AS 44.62.640.

If you have any questions regarding this memorandum, please feel free to contact me.

TNS:kmh

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[1] We note that the legislature stated that it wanted the department to "strictly enforce" the reporting requirements and penalties of subsection (m). Section 1(e), ch. 79, SLA 1988. However, this language only means that the department should strictly enforce subsection (m) once it is clear how the department should calculate penalties.