

GOOD MORNING MR. CHAIRMAN AND COMMITTEE MEMBERS.

MY NAME IS MITCH WHITE AND I AM GRATEFUL FOR THIS OPPORTUNITY TO SPEAK TO YOU.

AS NATIONAL CHAIRMAN OF THE ASSOCIATED GENERAL CONTRACTORS' MARINE CONTRACTOR COMMITTEE, I OFFER THE FOLLOWING TESTIMONY.

THE LONGSHORE ACT WAS ESTABLISHED IN 1927 TO PROVIDE WORKER'S COMPENSATION INSURANCE TO A CLASS OF WORKERS THAT HAD NO COVERAGE. THERE IS NO DENYING THAT SUCH COVERAGE WAS SORELY NEEDED AND THE FEDERAL GOVERNMENT WISELY STEPPED IN AND PROVIDED IT BY ENACTING THE LONGSHORE ACT. BY THE WAY, I AM A FORMER MARINE CONSTRUCTION WORKER AND KNOW THE IMPORTANCE OF HAVING A COMPENSATION SYSTEM FOR THE WORKING MAN.

LEGISLATIVE HISTORY FROM MARCH 1927 SHOWS THAT, AND I AM QUOTING, "THE ORIGINAL INTENT OF ALL WORKMEN'S COMPENSATION LAWS WAS TO TRANSFER FROM SOCIETY AND FROM THE COURTS THE EXPENSE OF TAKING CARE OF THOSE INJURED IN INDUSTRY AND TRANSFER IT TO THE INDUSTRY ITSELF. INCIDENTALLY, IT GAVE THE WORKER A SQUARE DEAL AND ELIMINATED THE AMBULANCE CHASER."

THE TERM SQUARE DEAL ORIGINATED WITH TEDDY ROOSEVELT WHEN HE OFFERED THE FOLLOWING ADMONISHMENT: "WHENEVER WE GO IN FOR REFORM EACH SIDE MUST BE REMEMBERED AND JUSTICE SHOULD BE EXTRACTED EQUALLY FROM EACH SIDE"---IN OTHER WORDS, A "SQUARE DEAL" MUST BE SOUGHT. WELL, I CAN TELL YOU THAT TODAY'S LONGSHORE ACT DOES NOT PROVIDE A SQUARE DEAL. ALTHOUGH THE NEED TO FILE SUIT IS ELIMINATED THROUGH A NO FAULT SYSTEM, THE AMBULANCE CHASER HAS NOT BEEN ELIMINATED, BUT RATHER ENCOURAGED AND EMBOLDENED BY THE PROVISIONS OF THE CURRENT LONGSHORE ACT. LEGAL MACHINATIONS AND THE FAILURE OF THE ACT TO RECOGNIZE LESSONS LEARNED OVER THE LAST GENERATION AT THE STATE LEVEL FOR DELIVERING QUALITY HEALTH CARE TO INJURED WORKERS HAVE LED TO A COSTLY AND BURDENSOME COMPENSATION SYSTEM. AS A RESULT BOTH THE WORKER AND THE COMPANY SUSTAIN A LOSS OF MORALE, THERE IS LESS MONEY FOR WORKER WAGES AND BENEFITS AND LESS MONEY FOR SAFETY TRAINING. -----HOW CAN WE SQUARE THE DEAL?

ALTHOUGH THERE ARE MANY AREAS OF THE ACT THAT REQUIRE CHANGE, I WANT TO ADDRESS THREE AREAS IN PARTICULAR.

**THE FIRST AREA I WISH TO DISCUSS INVOLVES CUMULATIVE NON-TRAUMA (CRT) CLAIMS:**

**CONTRACTORS GENERALLY SEE TWO TYPES OF CLAIMS. A TRAUMA CLAIM THAT IS FOR ANY SPECIFIC INJURY SUSTAINED ON THE JOB (IT IS MOST PREVALENT) AND A CUMULATIVE NON-TRAUMA (CNT) CLAIM THAT IS FOR A VARIETY OF INJURIES FOR WHICH THERE IS NO PERCIPITATING INCIDENT. RATHER, IT IS A CLAIM FOR INJURIES SUSTAINED OVER TIME AS THE RESULT OF THE REPETITIVE NATURE OF ONE'S WORK AND THE GENERAL AGING PROCESS. SOME LONGSHORE ATTORNEYS HAVE LEARNED TO GAME THE SYSTEM THROUGH THE OVERUSE OF CRT CLAIMS RESULTING IN A WASTE OF HEALTH CARE RESOURCES.**

CRITICALLY, A WORKING MAN TYPICALLY DOESN'T FILE A CNT CLAIM UNTIL HE HAS SEEN AN ATTORNEY. RATHER, OUR EXPERIENCE SHOWS THAT AN EMPLOYEE FILES A CLAIM FOR A SPECIFIC INJURY SUSTAINED ON THE JOB, IN OTHER WORDS A TRAUMATIC CLAIM, AND THE EMPLOYER PROVIDES MEDICAL CARE AND WEEKLY COMPENSATION DURING THE HEALING PROCESS. ALTHOUGH WE DO NOT DENY THAT CNT CLAIMS MAY BE LEGITIMATE, THEY TYPICALLY ARISE WHEN THE SAME ATTORNEY, USUALLY WORKING WITH THE SAME DOCTOR TIME AND AGAIN, FILES A CLAIM ON BEHALF OF THE EMPLOYEE FOLLOWING THE EMPLOYEE'S CONSULTATION ON A TRAUMATIC INJURY. ONE CAN ARGUE THAT THE ATTORNEY HAS THE GOOD SENSE TO ASK MEDICAL QUESTIONS THAT A LESS EDUCATED WORKER DOES NOT KNOW TO ASK AND THUS THE EMPLOYEE ONLY GETS APPROPRIATE MEDICAL CARE ONCE AN ATTORNEY BECOMES INVOLVED. HOWEVER, WE BELIEVE IT FAR MORE LIKELY THAT THE INITIAL TRAUMATIC INJURY CLAIM BY AN EMPLOYEE IS TRULY REFLECTIVE OF ANY INJURY SUSTAINED ON THE JOB (AND OUR EXPERIENCE BEARS THIS OUT).

WHY IS IT THAT WE USUALLY SEE A CNT CLAIM AFTER THE ATTORNEY BECOMES INVOLVED? THE ATTORNEY REALIZES THAT THE CNT CLAIM IS FAR MORE VALUABLE AT THE END OF THE DAY, PARTICULARLY TO THE ATTORNEY AS THE EMPLOYER PAYS HIS FEES. THE CNT CLAIM ARISES WHEN THE ATTORNEY MAKES BROAD ALLEGATIONS OF VARIOUS UNSCHEDULED INJURIES (TYPICALLY TO THE KNEES, SHOULDERS, BACK, ETC.). A DOCTOR INEVITABLY OPINES THAT THE CNT CLAIMS ARE WORK RELATED, ALTHOUGH THERE IS NO SPECIFIC INCIDENT GIVING RISE TO THEM, AND THE EMPLOYEE WILL BE PERMANENTLY PARTIALLY OR TOTALLY DISABLED EVEN THOUGH MORE OFTEN THAN NOT THE WORKER'S SUBJECTIVE COMPLAINTS DO NOT COINCIDE WITH THE OBJECTIVE MEDICAL FINDINGS. AN UNSCHEDULED PERMANENT TOTAL OR PERMANENT PARTIAL DISABILITY CLAIM IS VERY VALUABLE GIVEN THAT THE EMPLOYER MUST PAY LIFETIME BENEFITS TO A WORKER FOR THE TERM OF THE DISABILITY. IT IS TELLING, HOWEVER, THAT THE EMPLOYEE GENERALLY OPTS FOR A LUMP SUM SETTLEMENT RATHER THAN SETTLING FOR LIFETIME BENEFITS.

WE BELIEVE OPTING FOR SETTLEMENT OFTEN BELIES THE FACT THAT THE WORKER INTENDS TO WORK AGAIN AND THAT HE AND HIS ATTORNEY ARE GAMING THE SYSTEM. HOW SO?

BY ALLEGING PERMANENT DISABILITIES THE WORKER ENHANCES THE VALUE OF ANY LUMP SUM SETTLEMENT BECAUSE PERMANENT DISABILITIES CALL FOR LIFETIME BENEFITS VASTLY INCREASING THE VALUE OF A CLAIM IF IT GOES TO TRIAL. MOREOVER, IT IS TO THE WORKER'S ECONOMIC ADVANTAGE TO ACCEPT A LUMP SUM SETTLEMENT IF HE INTENDS TO WORK AGAIN BECAUSE LIFETIME DISABILITY BENEFITS MAY BE SET ASIDE, IN WHOLE OR IN PART, IF THE WORKER FINDS EMPLOYMENT DURING THE DISABILITY. A LUMP SUM SETTLEMENT CANNOT BE MODIFIED. IT IS FINAL AND BINDING. IN SHORT, ALLEGING PERMANENT DISABILITIES IS AT TIMES SIMPLY A NEGOTIATING PLOY TO RAISE THE LUMP SUM SETTLEMENT VALUE.

AGAIN, WE CAN APPRECIATE THAT SOMETIMES AN EMPLOYEE HAS A LEGITIMATE CNT CLAIM. HOWEVER, WE BELIEVE THAT THIS LEGISLATIVE BODY SHOULD PROVIDE A MEANS TO REALISTICALLY ASSESS A CLAIM WHEN THIS IS NOT THE CASE. SPECIFICALLY, WE BELIEVE THAT THE LONGSHORE ACT SHOULD PROVIDE MECHANISMS THAT (1) DETERMINE THE LIKELIHOOD THAT AN INJURY OCCURRED AND WHERE; (2) PROVIDE FOR A HEALTH CARE PANEL TO DETERMINE THE MEDICAL TREATMENT AN EMPLOYEE REQUIRES; (3) BASE TREATMENT ON NATIONALLY RECOGNIZED STANDARDS; AND (4) PROVIDE FOR A CORRELATION BETWEEN OBJECTIVE AND SUBJECTIVE MEDICAL FINDINGS.

WHERE THESE MECHANISMS SUBSTANTIATE A CNT CLAIM, WE WOULD BE ASSURED THAT THE EMPLOYEE IS RECEIVING PROMPT MEDICAL CARE, COMPENSATION DURING THE HEALING PROCESS AND THE PERIOD OF DISABILITY, AND THAT HEALTH CARE RESOURCES ARE NOT BEING WASTED.

**THE SECOND AREA I WISH TO ADDRESS IS THE LAST RESPONSIBLE EMPLOYER RULE.** ---IN A NUTSHELL, THE RULE WORKS AS FOLLOWS: AN EMPLOYEE WORKS FOR A CONSTRUCTION CONTRACTOR NOT SUBJECT TO THE LONGSHORE ACT. HIS PREVIOUS EMPLOYER WAS A MARINE CONTRACTOR SUBJECT TO THE LONGSHORE ACT. THE EMPLOYEE SUSTAINS AN INJURY WORKING FOR THE LATTER CONTRACTOR. NO MATTER HOW MINOR THAT INJURY, THE EMPLOYEE CAN FILE A LONGSHORE CLAIM AGAINST HIS PRIOR EMPLOYER IF THE EMPLOYEE CAN SHOW THAT THE INJURY AGGRAVATES OR ACCELERATES OR COMBINES WITH A PRIOR INJURY, OCCURING DURING EMPLOYMENT WITH THAT MARINE CONTRACTOR.

THE CLAIM AGAINST THE FORMER MARINE CONTRACTOR MUST BE MADE WITHIN 30 DAYS OF THE EMPLOYEE HAVING BECOME AWARE, OR IN THE EXERCISE OF REASONABLE DILIGENCE OR BY REASON OF MEDICAL ADVICE SHOULD HAVE BEEN AWARE, OF THE RELATIONSHIP BETWEEN AN INJURY AND THE PRIOR EMPLOYMENT.

IT IS PARTICULARLY TROUBLING THAT A CLAIM CAN BE ASSERTED AGAINST THE MARINE CONTRACTOR AFTER THE EMPLOYEE LEFT THE CONTRACTOR'S EMPLOY AND PERFORMED CONSTRUCTION WORK FOR AN EXTENDED PERIOD FOR THE NON-LONGSHORE CONTRACTOR. ALL THE EMPLOYEE NEED SHOW IS THAT A SINGLE DAY'S WORK FOR THE NON-LONGSHORE CONTRACTOR AGGRAVATED A PREVIOUS CONDITION, CAUSED A MINOR BUT PERMANENT INCREASE IN THE EXTENT OF DISABILITY AND/OR CAUSED EVEN A MARGINAL INCREASE IN THE NEED FOR SURGERY AND THE FORMER EMPLOYER IS ON THE HOOK.

BECAUSE LONGSHORE BENEFITS ARE MUCH RICHER THAN NON-LONGSHORE ACT BENEFITS, THE FORMER EMPLOYEE AND HIS ATTORNEY HAVE AN INCENTIVE TO ASSERT A LONGSHORE CLAIM AGAINST THE MARINE CONTRACTOR, EVEN WHERE THERE IS NO PERCIPITATING INCIDENT WHILE IN THE MARINE CONTRACTOR'S EMPLOY. THE MARINE CONTRACTOR WILL BE FOUND FULLY RESPONSIBLE FOR LONGSHORE BENEFITS, ASSUMING TIMELY NOTICE BY THE FORMER EMPLOYEE. LONGSHORE ATTORNEYS ARE ADEPT AT FINDING A LONGSHORE EMPLOYER WHERE POSSIBLE AND THEY ARE ADEPT AT FINDING A DOCTOR WHO WILL FIND THAT THE INJURIES OCCURRED WHILE IN THE PREVIOUS MARINE CONTRACTOR'S EMPLOY.

WE BELIEVE THAT THIS RULE RESULTS IN AN UNREASONABLE WASTE OF HEALTH CARE RESOURCES, WHERE  
---THE EMPLOYEE REPORTED NO ACCIDENT WHILE IN THE MARINE CONTRACTOR'S EMPLOY DESPITE POLICIES THAT CALL FOR PROMPT REPORTING OF ALL INCIDENTS NO MATTER HOW MINOR,

---THE EMPLOYEE IS INJURED IN HIS LATTER NON-LONGSHORE JOB AND DECIDES TO ASSERT AN AGGRAVATION OF AN UNREPORTED INJURY WITH HIS FORMER MARINE CONTRACTOR EMPLOYER,

---THE EMPLOYEE SUSTAINS AN INJURY, DISABLING OR OTHERWISE, WHILE WORKING FOR THE NON-LONGSHORE EMPLOYER AND DECIDES TO ASSERT A CONCURRENT CRT CLAIM OR TRAUMATIC CLAIM AGAINST HIS FORMER EMPLOYER.

TO AVOID THIS WASTE OF HEALTH CARE RESOURCES, WE BELIEVE THAT THE APPROPRIATE SOLUTION IS TO MAKE THE LAST RESPONSIBLE EMPLOYER RULE INAPPLICABLE TO THE PRIOR LONGSHORE EMPLOYER WHERE THE EMPLOYEE IS EXPOSED TO WORKPLACE CONDITIONS THAT MAY GIVE RISE TO AN INJURY DURING SUBSEQUENT EMPLOYMENT NOT SUBJECT TO THE LONGSHORE ACT.

### **THE LAST AREA I WISH TO ADDRESS IS THE ALLOCATION OF RISKS BETWEEN LONGSHORE EMPLOYERS**

QUITE OFTEN MARINE CONTRACTORS OWN THEIR OWN VESSELS AND THEY HIRE LONGSHORE EMPLOYERS AS SUBCONTRACTORS TO PROVIDE SERVICES TO THE VESSEL. WHEN A SUBCONTRACTOR EMPLOYEE IS INJURED ON A VESSEL, THE SUBCONTRACTOR IS OBLIGATED TO PAY LONGSHORE BENEFITS TO THAT INJURED EMPLOYEE. THAT SUBCONTRACTOR THEN HAS A LIEN AGAINST THE VESSEL OWNER FOR THE FULL AMOUNT OF THE COMPENSATION BENEFITS AND FEES PAID TO THE EMPLOYEE'S ATTORNEY, EVEN IF THE VESSEL OWNER IS 1 PERCENT AT FAULT AND THE SUBCONTRACTOR IS 99 PERCENT AT FAULT FOR THE EMPLOYEE'S INJURIES. IN ADDITION, THE SUBCONTRACTOR CAN SUE THE VESSEL TO RECOVER ITS PAYMENTS ASSOCIATED WITH COMPENSATION OR THE INJURED EMPLOYEE CAN SUE THE MARINE CONTRACTOR'S VESSEL. WE CERTAINLY DON'T HAVE A QUARREL WITH THE INJURED WORKER SUING THE VESSEL AND BEING FULLY COMPENSATED FOR HIS LOSSES. HOWEVER, TO THE EXTENT THAT THE SUBCONTRACTOR'S LIEN IS NOT DIMINISHED BY ITS CONCURRENT NEGLIGENCE WE THINK RESULTS IN AN UNFAIR RESULT. THE MARINE CONTRACTORS WOULD LIKE TO SEE A COMPENSATION LIEN REDUCED IN PROPORTION TO A SUBCONTRACTOR'S FAULT, AS IS FOUND IN THE OUTER CONTINENTAL SHELF LANDS ACT.

### **CONCLUSION**

WE BELIEVE THAT THE SQUARE DEAL WE SEEK WILL MAXIMIZE THE UTILIZATION OF HEALTH CARE RESOURCES AND IT WILL PROPERLY ALLOCATE RISKS BETWEEN EMPLOYERS. AGAIN, WE NEED MECHANISMS THAT WILL

(1) DETERMINE THE LIKELIHOOD THAT AN INJURY OCCURRED AND WHERE; (2) PROVIDE FOR A HEALTH CARE PANEL TO DETERMINE THE MEDICAL TREATMENT AN EMPLOYEE REQUIRES; (3) BASE TREATMENT ON NATIONALLY

RECOGNIZED STANDARDS; AND (4) PROVIDE FOR A CORRELATION BETWEEN OBJECTIVE AND SUBJECTIVE MEDICAL FINDINGS.

ONE MAY THINK THAT SQUARING THE DEAL IS FOR THE SOLE BENEFIT OF THE MARINE CONSTRUCTION CONTRACTOR. HOWEVER, EMPLOYEES OF THE CONTRACTORS STAND TO GAIN AS WELL. WE UNDERSTAND, AS DO OUR EMPLOYEES, (AND I WAS ONCE ONE OF THOSE EMPLOYEES) THAT INCIDENTS OCCUR THAT CALL FOR COMPENSATION BENEFITS. WE HAVE NO QUARREL WITH PAYING BENEFITS. INDEED, IT IS THE RIGHT THING TO DO.

THE HONEST WORKING MAN UNDERSTANDS AND EXPECTS A COMPANY TO BE RESPONSIBLE AND FAIR. WHEN HE IS HURT IN THE WORKPLACE, THE COMPANY IS OBLIGATED TO PROVIDE HIM PROMPT AND APPROPRIATE MEDICAL CARE AND RETURN HIM TO WORK AS QUICKLY AS POSSIBLE. IN RETURN, THE WORKER WILL BE FAIR AND RESPONSIBLE TO THE COMPANY. WHEN A COMPANY FAILS IN ITS OBLIGATIONS TO THE WORKER OR THE WORKER GAMES THE COMPENSATION SYSTEM, BOTH THE COMPANY AND THE WORKER SUFFER. THERE IS A LOSS OF MORALE, LESS MONEY FOR THE COMPANY TO PROVIDE IN WAGES AND BENEFITS TO LABOR, AND LESS MONEY FOR SAFETY TRAINING.

THE REFORMS WE WOULD LIKE TO SEE WILL BENEFIT BOTH MARINE CONTRACTORS AND THEIR EMPLOYEES. THANK YOU.

## A COMMON REAL LIFE SCENARIO

A MARINE CONTRACTOR HIRED A 48 YEAR OLD LONG TERM CONSTRUCTION WORKER, RODEO PARTICIPANT AND LIVESTOCK HAULER. MANY OF YOU HAVE SEEN COWBOYS THAT WALK A BIT BENT OVER, THAT LOOK LIKE THEY HAVE WORKED HARD ALL THEIR LIFE. THAT IS THIS MAN. HE WAS HIRED TO OPERATE HEAVY CONSTRUCTION EQUIPMENT, WELD AND PROVIDE OTHER WORK AS NEEDED. THE FIRST DAY ON THE JOB THE EMPLOYEE COMPLAINED THAT HE HAD CARPAL TUNNEL SYNDROME AND HE HAD TROUBLE HOLDING A WELDING STINGER WHILE WELDING. THE EMPLOYER ELIMINATED THAT TASK FROM THE EMPLOYEE'S DUTIES AND ASSIGNED HIM TO OPERATING HEAVY EQUIPMENT SO THAT HE COULD AVOID REPETITIVE WORK WITH THE R WRIST. AFTER 19 MONTHS ON THE JOB THE EMPLOYEE INJURED THE TENDONS IN HIS R WRIST. ALTHOUGH HE DECLINED RECOMMENDED SURGERY, HE WAS MEDICALLY ALLOWED TO CONTINUE WORK. HE WORKED AN ADDITIONAL YEAR BEFORE HE WAS LAID OFF. HE THEN UNDERWENT THREE SURGERIES ONE FOR WORK RELATED TENDONITIS IN THE R WRIST, AND TWO FOR PRE-EXISTING NON-WORK RELATED CARPAL TUNNEL SYNDROME AND TENDONITIS IN THE RIGHT INDEX AND MIDDLE FINGERS. THE LATTER TWO SURGERIES WERE ADMITTED TO HAVE PRE-EXISTED HIS EMPLOYMENT AND WERE PAID FOR BY HIS UNION INSURANCE. HIS DOCTOR THEN RELEASED HIM TO FULL DUTY WITH NO RESTRICTIONS OTHER THAN HE WAS NOT PERMITTED TO ENGAGE IN VERY HEAVY LIFTING (90 LBS) WITH THE UPPER RIGHT EXTREMITY. THE EMPLOYEE THEN RETIRED FROM THE UNION AFTER 25 YEARS IN THE TRADES. DURING THE RETIREMENT PROCESS, THE EMPLOYEE OBTAINED SOCIAL SECURITY BENEFITS, A UNION PENSION AND RETAINED A LONGSHORE ATTORNEY WHO FILED A CUMULATIVE NON-TRAUMA CLAIM AGAINST THE EMPLOYER---THE NATURE OF THE INJURIES ALLEGED WERE TO "BOTH SHOULDERS, BOTH ARMS, BOTH WRISTS, BOTH HANDS, BACK; BILATERAL CARPAL TUNNEL SYNDROME AND TRIGGER FINGER ON INDEX AND MIDDLE FINGERS ON RIGHT HAND." THE ATTORNEY FOR THE WORKER THREW A NUMBER OF CLAIMS AGAINST THE WALL HOPING THAT SOME WOULD STICK, INCLUDING THE TWO NON-INDUSTRIAL INJURIES ALLEGING THAT THE EMPLOYER'S WORK AGGRAVATED THE CARPAL TUNNEL SYNDROME AND TENDONITIS IN THE R MIDDLE AND INDEX FINGERS. UP TO THIS TIME, THE EMPLOYER WAS UNAWARE OF ANY WORK RELATED INJURIES OTHER THAN THE TENDONITIS IN THE R WRIST. ALTHOUGH THERE WERE NO OBJECTIVE MEDICAL FINDINGS SUPPORTING THE CT CLAIMS TO THE BACK AND SHOULDERS AND THE CARPAL TUNNEL SYNDROME AND TRIGGER FINGER WERE PRE-EXISTING AND SURGICALLY REPAIRED, THE WORKER'S NEW DOCTOR (ROUTINELY ASSOCIATED WITH THE ATTORNEY) RECOMMENDED A THREE DISK FUSION IN THE UPPER BACK, AND SURGERY TO THE WRISTS AND SHOULDERS. THE WORKER STATED THAT HE WANTED THE BACK SURGERY AND THE WORKER'S DOCTOR DIAGNOSED A PERMANENT DISABILITY---A VERY VALUABLE CLAIM.

RATHER THAN INCUR THE RISK OF HAVING TO PAY LIFETIME BENEFITS (A SEVEN FIGURE SUM) FOR A SUSPECT CLAIM, THE EMPLOYER OPTED TO SETTLE FOR \$300,000 TO THE CLAIMANT AND \$50,000 TO THE ATTORNEY. SETTLEMENT WAS IN SPITE OF THE FACTS THAT THERE WAS NO INCIDENT OR INCIDENTS PERCIPITATING THE CNT CLAIM, THAT THE OBJECTIVE MEDICAL FINDINGS DID NOT SUBSTANTIATE THE RETIRED EMPLOYEE'S SUBJECTIVE COMPLAINTS AND THE TREATING PHYSICIAN FOUND THAT THE EMPLOYEE WAS FIT FOR FULL DUTY. MOREOVER, THE FORMER EMPLOYEE HAS NOT HAD SURGERY AND CONTINUES WORKING IN THE LIVESTOCK TRADE. WAS THE SYSTEM GAMED? WE BELIEVE SO.