

Mr. Patrick Rouble, Chair
Workers' Compensation Act Review Panel
Box 2703
Whitehorse, Yukon
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RE: YUKON WORKERS' COMPENSATION ACT REVIEW ISSUES PAPER

Given the seeming delay in process of the current Act Review we are concerned that, in the event of a change in the process, some of the critical issues requiring change may get vetted out of the list of items and areas for review.

Issue #41-Limitation on Legal Rights as it Relates to Vehicles (Sec. 41 of The Act), is a very important area that requires change. Section 41 (4) effectively removes the Bar to Suit where a disability arises from the use or operation of a "**vehicle**". The original intent of this subsection 41 (4) was to provide the Workers Compensation Board with the ability to recover its costs from the General Auto Insurance industry where the vehicle was not owned/operated by a "Worker" or "Employer" as defined by the Act. Such should be the effect of such resulting subrogated actions so that the WCB Fund is not in fact subsidizing what would otherwise be the normal costs to the Auto Insurer.

The current Act defines "vehicle" as "any mode of transportation the operation of which is protected by liability insurance". This definition is too broad and has in fact permitted current WCB Policy to pursue subrogated actions against "Employers" and "Workers" if a disability or claim is as a result of a "vehicle" accident. This is absolutely contrary to the basic tenants of the Worker Compensation System (the Meridith principles involving the historic compromise and the Bar to Suit). Employers are put into a double jeopardy situation of paying compulsory WCB Premiums and then being sued. We know this was not the original intent of Sec. 41 (4) of the Act but given the broad wording used in the definition of "vehicle" in the Act has permitted current WCHSB Policy (GC-01: Subrogated Claims (Amended 1995/03/07) to actively pursue actions against "Workers" or "Employers" whenever a motor vehicle is involved.

We believe the simple and effective corrective action is to change the definition of vehicle in the Act to read: "**vehicle**" means any mode of transportation, the operation of which is by someone other than an Employer or Worker as defined in this Act, and which is protected by liability insurance.

We do not know which parties have provided the Analysis/Comments to Issue #41 of the Act Review Discussion Paper dated 2003-04. We suspect it comes from the WCHSB. The very statement that the Board "is cognizant of not pursuing an action against an individual employer such that may cause bankruptcy" is contrary to the very principles of the Worker Compensation System. The bar to suit against "Workers" and "Employers" is being usurped. A subjective decision by the Board as to whether or not a lawsuit will bankrupt an employer has no place in the administration of the Act. The Act must be fixed to prevent such in future.

We believe the above change to the definition of "vehicle" compels the proper and intended application of Section 41 (4) of the Act.

Yours truly,

TRANS NORTH HELICOPTERS

Arden A. Meyer
General Manager.

Cc: Yukon Chamber of Commerce
Whitehorse Chamber of Commerce
