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Department of Industrial Relations Compliance With Portable Amusement Ride Safety Law

Assembly Committee on Agriculture

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CALIFORNIA LEGISLATURE
ASSEMBLY COMMITTEE ON AGRICULTURE

Subcommittee on Fairs and Expositions

NORMAN S. WATERS
CHAIRMAN

**DEPARTMENT OF INDUSTRIAL RELATIONS
COMPLIANCE WITH PORTABLE
AMUSEMENT RIDE SAFETY LAW**



April 1, 1986
Sacramento, California

MEMBERS
Norman Waters, Chairman

Steve Clute
Condit

Wally Herger
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Committee Consultant

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Assembly California Legislature

Assembly Subcommittee

on

Fairs and Expositions

CHAIRMAN

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OVERSIGHT HEARING

Department of Industrial Relations Compliance with Amusement Ride Safety Law

Assembly Subcommittee on Fairs and Expositions
Room 317, State Capitol

April 1, 1986
10:00 a.m. to 12:00 noon

Assemblyman Norm Waters, Chairman
"Opening Remarks"

Kim Myrman, Executive Director, Western Fairs Association
"Industry Safety"

Butch Butler, Carnival Operator
Sam Johnston, Carnival Operator
Guy Leavitt, Carnival Operator

Bob Simpson, Chief Deputy Director
Department of Industrial Relations

Ron Rinaldi - Director of Industrial Relations

Gene Marquart, Insurance Officer
Office of Insurance and Risk Management
"The State's Liability"

Esther Armstrong, Division Chief, Fairs and Expositions
"Division's Role in Ride Safety"

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STATEMENT OF THE ISSUES

This hearing is designed to review the administration's compliance to the amusement ride safety law. Particularly, the law which requires the Department of Industrial Relations to develop a program to certify insurance inspectors to conduct safety inspections on amusement rides. In addition, the committee will review a report issued by the Department to the Division of Fairs and Expositions of the Department of Food and Agriculture relative to amusement ride accidents.

CHAIRMAN NORMAN S. WATERS: This is a hearing of the Subcommittee on Fairs and Expositions and we're going to deal with Cal OSHA's compliance with Amusement Ride Safety Laws. Ladies and gentlemen, thank you very much for the interest that you've shown for this important hearing. This hearing is designed to review the administration's compliance to the Amusement Ride Safety laws. Particularly Cal OSHA's timely reporting to the Division of Fairs and Expositions relative to the accidents that occur on amusement rides. The reporting of accidents helps us evaluate and calculate the problems before us.

In addition, we will discuss the laws which allow for a certified insurance inspector program. California has the best amusement ride safety record in the nation. I think this is attributable to the prudent efforts of the owners and the operators, and the skilled Cal OSHA inspectors who have done a relatively good job, I think, and the detail oriented fair industry. I applaud all of you for this excellent record. This is certainly worthy of mentioning. And I support you in your future endeavors to keep our fairgrounds safe, for the patrons and the staff alike.

We have a great deal of ground to cover today, so perhaps we should get on with it. Our first witness is Kim Myrman. Kim is the Executive Director of Western Fairs Association dealing with industry, and her topic is going to be industrial safety. Kim, thank you very much.

MS. KIM MYRMAN: Thank you. We have a microphone that would like to go awry. Maybe it needs an OSHA inspection. Mr. Chairman, as you well know, I am Kim Myrman, Executive Director of the Western Fairs Association. Western Fairs represents all of the fairs in California and 500 fair related businesses throughout the western United States. We also represent approximately 80 fairs that are also outside of the state of California.

We're very fortunate in California as we are the nations leader in the area of portable ride safety. Millions of Californians and tourists attend our State's fairs every year and the carnival industry is a key factor in our success. Western Fairs sponsored Senator Ray Johnson's Senate Bill 1177 in 1983, which strengthened California's portable ride safety laws. We plan to continue to support legislation and administrative action which protects the fair going public. I will conclude by saying that our position, as the leader in ride safety, is a direct result of our ability to work together by bringing fairs, carnivals, legislators and the administration to the table with a common goal: protection of the public. We thank you Assemblyman Waters and your colleagues, your interest in this important subject, and we look forward to supporting this committee's work in any way that we can. Thank you.

CHAIRMAN WATERS: Thank you. Steve Clute, a member of the committee, has just joined us, on my left. Steve, these are carnival operators; providing testimony at this time.

MR. BUTCH BUTLER: Okay, I'm Earl "Butch" Butler, from Butler Amusements, and we operate in the state of California. We have 34 fairs in the state. And, of course, we're completely involved in ride safety. One of the things that was sent to me was this rough draft on the qualification of certified inspectors which would be from the insurance companies. I just had the inspection from one of my insurance companies, and they sent out a certified inspector that completely went through our rides. He was from Ohio, and I'd like to submit this book to Sue so she could look at it and see what type inspections that the insurance companies do when they come out and inspect our rides. In the rough draft, when I went over it, I see a few rough edges there that I thought might be a little more than what should be inspected of the applicants. I think that's what we are going to be talking about here. Guy, would you like to say something?

MR. GUY LEAVITT: Go ahead, Sam.

MR. SAM JOHNSTON: My name is Sam Johnston and I, for the years 1981 through '83, was a director of the Western Fairs Association, the position that Earl Butler, Butch Butler, currently holds, and in that position we worked with Senator Ray Johnson in implementing SB 1177 and we also were working on another bill, SB 1178 which didn't fly, which I'd like to see something done also, too. But, one of the things that we did do, we did go over some of the criteria that was required, in our minds, for a safe carnival operation. Although California does

enjoy a relatively good safety record in the carnival industry; as a whole enjoys a relatively good record. For instance, the carnival or the amusement rides is number 164 from the top of the most serious, serious accident causing items being the top. For instance, stairs cause the most injury accidents and things like that. You go on down stairs, bicycles, baseball, football, basketball, you go on down, even beds are in there. Ladders and stools, then you go on down to number 164, which is amusement rides. This is from the Outdoor Amusement Businesses Consumer Product Safety Commissions Annual Report. And from that they report that there is approximately 2.5 billion passengers ride carnival rides annually which is ten times the population of the United States. On an average, there is around ten deaths a year in the carnival industry and there are about 250 accidents that require hospitalization; being overnight or longer in a hospital.

CHAIRMAN WATERS: Those are national...?

MR. JOHNSTON: These are national statistics, from the Outdoor Amusement Business Association. I don't have a breakdown on the national, I can get that, but I don't have it at this time. I can put that together if it's in the interest. There are approximately 6,000 injuries and of these 6,000 injuries being cuts, abrasions, sprains, lacerations, and things like that; and this amounts to about 84 percent of the total injuries of the amusement ride industries. And if you total the 84 percent and the four percent which are the serious, which are

overnight or longer, there's about 12 percent that just kind of disappear. And this happens to a large degree in the amusement industry accident area.

I currently operate in California, Oregon, and Nevada. California was the first state that had the ride inspection program, and I currently enjoy very good rapport with the California inspectors. As I went into Oregon, Oregon also had a ride inspection program, so thereby my carnival operation got inspected twice. Once by California and then once by Oregon. Within the last four years, we also are inspected by our insurance inspector and our insurance inspector is currently certified in Oregon thereby, he, when he comes out and inspects my carnival, he's also inspecting me for Oregon. So we do get two inspections and two written reports in on the carnival. It's good to have these inspections, in my opinion, because it's another set of eyes. However, the best procedure is for the carnival operator to have a good inspection program himself because he is the one that sees that piece of equipment all the time. He's the one that's setting it up, he's the one that's tearing it down.

CHAIRMAN WATERS: If all that, on that point, it seems to me that many of the accidents that occur are operator's fault. Now why is that? I mean...

MR. JOHNSTON: That's true. There is, to some degree, a large transient population in the operation of carnival rides.

CHAIRMAN WATERS: That run the, run the...

MR. JOHNSTON: That actually operate the equipment. And any good operator should have some type of a training program whereby that they train the operator. In other words, they don't take...

CHAIRMAN WATERS: Do you have such a program.?

MR. JOHNSTON: I have such a program. I don't take an operator off the street and allow him to operate a zipper ride or a ferris wheel or something like that, that requires a degree of expertise in balancing the ride and operating it safely. We do take a large amount of people off the street, but we put them on the push button, start and stop rides. For instance, the kiddie rides that you just push a button to start it, you have another push button that stops it in case there's something that happens. Also, we take the operators off the street and put them on the rides where they just collect the tickets.

CHAIRMAN WATERS: Yeah, right.

MR. JOHNSTON: For instance, the fun houses, glass houses, and the fantasy castles where they just take a ticket and go in there. And after they have proven themselves for a period of time, whether it be eight hours or eight days or a week, or two, or whatever, then we move them up to a ride that may require more expertise to operate that ride. For instance, an octopus, or a sizzler, or a roller coaster, where you have a clutch and a brake, where they have to have some degree of skill to operate

the clutch and the brake. Then after they have operated that particular piece of equipment for a period of time, then we move them on into the rides that require not only the clutch and the brake operation, but also a sense of balance such as a ferris wheel. Many people always relate to the story how they got on the ferris wheel and it broke down and they were left at the top. Well, this is perhaps not the ferris wheel's fault for breaking down, this is perhaps the fault of an inexperienced operator getting the ferris wheel out of balance and it won't go around because you know if you put a lot of weight on one side and a little amount of weight on the other side, the heavy side is going to come to the bottom and its going to try to stay there. And this is why so many experiences have been that the ferris wheel has broken down, where in the actual case perhaps it wasn't the ferris wheel breaking down, it was just inexperience in operation. And I do have a program.

CHAIRMAN WATERS: Mr. Clute?

ASSEMBLYMAN STEVE CLUTE: Yeah, Mr. Johnston, in California in 1985, how many fairs were you a part of or did you deal?

MR. JOHNSTON: I was the prime contractor, or supplied equipment, to 12 California fairs.

ASSEMBLYMAN CLUTE: And you have one inspection by department, State Department of Industrial Relations for California?

MR. JOHNSTON: That's correct.

ASSEMBLYMAN CLUTE: In '85.

MR. JOHNSTON: In '85.

ASSEMBLYMAN CLUTE: You covered those fairs.

MR. JOHNSTON: Yes.

ASSEMBLYMAN CLUTE: And what does that entail then?

That inspection, kind of...

MR. JOHNSTON: Basically what happens is one of the inspectors will come out to my first operation of the season, and it's right here in Sacramento, and they will inspect the equipment after or during the assembly process. And once they have assured that the equipment is structurally sound and that the guards are in place, and the proper winter time maintenance has been performed, then they will place a tag on that ride that says that has been inspected for that year and is currently licensed to operate for that year.

ASSEMBLYMAN CLUTE: So that one time certifies it for the other 11 fairs you do that year, so I guess I assume that there's not much changes or new inspections needed when you disassemble and the reassemble for a new fair?

MR. JOHNSTON: It would always be good to reinspect the equipment, but I don't think that is possible, and we reinspect our equipment each day when we do reassemble. Matter of fact, I have a ride inspection list that I inspect equipment each day, that I observe. Like I say, the state inspection program is

good, but it will never replace a good carnival operator's in house inspection program.

ASSEMBLYMAN CLUTE: Do you think the state comes out enough to inspect?

MR. JOHNSTON: It, perhaps, could be inspected more. Yes, I think they could inspect more.

ASSEMBLYMAN CLUTE: With 12 fairs in this state, are you one of the larger contractors?

MR. JOHNSTON: No, I would be probably be one of the smaller contractors. I have 18 traveling rides that I use in my carnival. And 18 rides considers me a fairly small operator.

ASSEMBLYMAN CLUTE: Would, then would other contractors, even though they're larger, probably have the same one inspection that you had?

MR. JOHNSTON: It's possible. You'd have to talk with each of those. I think where the inspection program places most of its emphasis is upon the larger fairs. I know when they set up at Cal Expo the inspector goes out there and inspects the rides, and ...

ASSEMBLYMAN CLUTE: Do you have rides there too?

MR. JOHNSTON: No, I don't operate at Cal Expo.

ASSEMBLYMAN CLUTE: That's what we need to make money. Okay, thank you.

CHAIRMAN WATERS: I was wondering, you might address too, are you having trouble getting insurance?

MR. JOHNSTON: I'm not having ...

CHAIRMAN WATERS: Right, all of you think about that and tell the committee if you had a problem.

MR. JOHNSTON: I'm not having any trouble getting insurance, the only problem I have is the limits that I've had in the past, five million dollars, is currently not available today. The maximum limit available is two million dollars to myself and the cost of that two million dollars has gone up 130 percent over the last two years. So, the limits are lower and the cost is higher.

ASSEMBLYMAN CLUTE: Sounds about right.

CHAIRMAN WATERS: Okay, you may proceed.

MR. LEAVITT: Mr. Chairman, Guy Leavitt, Ray Camick Shows, committee. The doorknob of my office was broke off, and a friend of mine asked me why. And I said because the Federal Consumer Product Safety Report said that doorknobs are more dangerous than carnival rides.

CHAIRMAN WATERS: Is that right?

MR. LEAVITT: So, I just left the doorknob off of my office. What these gentlemen are telling you is actually true, I think, in most circumstances. We, as a carnival operator, travel in seven states. We're inspected by four of the seven states that we travel in. There are 15 states in the United States that have a safety program. Other than California, out of the 15 states, most of them are recognized by all the manufacturers and

producers of carnival rides as having one of the best programs because all of these inspectors in the 15 states, or representatives from, attend meetings annually where the manufacturers and the operators and the inspectors from the states can get together and discuss the problems that they've had in the past. These seminars are some that are not attended by California inspectors and I think it would be a great asset to have the funding to send the inspectors from California to these particular seminars for the training that's necessary, I think, to inspect our rides like they need to be done. I had a situation last year, at a California fair, where the inspector said that we had to close a ride down because one of the pins was too loose in it's hole. These pins have to be taken in and out every single week, and I said "Well, it's within the manufacturers limitations." He said "I have no idea." I said, "well, did you go to your manual from that manufacturer and look and see?" And he said "no." I said "do you have a micrometer so we can mark the pin and the hole?" He said "no." We just happened to have an inspector from our insurance company, or that the fair had hired from out of state, that did have all of those specifications, then we called that engineers at that particular manufacturer and he said you're well within the limitations, no reason the ride couldn't operate. So I think the training; I think the team that California has is an excellent team. I think they need a little bit more extensive training in their field. I

don't know that all of the rules that pertain to industrial safety also pertain to carnival rides, that they don't go hand in hand. There are some, yes, that do. There's a lot of them that don't. Safety guard, for instance, on a belt drive motor 55 feet in the air doesn't need a cover. The public can't get to it, you know, those things that pertain to industrial safety don't pertain to our business I think. And vice versa.

CHAIRMAN WATERS: Do you...

MR. LEAVITT: As far as insurance, we're having no trouble getting insurance. In the last nine years, our insurance has increased 1000 percent. Limitations, like Sam said, are limited this year. We're not the only business in the world that has limitations this year on insurance. We're all faced with that particular problem.

CHAIRMAN WATERS: Okay.

MR. LEAVITT: It's just costing a tremendous amount of money.

CHAIRMAN WATERS: Do you have problems too, like with your operators getting injured? It seems like there was a high number of them on the report, some of the reports that I briefly looked at. Seems like the operators were getting hurt as much as the people that were participating.

MR. LEAVITT: We've had one serious injury in the last 25 years with an operator, that I know of.

CHAIRMAN WATERS: Do you have a training program for your operators?

MR. LEAVITT: Yes we have a training program. We've sent 11 people, ten of which are still employed by us, to seminars over the last few years to train us. Those people come back to train our employees. Most people in our industry are doing that now.

MR. BUTLER: What we're doing, we've been inspecting rides, and I think these two gentlemen will attest to it, we've been inspecting our rides since day one, we just haven't been documenting it. Now we document everything. We document preopening, we document opening every day. Another thing that I asked for last year, from the State of California, was documentation on what their recommendations were back to us; didn't receive anything from them. Which would help us in the long run. If we knew what they would like to have from us in writing, it would help us tremendously.

CHAIRMAN WATERS: Sure. Mr. Clute, for a question. Incidentally, Gary Condit from Ceres has joined us. Is that right, Gary?

ASSEMBLYMAN GARY CONDIT: Yeah, that's right.

CHAIRMAN WATERS: Where they have a lot of fairs.

ASSEMBLYMAN CLUTE: Are you required, or do you do it on your own, to have various types of eye and hearing protection for your employees, rides and that type of stuff?

MR. LEAVITT: There again, I don't think that that's quite required at all. That's more on an industrial safety program where you're standing up against a grinder all day long. We don't have those kinds of things.

ASSEMBLYMAN CLUTE: You don't think there's a...

MR. LEAVITT: In my shop in winter quarters, yes, we have those things.

ASSEMBLYMAN CLUTE: ...fairly high level of noise up when you're operating?

MR. LEAVITT: No, we check our noise levels with decimal meters. They don't run over 90.

ASSEMBLYMAN CLUTE: Yeah, well 90's getting up there. The other thing on insurance, is yours an out of state carrier like Mr. Johnston's?

MR. LEAVITT: Yes.

ASSEMBLYMAN CLUTE: Oregon?

MR. LEAVITT: No.

ASSEMBLYMAN CLUTE: See, that makes a difference too, I think, because its, carriers in state it's a little tougher for some of the business people.

CHAIRMAN WATERS: I had a question that maybe that you might respond to too.

MR. LEAVITT: Okay.

CHAIRMAN WATERS: You all mentioned that you trained your operators and do you train them in house, or do you send

them someplace for training? Is there a special school to train these folks, or do you train them on the job site? Or how do you do that?

MR. BUTLER: Well, everyone trains them on the job site, but there's also seminars. We had a Northern California meeting in San Francisco where we brought all our ride men to and we had some professional insurance people that come and went through a seminar with them. Just recently, within the last 30 days. I wanted to put a percentage up because California has ten percent of the population of the nation, and the accident rates on the amusement rides in the state of California is less than one percent. It's .0065. So, on a ten percent scale of population, we're running less than one percent on accidents. And, you asked about insurance? Our insurance in the last two years went from \$35,000 on five million to over \$300,000.

CHAIRMAN WATERS: On five, on the same coverage?

MR. BUTLER: On, no less coverage.

CHAIRMAN WATERS: Less coverage? Wow.

MR. BUTLER: Two million instead of five. And we do receive a lot more inspections than what Sam Johnston stated that he receives. We do have 75 rides and we play at a number of fairs and some of the fairs call in the state to go through our rides more often. Larger fairs do get a lot more inspections. So, we see an inspector probably 30, 35 times a year.

CHAIRMAN WATERS: Seems like you had quite a few accidents here last year. How do you account for all those?

MR. BUTLER: Account for the number of people we ride.

CHAIRMAN WATERS: On the percentage...

MR. BUTLER: We're riding that many more. I don't think our percentage is any higher than anybody else's when you talk about the number of people that we serve.

CHAIRMAN WATERS: Okay. I'll accept that for now. Is there any, do you have anything further to add? Any further questions by the committee at this time for these gentleman? Mr. Clute.

ASSEMBLYMAN CLUTE: No, just the last comment I was thinking if an airline, say we had a higher accident rate because we carry more people, they sure wouldn't be carrying more people for too long. It just seems like a different way to rationalize that.

CHAIRMAN WATERS: Okay. Thank you very much.

MR. LEAVITT: Thank you.

CHAIRMAN WATERS: Ron, are you going to testify briefly here today?

MR. RON RINALDI: I'll send someone else, and I'll join them eventually.

CHAIRMAN WATERS: Okay. Well why don't you and Mr. Simpson come on up. Mr. Simpson is the Chief Deputy Director of Cal OSHA.

MR. RINALDI: I'm the Director of the State Department of Industrial Relations and Bob is Chief Deputy of the Department.

MR. BOB SIMPSON: Thank you Mr. Chairman, members, and staff. Mr. Rinaldi and I appreciate the opportunity to appear before you here this morning in response to your inquiry about amusement ride inspections and the role of Cal OSHA in those inspections. We want to acknowledge the cooperation which we received from the amusement ride operators and tell you that over the years we have had a excellent working relationship with this industry. Were it not for their willingness to work with us and cooperate with us, we would not have been able to carry out our assigned responsibilities.

I am the Chief Deputy at the department, and I would like to address my remarks this morning principally to the matter of the certified inspector aspect of the amusement ride safety law. These provisions are found between <7900 and <7905 of the Labor Code. First, Assemblyman Clute inquired about our personnel who are doing the inspecting, and I would say that these are all safety engineers who have many years of experience in the department; are trained both in the classroom and on the job in the performance of their duties of inspecting these amusement rides and there is in Title 8 in California...

CHAIRMAN WATERS: Excuse me, Mr. Condit has a question.

ASSEMBLYMAN CONDIT: The only reason I interrupt you, I apologize,...

MR. SIMPSON: That's all right.

ASSEMBLYMAN CONDIT: I heard this gentleman say, just a few minutes ago, that he thought the inspectors ought to be, money ought to be available for more training. Did I understand you to say that? You responded...

MR. SIMPSON: And I think you made a very good point. I was not aware that our people were not participating with others in the industry in the seminars that he referred to. And I, I just, I'd be more than happy to look into that, I...

ASSEMBLYMAN CONDIT: Is that because we don't have the budget, or is it just...

MR. SIMPSON: No, I don't think it is because we do not have the budget, I don't know why we're not participating in that kind of training, and I'll certainly find out. That's not to say though, that our people are not trained, we think they are well trained both on the job and in the classroom training that we provide within the department. There is...

MR. RINALDI: If I could just make one comment. The same people that conduct these inspections are the same staff that does the aerial passenger tramway; the ski lift industry. They're well trained in these kinds of devices. It doesn't mean...

MR. SIMPSON: ...and there is, in Title 8, a very detailed set of specifications to determine the safety of an amusement ride. These provisions of general safety order 3900 and following, are the bible that our people use day in and day out in going through each ride and determining whether a ride should be permitted.

ASSEMBLYMAN CLUTE: Now, can you address the concern I had for the employees of the rides in regards to ear and eye protection? Now, unless rides have really changed since I've been around them, no way that I could be personally working a ride all day without some type of protection?

MR. SIMPSON: Well, do you have any...

MR. RINALDI: Let me try, Mr. Clute. There are some general industry safety orders that address all employees in this state. An employer is required to provide ear protection if the decibels exceed, I believe, 90 dba. And ear protection can take any form, of course, that's acceptable. Fitted earplugs, that kind of thing. Every employer in the state's required to do that. And that would be applicable to this industry as well as any other industry.

ASSEMBLYMAN CLUTE: So you do look for that and measure for compliance?

MR. RINALDI: Our inspectors would be looking...

ASSEMBLYMAN CLUTE: Okay, 'cause I got the impression from the gentleman that answered that, apparently, at least in

his perception, there was not a need in their industry. And maybe that's because he feels the decibels never rise to a certain point or whatever.

MR. RINALDI: It's similar to other occupational health exposures, Mr. Clute. It's a time weighted average you know. And there are ceiling limitations, and I forget what the ceiling limitation is on sudden impact noise.

ASSEMBLYMAN CLUTE: Yeah.

MR. RINALDI: But an employer in this state is required to train his employees of the hazards that he may encounter in his occupations and presumably this industry is doing that.

ASSEMBLYMAN CLUTE: I'm a little bit biased Mr. Chairman, I was just down on an aircraft carrier this weekend, and on the flight deck operations, they would never comply with Cal OSHA and many of the people, after working the flight deck, have to have hearing aids. I know that's a much more severe noise, but kind of a concern I had on noise.

CHAIRMAN WATERS: Yeah, thanks.

MR. RINALDI: Thank you.

MR. SIMPSON: Amusement rides, as we define them in the statute and in the regulations, are inspected at least once a year, and those inspections are conducted by personnel within the Department of Industrial Relations and the Division of Occupational Safety and Health. These personnel are assigned to a group which we call the Elevator Amusement Ride and Aerial

Passenger Tramway Unit, which is a part of Engineering Services. We have five inspectors stationed up and down the state trained to perform these rides, and each of these men spends approximately 20 percent of his time in the performance of these duties. In accordance with Labor Code <7904B, the division recently filed with the Division of Fairs and Expositions a report detailing the number of amusement rides inspected during the year and the number of accidents. And incidentally Mr. Chairman and members, our figures with respect to the exposure in California and actual number of accidents in California conform with the data that the previous witness provided.

CHAIRMAN WATERS: Do you think that that's a good safety record out there? Do you agree that that's a; we seemed to think it was and, but I'm not sure how many accidents is proper, I mean could you respond to that?

MR. SIMPSON: Well, I think...

CHAIRMAN WATERS: Not proper, but I mean how many is an average?

MR. SIMPSON: Acceptable?

CHAIRMAN WATERS: Acceptable, that's the word.

MR. SIMPSON: Mr. Chairman, I think we would say that one accident was one too many. But these accidents are going to occur and I think, again, you've got to look at averages and the size and exposure of the business, the nature of the business, and on those bases, if you look back over several years, you find

that we've had an average of slightly fewer than five accidents per year in California. And I just can't help but feel that that isn't an excellent record. If these accidents are going to occur, I think that's got to be a very good record.

Labor Code <7905, and here's where I would like to address a principal portion of my remarks, authorizes the division at its discretion to higher inspectors to inspect amusement rides, but mandates two conditions to our use of hired inspectors. One, that they be employed by an insurance company or a public entity, and two, that they be approved by the division. Incidentally, there is a court case which has told us that "employed" by an insurance company or public entity must be read broadly and that "employed" would also include independent contractors as well as direct employees.

There was a comment by a previous witness regarding inspection by insurance inspectors in other states and I would like to offer a perspective on that in California if I may. We have not established a program for the qualification and approval of third party inspectors in California because it remains our conviction that the advantages of doing that are outweighed by the disadvantages. It is true that inspectors approved by the division could relieve the division of some portion of its workload and it might be that these third party inspectors, because of their numbers and dispersion over the state, might reduce the cost of inspections. But the disadvantages of this

approach to inspection, we believe, are substantial. Assuming that we could attract an insurance company or a public entity to want to get into inspecting amusement rides, that might not be easy because of the exposure to liability in doing that, and assuming that those employers could attract their employees to conduct these kind of inspections. The first thing that would happen we believe, is those employees would immediately be placed in a position of conflicting interest between their duty to their employer and, if they're a fee inspector, wanting of course to optimize the number of inspections. Control of inspections would be more difficult and time consuming if we had third parties involved in this operation, and we believe that since we have continuing responsibility for these inspections, we still would have the task of handling complaints, revoking, inspections done incompetently, and tracking the system to avoid duplications and to assure uniformity. Duplication of effort would be inevitable because third party insurance inspectors are not authorized by law to shut down a ride if there is an imminent hazard. And we would have to do that anyway.

CHAIRMAN WATERS: The insurance inspector could not shut you down?

MR. SIMPSON: No. They have no power in the law to issue an order prohibiting use. We, and other public entities are the only ones who can do that.

ASSEMBLYMAN CLUTE: They can cancel the insurance though on the spot couldn't they?

MR. SIMPSON: Well, that's right. In the final analysis, Mr. Chairman and members, a program for the approval of third party inspectors may simply not be justified simply because of the workload. We're involved here with 20 percent of the time of five inspectors which translates to about a person a year. We have a supervisor over these five people up and down the state. That's a person and a half; a clerical, to keep track of the recordkeeping. So we have the situation nicely in hand and we think it just might not be worth the effort.

CHAIRMAN WATERS: You have enough inspectors you're saying?

MR. SIMPSON: We believe it is, yes. In conclusion, I would suggest that if you wish us to continue to conduct these inspections, we do not believe that we should share jurisdiction with either a private sector employer or some other public entity. From my experience, Mr. Chairman, dual responsibility often means that nobody is responsible, and we just can't afford that kind of thing when human lives are at stake. That's the conclusion of my statement.

CHAIRMAN WATERS: Is there a statute that provides for dual inspection?

MR. SIMPSON: Yes, indeed there is. It's <7905 of the Labor Code. It makes it discretionary for us to...

CHAIRMAN WATERS: You're saying we should repeal that section then or?

MR. SIMPSON: Well, we're suggesting, Mr. Chair and members, that we might not oppose a repeal of that provision of the law. As I say, we think perhaps dual jurisdiction is, on balance, disadvantageous and perhaps even dangerous.

CHAIRMAN WATERS: Mr. Condit.

ASSEMBLYMAN CONDIT: Has there ever been a case in where you've used that code? Where you have contracted out because you've been behind or some other reason?

MR. SIMPSON: In this area, no, Mr. Assemblyman, we have not.

ASSEMBLYMAN CONDIT: Do you see any possibility of that ever occurring?

MR. SIMPSON: Well, and at the present workload, and with the present availability of personnel and demands on their time, we don't see any need to invoke the program.

MR. RINALDI: We use our inspectors who do...

CHAIRMAN WATERS: Mr. Rinaldi.

MR. RINALDI: ...the aerial passenger tramways, so and the seasons are different too.

CHAIRMAN WATERS: Please use the mike, Ron.

MR. RINALDI: We have the ability to inspect these rides as frequently as necessary. I believe we average about four inspections a year. The law mandates one. So, the capability is

there and the workload isn't so great that we see any benefit in going through a process of developing regulations on how you'd permit outside inspectors to do this. I think the bigger problem, Mr. Chairman, is there would be a great reluctance for anyone to take on this task because of the enormous liability involved and we've experienced this in exploring the same thing in the elevator industry.

CHAIRMAN WATERS: Okay. Oh yeah, when you send, when there's an accident and you report to the, or send the report to the Division of Fairs, is this all you send to them? Is this kind of a gimpy little outline here? And could you, in the future, provide them with a detailed accident report so they have a better chance to evaluate that? I have it here...

MR. SIMPSON: Indeed, we can and we have gotten together with Esther Armstrong and others in the Division of Fairs and Expositions and agreed with them that we will, starting now, send them a copy of every accident report in full.

CHAIRMAN WATERS: Okay.

MR. SIMPSON: And also, the root location information that comes in with the permit and then any other information that they would like. We're more than happy to cooperate with them.

CHAIRMAN WATERS: Okay. Further questions by the committee? Thought I had, I think I had something else but I can't think what it was right now.

MR. RINALDI: We'll be available.

CHAIRMAN WATERS: All right. Please...

MR. RINALDI: Thank you, Mr. Chairman.

CHAIRMAN WATERS: ...you know, stick around. Long time, can't believe it. Where are we? Gene Marquart, Insurance Officer, Office of Insurance and Risk Management, "The State's Liability." I was waiting to hear about that. Thank you very much for being with us.

MR. GENE MARQUART: Thank you, it's a pleasure to be here, sir. The state does have a liability as you know with the district ag. I am Gene Marquart, the State Insurance Officer, Office of Insurance and Risk Management. We do have a, the state does have a liability. We certainly have a great interest in the safety of the carnival operations, because one of the means of risk management for the state is to have us named on the insurance policies of the carnivals so that if we are named along with the carnival operator, the insurance carriers for those operators can take part of the states defense in resolving the claims. I have in front of me, I did a fast check yesterday, we have a different number of claims outstanding than the gentlemen before me have discussed.

CHAIRMAN WATERS: Would you pull that mike up just a little bit closer, please.

MR. MARQUART: The last time it turned off completely when I was testifying. We have, presently we have 16 claims outstanding for carnivals of which 14 of those are ride related.

These are open claims for 1984/85 and 1985/86. They are different, of course, than the accidents that are discussed where there are mechanical breakdowns and that sort of thing, but they're; and many times people do not realize or have not indicated that they have been hurt on a ride until afterwards and then they will put in a claim to the state. Now, which at that time then we get together with the carriers of the carnival operators and pass on our liability defense to the carnival operators. So we are very concerned about the safety of the rides just as the operators are. We did, also did some checking with the insurance carriers for the carnival operators within the last two days and those very few carriers who are writing carnival insurance now had no interest at all in being involved in the inspection. Continental Insurance Company does do some work but they, as we've indicated, you indicated by the broad definition of "employee" it may have retained licensing depended contractors to inspect for those particular carriers. In the state of Texas, I believe, the insurance companies are required to provide the inspection and in that area its all done by licensed contract inspectors; no employees as such of the insurance carriers, primarily for the conflict of interest that the gentlemen were mentioning and other reasons. We take a continued interest in not only the limits of liability that the operators have, the availability of the insurance, but we are certainly following and working very closely as we can to prevent

accidents and to work with whoever is designated so we can have as thorough and as frequent inspections of the rides as possible. I certainly think once a year is not enough, so I'm really pleased to see that there's at least four times. I'd like to see it every time they set up as a matter of fact.

CHAIRMAN WATERS: Do you think the state's liability would change in any way if we had private inspectors, private insurance inspectors doing the...?

MR. MARQUART: First of all, the insurance companies, Mr. Waters, would have so many disclaimers because of the conflicts of their activities that I think there would have to be licensed inspectors probably contracted people rather than employees; those who have experience either in other states or have been licensed by our own people so that they would have the qualifications.

CHAIRMAN WATERS: So it wouldn't gain anything, you don't think, in trying to do that rather than....?

MR. MARQUART: I'm sure with just insurance employees, no sir, they wouldn't. It would not help us at all.

CHAIRMAN WATERS: Okay. What's the potential of the state's liability out there with these rides and with regard to the state inspected rides, the amusement rides?

MR. MARQUART: I think Mr. Rinaldi can talk about the immunities for inspection and that sort of thing more than I. Certainly we have concerns about limits of liability and the fact

that we have to be as careful as possible with the quality of the insurance carriers that are writing the insurance. We have two claims right at the present time that were previously carried by an insurance company that was a nonadmitted carrier in the State of California. They've gone broke and now we are picking up the liability of that carrier. The nonadmitted carriers are the ones that have been writing carnival insurance primarily and so its a very difficult thing to keep track of at this time. But it is proper that we try to get admitted carriers if we can so that we'll have the loss fund to rely on in case there is a financial reversal. Our liability in the joint and several liability area if the carnivals are having a problem getting the limits of insurance as they are, and I know that two million is a maximum as far as I know at the present time, if there should be claims that go above that because we are contracting with them, we are allowing them on state premises, we would certainly be exposed to the, anything over that.

CHAIRMAN WATERS: We have not had that to this point.

Mr. Condit.

ASSEMBLYMAN CONDIT: Yes, do you use this accident report to evaluate trends, or...?

MR. MARQUART: I just saw that yesterday for the first time. We get our accident reports from our own, from the fairs themselves, and from the insurance: from our own inspections. So, this would be..., pardon me?

ASSEMBLYMAN CONDIT: More, much more comprehensive than this?

MR. MARQUART: Well, yes sir. When we make an inspection its very thorough. Of the loss, now that's different than the accidents that we're talking about. I'm going to be very interested in getting copies of the accident reports as they come to district ag.

CHAIRMAN WATERS: Thank you very much, sir. We call Esther Armstrong now. The Division Chief, Fairs and Expositions. She's going to talk about the division's role in ride safety. And anything else she wants to talk about.

MS. ESTHER ARMSTRONG: Or you ask me about. Mr. Chairman, Assemblyman Condit, my name is Esther Armstrong and I am the Assistant Director responsible for the Department of Food and Agriculture's Division of Fairs and Expositions. One of the key roles I play in California's fair system is the approval of state supported fairs budgets and contracting methods. California's fairs represent our states 48th largest industry and carnivals play an important role in the health of our state's fairs. I am not a technical expert in the area of carnival ride safety. My background is with fair management and agriculture. It is an important area and I rely on OSHA, the legislature and the carnival industry itself for advice and support. I must agree with Kim Myrman's comments regarding our leadership in ride safety. Our state has a tremendous track record in the field and

we must continue to improve and upgrade our policies to protect the public. Our staff and our fairs are looking forward to working with this committee. Thank you.

CHAIRMAN WATERS: Thank you, Esther. Gary?

ASSEMBLYMAN CONDIT: Yeah, since I'm on the accident reports I might as well. You take, you use this accident report to do what with once you receive it?

MS. ARMSTRONG: I don't know if you're aware of; we're in our contracting procedures with carnivals, the fairs. We use safety as a very important part of evaluating that carnival for fairs. This is the first report that we have ever received from OSHA.

ASSEMBLYMAN CONDIT: I see, so this is what I'm getting at, does this report, do we share this information on the accidents these folks have with fairs that are looking into signing contracts with them?

MS. ARMSTRONG: Yes, I sent this report with a cover letter to all fairs in the State of California plus all the carnival rides, operators.

ASSEMBLYMAN CONDIT: So, when they interview them, they can say, look, you had 26 accidents, give me the scoop on...?

MS. ARMSTRONG: Well, yes. This report represents the first effort by OSHA in this area. As an administrator, I feel that there cannot be too much information provided on this important subject. And as the OSHA people related, yes we've had

a meeting with Mr. Swerry and Ron Craven in my office saying that I don't think we can get enough information that regards to fairs. And in talking with Ron Craven and with the accident, and having the accident reports, not all those accidents were at fairgrounds. The accident reports, you know, they can be at schools or at shopping centers, or whatever.

ASSEMBLYMAN CONDIT: Okay. I just wanted to find out if they were being utilized to share the information with the Board of Directors, or Fair Board...

MS. ARMSTRONG: Yes, they do, they use that, for many years they were required to go to a high bid. This time we have worked with General Services and used the RFP proposal that puts safety as a very important factor. I don't think it can be stressed enough.

ASSEMBLYMAN CONDIT: As it should be, yes.

MS. ARMSTRONG: Correct.

ASSEMBLYMAN CONDIT: Thank you.

MS. ARMSTRONG: Norm?

CHAIRMAN WATERS: Yes, I guess that's it. Any further questions, Gary? Thank you very much.

MS. ARMSTRONG: Okay.

CHAIRMAN WATERS: Do you have, anyone else out there have anything that they would like to address this committee? I want to just take this opportunity to thank you very much for all of you participating. I think in closing I'd just like to urge

Cal OSHA to continue their good work and as far as the reports that they have indicated are necessary, we'd hope that you would deal with that in a more effective way, if you will, and maybe we ought to take a look at the provisions of that labor code <7905 and whether we need to repeal it or what to do with it. I need some recommendations in order for us to proceed on that and with that if there's no one else? This hearing is adjourned.

Testimony from Larry Davis has been submitted, and accepted by Chairman Waters (attached).

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April 1, 1986

APP 2 1986

Honorable Norm Waters
State Capitol
Room 6028
Sacramento, California 95814

Dear Assemblyman Waters:

You have asked me to address the issue of safety as it relates to carnivals and CAL-OSHA.

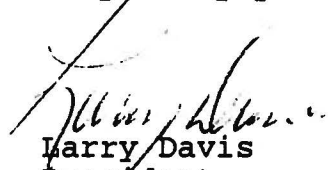
Safety is a real problem. If not checked, it can become a very serious problem. The job of our state inspectors is a tough one but one that is being performed in a very professional manner. I am personally acquainted with all of these people and how they do their job. They are good people who are doing their best to work within the system. The fair boards, sometimes led by management, book carnival companies without a complete knowledge of the safety record of the carnival. In cases where the carnival is not from California, the inspector first sees the ride only a day before the fair opens. Since the fair must open on time, this sometimes leads to a hasty inspection. I know that our state inspectors do not like to work under these kind of circumstances, but what are they to do?

We come back again to safety. The direct responsibility of the carnival management is to ensure that their equipment is kept in a safe condition and that their employees are doing their job properly. Operators must accept the responsibility and have the necessary moral character to operate their business in a safe manner or suffer the consequences. Now the consequences are high insurance premiums. Tomorrow there may be no insurance at all and then we will be faced with being out of business.

The accountability must be placed where it belongs - on the carnival operators not on CAL-OSHA.

I would be happy to discuss any particular accident and offer my opinion for your information if you wish. I believe that my 30 years as a carnival operator has taught me something about amusement equipment.

Very truly yours,



Larry Davis
President
Carnival Time Shows

