Approved Arthur Douville 4-22-86
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry.

The meeting was called to order by Representative Arthur Douville at
Chairperson

9:00 a.m./p.m. on March 27, 1986 in room 526-S of the Capitol.

All members were present except:

All members were present.

Committee staff present:

All present.

Conferees appearing before the committee:

Jean Chappel, Midwest Rehab. Serv. Inc.
Joan Wesselowski, KS Assoc. of Rehab. Facilities
Joe Taggart, Machinist Union, Wichita
Bill Sneed, KS Assoc. of Defense Councils
James Zongker, Machinists, Wichita
Dr. Ann Neulicht, Intracorp
Mike Kiegerl, President, Professional Rehab. Management, Inc.
Jim Shetlar, KS Trial Lawyers Assoc.

The following people spoke as proponents of S.B. 365: Jean Chappel, Joan Wesselowski (see attachment #1), Dr. Ann Neulicht (see attachment #3), Mike Kiegerl (see attachment #5).

The following people spoke as opponents of S.B. 365: Joe Taggart, Bill Sneed, James B. Zongker (see attachment #'s 2 and 4), Jim Shetlar (see attachment #6).

Because of time limitations additional written testimony was received (see attachment #'s 7, 8 and 9).

A question and answer period followed. Representative Bideau said that the problem with the bill is the way it is worded. He asked Bill Sneed if his organization participated in the drafting of the bill. Mr. Sneed said no. He then asked the machinists union rep. if they participated in the drafting of the bill. They too said no. He asked the people from the KS Trial Lawyers Association if they participated in the drafting of the bill. The said they found out about if after it had been introduced. Representative Bideau then asked all of the people he had just spoken to if they would like to participate in an interim study on the bill, so that they could have some input. They all said that they would.

Representative Douville informed the committee that the provisions of S.B. 365 have been amended into a house bill in a senate committee. He said that they could still consider S.B. 365 when the Senate passes it back over to the House.

The meeting was adjourned at 10:00 a.m.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

HOUSE COMMITTEE ON
LABOR AND INDUSTRY

Guest List   Date 3-27-86

Name	City	Representing
[illegible]	Newton	Ks Assn of Rehab Inc
Jean Chappell	Abilene	Midwest Rehab.
Bill Morrissey	Topeka	KDHR / WC
James Zongker	Wichita, Ks	Machinists
Tom Hammond	Wichita, Ks	Machinists
Bud Langston	Topeka	KDHR / WC
Marjorie Wright	Topeka	Menninger Fd.
Susan Hurley	Topeka	Menninger Fd.
Bill Sneed	Topeka	Ks Assoc. of Def. Counsel
Joan Watson	Topeka	SRS - Rehab SVC.
Ann Newlicht	Kansas City	Intracorp
[illegible]	Topeka	KTLA
[illegible]	Topeka	KTLA
Dan Nagel	WICHITA	LL 834
Harold F. Stocking Jr.	wichita	Local lodge 834
Susan Matich	KC	Crawford Rehab
Tim Johnson	KC	Work Assessment & Rehab Center
Dick Thomas	Topeka	Rehab Services - SRS
Chris Cowger	Topeka	KS. Ins. Dept.
Rob Hodges	"	KCCI
R. A. Eldridge	Wichita	LL 834 Mach. Union
J. Taggart	Wichita	LL 834 " "
R. Gaches	WICHITA	BMAC

Kansas Association of Rehabilitation Facilities
TownCenter Building 120 West Sixth, Suite 110
Newton, KS 67114 316-284-2330

TO: HOUSE COMMITEE ON LABOR AND INDUSTRY

FROM: KANSAS ASSOCIATION OF REHABILITATION SERVICES (KARF)

RE: SB 365 - AN ACT CONCERNING WORKERS' COMPENSATION, RELATING TO VOCATIONAL REHABILITATION

DATE: MARCH 26, 1986

Under the current Workers' Compensation law the intent to restore the injured employee to gainful employment has not occured in 70% of the rehabilitation cases in Kansas because rehabilitation (medical and vocational) has not been given the priority it needs to return the injured worker to employment. These cases have ended up being litigated with a lump sum payment and the individual being supported by the taxpayer through state welfare, Social Security and medical programs. These programs pay out about five times what Workers Compensation does to severely disabled workers. (1)

Recommendation

Kansas Association of Rehabilitation Facilities supports and recommends that SB 365, An Act Concerning Workers' Compensation, Relating to Vocational Rehabilitation, be passed because the bill provides:

1. A win, win situation for employee and employer
2. Prompt, early, and elective rehabilitation (vocational) through either private (non-profit facilitites, private vendors) or public rehabilitation
3. Payment for only functional loss, no work disability if the injured worker refuses to participate in rehabilitation
4. Assessment and job placement with same employer as priority, etc. and finally training as last priority
5. Expeditious return to work of injured employee

3-27-86
Attachment #1
H. L+I

Justification

1. One study has shown that when referrals to rehabilitation services took 4 to 6 months, 33% were returned to work. That proportion dropped to 18% in cases where more than a year elapsed between injury and rehabilitation. (2)
2. A second study showed that 78% of the individuals who received rehabilitation returned to work or entered training and then returned to work. Twenty-one percent were employed in 6 months, 90% employed within 12 months, and all employed within 15 months. (3)
3. Rehabilitation can decrease Workers' Compensation costs significantly.
4. Returning the injured worker to work saves the taxpayer money in payment of disability benefits.

References

(1) Riordan, Teresa, "Adding Insult to Injury," The Washington Monthly, (March, 1984), 18

(2) Eckenhoff, Edward A., "Medical Rehabilitation for Disabled Employees," Business and Health, (May, 1984), 30-31

(3) Schwartz, Gail, "Disability Costs: The Impending Crisis," Business and Health, (May, 1984) 26

(4) Eckenhoff, Edward A., "Medical Rehabilitation for Disabled Employees," Business and Health, (May, 1984), 30

Adding Insult to Injury

The workers' compensation system rewards lawyers, insurance companies, and workers with hangnails—everybody but the seriously injured worker.

In 1978 a fraternal organization of about 250 Florida lawyers sat down in a Miami country club to dine, to the accompaniment of a 12-piece orchestra, on prime rib and baked Alaska in celebration of yet another very good year. This particular group called itself the "Friends of 440," after the chapter number of a Florida law that permitted them to make a reasonable living in their line of work. No, they weren't regulatory specialists or even tax lawyers. Instead, they belonged to the burgeoning bar of workers' compensation, the program designed to provide for workers injured on the job. And they had collected almost $20 million in legal fees for representing claimants in workers' compensation cases during that year.

So what, you say, lots of lawyers make money. Yes, but the workers' compensation system was designed to *eliminate* litigation. It's supposed to be like small claims court. There aren't supposed to be any lawyers.

Teresa Riordan is on the staff of The Washington Monthly. *Ben Holmes assisted in the research of this article.*

Lawyers aren't the only unintended beneficiaries of the workers' compensation system. Insurance companies, doctors, and unscrupulous workers with trivial injuries have forged the system into a highly profitable industry—highly profitable, that is, for everybody but the seriously injured worker, the party that compensation was designed to protect.

Workers' compensation, the first social insurance in America, started out as a good idea—as a way to minimize the human tragedy of workers injured on the job. Until the turn of the century, the only way an injured worker could make his employer pay his medical expenses and wages while out of work was to drag him into court and charge that he was to blame for the accident. If the worker couldn't prove this—that the employer was negligent—he and his family had to foot the bill themselves. Most often they couldn't. If a fellow worker had caused the injury, or there were multiple causes, or the unexpected had happened despite all precautions, the worker had to provide for himself—quite an impossible feat for, say, a laborer whose only source of capital was his now-broken body. It was often

BY TERESA RIORDAN

3-27-86 H. L&I
Attachment #1

tough to win a case even when the worker could document negligence because few workers could prevail against the legal horsepower their employers could afford to hire.

So along came Progressive Era reformers who began pushing for a "no-fault" compensation system: employers, through private insurance, would pay injured workers' medical expenses and lost wages regardless of fault. In exchange, workers would give up their right to sue employers for negligence. The costs of all work-related injuries were to be allocated to the employer—through higher premiums to an insurance company, which would pay actual benefits. This was not because of any presumption that the employer was to blame for every individual injury, but because the inherent hazards of employment should be considered a cost of production. By 1920 all but six states had passed a workers' compensation statute. Today all states have such statutes, which covered about 79 million workers and paid out $15 billion in benefits to workers in 1981 (the most recent figure available). But the growth of workers' compensation has been a cancerous one—one that is but a symptom of the broader malaise gripping America's social programs today.

Compplots

Compensation was supposed to be simple, free of lawyers and courts. No state's procedure is the same, but, typically, this is how it was intended to work: First, the worker gives notice of injury to his employer, who files a report with the state compensation commission. Then, in most states, the employer's insurer and the worker must come to an agreement, which must be made before payment begins, on what should be paid. The problem is that the parties often don't agree. There are hundreds of possible points of contention, so this "agreement system" constitutes the chink that lawyers have used to wedge themselves firmly into the compensation process. When a claim is "contested," which means the claimant files a claim with the commission, the parties can reach an agreement at any point of the process. But if they don't, they go first to an informal hearing, then to a formal hearing, and, if necessary, all the way to the appellate level of district court.

Only a few cases (almost all of them the serious—i.e., expensive—cases, but more on that later) are contested when the report of injury is initially filed. Nonserious cases are frequently disputed, but only after the worker has been taken care of while injured and, usually, is ready to go back to work. That's right, most claims are contested after, it would seem, the system has met its obligation to the injured worker. The reason can be found in what are called, in comp-culture parlance, lump-sum settlements. They are the keystone of the industry that lawyers and insurance companies and doctors and workers have constructed on the foundation laid by workers' compensation.

Lump-sum settlements are based on the well-meaning theory that even after the worker recovers from an injury, he may sustain a permanent disability for which he should be monetarily compensated. This is called "permanent partial disability" and is figured as a percentage of impairment. An example: if a millworker cuts his arm off in a high-speed saw, his arm is indisputably 100 percent impaired. His lump-sum settlement is based on an awards "schedule," which assigns a dollar amount to each body part or type of impairment. So if the mill is located in, say, Minnesota, the millworker will be awarded $78,300, or 100 percent of the scheduled award. This is over and above his medical expenses and the wages he received while out of work. That $78,300 is awarded, in theory, because without the use of his arm the millworker won't be able to make as much money in the future. In most states, in exchange for the lump sum the claimant often agrees not to return to the insurance company for more benefits should complications from the injury arise in the future. (The schedules vary widely, because they are legislated by each state. If you're going to lose a thumb on the job, for example, try to do it in Iowa, where it's worth $29,940, rather than across the border in Missouri, where it will fetch only $6,821.)

It would be foolhardy for the insurance company to contest the size of the lump-sum settlement in such a black-and-white situation as the case of the millworker, so it will likely reach an agreement with the claimant's attorney without meeting before the commission again. But the millworker isn't the only one getting lump-sum settlements these days. Lump-sums for minor injuries are ubiquitous; workers collect thousands of dollars for twisted ankles, strained backs, and other afflictions where the lost-future-income argument is a little tough to buy.

Take the case of a municipal worker in Grandville, Michigan, who was awarded more than $20,000 in a lump sum after injuring his knee in a softball game. The claimant's attorney argued that because the city owned the ball field, the injury had taken place on company property. These cases generally are contested and so, at the very

least, are argued at informal commission hearings.

Before these "hearings," the compensation lawyer and the insurance representative will usually haggle in the hall, trying to reach a last-minute agreement. If they don't, the hearing proceeds. Testimony is taken, evidence is given, and the whole affair begins to resemble a typical courtroom proceeding, which is exactly what workers' compensation was supposed to eliminate. This is where the doctors come in. After all, the debate is about one thing only: what "impairment rating"—meaning percentage of "permanent partial disability"—should be assigned to the claimant. This, it turns out, is quite a subjective number—to the financial gain of many a doctor.

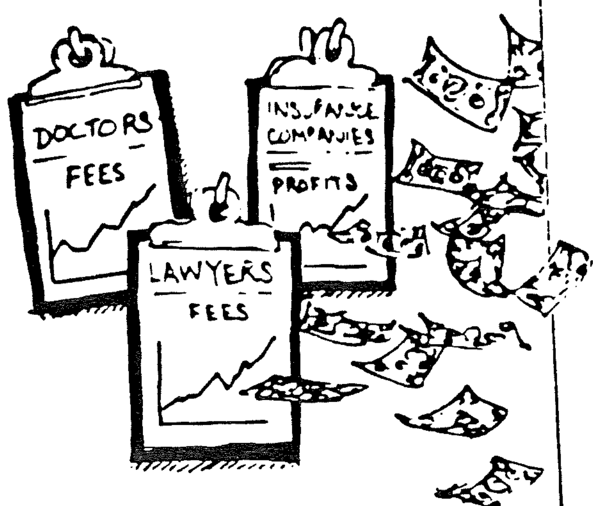
Each side usually gets to choose its own doctor to examine the claimant and assign an impairment rating. The doctors are selected not for whether they know an I.V. from a blood sample but for whether they have a reputation for having a soft heart for injured workers or a profound respect for the insurance industry—*i.e.*, whether they give high or low disability ratings to the claimants they examine. In a survey of 100 compensation cases several years ago, the *Baltimore Sun* found that 80 percent of the claimants went to one of just two physicians, Allan H. Macht and Eli M. Lippman. For their talents, compensation doctors can make a handsome living, especially if they do a bulk business. They get $1,200 to $1,500 to testify at a compensation hearing and from $200 to $700—depending, as one compensation lawyer puts it, "on how greedy the doctor is"—for giving a deposition.

"It's all a game," Tom Woodruff, a member of the Florida House Insurance Committee and a practicing compensation lawyer, told the *Miami Herald* in 1979. "The carrier sends a claimant to an incredibly conservative doctor. I send him to a very liberal doctor. The judge comes down somewhere in the middle." In this game, the compensation arbiter serves no longer as a seeker of the truth but, rather, as an umpire who determines how much you should get for landing on Free Parking.

One reason lump-sum settlements have proliferated in the past 30 years is that without them, without lots of them, few lawyers would find the compensation business lucrative enough to pursue. In some states, in fact, the only fee lawyers can collect is for what they get over and above wage and medical benefits. So the only reason they're in the compensation business is what they make off lump-sum settlements. To be sure, in some states the lawyer can, for all his filing and bargaining, get up to 25 percent of the disability wages the claimant collects while he's out of work. But these benefits aren't overly generous to begin with (generally two-thirds of the salary at time of injury, though this is tax-free) on the assumption that we don't want him to get too comfortable being on the dole. So the percentage that trickles in weekly from disability pay is just lunch money. The big bankrolls, of course, come from lump-sum settlements.

Why is the compensation insurance industry, with apparently little resistance, shelling out thousands of dollars in dubious lump-sum settlements? In part because the practice has become routine. The insurance commissioners who decide the claims now expect to give the claimant some kind of lump-sum settlement

This system, which was supposed to be "no-fault," often leads to just the sort of courtroom-like procedure it was supposed to eliminate.



regardless of how inconsequential the injury. But another reason is that lump-sum settlements are a type of insurance for the insurance industry—insurance that the worker won't come back later for more medical expenses and disability pay. That right, remember, is usually signed away in exchange for a lump-sum.

Rate-Crashers

So it would seem that workers' compensation isn't such a great deal for the insurance companies after all. Indeed, it would seem that the best they can do is minimize their losses. But it only seems that way when you're looking at the structure from the front. A trip around to the other side, where they earn their money, lends a whole new perspective.

In most states, premiums are fixed; though insurance is carried through private companies, there is no competition. A state commission or regulatory agency, acting under the authority of Congress's great gift to the insurance industry, the McCarran-Ferguson Act, sets the rates for premiums just as the legislature sets the schedule of benefits for permanent-partial disability. Although the state insurance commission has to approve rate increases or changes, it relies on a private corporation—the National Council on

Melvin's World

In exchange for workers' compensation, workers gave up the right to sue their employers for negligence. There is, however, a backdoor way to sue when workers are injured on the job. They sue not their employer but a third party, often the manufacturer of equipment or materials they used at the workplace. This category of third-party suits is called, logically enough, product liability. And if workers' compensation is a scandal, according to Jeffrey O'Connell, a University of Virginia law professor and expert in no-fault insurance, then product-liability suits are "a scandal piled upon a scandal."

One reason for the recent proliferation of product-liability suits is that workers' compensation does not provide adequate coverage for occupational disease victims (whose symptoms often don't appear until after the statute of limitations has long since run out in workers' compensation). Since they have no other option, they sue. More than 20,000 such suits have been filed by workers exposed to asbestos. Another reason is that suits are now easier to win. Tort law has evolved in such cases into a system of "strict liability," which means the injured party has to prove only a product or warning defect, rather than negligence. Melvin Belli, the preeminent personal injury lawyer (once called the King of Torts by *Life* magazine), offers yet another reason for the explosion in the number of product liability suits: "In common court you can get a lot more money than in workers' compensation," he says. This is certainly true—not just for the injured worker, but for Belli, too. Belli wins several settlements of more than $1 million a year, one-fourth to one-third of which he keeps for himself, from injured workers' cases.

But the problem with product-liability suits is the problem that spurred enactment of workers' compensation in the first place: tort law is inefficient and arbitrary. The worse the injury, the larger the settlement sought, and the longer the insurance lawyers drag out the case. For every 66 cents claimants get in product-liability setlements, lawyers haul in 77 cents (remember there are lawyers' fees on both sides). Most suits are brought on a "contingency basis," which means the worker doesn't have to pay his lawyer anything unless he wins the suit. Belli, in an interview with the *San Francisco Chronicle* called this contingency fee "the poor man's ticket to the courtroom." Maybe. But if so, it's a lottery ticket, because to continue his lifestyle of velvet-lined offices and satin-lined suits, Belli can only afford to take on cases he knows he can win—irrespective of the extent of a worker's injury or his need for compensation. No clear sense of justice prevails.

Business and insurance lobbyists are carrying the fact that the trial bar is profiting disproportionately from product-liability cases as a banner under which they hope to pass sweeping reforms. Senator Bob Kasten, the white knight of the business lobby, has introduced a bill, which now has full administration backing, that would set federal standards of liability, limiting punitive damages, forbidding suits by people damaged by capital goods more than 25 years old, and tightening the terms of liability.

The result would be a disincentive for manufacturers to do the research necessary for developing safe products, because if they don't know that their product is unsafe, they won't be liable. The burden of proof, and the accompanying increase in litigation costs, would shift to the injured claimants. So the irony of Kasten's crusade is that his bill would be a relief measure for those who have added the most to the high cost of litigation in the first place—the insurance industry and manufactuers who profit from unsafe products—while it would relax the safety inducements of present tort law. With OSHA now offering only a silhouette of protection, this is a frightening prospect.

—Ben Holmes

Compensation Income—for recommendations. Who funds the NCCI? Basically, insurance companies who pay a fee to belong to the council and agree to charge premiums in accordance with its fixed schedule.

All this smacks of cartel and government-sanctioned price-fixing, according to a study commissioned by the Labor Department in the early days of the Reagan administration. Most states follow the NCCI recommendations for premium rates because, according to Robert Hunter of the National Insurance Consumer Organization and a coauthor of the Labor study, "20 or 30 actuaries come charging down from NCCI in New York" to argue for them. "State regulators are just undergunned," he says. "NCCI gets away with murder." Some states don't even have an actuary or an insurance commissioner. The study concludes that as much as $1.8 billion a year in insurance premiums could be saved if a more competitive rate-making system, which some states already use, were adopted nationwide. The study, by the way, was not published after Raymond Donovan, the secretary of labor, received a letter from the six leading compensation insurance companies asking him to "halt the release" of it.

Another reason insurance companies are making such a killing off compensation is investment income. Insurance premiums of all kinds serve as interest-free loans to the insurance industry, but in the case of compensation insurance there is, in effect, more income to invest because it takes so long to settle claims. And in other insurance specialities—for instance, auto insurance—income investment reserves are at least somewhat constricted by competition. Not so, as we've already seen, in compensation insurance.

For example, according to Hunter, the compensation insurance industry earned a 35 to 40 percent return on net worth after taxes in 1981 from the businesses it insures in Washington, D.C. But even though investment income can be significant, it's not taken into account when premiums are figured. That's right. When rate-setting time comes around, the insurance companies pretend that this enormous source of income does not even exist. And less than 60 percent of the money private insurers take in on premiums is paid out in benefits. Compare this to the Social Security benefit system, where 95 cents of each dollar goes into benefits. Or look at, for example, Ohio, which has a state-operated fund. It ranks 11th in the nation in the level of benefits paid to disabled workers, but 39th in the cost of the insurance to business.

Why do insurance companies pay out so little in benefits? Insurance companies rarely contest *partial* permanent disability claims, those primarily minor claims that typically end in lump-sum settlements. But they do contest—six times more frequently, in fact—*total* permanent disability cases. In other words, they fight hardest the cases in which the worker needs compensation the most. These are cases of severe disability, where the worker may be unable to work again for years or perhaps the rest of his life—a costly possibility for the insurance carrier.

In many states, when an insurer contests a case he isn't obligated to pay the worker anything until the claim is resolved. Where there is a big backlog of cases, it takes four years to settle the typical compensation dispute. That's how long it took before compensation payments started for Robert T. Rigby, a worker in Baltimore suffering from burns, open sores, and disfigurement of his fingers, face, and genitals caused by chemicals he worked with. Many such disabled workers drift into the fourth dimension. They can't collect workers' comp because their claims are in limbo. They can't apply for unemployment, because it requires an active search for work, and they can't work because they're disabled. Or, if the worker lies and says he can work, to collect unemployment, the lie will come back to haunt him in the compensation hearing. How, the insurance attorney will ask, can you collect unemployment if you're disabled?

In some cases, insurance companies "starve out" a worker by delaying the processing of his claim, either intentionally or because of administrative backlog. Sometimes, the insurance company doesn't pay even after a weekly disability pay benefit has been agreed upon and approved by the commission. And it won't pay until the court orders it to. Why should it? Generally there are no fines for non-payment unless an appeals court imposes a contempt of court penalty, which occurs rarely. In some states, a carrier may be forbidden to take on further compensation business, but this also is rare. The most the insurer risks is having to pay retroactive benefits. After the worker's been without money and jobless long enough, the insurance company can offer him a lump-sum settlement of, say, $20,000, an irresistible amount to a desperate person. It also looks good to his attorney, who would rather get one big check today than dribs and drabs every week for the next seven years. Besides, the lawyer has an added incentive for making a lump-sum settlement instead of fighting for weekly disability

pay, because the insurance carrier can contest the disability wages up to the appellate court, that route can mean two to three times as much work for the attorney, for the same 20 percent settlement cut.

Even if the insurance carrier doesn't get a lump-sum settlement, it always comes out ahead if it stalls, for three reasons. First, it earns interest on the money it would be paying out. Second, inflation will have appreciably lowered the worth of the worker's pay by the time the award is made, because benefits are determined by the amount the worker was earning the day of the accident. And, third, if the insurance company is real lucky, the claimant may just kick the bucket before it ever pays a cent.

Indeed, the insurance industry seems to have mastered the art of paying as little as possible to permanently disabled workers. Only 15 percent of the estimated 410,000 workers severely disabled by injury receive long-term compensation, according to a Labor Department study released in 1980 (the most recent national figures available). Of those, the average pension is just 30 percent of previous wages. In some states, the percentage of those receiving benefits doesn't even approach the 15 percent average. In Illinois, for example, only roughly 4 percent of all fatal and serious cases involve a pension.

Those with occupational diseases (where the disability occurs over time after repeated exposure to, say, a chemical) have an even slimmer chance of getting compensation. This is because a worker must prove that his injury arose "during the course of and out of" his employment, which is hard to do when a condition develops over time. In addition, most states have arbitrary statutes of limitation that stipulate a worker must file for compensation within two years of exposure to a hazardous substance, in effect precluding awards for occupational diseases like asbestosis or silicosis, which have latency periods of up to 30 years. As a result, only 5 percent of those severely disabled from an occupational disease receive workers' compensation benefits. Those who do don't get much. According to 1975 Labor Department figures (again, the most recent national figure available because nobody bothers to keep track) the average *total* compensation for a worker who had been permanently disabled by an accident was only $23,352. The average *total* compensation for the occupational disease victim with permanent total disability was even lower: $9,676. Total.

What happens to the disabled workers who don't get workers' compensation? Sometimes they enter the lottery of third-party lawsuits—a sort of backdoor way to sue for negligence, a privilege workers supposedly gave up for guaranteed disability payments (see sidebar, page 16.) If their number comes up they can reap thousands, even millions. Most often, though, they end up being supported by the taxpayer through welfare and the near-bankrupt Social Security and Medicare programs. These programs pay out almost $3 billion—about five times what workers' compensation does—to severely disabled workers who should be provided for by workers' compensation. Even so, 280,000 workers—a high percentage of them women and minorities—don't get any sort of financial assistance at all, according to a Labor Department estimate. They just fall through the cracks, many times because they don't know they're eligible for aid.

Going for Baroque

If the lawyers and insurance companies are guilty of constructing the baroque system of workers' compensation we now have, the government is guilty of buttressing it. In creating federal disability pay within the folds of the Social Security Administration, Washington ignored the existence of workers' compensation. When it looked around a few years later, it discovered that the two programs overlapped each other. And in its infinite wisdom, the government decided to reduce a worker's benefits if he was getting money from both programs. This "offset" system stipulates that if an injured worker is getting both Social Security disability and workers' compensation, he can't collect more than 80 percent of his former salary from both. If he does, the government reduces its payments so the worker gets just 80 percent. In 14 states, the insurance companies are the ones who get to lower *their* benefit payments. This is because the Social Security Act used to provide that if a state elected to reduce its benefits, Social Security benefits could not be reduced. Congress realized the folly of this in 1981 and changed the rule—but only so no *new* states could begin to reduce their benefits. In other words, Uncle Sam gets to play the sucker every time. There is one kind of payment the government doesn't offset: lump-sums. So if the worker is smart, he will take a lump-sum and then collect Social Security disability.

Take the case of Elbert Turner, a 46-year-old father of eight whose spine was so fragile that one doctor warned he could become paralyzed if he stepped off a curb the wrong way. A

workers' compensation judge in Daytona Beach, Florida, ruled in 1979 that Turner should get $80 a week for life as well as medical coverage Turner's maximum disability benefits were set at $112.52, two-thirds of his former pay. But Turner qualified for $56.79 in Social Security disability payments, which, along with the $80 in compensation, put him over the limit. So the insurance company—not the Social Security Administration—decreased its payments to Turner by $24.27. Then an advance of $2,000 in Social Security disability pay to Turner (which he got instead of weekly payments for the first five months) was labeled an "overpayment" by the insurance company, which deducted another $5 a week from his check. Then, after Turner was given a 5 percent cost-of-living increase—which amounted to $16 a week—in his disability payments, the insurance company, again, lowered its compensation payments, which are not adjusted for inflation. The insurance company had whittled its weekly payments, which had started out at $80 a week, to just $34.73.

Turner ended up settling his case. He gave up all rights to future payments or medical care, in exchange for a lump-sum settlement of $22,500. Why? "I was better off without it because with that little bit of money I couldn't draw my government pension," Turner told the *Miami Herald*. "They knew I had a big family to take care of and they knew I couldn't do it on what money I was getting. They knew sooner or later I would press for a settlement because of what they were giving me."

Sometimes disabled workers don't know they're eligible for workers' compensation. Linie Mae Bass, for example, a spooler for a Burlington Industries cotton mill in Irwin, North Carolina, first experienced trouble breathing in 1971. "When I got off work in the afternoons," she says, "if I had to walk over a block to my car, I would be exhausted." The company sent her to a doctor in Durham, who told her she had a "breathing problem" and that she would have to be transferred to a different part of the plant, away from the cotton dust. Burlington transferred her all right—two years later. Her new job was as a cloth inspector, which involved running up and down steps from one floor to another and proved too much of a challenge to her damaged lungs. "There was no place else to go in the plant," she says. "I just went back to my old job"—back to the cotton dust. Then in late 1974, Bass's health deteriorated so much that she lost a lot of weight and could "barely keep my head up." Still, she went to work every day, six days a week. After all, she needed the money. Her husband was earning only a meager income. He had lost his arm in a mill accident 20 years earlier; he wasn't receiving workers' compensation for lost wages because he had been given a lump-sum settlement soon after the accident.

Workers' compensation has turned out to be a failure. But it is only one example of our society's tendency to offer help to individuals not according to fact of need but according to circumstance of need.

Eventually, Burlington sent Linie Mae Bass to another doctor in Chapel Hill, who told her that her lungs were in such bad shape that she was permanently disabled. The company doctor in Irwin met with Bass and told her, "The good news is that you don't have brown lung." He also told her to apply for Social Security disability—not a word about workers' compensation. She applied for Social Security disability and was denied it (she's not sure why). The doctor told her to apply again. She was denied again. It wasn't until sometime in 1976 that she learned—from the Brown Lung Association—that she could file for workers' compensation and that she did indeed have brown lung. After a drawn-out battle with Burlington's insurance company, Liberty Mutual,

Bass received her first compensation check in 1979.

And today? Bass's weekly compensation checks stopped last year. North Carolina law stipulated that the maximum amount of money she was allowed to receive from compensation was $32,000. And $8,000 of that had gone to her lawyer, who admittedly played a substantial role in wrenching money for Bass from the insurance company. Even though the "maximum" clause was eliminated in 1978—a full year before Bass saw her first compensation check—it technically applied to her because she started getting sick in 1974. Now Bass collects Social Security disability instead.

But the stories of Linie Mae Bass and Elbert Turner are not nearly as important as the fact that there are a lot of Linie Mae Basses and Elbert Turners—and that they are being compensated, not by insurance companies, but by society as a whole. The industries that impose these human costs are not always made to bear them, as the system assumes they do. Instead, the taxpayer pays $3 billion a year to provide for injured or disabled workers. Which means that the human costs of production, much like unchecked pollution, don't always show up accurately on industries' cost-benefit analysis, thereby giving the industries little incentive (through threat of higher compensation premiums) to make the workplace safer.

The Counter-Reformation

If workers' compensation is such a quagmire, why doesn't anybody try to clean it up? Mostly because the only people sinking in it are the unorganized, powerless, injured workers, worried more about whether they can pay their medical bills and feed their kids than about how to phrase a letter to their legislators on the injustices of the compensation system. The rest of us are standing on dry land—or, in the case of the compensation lawyers and insurance companies, harvesting a bountiful crop from the swamp.

Workers' compensation hasn't gone completely untouched by reform efforts. The Occupational Safety and Health Act of 1970 established the National Commission on State Workmen's Compensation Laws, which issued a report identifying 19 recommendations that are "essential to a modern workers' compensation." The states were supposed to comply voluntarily but the commission suggested that if the states hadn't cleaned up their act in five years, the recommendations should be made mandatory. At last count, ten years later, the states had taken only baby steps toward change. compliance with the 19 "essential" recommendations had increased from an average of eight per state to only 11 and a half. Why such lethargic progress? The issue is so complicated that no administration wants to touch it. "It's a hornet's nest," says Peter S. Barth, the executive director of the commission in 1971 and '72 and now a professor at the University of Connecticut. "You've got five or six different interest groups that live off this system." Although every administration has displayed a profound disinterest in compensation reform, the Reagan administration, in its quest to dismantle OSHA, has been more vigorously disinterested than usual. "You could replace [the Office of Workers' Compensation Programs] with a post office box," according to one civil servant.

In Congress, Senators Harrison Williams and Jacob Javits, every year from 1971 to 1978, did introduce bills requiring that those essential recommendations be instituted. But each year they were soundly defeated, mostly because of pressure from the insurance industry, which has an economic stake in preserving the status quo. Although, as we have seen, insurance companies pay a lot of unnecessary lump-sums for insignificant injuries, they often get away without paying for claims brought by seriously injured workers—the expensive claims. That the compensation insurance industry isn't bearing the costs it should becomes obvious when you compare it to the automobile insurance industry. Both reap windfalls from investment income that they fail to pass along in the form of lower rates. But the auto insurance industry has a vested interest in reducing auto accidents—because fewer claims means less money paid out—and therefore lobbies for safer cars and for such safety movements as airbags and better bumpers. The big compensation insurance carriers have yet to be seen conferring with Ralph Nader on how to make the workplace safer.

You hate to ask the obvious, you say, but what about unions? Aren't *they* pushing for reform? Not really. The compensation system "works" for the majority of workers. It fails only for a small minority.

After all, for every 100 union members who file workers compensation claims for nonserious injuries, there is probably just one seriously disabled worker. And because he's out of work, he's probably not even paying union dues any more. As long as those 99 card-carrying, voting members are satisfied, the union leader has little impetus or time to explore ways to take care of the guy who's really in trouble and who, inciden-

tally, probably no longer has voting privileges. So year after year state AFL-CIO units lobby for higher scheduled benefits (upon which lump-sum settlements are based), or simply higher benefits across the board, instead of reform of the system.

Most union leaders, some observers assert, aren't as scheming as all that. They simply don't understand the issue. So whom do they rely on for their information? Lawyers—workers' compensation lawyers to be exact. Take, for example, Mark Shaffer, a partner with the firm of Ashcraft & Gerel in Washington, D.C., which has been in the compensation business for 30 years (perhaps those in the Washington, D.C., area have caught their TV ad, starring John Riggins of the Redskins). Shaffer is a paid adviser to the AFL-CIO on the Longshoremen's Act (a federal version of workers' compensation). He and his firm also give free workshops to local unions on how to collect compensation. When the issue of compensation reform came up in the District of Columbia recently, guess who was whispering in the ears of the area union leaders? That's right, Ashcraft & Gerel.

For a better look at how the relationship between unions and compensation lawyers has stalled out reform efforts, let's look at the state of Delaware. A bill was introduced there in 1982 to reform workers' compensation by eliminating most lump-sum settlements, except in the case of amputation and severe disfigurement. In exchange, the bill would have increased the maximum weekly wage compensation from two-thirds of the average state wage to two-thirds of 125 percent of the average state wage, thereby increasing aid to severely injured workers. The bill also would have limited fees for lawyers to only what the lawyer got the client over and above his wage and medical benefits.

The bill was patterned after a "wage-loss" system that had recently been implemented in Florida, a state that, you will recall, had been

Mining the Federal Treasury

The Black Lung Benefits Act and the Longshore and Harbor Workers' Compensation Act came about because workers' compensation failed to take care of disabled coal miners and longshoremen. Both programs were enacted to meet genuine needs. Both, however, have mushroomed far beyond their original intent because of amendments passed over the years.

Let's look first at the black lung program, which was passed in 1969 as a temporary measure to care for coal workers with pneumoconiosis who were being left out of workers' compensation coverage. The original law limited coverage to those "totally disabled" by black lung. But subsequent amendments, the first in 1972, took a cap off death benefits, extended coverage to a host of new dependents, eradicated the waiting period for benefits, and radically liberalized qualifications.

How liberal are the qualifications? So liberal that almost every coal miner who retires or quits mining files a claim. In one case, an 82-year-old man died in 1966 of a heart attack, 38 years after he'd seen the inside of a mine. Seven years later in 1973 his widow applied for benefits because, she stated, her husband had suffered from "shortness of breath" and had worked 12 years as a miner. A doctor's statement reported that the man's lungs had been clear. Even so, after two unsuccessful claims, the widow was given a cash award of $12,240 and a weekly allowance of $232.

Besides money paid to people who genuinely fit the loose qualifications, $1.5 million in benefits had been paid by 1983 to 453 ineligible coal miners and their families. This included a multitude of double payments and payments to the dead. At one point, death benefits were being paid out to 23 "spouses" of one miner. Small wonder that this fund, which was originally going to tap only $40 million from general revenues, is now $1.9 billion in debt to the U.S. Treasury. Worse, the General Accounting Office projects a $9.5 billion debt by 1995.

The history of the longshoremen's program, which was started in 1927, resembles that of black lung. Initially it covered only a specialized class of maritime employees for injuries that occurred while in navigable waters. But Congress wasn't content to tinker with the black lung program in 1972, so it decided to tack several amendments onto the longshoremen's program. Now the program covers hundreds of thousands of workers, many of whom—pleasure boat builders and campsite employees, for example—rarely stray near water's edge during the course of a day. It's easy for a worker to get comfortable on disability benefits, which can be as much as $456 week and are fully indexed for inflation and tax-free. Often the worker is better off than he was before his injury. In addition, these disability claims are easy to qualify for because they're considered valid unless proved otherwise. Even if the claim is challenged, the worker can pick his own doctor to verify his injuries. Best of all, if the injury is ruled "permanent" a worker keeps receiving benefits even after he goes back to work. It comes as no surprise that claims have more than tripled since 1972 and cost $263 million last year.

—Mairi N. Morrison

plagued by all the typical problems of compensation. The wage-loss formula was designed to compensate workers for actual wages lost due to injuries. It eliminated lump-sum payments for permanent partial disabilities, which had covered a wide range of injuries, including relatively minor ones.

Though only a piecemeal solution to the national problem, the Florida reform has been a success so far. Since it passed in 1979, the cost of insurance premiums to business has gone down almost 50 percent, because unnecessary lump-sums have been eliminated. What about compensation lawyers in Florida? Well, they're not eating much prime rib these days. Their number has plummeted from 200 to about 10, according to one compensation lawyer. Lump-sum settlements dropped from more than $25 million in 1978 to less than $5 million in 1982.

But back to the cold weather in Delaware. Two lawyers by the names of Harry Rubenstein and John Schmittinger were lobbying heavily against the bill. Rubenstein and Schmittinger, as you might have guessed, make their living from workers' compensation cases.The pair did good work—the bill was defeated in June 1982—but they didn't do it all alone. Interestingly enough, the insurance industry, which initially had been cheerleading for the bill, lost its enthusiasm when the state senate added an amendment mandating a 26 percent cut in premiums that would take account of investment income.

Comp & Circumstance

Unions and compensation lawyers have been much more amenable to reform that would aid occupational disease victims. They were instrumental, for example, in the passage of the Black Lung Benefits Act of 1969. Today the big push is behind a bill in Congress to aid asbestos victims, which was written by Representative George Miller of California. But the problem with the Miller bill is the problem of limiting reform to, say, state-legislated wage-loss programs like that of Florida: it's simply not comprehensive. Instead of addressing the problems of workers' compensation as a whole, or even the problems of occupational disease as a whole, it focuses mainly on asbestosis. It's another patch for the quilt of assorted programs we already have, a quilt with lot of gaps, overlaps, and wasteful embellishment (see sidebar on page 21 on the Black Lung Benefits Act and the Longshore and Harbor Workers' Compensation Act).

Workers' compensation has turned out to be a failure. Yet it is but one dramatic example of a much bigger failing: our society takes care of its individuals not according to fact of need but according to circumstance of need. The unmarried 23-year-old laid off after working less than a year may get the same unemployment benefits as the laid-off 38-year-old with four kids and an invalid spouse at home. Medicare will pay all the hospital bills for an advertising account executive who is dying of heart disease, it won't pay for nursing-home care for a librarian because he happens to be dying of, say, multiple sclerosis. And a mother on welfare may not be able to afford to feed her children adequately because she happens to live in Mississippi rather than California, where welfare checks are five times as high.

The way to care for our needs is not to add a few more swatches of fabric to the quilt of social programs, but to weave one cohesive federal program—one that provides medical care and adequate income to those who are disabled, or out of work, regardless of the reason.

Such a system would eliminate the farcical lengths to which workers have to go to collect claims. It would also, some would argue, eliminate the only incentive industry has to clean up the workplace. But the point is, as we've seen, that the present system doesn't do a very good job of providing this incentive either. It often merely socializes human costs of production rather than assigning them to a particular industry, where they belong. A better way would be to impose industrial taxes—the worse the record of injuries, the higher the assessment; in addition, flagrant violators should face vigorous criminal prosecution.

But this system would go far beyond providing for injured workers. After all, if we are going to help the worker who contracted asbestosis on the job, why shouldn't we provide for his wife who contracts asbestosis from washing the white fibers out of his clothes every evening or who, say, gets cancer for no other apparent reason other than that some people simply get cancer? Or, for that matter, why shouldn't we provide for his next-door neighbor who is out of work, not because of injury but because the economy is depressed and he's been laid off and can't find another job?

The answer is that we should. The workers' compensation system is a case study in the folly of trying to tailor a different relief for every kind of need. The lawyers and insurance companies might not do better under a greatly simplified system. Those who truly need the system would. To them, their origin of suffering makes little difference. ■

Illustration by Andy Myer

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Medical Rehabilitation for Disabled Employees

BY EDWARD A. ECKENHOFF

Appropriate medical care helps disabled workers return to jobs, cuts employers' costs.

In a medical climate in which cure is king medical rehabilitation, along with its practitioners and patients, has fought an uphill fight for recognition and respect. After decades of struggle, it is winning both, based on its performance in returning severely disabled people to optimum independence and self-sufficiency in a society where these nouns are virtual synonyms for "employment."

Yet, to most employers, the efficacy of rehabilitation still needs to be proven. Like many other things in this transitory world, rehabilitation has changed, and will continue to change, for the better. With the acceptance and support of an enlightened corporate community, that change can be accelerated to everyone's benefit.

Rehabilitation Objectives

Rehabilitation is based on recognizing that physical impairment affects all aspects of a person's life. Disabled persons — and their families, friends and employers — must deal with new self-concepts and relationships as well as new modes of self-care, mobility, communication, health, employment, finances and career goals. The more severe the disability, the more life functions that are affected.

The objective, then, is to minimize or overcome each patient's dysfunction to the greatest extent possible and on the broadest front. Thus, medical rehabilitation is a concerted team effort, carefully managed toward this end and carried out by an array of skilled health professionals, each of whom pursues a coordinated objective on the patient's behalf.

The team may, according to the patient's need, include physicians representing a variety of specialties: physical, occupational and vocational therapists; speech pathologists; and psychologists and social workers to treat behavioral problems which often accompany disability and can be disabling in their own right. Often, designers of artificial limbs and braces as well as other rehabilitation engineers are called in to build devices to compensate for lost function and make life more independent and productive.

At its best and most effective, rehabilitation provides a full range of adaptive and supportive services designed to restore function in a physical sense and also to help in the difficult, important process of readaptation to an environment designed for the able bodied. The rehabilitation team may, therefore, include other specialists such as job placement and vocational counselors, and driving instructors and recreation therapists, each of whom helps the disabled person regain access to a community full of social and physical barriers.

Not all rehabilitation patients need this range of services. In fact, in most community hospitals they are not even available. Economics, experience and expertise have put them in the province of the comprehensive rehabilitation hospital. But when achievement of the objective and the attainment of independence, self-confidence and return to productive life demand it, comprehensive rehabilitation can mean success where half-measures will fail.

From Altruism to Pragmatism

The vicious efficiency of 20th century wars led to the use of rehabilitation as a humane extension of a medical system that is capable of saving even the most hideously wounded. During and after World War II, rehabilitation pioneers such as Howard A. Rusk and Paul B. Magnuson in the U.S., and Ludwig Guttman in England, argued that there ought to be more to life for the disabled person than stable organic function and custodial care until death.[1-3]

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Edward A. Eckenhoff is the president of the National Rehabilitation Hospital in Washington, D.C., and an adjunct assistant professor at Georgetown University

others demonstrated that many disabled veterans could be helped to become functionally independent and productive, rather than allowed to remain dependent on society.[4] This demonstration was the genesis of modern rehabilitation.

In later years, as medical advances helped more and more people survive birth defects, disease and trauma, rehabilitation became justified on pragmatic grounds as well as humane ones. Today, in fact, birth defects, disease and trauma lead less often to death than to impairment and disability. Perhaps ironically, with each advancement in acute care medicine, the number of disabled people continues to grow.

It is estimated that there are 23 million disabled people in the U.S. alone, and that nearly half of these people are severely disabled.[5,6] A federal Social Security Administration study estimated that 17.2 percent of the working age population had chronic health conditions and impairments limiting their ability to work.

Other studies and estimates tend to confirm these statistics of the inexorable growth of disability. For example, each year about 8,000 people survive traumatic spinal cord injury and over 420,000 survive brain trauma.[7,8] In addition, an estimated 20 million Americans suffer from arthritis, and neurological disorders afflict an estimated 1.5 million.[9,10] Back pain disables an estimated 17.7 million people to an extent requiring hospitalization, and undetermined numbers are disabled by cancer and chronic pulmonary disorders.[11]

In all, 70 percent of all Americans will, at some time in their lives, be so disabled that they cannot climb a flight of stairs.[12]

Paying for Treatment

As the number of disabled people grows, the cost of disability grows in geometric proportion. A major share of this cost is now and will continue to be borne by employers. But rehabilitation offers a viable means of cost control.

Most authorities agree that a paraplegic will require at least two months of rehabilitation treatment following acute care hospitalization. Assuming no significant medical complications (which can increase costs significantly) and an expeditious progression from acute care to rehabilitation, the initial bill can run between $40,000 and $50,000. A similar course of treatment for a quadriplegic may cost closer to $75,000.

It is estimated that some 8,000 victims will survive permanent spinal cord injury each year. If first admission rehabilitation costs for these patients are put at a mid-range of $62,500, the first year treatment costs would total $500 million. Treating the 414,000 stroke cases alone, which appear annually (about one a minute), would cost in the billions. And, of course, spinal cord injury and stroke are just two among dozens of potentially disabling events which can generate rehabilitation costs.

The common denominator among the disabled is that few individuals can afford to pay for rehabilitation from their personal resources. Government, insurers and corporations, through taxes and benefits, end up paying for all or most of the bill.

One of the facts which contributes to employers' difficulty in understanding the benefits of rehabilitation is that it offers no cures. It does, however, offer attainment of a disabled person's maximum residual capacities — capacities which constitute the social and economic profit margin on an investment in rehabilitation.

Consider the hypothetical example of 100 spinal cord injured patients who were rehabilitated successfully, returned to their communities and were gainfully employed. Given an average of $62,500, their rehabilitation would cost $6.25 million. At the minimum wage of $3.50 an hour, the 100 injured persons will have earned $728,000. The government receives taxes on their earnings, totaling about $72,800. Meanwhile, federal and private insurance programs will save about $1.14 million in disability benefits.

Assuming, therefore, that these 100 persons never earn a raise (which is unlikely), continue to require no supplemental benefits (which is quite likely), and never pay any higher taxes (which is virtually impossible), their economic contributions will have repaid the cost of their rehabilitation in about five years. Yet the benefits continue to accrue since the average spinal cord injured person may have an additional 30 years in which to work.

Testing muscle strength is one way for rehabilitation specialists to evaluate how much work this auto accident victim, who now suffers from chronic pain, is capable of doing.

Statistics on stroke patients are equally interesting in a quantitative sense. The average surviving stroke patient lives at least 7 years after the incident and 30 percent live 11 more years. It costs a minimum of $17,000 to maintain an unrehabilitated stroke victim in a nursing facility, for a total of $119,000 for 7 years and $187,000 for 11 years.

If a stroke victim is rehabilitated and enabled to live at home, annual expenses fall sharply to $3,920, or $27,000 for 7 years and $43,120 for 11 years.

Rehabilitation's dollar payoff, therefore, is between $8 and $10 for each $1 spent.

Data Show a Return to Work

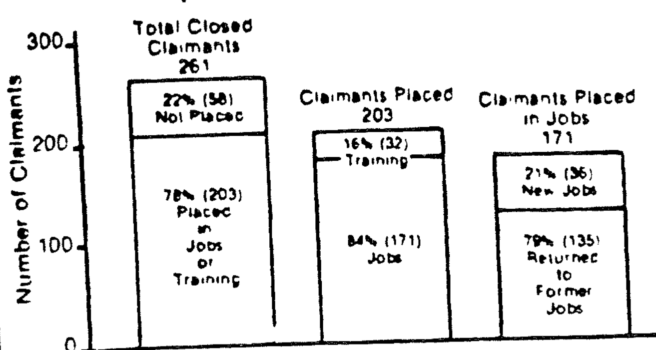
So far, the figures discussed have been abstract ones. How well does rehabilitation actually work, with real patients and real disabilities?

A five-year unpublished study, conducted by the Rehabilitation Institute of Chicago, showed that from a statistical sample of 3,888 severely disabled patients, only

6.4 percent were discharged to custodial care environments following rehabilitation.

The institute conducted additional unpublished studies of patients sponsored by workers' compensation which showed the cost-effectiveness of rehabilitation. According to one study, out of 419 severely disabled claimants, only 2.2 percent were discharged from a rehabilitation hospital to nursing home. In a second study, of 261 severely disabled patients, 203 or 78 percent successfully resumed employment or entered training programs. And most, or 171, of that group returned to work.

Worker Compensation Claimants
September 1977 - September 1980



Moreover, considering social barriers and the resistance of many employers to hiring disabled workers, the lag time between completing rehabilitation and going back to work for these patients was notably short. Seventy-one percent were employed within 6 months after admission from the rehabilitation hospital in which the study took place, 90 percent were employed within 12 months, and all were employed within 15 months.

With encouraging data like these, and with corporations working hard to cut costs, it would seem that no cost cutting opportunity as promising as rehabilitation would have to knock more than once. Yet, rehabilitation institutions nationwide are far from being overwhelmed by demands from corporations for treatment of disabled employees. Nor are qualified, rehabilitated job seekers overwhelmed by job offers.

Precedent and inertia may be at fault. Traditionally, employers have written off disabled employees, paying compensation claims and other benefits as a cost of doing business. In the days before rehabilitation, this may have made some sense. Today, in most cases, it does not.

The choice is relatively simple. The corporation may choose to bear the ongoing costs of sustaining unrehabilitated, disabled employees. Or, it may choose to underwrite rehabilitation, thus either minimizing its ultimate outlay or, when the employee returns to work, eliminating it entirely.

Rehabilitation Opportunities Changing

It is appropriate and honest to acknowledge that nationally there are far too few rehabilitation beds in too few quality institutions. Most of the better rehabilitation hospitals have waiting lists, and it is probable that if all large employers decided to take advantage of the economic and humane opportunity which rehabilitation represents, the rehabilitation health care system would be unable to bear the load.

Because of pressures on existing facilities, rehabilitation hospitals are expanding as fast as state health planners will allow. These new hospitals should be evaluated by employers and other referrers on an individual basis, and with a careful eye on variances in the quality and range of services. High quality institutions will be able to offer superior staff qualifications, efficient facilities and credible performance records, including patient discharge destinations and return-to-work figures, as inducements to employers.

Opportunities are developing at the right time. Corporate behavior is beginning to change. Some employers are starting to view disabled employees as people whose potential to contribute as employees can be restored through rehabilitation. The disabled employees, themselves, are beginning to demand rehabilitation as an alternative infinitely preferable to a life of dependency and confinement. And a few corporations, such as Du Pont, Liberty Mutual and The Insurance Company of North America, are acting on the highly pragmatic premise that through their recognition and support of rehabilitation, they can exert a powerful, positive influence on its inevitable growth.

It is true that rehabilitation is still a developing part of the U.S. health care system. Yet in the total scheme of things, it represents a unique conjunction of humanitarian and utilitarian virtues, of social and economic benefits, and of qualitative and quantitative potential. Recognition from the business community may well be the catalyst required to realize rehabilitation's full promise. ■

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Disability Costs: The Impending Crisis

BY GAIL SCHWARTZ

Employers must learn to manage disability benefits if they are to avert growing costs.

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Health care costs are high all around, bu. for one group — the disabled — this burden is becoming increasingly disproportionate. With health and medical costs three times that of the general population, care of disabled individuals poses a growing problem for the public as well as private sectors. Because U.S. expenditures for disability benefits are skyrocketing, disability costs currently approximate the dollar amount spent on general health care five years ago.

Aside from these expenditures, there is a deepening awareness among some employers of the lost productivity and absenteeism associated with disabled employees or dependents. Such concerns have prompted several large employers to take strides toward retraining and disability prevention, and have stimulated corporate involvement in managing disability benefits. These are employers who recognize that it is in their best interest to maintain the healthiest work force possible.

The True Cost of Disability

Despite the farsightedness of a few corporations, many employers remain unaware of the true costs associated with disability. But one telling statistic is that the cost of disability income payments and health care services for the disabled totaled $184.6 billion in 1981, the latest year for which there are complete statistics. Of this amount, $114 billion went for health care and the remaining $70.6 billion was spent on wage replacement programs for disabled individuals who could no longer work.

Of the $114 billion spent on health care, almost 44 percent came from the federal government. Another 37 percent was spent by private industry and individuals, and the remaining 19 percent came from state and local governments.

Disability costs also represent a sizable portion of payroll. For example, employer contributions to Social Security Disability Insurance (SSDI), workers' compensation and employer sponsored disability plans account for 3 to 5 percent of payroll depending on the state, type of industry and insurance arrangement.

One reason disability represents an increasingly costly component of employee benefits is that disabled persons make greater use of such costly services as hospitalization. The Social Security Administration reports that in 1980, almost 25 percent of severely disabled persons were hospitalized, compared to only 2 percent of the nondisabled population.

Disability also takes its toll on productivity. According to SSA data, approximately 4 percent of workers are absent one or more days of every week because of an injury or illness. About 1 percent of compensation paid to workers is for sick leave, which costs industry close to $7 billion per year.

Societal costs also must be factored in, including the loss of the skill and experience of people who become disabled and leave the work force. Not only do such individuals lose their income, but spouses or relatives also are often compelled to give up full or partial employment to care for them. Under these circumstances, government health and entitlement programs are deprived not only of the tax contribution of disabled persons, but also of contributions from individuals otherwise capable of working.

Who is Disabled?

Who are the disabled in America is a critical question which must be examined if their cost of treatment and rehabilitation is to be accurately assessed and efficiently

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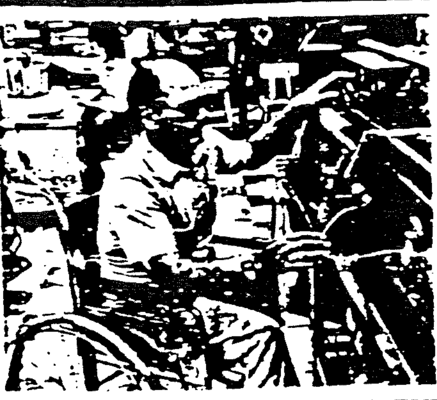
considered disabled if his or her physical or mental status severely limits the ability to function at full job capacity.

According to SSA data, 21.9 million Americans of working age or 17.2 percent of the working age population is disabled to some extent. Nearly half, or about 11 million working age persons, are severely disabled. Another 8.6 percent of the working age population, or 4.9 million persons, are occupationally disabled, that is, able to work but not at the same jobs as they did prior to their disability. Finally, 3.8 percent of the working age population, or 6.1 million persons, have a secondary work limitation restricting the kind or amount of work they can perform.



"Modifying jobs slightly or adopting flexible employment arrangements to accommodate disabled workers are two . . . ways of keeping them on the job. Job modifications are inexpensive and can easily save in disability costs."

The incidence of disability is increasing as demographics change and the population matures. The World Health Organization predicts that there will be an additional 200 million people disabled by year 2000.

There are certain characteristics that depict the bulk of the disabled population. For example, women are more likely to be disabled than men. Blacks are more apt to become disabled than whites. The incidence of disability also has been shown to decrease with educational attainment. But the risk of disability increases with age, although a disabling condition can develop at any time. In 1978, the average age of disabled persons was 54 years old. Adults age 55 to 64 are 10 times more likely to be disabled than adults age 18 to 34.

Disability frequently is caused by acute and/or chronic health problems, including musculo-skeletal, cardiovascular, spinal, arthritic and mental health conditions, and strokes. Another 330,000 individuals become disabled as a result of accidents each year.

Almost 44 percent of working age disabled men remain outside the labor force compared to 9.6 percent of nondisabled working age men who are unemployed. Disabled women are even less likely to be in the labor force than disabled men. Almost 70 percent of all disabled women remain outside the labor force.

Adding to this problem, the steady high unemployment rate has placed even more of a burden on disabled persons who must compete with able-bodied job seekers for a limited number of positions. An able-bodied person stands a far greater chance of finding a job than his or her disabled counterpart, even when a disability does not

Managing Disability Benefits

Given these costly ramifications, public and private disability benefits can be better managed through the development of corporate strategies and programs for preventing and/or mitigating the impact of disability. Disability management involves a continuum of activities aimed at maintaining a healthy employee population.

The process begins when an employee is first hired. It should include screening to determine an individual's health risks, followed by guidance on how the employee might reduce those risks. This guidance may involve health promotion and/or employee assistance programs such as physical fitness, smoking cessation and counseling programs.

Maintaining a healthy work force means having the capacity to quickly identify work related problems, prevent chronic disability and help employees continue working to the extent of their ability.

Minimizing the potential negative impact of disability is important. This involves coordinating management of all disability related programs including workers' compensation, short- and long-term disability and corporate medical department activities. The success of such programs can be enhanced greatly by placing one person in charge of coordinating all disability related activities.

Effective management also involves educating managers as well as employees as to how disability plans work, including eligibility requirements and duration of benefits. Other critical components of disability management include vocational rehabilitation, mental wellness, periodic review, work incentives, job modification and coordination of benefits.

Vocational rehabilitation, both public and private, plays a particularly important role in that it is geared toward returning disabled people to work. It is estimated that employers can save an average of $10 for each $1 invested in this area. Early rehabilitation at the worksite can contribute to the prevention of permanent disabilities. Timeliness of treatment, however, is of the essence.

In 1980, International Rehabilitation Associates sampled 5,620 workers' compensation cases. About 33 percent of the workers returned to work following accidents when referral to rehabilitation services took place within four to six months. That proportion dropped to 18 percent, however, in cases where more than a year elapsed between the injury and rehabilitation treatment. Thus, the longer a person remains disabled, the more likely he or she will stay that way.

Another advantage of rehabilitation is that it can decrease workers' compensation costs significantly. For example, take the case of a 50-year-old truck driver working for a large company in the state of Washington who has an accident. He fractures his neck and can no longer continue his present job. If he qualifies for an average weekly benefit of $294, receives a yearly 7 percent cost-of-living increase, lives for another 20 years, and does not resume employment, this individual would receive total benefits of approximately $627,000. As this

appropriate course of rehabilitation can be staggering, and it takes only a few such instances to demonstrate the inordinate expense of not managing disability benefits.

Another facet of disability management is emphasizing mental wellness. An appropriate blend of mental health benefits, employee assistance programs and stress reduction programs can work to reduce corporate disability costs. Some striking statistics illustrate why mental health is an important component.

Emotional problems may contribute to the cause of as much as 85 percent of all worksite accidents. In addition, more than 40 percent of disability costs are due to mental disorders. It is estimated that 80 percent of all physician visits, furthermore, are attributable to emotional rather than physical causes. Poor health induced by stress can cost employers up to $100 billion each year.

Also a vital component of any disability management program is periodic reviews to determine whether disability benefits are being appropriately provided. Ongoing reviews keep employers informed of the health status and employment potential of disabled employees.

Companies can benefit greatly from review groups that bring benefits managers, corporate medical directors, personnel and workers' compensation administrators together to assess individual employees' disabilities and set a course for rehabilitation and employment. Some companies have realized cost reductions as high as 25 percent in disability as a result of taking an integrated approach to reviewing disability benefit programs.

Work incentives are a fourth component of successful disability control. Disability benefits can be disincentives to return to work since only those disabled individuals who do not work are offered cash compensation. The dilemma for policy makers is how to encourage employees to return to work without depriving those who cannot work of adequate benefits.

To make matters worse, the monetary value of disability benefits in some cases exceeds individuals' predisability earnings. This is because of the tax-free status of disability benefits which may enable individuals to receive more money while on disability than while working. In addition, many disability compensation programs, as a prerequisite for eligibility, require disabled persons to withdraw completely from employment.

However, many employers have job training programs that permit employees to continue receiving disability benefits while earning a portion of their income create work incentives and alleviate the fear disabled persons have of losing benefits during trial work periods.

Modifying jobs slightly or adopting flexible employment arrangements to accommodate disabled workers are two other ways of keeping them on the job. Job modifications are inexpensive and can easily save in disability costs. Take the case of a national company that employed a 27-year-old systems analyst in their Washington, D.C., office who was involved in a traffic accident which left him as a functional quadriplegic. Once disabled, he was entitled to receive $1,420 per month in benefits. The company realized it could be paying him disability benefits for another 38 years and decided, instead, to provide work modifications totalling $7,000 to enable this individual to maintain his job. Through structural modifications to accommodate a wheelchair, transportation assistance and other support, this individual stayed in the work force and the company was able to recoup these expenses within five months.

A final critical component of disability management should be coordination of benefits from different sources. Many public and private disability insurance programs have policies against duplication of benefits that reduce the full amount of disability insurance an individual can receive. Private disability insurance usually stipulates a reduction in benefits where the employee is receiving support from other sources such as workers' compensation or SSDI.

	Percentage of Total Working Age Population	Percentage of Total Disabled Persons of Working Age	Percentage of Severely Disabled Perso[ns] of Working Ag[e]
Men			
Not in Labor Force*	9.6	40.3	80.6
Employed	87.0	56.2	16.5
Unemployed**	3.4	3.4	3.0
Women			
Not in Labor Force*	38.2	69.2	90.9
Employed	58.0	28.1	8.6
Unemployed**	3.8	2.7	0.6

*Not in labor force means potentially capable of working but not looking f[or] work.

**Unemployed means not working but actively looking for work.

Source: 1978 Survey of Disability and Work, U.S. Department of Health a[nd] Human Services, Social Security Administration, Office of Research a[nd] Statistics, Table 78, November 1982.

A recent Social Security Amendment prohibits combining Social Security and workers' compensation benefits to exceed 80 percent of prior earnings. However, the coordination of benefits is a highly variable process and extremely difficult to administer. Failing to coordinate benefits can lead to severe work disincentives. It also can be extremely costly to employers. For example, if an employee only receives long-term disability (LTD) benefits and does not become eligible for SSDI, the employer cannot offset those LTD costs. However, if an employee is on LTD and $500 per month is assumed by SSDI, in 10 years this represents a savings of $60,000. Two major corporations, FMC and General Motors, now require their disabled employees to appeal any SSDI denials.

Disability Placement, Management Models

Examples of how a few employers have responded to the special needs of disabled employees will illustrate the advantages of innovation in this realm. One such program was established 16 years ago by the Rehabilitation Services Administration of the former Health, Education

and Welfare Department to encourage private employers to hire the disabled.

Projects with Industry (PWI), as the program is called, assists severely disabled persons in obtaining competitive employment. PWI has provided support to projects that involve employer placement, training and other services for the disabled.

Project funding has increased from $900,000 in fiscal year 1970 to a total of $13 million in FY1983. PWI awards generally are small and intended to help generate additional support from non-PWI sources. In 1982, the average PWI award was $123,028.

There currently are 65 PWI projects underway, including 15 new projects and 50 that have been operating for more than a year. Project sponsors are rehabilitation facilities, trade associations, educational institutions, civic and professional organizations, private organizations and labor unions. Corporations involved include Lockheed, Del Monte, Hewlett Packard, Du Pont, Sears and General Electric. The American Restaurant Association and the Electronics Foundation Association also operate PWI projects.

Disabled persons have been placed in computer programming, electronics and other technical positions, food service, janitorial jobs, machine operations, housekeeping, nursing, printing, sales, secretarial, banking and accounting positions.

During 1981, the total earnings of employees hired through PWI was about $1.7 million, of which $335,000 was returned to federal and state governments in the form of taxes. Government's return on investment was $11.20 for every $1 invested.

One project, with the Electronics Industry Foundation, was designed by the executive staff of the Electronics Industries Association. Started in 1977, it now includes a network of area programs located throughout the nation. The programs are in areas with large concentrations of electronics manufacturing companies. Of the 2,225 disabled persons employed through this project thus far, 548 were placed in 1983 alone. Their jobs include a wide range of production, service, clerical, technical, and professional positions. The 1983 average starting salary was $11,373; the salary range for these employees stretched from $7,000 to $42,600. There are almost 600 companies and 700 community rehabilitation agencies participating in this effort.

The persons placed through the project have such disabling conditions as visual, hearing and mobility impairments, epilepsy, cerebral palsy, mental retardation, back injuries and heart conditions. By working with a variety of employers, the project is able to match workers with the most appropriate jobs, thereby satisfying the needs of the employer and employee. Only qualified persons or those identified as having the potential for employment or training are recommended to employers.

McDonald's Corporation also has embarked on an effort to hire the disabled through its new "McJob program." The program trains and places disabled persons in the food service industry. It is being developed in conjunction with Goodwill Industries and McDonald's Milwaukee regional corporation.

Goodwill is responsible for screening and recruiting individuals for admission into the program and for providing expertise in the area of handicapped training and employment. On-site training is done at selected McDonald's restaurants. A full-time job coach has been hired by the corporation to assist trainees in acquiring job skills and adjusting to a normal working environment. Training participants receive minimum wage salaries, meals and uniforms. The training period averages two to three months with four to six trainees participating at a time. Individuals who complete the program are then eligible for placement in available McDonald's jobs throughout the community.

It is hoped that the Milwaukee program will eventually serve as prototype for expansion of the McJob effort nationwide. Because the program was developed only a year ago, McDonald's is not yet distributing data for analysis.

Homebound Alternative

American Express has taken another innovative approach to job modifications for the disabled. In October 1982, the international banking division of the American Express Company undertook a 9-month pilot test of a home based office system called "Project Homebound." Ten homes in the New York City area were converted into automated word processing work stations for physically disabled, homebound individuals.

Each home site work station is equipped with a word processing terminal, a central dictation system and a telecopier. This equipment is linked to a control center at American Express headquarters through two telephone lines and a data line. American Express supervisors monitor and assess the performance of the home workers.

Under government guidelines, participants in the American Express pilot were permitted to receive income in addition to government disability benefits for the duration of the period permitted to test their potential for "substantial gainful employment." In September 1983, the participants became full-time, regular employees of American Express and the pilot project was then integrated into the company's overall operation.

As these examples indicate, there are a variety of ways in which disabled individuals can be assisted in leading self-sufficient life styles. Unless disability programs are better managed and return-to-work efforts become more widespread and successful, disability costs will continue to mount at the current rate.

Employers are just beginning to recognize that it is in their best interest to maintain a healthy work force. The advent of worksite wellness programs has caused many large employers to focus their attention on health education and disease prevention. Corporate efforts at disability prevention, worksite rehabilitation programs, retraining opportunities for the disabled and new strategies for more effective management of disability programs are increasing and should be encouraged. ■

FACT SHEET

Identity of Kansas Association of Rehabilitation Facilities (KARF)

KARF is an Association of 34 Rehabilitation Facilities throughout Kansas providing Vocational/Day Activity Programs, Community Living Programs, Children's Services Programs, Individual Support Programs, and Medical Rehabilitation Programs (enclosed membership profile).

The facilities provide programs/services to over 14,000 individuals with disabilities throughout the year with an average daily census being approximately 4,000 individuals.

Definition of Habilitation/Rehabilitation Programs for Individuals with Disabilities

Habilitation/Rehabilitation is the process by which an integrated program of services is provided to help a person disabled at birth or by illness or injury, gain a higher level of function. Such services address vocational, community living, medical, education and support needs. The goal of the rehabilitation process is to help the person become capable of self support by enabling him or her to engage in employment, live as independently as possible, exist outside institutional settings, or otherwise improve his or her situation.

ASSOCIATION MISSION, BELIEFS AND VALUES

Mission

The purpose of the Kansas Association of Rehabilitation Facilities is to serve its membership in developing and promoting quality programs for individuals with disabilities and to communicate essential information between its membership and its publics.

Beliefs and Values

The Association is founded upon certain shared beliefs and values which are an expression of our mission and purpose as individuals, as professionals, as facilities and as a voluntary organization.

We believe in the inherent dignity of the individual with disabilities.

We believe that no applicant or participant in services, employment or housing should be discriminated against on the basis of race, color, national origin, religion, sex, age, or handicap.

We believe in the community's right and responsibility to provide services that are reasonably accessible and available on a local or regional basis to individuals with disabilities.

We believe that it is the responsibility of government to address the needs of individuals disabled at birth, or by illness or injury; and provide needed support and reimbursement for services needed to assist them to live as independently as possible.

We believe in integrating individuals with disabilities into community programs/services, business and industry, and social settings without compromising the quality of service needed to meet each person's needs.

We believe that government should provide incentives to business and industry to promote employment and other opportunities for individuals with disabilities.

We believe that transitional living support, and medical and vocational rehabilitation should be provided by the private sector (insurance) to prevent long term government support through SSI, SSDI and long term care.

We believe that services should be available in the community to prevent institutionalization.

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KARF MEMBERSHIP

Facility	Vocational	Residential	Medical	Children's Services	Independent Living
Arrowhead West, Inc.	X	X		X	X
Bethany Rehabilitation Center			X		
Big Lakes Development Center	X	X		X	
Brown Co. Sheltered Workshop	X				
Carondelet Rehabilitation Center of America			X		
Cerebral Palsy Research, Inc.		X		X	X
Chikaskia Area Training Ctr.	X	X		X	
CLASS, Ltd.	X	X		X	X
COF Training Service, Inc.	X	X			
Community Living Services, Inc.		X			
Cottonwood, Inc.	X	X		X	
Dev. Services of NW Kansas	X	X		X	X
Early Childhood Dev. Center				X	
Futures Unlimited, Inc.	X	X			
Goodwill Industries	X				
Hutchinson Heights		X			
Johnson County MR Center	X	X		X	X
KU Rehab Medicine Assoc.			X		
KS Elks Training Center	X	X			
Lakemary Center, Inc.	X	X		X	
McPherson Co. Div. Services	X	X		X	
MR Gov. Board/Wyandotte Co.	X	X		X	
Menninger Foundation/Rehab Programs	X				
Nemaha Co. Training Center	X	X			
Northview Developmental Ctr.	X	X		X	
Occupational Ctr./Central KS	X	X		X	X
St. Joseph Medical Center			X		
Sheltered Living, Inc.		X			
SW Developmental Services, Inc.	X	X			
SRS, Div. of Rehab Services, KVRC and VRU	X	X			
Starkey Developmental Ctr.	X	X		X	
Sunflower Training Center	X	X		X	
TECH, Inc.	X	X		X	X
Terramara, Inc.	X	X			
Tri-Ko, Inc.	X	X			
Tri-Valley Dev. Center	X	X		X	
Wesley Medical Center			X		

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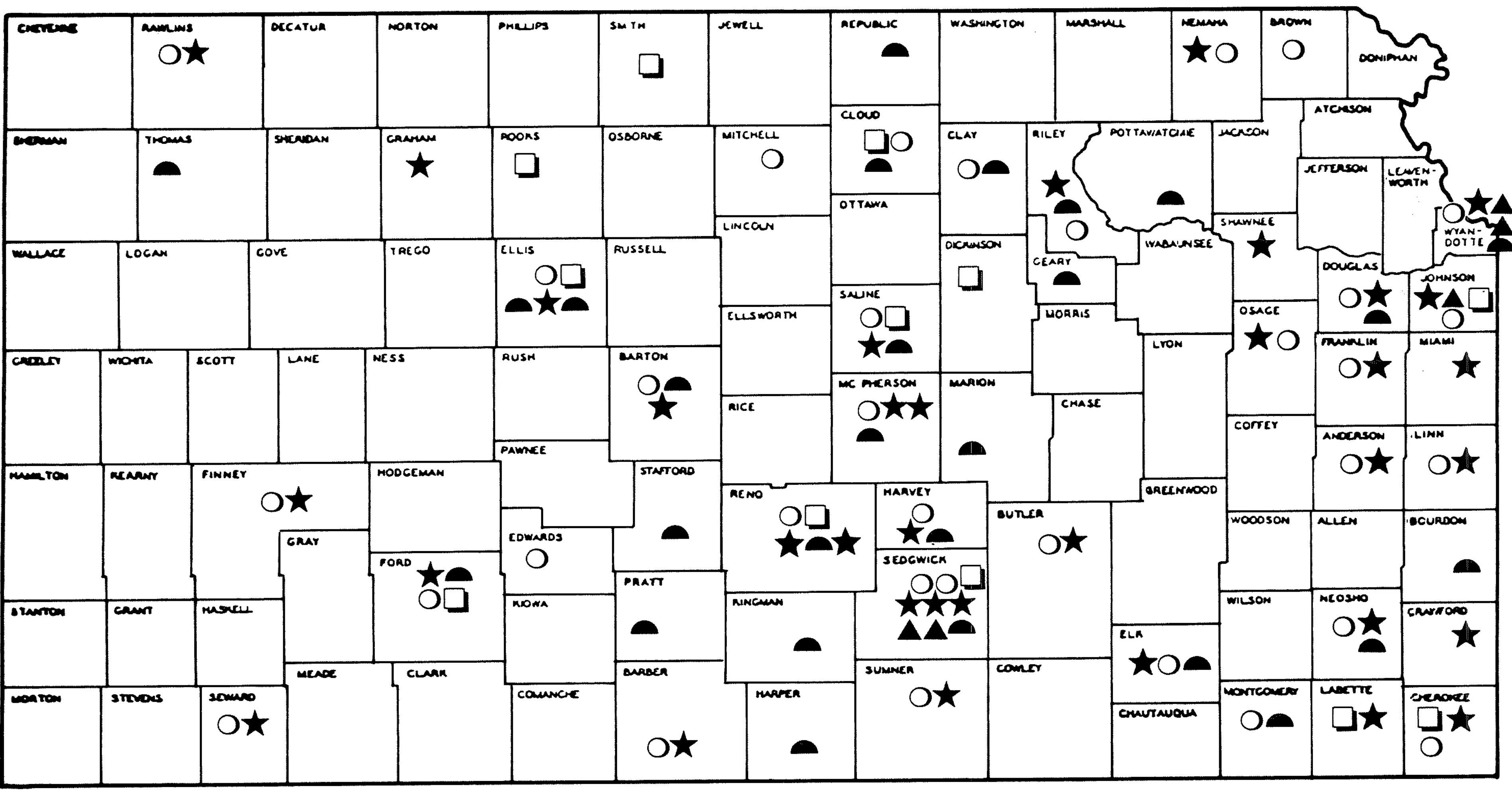
KARF MEMBERSHIP



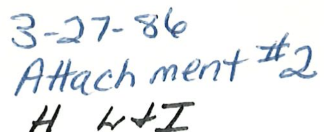
- ❑ Independent Living
- ○ Vocational Facilities
- ★ Residential Facilities
- ◓ Children's Services
- ▲ Medical Rehabilitation Facilities

The International Association of Machinists and Aerospace Workers, District Lodge No. 70 in Wichita, Kansas, opposes the passage of Senate Bill 365 as it is written. Although there are several good aspects of the bill, the overall affect of the purposed legislation would be a tremendous set back for the labor movement and a dismantling of the workers' compensation system as we know it today.

The simplistic theory behind the legislation is that the injured worker should be retrained and returned to the work force. Although this is a very admirable idea which everyone associated with labor and industry does support, Senate Bill 365 does not in any way implement this theory.

Senate Bill 365 does have several additions which we support such as the provision allowing vocational rehabilitation benefits to be provided at a preliminary hearing instead of after the case is completed. Likewise, making a review and modification effective from the date of changed circumstances instead of when the final decision is entered is in the best interest of both industry and labor.

One of the most significant effects of this legislation that you should be aware of is the fact that if this bill is passed, there will be a significant increase in the amount of litigation in every workers' compensation case and therefore, the cost of the workers' compensation system will be increased for everyone. This bill is very ambiguous and subject to judicial interpretation. Neither Fred Haag nor George McCullough who wrote this bill can agree what certain phrases



within the bill mean. Therefore, after this bill is passed and becomes law, we would anticipate that for the next three to four years, practically every case will have to be appealed to the Court of Appeals or Supreme Court for a judicial interpretation. We all know from past experience that once a case is appealed to the Court of Appeals or Supreme Court, the decision which is rendered from the particular court is likely to not bear any resemblance whatsoever to the legislative intention behind the bill. For example, under the vocational rehabilitation section of New Section 7(k) there is language which states:

> "Thereafter, compensation shall be paid, if for general bodily injury, at the greater of permanent partial impairment of function or 80 percent of the difference between pre-injury wage and post-injury wage earning capability."

Fred Haag, one of the authors of the bill, has indicated that he of course would take the position the phrase "wage earning capability" is totally different from the actual wages earned. For example, assume a worker was injured at Boeing and earning $12.00 per hour and was unable to return to that job. Assume further, that he went through vocational rehabilitation training and learned to be a computer programmer and the average wage for computer progammers was $12.00 per hour. Assume still further that the worker would be unable to find a job as a computer programmer and could only find a job working at a minimum wage of $4.00 per hour. The question then arises, is the worker entitled to 80 percent of the difference

between $4.00 per hour and $12.00 per hour or is he entitled to nothing because he now has the wage earning capability to earn $12.00 per hour regardless of the fact he is unable to find a job or be employed. Obviously, the phrase "wage earning capability" is subject to interpretation by the Court of Appeals or Supreme Court under this new act and at this point in time, no one knows how that phrase would be interpreted. If that phrase is interpreted as George McCullough one of the authors of this bill believes it should be interpreted, the worker would be entitled to 80 percent of the difference between $12.00 per hour and $4.00 per hour. However, if the phrase is interpreted as Fred Haag believes it should be interpreted, the worker will receive absolutely nothing other than the impairment of function rating even though he is unable to find a job. Senate Bill 365 provides for several additional steps in the workers' compensation system and hearings will be required at each at each of these steps, again adding to the cost and time required in litigation.

Additionally, the expense to the State of Kansas for creating a new bureaucracy to administer the vocational rehabilitation aspect of this act as it is written is prohibitive. Senate Bill 365 requires and makes mandatory that vocational rehabilitation training be given to every injured worker who is not able to return to his previous employment. It is estimated there will need to be hired in the Division of Workers' Compensation a minimum of an

additional 50 people to implement just the vocational rehabilitation section of the new bill. In our opinion, in order to maintain any semblance of fairness in the system, all of these decisions and vocational rehabilitation will need to be done by a governmental agency because the delegation of this authority to private vocational rehabilitation specialists would open the door to corruption. If Senate Bill 365 is passed, we predict there will be numerous businesses formed to claim they specialize in vocational rehabilitation in order to receive money for allegedly retraining injured workers. Also, it is our opinion that to make vocational rehabilitation mandatory is wrong because obviously, you will be unable to teach anyone a new trade if that person has no desire whatsoever to learn the trade prescribed by a vocational rehabilitation administrator. Vocational rehabilitation under this bill should be made voluntary and not mandatory.

The present Workers' Compensation Act allows an injured worker to be compensated for general bodily disability measured by the extent to which the injured worker's ability has been impaired to engage in work of the same type and character he or she was performing at the time of the injury. In other words, what portion of the worker's job requirements is he or she unable to perform because of the injury is the test for determining the percentage of general bodily disability today. Under Senate Bill 365, this concept of the law would be destroyed. A new bill would either limit an

injured worker to his impairment of function given by a physician or the difference in his wage earning capability as set out in the new act. If the new worker is to be compensated based solely upon an impairment of function rating by a doctor, the employer would obviously hire doctors to examine the worker and he would find that he had either no impairment of function or a very minimal impairment of function. The worker, if represented by an attorney, would be sent to a doctor who would find that he would have a very high impairment of function without taking into account the worker's ability or lack thereof to perform any type of work.

In summary, Senate Bill 365 basically provides a vehicle where an employer can limit its workers' compensation exposure to the impairment of function given by one of their conservative physicians without any requirement or retraining an injured employee and guaranteeing that employee any type of job.

Every time we review Senate Bill 365, we notice additional problems for labor, industry and the workers' compensation department. Additionally, we are continually noting language within the act which is subject to judicial interpretation and is ambiguous on its face. This very fact shows this bill was hastily drawn up without comprehensive study or research into the effect of the bill's language. It would appear to us the only people who will benefit by Senate Bill 365 are the additional 50 to 100 people who will have to be hired by the Division of Workers' Compensation and the

numerous so-called experts in vocational rehabilitation who will try to have the state refer workers to them for vocational rehabilitation. We would urge this bill not be allowed out of committee in its present form. We cannot allow a complete revamping of the workers' compensation system to occur until we are sure of the effect it will have on the injured worker, the employer and the whole workers' compensation system. We would urge that before such a bill be passed, labor, industry and the Division of Workers' Compensation get together to study and draft a bill which is acceptable to everyone. As it stands now, even the people who were the authors of Senate Bill 365 cannot agree upon the meaning or interpretation of Senate Bill 365 and obviously, it cannot satisfy even the needs of the people who drew the bill let alone all of the numerous workers who will be affected by it.

TESTIMONY OF ANN NEULICHT
(INTRACORP - KANSAS CITY DISTRICT)
BEFORE KANSAS HOUSE COMMITTEE ON
LABOR AND INDUSTRY RE:
PROPOSED SENATE BILL 365

My name is Ann Neulicht, Ph.D. I am an Account Representative for International Rehabilitation Associates, Inc. (which may be more commonly known by its trade name, INTRACORP). INTRACORP is the oldest and largest private sector provider of insurance rehabilitation services in the country. In the State of Kansas, INTRACORP employs ten rehabilitation specialists out of the Kansas City District offices and serves over 200 disabled workers every year. But our expertise as the leader in the industry is not limited to Kansas; we have 120 branches nationwide, where over 2,200 of our employees have served more than 200,000 disabled workers since 1970.

With that brief introduction in mind, I will now turn my attentions on proposed Senate Bill 365 to amend the Kansas Workers' Compensation Law.

First let me say that INTRACORP applauds the efforts of the Kansas Legislature in taking steps to amend the current law to provide for vocational rehabilitation for workers in this State who suffer job-related injuries or other disabilities. We also believe that a strong and effective vocational rehabilitation program will prove to be cost effective in the long run, because it will remove many people who are capable of being rehabilitated from the Workers' Compensation system and return them to productive employment. Obviously, the shorter the amount of time that the injured or disabled worker

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H. L+I

is receiving benefits, the less the cost that the system will have to bear.

Equally important, of course, are the benefits to the disabled worker himself, who, through the receipt of timely and comprehensive rehabilitation services, is able to return to a productive lifestyle and suitable, gainful employment as quickly as possible. We thus are very pleased to see, for the first time in this state, a formal recognition, in Senate Bill 365 (and I am now quoting from Section 7A of that bill) that: "A primary purpose of the Workmens' Compensation Act shall be to restore the injured employee thru comparable, gainful employment." We believe that such a recognition is long overdue, and we congratulate the Kansas Legislature in finally incorporating into the Worker's Compensation Statute a provision for vocational rehabilitation.

In this regard, we also are pleased to see formalized (in Section 7I of Senate Bill 365) the availability of vocational rehabilitation services from both the private and public sectors in cases where the rehabilitation plan recommends vocational education or training for new marketable job skills. We do wish, however, that this sort of equitable treatment also had been accorded in cases of referrals of workers for initial evaluation. Section 7F of the Bill permits referrals for initial evaluation to be named <u>only</u> to the State - but <u>not</u> to private sector rehabilitation companies (assuming services are available within 60 days). This same section also requires State approval before evaluation referrals may be made to private providers.

Nevertheless, INTRACORP generally supports Senate Bill 365 despite this obvious disparity in treatment between the public and private sectors, and despite the fact that we believe that injured workers have the right to receive rehabilitation services - including vocational rehabilitation services - by choosing a provider from a pool of available providers in both the public and private arena, because Senate Bill 365 represents a first step toward insuring a disabled worker's right to receive comprehensive medical and vocational services as a Workers' Compensation benefit. We realize that should the procedures called for in Senate Bill 365 ultimately not work as efficiently or effectively as possible, those procedures can later be changed. We are optimstic that they will work and therefore cannot oppose the entire bill on the basis of only one section in it with which we may disagree.

Frankly, we also realize that if this bill becomes law, we would not lose anything which we may now have. Currently in this State, vocational rehabilitation is furnished primarily by the State, with most referrals to private sector companies involving only the medical - but not the vocational - aspects of rehabilitation. Thus, INTRACORP (and every other Kansas-based private rehabilitation company) has only to gain, and very little to lose, by enactment of Senate Bill 365.

Finally, we anticipate that subsequent regulation will be issued which will clarify a number of unanswered questions, such as what criteria will be employed by the State in referring cases for vocational rehabilitation

- something which now is missing in the bill. We also would expect such regulation to set forth the standards, in terms of education and experience, for private and public rehabilitation providers. Again, these and other issues all may be properly addressed at a later time. For now, we are satisfied that the first step has been taken to see that disabled workers in this State receive the vocational rehabilitation services to which they are entitled and which they deserve.

Thank you for your courteous attention to these issues. I will now entertain any comments or questions you may have.

INTERNATIONAL ASSOCIATION of MACHINISTS
and AEROSPACE WORKERS
AERO LODGE No. 834

3917 E. McARTHUR · WICHITA, KANSAS 67210 · DIAL 683-5675 · AREA CODE 316

RESOLUTION

TO OPPOSE SENATE BILL 365

WHEREAS, THE KANSAS STATE SENATE HAS ALREADY PASSED SENATE BILL 365 AND THIS BILL WILL DRASTICALLY CHANGE THE WORKERS COMPENSATION LAW AS WE KNOW IT AND;

WHEREAS, THIS BILL IS PRESENTLY IN COMMITTEE AND IN ALL PROBABILITY, WILL COME UP FOR A VOTE IN THE HOUSE THIS SESSION AND;

WHEREAS, THIS BILL WOULD SERIOUSLY HINDER AN INJURED WORKER'S ABILITY TO RECEIVE AN APPROPRIATE DISABILITY AWARD AS PROVIDED UNDER THE CURRENT LAW AND ALSO DRASTICALLY REDUCE AN INJURED WORKER'S ABILITY TO DRAW A WEEKLY DISABILITY AS PROVIDED UNDER CURRENT LAW;

THEREFORE, BE IT RESOLVED THAT THE KANSAS STATE COUNCIL OF MACHINISTS OPPOSE PASSAGE OF THIS BILL AND;

BE IT FURTHER RESOLVED, THAT THE KANSAS STATE COUNCIL OF MACHINISTS SEND LETTERS TO THE APPROPRIATE LEGISLATORS; GOVERNOR JOHN CARLIN; AND LIEUTENANT GOVERNOR TOM DOCKING:

BE IT FINALLY RESOLVED, THAT THE KANSAS STATE COUNCIL SEND LETTERS TO ALL LABOR ORGANIZATIONS REQUESTING THEIR MEMBERS TO WRITE OR CALL THEIR LEGISLATORS AND VOICE THEIR OPPOSITION TO PASSAGE OF THIS BILL.

THIS RESOLUTION SUBMITTED BY:
AERO LODGE NO. 834
LEGISLATIVE COMMITTEE
ARNOLD J. TYE, CHAIRMAN

RESOLUTION ACCEPTED BY KANSAS STATE COUNCIL OF MACHINISTS ON SATURDAY, JANUARY 18, 1986.

3-27-86
Attachment #4
H. L I

Testimony on Behalf of SB 365
Before the House Committee on
Labor and Industry

by S. M. Kiegerl

I. Background Information

S. M. Kiegerl, M.A., is a Certified Rehabilitation Counselor. He is one of the founders and Chairman of Professional Rehabilitation Management, Inc., a private rehabilitation organization which serves 11 states in Mid-America. The company was founded in Olathe, Kansas, in 1976. It is the largest private industrial rehabilitation organization based in Kansas. It has well over 100 customers, including insurance companies, FELA/Jones Act providers (railroads, barge lines), FECA (Federal government employees), and state workers' compensation funds. In many locations, physicians and even some attorneys act as referrors.

In 1980, Professional Rehabilitation Management, Inc., was one of four private organizations (now reduced to two) chosen to develop and implement the new rehabilitation program for the North Dakota Workers' Compensation Bureau. This became one of the most successful programs in the United States, not only from the financial point of view, but also in the breadth of services provided on behalf of injured workers in North Dakota. This is significant because in North Dakota, the state administers all Workers' Compensation. There are no private insurers. A longitudinal study of more than 1,000 closed Workers' Compensation cases tells an interesting and exciting story; namely, that a proper rehabilitation effort saves people and also money. Substantial cost savings to employers and carriers are realized as the result of salvaging injured workers. These savings are not at the expense of the worker; he/she is still compensated financially for any residual disability, but, more importantly, he/she is assisted to once again become able to earn a living. This point is important, for no Workers' Compensation award will sufficiently enrich any claimant to make him/her independent. Compensating for residual disability and re-integrating the worker in the labor force does just that. Presently, injured workers in Kansas do not get the assistance they need to re-enter; instead, they are induced to become dependent.

The North Dakota program also demonstrates what can be accomplished when the public and private sector agencies cooperate.

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H. L&I
Attachment #5

To allow the members of the committee to make a more informed judgment, a brief review of rehabilitation programs by other states might be useful.

State funds with rehabilitation programs include Colorado, Montana, California, Ohio and Illinois; the latter program being for the benefit of state employees only. All have used and are using the services provided for their claimants by Professional Rehabilitation Management, Inc., counselors. Further, the Federal government, through the Office of Workers' Compensation Programs, uses the services of private sector rehabilitation agencies, including the one I represent, regularly and with a great number of referrals.

All of these rehabilitation programs have certain similarities in their goals and objectives, and all subscribe to some of the concepts of rehabilitation. However, vast differences in administration, use, and results are found in these states. It is easy for any good idea to go awry, even in rehabilitation. We know of two states where the administration and use of rehabilitation programs have been very wasteful and even worse, on the whole, counterproductive. It is fair to state that the Washington and Minnesota approach to rehabilitation has been less than successful. There are certain lessons which can and should be learned from their problems.

From this vantage point, we analyze the program proposed under Section 7 in SB 365. The following universals exist as predictors of success:

1. Central administration; availability of all documentation in one location to assure appropriate decision-making.

2. Control. Not all injured workers need rehabilitation. In fact, only a small minority can benefit from rehabilitation intervention. Therefore, selection of cases, monitoring of the rehabilitation program, collection of data for on-going analysis, are all important.

3. Knowledge of the rehabilitation process. The recognition that injured workers have special needs which require special attention: medical, vocational, psychological, marital, economic and, in some cases, legal expertise is necessary to assure these needs are met. The choice of expert is crucial.

4. Timeliness of referral. A multitude of studies shows severely diminishing returns for cases referred late in the recovery phase. The longer the injured worker is left unattended, the greater the likelihood of disability complacency. This is a major and costly problem now, both

in human and financial terms.

5. Appropriateness of service. The rehabilitation effort must be client-centered. The key determinant for any intervention must be what is best for the injured worker. The rehabilitation professional must be totally committed to this. It is important that compliance is mandated; it is equally important that bona-fide rehabilitation services are provided and that interventions are not used to manipulate the claimants.

6. Incentives. Unless sufficient incentives for the injured worker, the employer, the carrier and the State are found in the program, it is doomed to failure.

Section 7 addresses all of these concerns. The appointment of the rehabilitation administrator as described in paragraph (4)(c) and (d) is critical to the success of the program. The description of tasks, while necessarily incomplete, seems sufficient to assure proper case selection, proper provider selection and appropriate control, timeliness of referral and appropriateness of service. Implementation of the provisions in Section 7 will also restore the incentives lost through Antwi.

To assert that the true implications of the vocational rehabilitation law are unknown, as the representative of the Kansas Trial Lawyers Association does, is as specious as is the incredible assertion that there is nothing fundamentally wrong with the present statute. When all incentives for an injured worker to return to painful activity are destroyed, when it becomes desirable for the insurance carrier to dispose of an injury claim by a (usually modest) sum of money rather than by assisting a claimant with all of his/her needs, the fundamental flaw in the present statue becomes obvious. There can be no doubt that injured workers in our state are not served well.

There is ample documentation that a quality rehabilitation program, properly administered and controlled, will inevitably pay great dividends. Rehabilitation then becomes and all-win, no-loss proposition. Studies to demonstrate these benefits are available and unassailable.

II. Private Sector Industrial Rehabilitation Philosophy and Application

Speaking not only for Professional Rehabilitation Management, Inc., but in a non-parochial fashion for all quality minded private sector rehabilitation organizations, I should like to begin discussion of rehabilitation by defining the concept and the philosophy underlying the private sector services. Later, I shall deal with the differences between public and private rehabilitation services and some of the issues raised by the opponents to vocational rehabilitation.

Rehabilitation in the industrial setting is defined as the restoration of the injured worker at the earliest possible time to his/her highest level of functioning possible considering the residual disability from the injury sustained.

Proper industrial rehabilitation encompasses at least three active components: injury management, vocational evaluation, planning and placement, and psychological/behavioral counseling and support. This is also known as the holistic approach to rehabilitation. Holistic Rehabilitation Counselors recognize that it is most important to attend to all of the needs of the injured worker during the time of crisis. This expands on the traditional approach to handling injured workers which consisted of treating the physical problem of the worker exclusively. Traditionally, the physician not only attended to the claimant's injury, but also acted as the principal provider of other rehabilitative services. The physician was then charged with making vocational judgments and rendering the necessary counseling and guidance. Physicians are generally not trained to do these tasks effectively, nor do many have the time or inclination to attend to such activities.

To neglect the vocational and behavioral aspects of the recovery is perilous and it can be very costly, both in human terms and financially. Very frequently, individuals, having received exceptional medical treatment to recover sufficiently to be gainfully employed, fail to re-enter the work force because of a lack of vocational assistance. Claims examiners can give numerous frustrating examples of this kind. Simply taking care of the injured worker's physical needs is no longer enough. In today's world when it is frequently difficult for those who are whole to find suitable work, it should not be surprising that it is generally impossible for those who have residual disabilities to re-enter the work force without professional assistance.

The psychological impact of an injury can be equally devastating. Post-traumatic anxiety, neurosis and depression are frequently found in workers and the incidence of dysfunctional behaviors increases when the worker is left to his own devices during

recovery. Alert, caring counselors who have devoted sufficient time to a claimant will act to forestall the most serious behavioral consequences in most cases.

Injury management will assure that the claimant's medical recovery is uneventful. In cooperation with the attending physician and all other practitioners, the rehabilitation counselor will become a central figure for the claimant and his/her family during the acute phase of the recovery. Useful information not otherwise available will be provided by the rehabilitation counselor to the physician. This is particularly important for severely or catastrophically injured workers. Close monitoring of the case will assure that support services are provided.

Studies demonstrate that rehabilitation, properly done, is an all-win, no-loss proposition. By its very nature, it is a cooperative effort. In most cases, the need for litigation is reduced or eliminated. The injured worker gains by being assured of the best possible medical care, by professional assistance during the time of greatest need, by evaluation and planning for re-entry, and by actual (re)training and by placement (for those who are unable to return to their previous occupations and/or employers). Those workers who, as a consequence of their injuries, exhibit behavioral dysfunction are assisted through intensive counseling and other interventions to avoid long term serious psychopathology. In cases where return to work is not possible, permanancy or totality of disability is clearly documented to facilitate settlement or alternate claims handling.

The worker's family gains by having him/her once again able and contributing to the family welfare and by forestalling serious interpersonal and interfamily problems through crisis intervention.

The employer gains by having employees who are functionally capable restored to his work force either through job accommodation or job modification. This saves not only on insurance cost but also on the expenses of replacement and those costs associated with the learning curve. Most employers know that re-integrating workers with residual disabilities makes economic sense, and not to do so inevitably proves costly.

Where re-employment is not feasible or desired, placement with another employer or in another job will help keep Workers' Compensation costs down. Rehabilitation has a positive effect on employer ratings and overall cost of Workers' Compensation. Therefore, the employer gains by assurance of manageable rates for Workers' Compensation insurance.

Industrial organizations such as labor unions gain by having

their members restored as active contributors and productive workers. We have found that unions are generally eager to cooperate with rehabilitation, recognizing that when their members benefit, they benefit.

The taxpayers of the state as a whole gain by having injured workers once again become producers rather than consumers of revenues. The State is recognized for fair compensation costs, which is becoming a greater factor in the (re)location of business.

III. Private Sector/Public Sector Rehabilitation Provider Comparison

The only competition which exists between public sector and private sector rehabilitation providers is for qualified workers. Otherwise, there is no competition. In most, if not all, private sector organizations, many workers with experience in state vocational rehabilitation agencies are found. Indeed, state vocational rehabilitation workers are heavily recruited by private companies.

To compare the performance of the public sector and private sector rehabilitation organizations in the industrial setting is not fair to the public sector agencies. State Vocational Rehabilitation Departments are charged with many other tasks besides serving the specialized population the private sector serves. The blind, the deaf, the indigent, the retarded and others are among those served by State Vocational Rehabilitation in addition to injured workers.

The principal difference in case handling is that private sector case loads are a fraction of the case loads generally forced upon the worker in the State Vocational Rehabilitation agencies. A Vocational Case Worker for Professional Rehabilitation Management, Inc., for example, will not handle more than 15 active cases at any time. The public sector case worker may handle 10 times as many. (Case loads of 75-150 are common.) It is clear that when the injured worker requires intensive assistance or is ready for placement, the state agency counselor will frequently not have sufficient time. A tendency exists in some state agencies to place such workers in facilitative (academic) long term training programs. Therefore, most State Vocational Rehabilitation placement statistics are not particularly impressive. It should be reiterated that this is not due to the fact that the public agency workers do not have the talent, they simply are frequently bogged down by insufficient staff and a rather cumbersome system.

Private sector initiative, and the need to produce consistently

good results to stay in business, inevitably leads to much better placement successes. In states where the Workers' Compensation Division has the ability to make referrals, it must be understood that the State Vocational Rehabilitation Agencies have much to gain by obtaining such referrals. Indeed, in some states, the Workers' Compensation Division is looked at as a convenient source of funding for some segments of the state vocational rehabilitation agencies. Public vocational rehabilitation agencies, therefore, have as much to gain as private ones by obtaining a large number of Workers' Compensation Division referrals.

There is a worrisome clause in the proposed act which might affect the timeliness of referrals and the rehabilitation administrator's ability to use private agencies. I refer to lines (511) to (514). "Referral by the rehabilitation administrator shall be to the Kansas division of rehabilitation programs if such services are available within 60 days, otherwise such referral may be to private evaluation facilities." This seems unnecessarily cumbersome and unfair. Why should public and private rehabilitation providers not compete on the basis of equality. Deleting the clause "if such services are available within 60 days" would resolve this issue. Those of us in the private sector welcome competition, recognizing that it makes us better. The public sector providers might well benefit from having to compete also. Inasmuch as the employer does have the choice to use a private rehabilitation provider (line 517), we can live with the present bill as is.

IV. Summary

1. Section 7 of SB 365 is well written. It describes a prudent, feasible rehabilitation program, which, if properly administered, could become one of the better programs in the United States.

2. The benefits of this program will be abundant.

3. We strongly endorse passage.

December 10, 1985

KANSAS TRIAL LAWYERS ASSOCIATION'S
POSITION CONCERNING SENATE BILL 365

On December 7, 1985, the Kansas Trial Lawyers Association adopted the following position concerning Senate Bill 365:

1. KTLA proposes to amend Senate Bill 365 by deleting Section 2, New Section 7, New Section 8 and corresponding portions of Section 9.

2. In addition, KTLA proposes an Amendment to K.S.A. 44-510 (g) which will provide the employer with a credit equal to all money paid by the employer for Vocational Rehabilitation evaluation and training of an eligible employee. Such credit will be applied against permanent partial disability benefits due the worker in non-scheduled permanent partial disability cases. The credit may not exceed the amount of disability compensation due an employee for the extent of his or her permanent partial impairment of function.

KTLA's proposal will make the following significant and salutary changes in the existing law:

1. Temporary total disability benefits paid during the period of Vocational Rehabilitation will not be deducted in calculating permanent disability benefits due in scheduled disability cases.

2. Temporary total disability benefits may be ordered paid during Vocational Rehabilitation evaluation and training at a Preliminary Hearing.

3. Temporary total benefits may be assessed against the employer or the Workers' Compensation Fund at the Preliminary Hearing.

3-27-86
Attachment #6 H. L+I

4. Temporary total disability benefits paid by the Workers' Compensation Fund and later held to be the responsibility of the employer shall be reimbursed to the Fund by the employer.

5. Lump sum settlements are prohibited unless certain Vocational Rehabilitation requirements have been met.

6. Modification of an existing Award shall be be fixed at the time of the change in the worker's disability.

7. An employer's knowledge of an employee's pre-existing impairment shall constitute a reservation on the part of the employer sufficient to impose liability upon the Workers' Compensation Fund.

8. The employer will receive a dollar for dollar credit for money paid for an employee's Vocational Rehabilitation evaluation and training.

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Testimony in Support of SB 365

Mr. Chairman, Members of the Committee: I am addressing you in support of Senate Bill 365.

Kansas Workers Compensation reported 62,769 injuries in FY 1985. This is a 10% increase over the preceeding year.

The Rehabilitation Section of Workers Compensation identified 1,539 injured Kansans as potentially needing rehabilitation intervention to return to competitive employment.

During FFY 1985, 808 workers were referred by Workers Compensation to the state and private VR programs. In this same year, 607 clients of the state VR program were referred by Workers Compensation. Of these 607, 124 workers have been rehabilitated into jobs, as of January 1, 1986. I call to your attention that 224 workers terminated VR service in this same period of time. This high percentage of closures would support the belief that there are many disincentives in the system. This opinion is supported by information from Workers Compensation staff that 60% of the referred workers were in litigation at the time of referral.

A recent survey of the 607 workers that were referred by Workers Compensation to Kansas Rehabilitation Services resulted in the following profile:

1. Work history 100 %
2. Under age 50 88 %

3-27-86 Attachment #7
H. L&I

3. 12+ years education 69.4%

4. Not severely disabled 90.3%

This profile for any other referral group would be very positive for successful rehabilitation. However, the rehabilitation rate for this group is third from the bottom for successful rehabilitations from a referral source. One of the primary purposes of the Workers Compensation Act is to return the injured worker to comparable gainful emploment. Our current system does not place enough emphasis on the vocational aspects of rehabilitation. There is a lack of incentive for both the injured worker and the employer to view rehabilitation as a positive process. Senate Bill 365 is a major step in the right direction. The emphasis is on rehabilitation and the prevention of disability dependence.

The change on page 5, lines 169-178 is a positive step in recognizing the benefits of rehabilitation. Functional loss can't be altered and therefore compensation for functional loss is needed. Rehabilitation measures such as job modification and retraining can have a positive effect on general work disability by reducing the amount of lost work potential. The changes in Senate Bill 365 will still allow compensation for functional loss but it will take into consideration age, education, training, previous work experience and physical abilities of the injured worker when determining general work disability.

I have discussed the lump sum settlement issue with our field counselors. The injured worker needs to spend so much time proving that he/she can no longer work that the end result is the loss of the ability to work is greatly

magnified. According to records from the Division of Workers Compensation, the average lump sum settlement is only $15,000. This represents a small percentage of the potential earnings of a worker who has been successfully rehabilitated.

By the time the lump sum is received the worker usually has accumulated bills and doesn't use the settlement for a rehabilitation program that would return her/him to the competitive labor market.

Delaying the lump sum settlement until after the rehabilitation program has been competed will allow for the following:

1. Early intervention with rehabilitation.
2. Incentives to become involved in an active rehabilitation process.
3. Vocational evaluation to assess the vocational potential to return to the competitive labor market.

Senate Bill 365 requires a referral to the state rehabilitation program and requires that a vocational evaluation be completed within 60 days. Rehabilitation Services supports the early intervention requirements that this bill proposes. We have adopted a presumptive eligibility process which will allow our counselors to make an eligibility determination on an interim basis and then start services immediately. Rehabilitation Services will use our state evaluation programs and use the community-based facilities evaluation systems. We require that the evaluation system be accredited by the appropriate body.

Senate Bill 365 establishes a rehabilitation fund to cover the cost of the vocational rehabilitation programs of these injured workers who need that level of intervention.

Senate Bill 365 addresses many of our concerns about returning the injured worker to competitive employment.

This proposed legislation takes a proactive stance on disability management with emphasis on ability versus limitations.

The Department of Social and Rehabilitation Services supports the passage of this important rehabilitation legislation.

Joan B. Watson, Commissioner
Rehabilitation Services
Social and Rehabilitation Services
296-3911
March 27, 1986

for
Robert C. Harder, Secretary
Office of the Secretary
Social and Rehabilitation Services
296-3271
March 27, 1986

5878C

VOCATIONAL REHABILITATION ACT OF 1986

A MODEL ACT

mandating the provision of vocational rehabilitation evaluation and services to certain injured workers whose injuries arise out of and in the course of employment.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF

______________________________:

Section 1. PURPOSE.

The purpose of this Act is to facilitate an injured employee's receipt of vocational rehabilitation services that will contribute to the employee's ability to return to work as soon as possible and to wages as close as possible to those earned at the time of injury. The provisions of this Act shall be interpreted in such a manner as to encourage all parties who are responsible for making available such services to do so promptly and with the above objectives in mind.

Comment: This Act mandates the evaluation of injured workers under the conditions described herein. It also mandates the delivery of vocational rehabilitation services, but only after mediation of any disagreement and, if mediation is not successful, with provision of full due process to all parties concerned.

3-27-86 H. L+I
Attachment #8

Section 2. ORGANIZATION.

A. There is hereby created a division within the State Department of Labor ("Department") to be known as the Vocational Rehabilitation Division ("Division"). The Division shall be headed by a Rehabilitation Administrator ("Administrator") who shall report to the Industrial Accident Board ("Board"). There shall report to the Rehabilitation Administrator as many Vocational Rehabilitation Monitors ("Monitors") as are deemed necessary and appropriate to assist in carrying out the provisions of this Act.

Comment: Rehabilitation is a function that logically may report to the state insurance, labor or other department charged with oversight of workers' compensation. Since the Labor Department typically has authority over self-insured as well as insured employers, it may be the most appropriate choice. The Industrial Accident Board's involvement is suggested because it is already charged with resolution of compensation disputes.

Under no circumstances, however, should a State Division of Vocational Rehabilitation be given this responsibility, for the following reasons:

The intent of this section is to maintain the status quo of competition among rehabilitation providers. It does not serve the interests of the profession nor the public to place control of the activity within the authority of one of the competitors, thereby unnecessarily disrupting competition and building into the system an element of antagonism.

B. The Administrator is empowered to enforce the provisions of this Act in any manner he or she deems necessary and appropriate. This includes, but it is not limited to, the power to employ professional and clerical staff to effectuate this Act; the power to adopt rules and regulations to facilitate early identification, notification, and referral of injured workers to rehabilitation services; the power to review and approve rehabilitation plans; and the power to resolve disputes arising from the furnishing of rehabilitation services hereunder.

C. The Division shall be funded from the assessments and taxes imposed on employers authorized to do business in this State.

Section 3. DEFINITIONS.

When used in this Act, the following terms have these meanings:

A. "Employer" - [See comment below]

Comment: The term "Employer" under this Act should include all employers who are subject to the Workers' Compensation Act. If already defined in that Act, that definition should be used.

B. "Evaluation" - A written statement of the injured employee's condition, containing:

(1) Relevant documentation provided by the treating physician assessing the injured employee's current and projected functional capacities and limitations; and

(2) A job analysis provided by the employer describing the position held by the employee at the time of injury, and including relevant background such as age, sex, education, work history, career goals and any other pertinent information.

C. "Health Care Services" - Those services that are required to be provided by the employer (or the employer's insurance carrier, where applicable) to an injured employee hereunder. Such services shall include, but are not limited to, all necessary medical, surgical, and hospital services; any non-medical treatments recognized by the laws of this State; medicines; payment of the reasonable and necessary costs of repair to, or replacement of, any prosthetic device accidentally damaged or destroyed in the course of employment; and payment of all reasonable and necessary travel expenses (including any necessary board and lodging) incurred by the injured employee in obtaining rehabilitation services hereunder.

D. "Plan" - A written proposal of services to be performed by a "Rehabilitation Provider", as defined herein. The Rehabilitation Provider, in proposing a Plan, shall consider the individual circumstances of the injured worker, and shall, as far as possible, adhere to the following priority of objectives:

(1) same job; same employer

(2) modified job; same employer

(3) same job; new employer

(4) modified job; new employer

(5) new job; new employer

(6) independent living

The Plan may include, but not be limited to, coordination of health care, vocational counseling, and job placement services.

Comment: The three broad services recited above encompass the entire range of rehabilitation services. The phrase "but not be limited to", leaves open the possibility of including more specific services.

E. "Rehabilitation Provider" - Any federal, state, or local govermental agency or facility, or any private entity, including individual practitioners or employers of rehabilitation specialists. All Rehabilitation Providers shall be qualified as provided in Section 6 of this Act.

Comment: The word "provider" is used in lieu of the word "vendor" so as to include in-house specialists as well as independent contractors.

F. "Suitable Gainful Employment" - Employment or self-employment which is reasonably attainable in view of the injury suffered, and which offers an opportunity to restore the employee to an occupation which pays wages as close as possible to the wages such employee earned at the time of the injury.

Section 4. RESPONSIBILITIES OF PARTIES.

A. Responsibilities of Rehabilitation Administrator. The Rehabilitation Administrator shall:

(1) Register and verify all Rehabilitation Providers, public or private, including those in the direct employment of an insurer, employer, or self-insured, who render any medical or vocational rehabilitation services. The use of a Rehabilitation Provider whose place of business is not within the state shall be permitted only with the express consent of the Monitor.

(2) On an annual basis, analyze and report the results of all rehabilitation assignments concluded, including the nature of the services provided and the costs thereof.

(3) Supervise and direct the implementation of activities under the provisions of this Act.

B. Responsibilities of Monitors.

Monitors shall:

(1) Initially contact both the employer and the injured worker in accordance with Section 5-B hereunder;

(2) Review Evaluations and Plans provided by a Rehabilitation Provider, and enforce all approved Plans;

(3) Review the progress of rehabilitation against specific Plans filed by the Rehabilitation Provider;

(4) Retain a Rehabilitation Provider for an approved Plan when an employer has refused to do so;

(5) Mediate disputes when agreement for Plan acceptance, modification or termination cannot be reached through informal methods of resolution;

(6) Refer to the appropriate appeal procedure under the workers' compensation law any matter that cannot be resolved informally;

(7) Make recommendations as required by this Act and by any rules adopted by the Board; and

(8) Perform such other duties as may be prescribed by the Board or the Department or as are otherwise required by this Act.

Section 5. PROCEDURE.

A. The Department of Labor immediately shall forward to the Monitor a report of any injury to an employee arising out of and in the course of employment (herein referred to as "First Report") which involves the following:

(1) Mangling, crushing or amputation of a major extremity;

(2) Traumatic injury to spinal cord, that has caused, or may cause paralysis;

(3) Severe burns that require hospital or burn center care;

(4) Serious head injury such as skull fracture or injury causing significant internal damage; or

(5) Any other injury that may prevent an employee from returning to his pre-injury job responsibilities within ninety (90) days from the date of injury.

B. The Monitor, immediately upon receipt of a First Report from the Department of Labor, or upon receiving information that by reason of an injury an employee's wages may be substantially reduced, shall notify the employer and/or the insurance carrier by telephone that such an injury may require the services of a Rehabilitation Provider (herein referred to as "Monitor Notice"). The Monitor Notice shall be confirmed in writing with a copy to the injured employee.

C. Upon receiving the Monitor Notice, the employer immediately shall retain a qualified Rehabilitation Provider.

D. The Rehabilitation Provider shall, within a reasonable time after being retained, do the following:

(1) Perform an initial consultation with the injured employee, the employer, and the treating physician;

(2) Conduct an Evaluation, including drafting a Plan if required; and

(3) Report the results of such Evaluation to the employer and/or insurance carrier and to the Monitor.

E. The examining or treating physician shall release all pertinent medical information to parties involved in the rehabilitation process who may require such information.

Comments: (1) Each state has its own requirement for some form of what is referred to here as a "first report of injury". (If the applicable state workers' compensation law uses a different terminology, the Model Bill terminology may be amended accordingly.) This section attempts to have the receiving agency forward copies of first reports involving catastrophic injuries, or disabilities of 90 or more continuous days, to the Rehabilitation Administrator for Monitor activity. Appropriate enabling provisions should be drafted, or the workers' compensation law amended, to enforce intra-agency cooperation.

(2) The number of days for referral should not be less than 90 nor more than 120, guided also by the efficiency of a particular state's administration. Studies have shown that referrals in less than 90 days tend to clog the system, while referrals after more than 120 days risk a reduced motivation to return to work. In any event, the referral period is intended to serve as the time during which relevant information is gathered, and should be recognized as preceding the implementation of any Plan.

(3) The Act authorizes the release of pertinent medical information by the examining or treating physician without the express consent of the injured employee. However, some states may have in effect confidentiality laws which should be analyzed before using this provision. The intent of this section is to allow rehabilitation and workers' compensation statutes to operate in accordance with disclosure requirements in civil suits. At common law, when an injury is in issue in a lawsuit, confidentiality is less protected.

Section 6. MINIMUM STANDARDS FOR REHABILITATION PROVIDERS.

All Rehabilitation Providers, as defined in Section 3-E hereof, shall be qualified in vocational rehabilitation techniques and processes and shall be familiar with current and appropriate medical interventions. The following minimum standards for Rehabilitation Providers also shall be required:

A. Public Rehabilitation Providers.

Rehabilitation specialists employed by a governmental agency or state-run facility shall be required to comply with appropriate civil service standards.

B. Private Rehabilitation Providers.

Employers who either contract for services or use their own employees shall utilize rehabilitation specialists who:

(1) hold a Masters or higher degree in health support services from an accredited institution, and have at least one (1) year's experience in vocational or physical rehabilitation; or

(2) hold a Baccalaureate degree in health support services from an accredited institution, and have at least two (2) years' experience in vocational or physical rehabilitation; or

(3) hold a diploma or Associate of Arts degree in nursing from an accredited institution, and a current RN license, and have at least three (3) years' experience in vocational or physical rehabilitation; or

(4) hold a Baccalaureate degree other than as described in subsection (2) above, and have at least three (3) years' experience in vocational or physical rehabilitation.

C. Private Practitioners.

The minimum standards for private practitioners who furnish rehabilitation services hereunder shall be the same as the standards for private Rehabilitation Providers described in Paragraph B above.

Comment: The word "provider" is used in lieu of the word "vendor" so as to encompass in-house specialists in addition to independent contractors.

The intent of this section is to establish minimum standards that balance practical experience in physical and vocational rehabilitation with appropriate levels of education, as evidenced by the degrees listed, to insure adequate expertise in the furnishing of such rehabilitation.

Section 7. INITIAL PERIOD OF PLAN; EXTENSIONS.

A. Initial Period of Plan.

The duration of the initial Plan of rehabilitation services shall not exceed a period of twenty-six (26) weeks.

B. Extensions.

With the approval of the Monitor, the initial Plan may be extended for a maximum of an additional twenty-six (26) weeks; provided however, that any such extension shall be consistent with the

initial Plan and shall be limited to no greater goal than restoration of the injured employee to "Suitable Gainful Employment", as defined in Section 3-F.

Any party challenging the Monitor's decision to extend the initial Plan period may exercise an immediate right to appeal, as set forth in Section 11 herein.

Comment: The limitations described in this section are intended only to demonstrate application, and such limitations are not to be construed as binding. The intent of this section is to insure that the Plan complies with the objectives set forth in this Act. The limitation on the period of extension is to insure that the Plan, even as extended, is restricted to its primary goals.

Section 8. PRESUMPTION OF PLAN APPROVAL: OBJECTIONS.

Where the Rehabilitation Provider recommends, drafts, and files a Rehabilitation Plan with the Monitor (with copies to the injured employee and to the employer and/or its insurance carrier), such Plan shall be presumed approved; provided however, that any party may object to the implementation of such Plan by setting forth his or her specific objections, in writing, to the Monitor within ten (10) business days from the date such Plan is filed.

Any party who has filed a timely objection in accordance with the above procedure may, if required, initiate the regular appeal procedure under the state workers' compensation law, as set forth in Section 11 hereof.

Section 9. FAILURE OR REFUSAL TO PARTICIPATE IN REHABILITATION PROCESS.

A. Failure or Refusal of Employer and/or Insurance Carrier:

Where the Employer or Insurance Carrier fails to offer an Evaluation or to furnish an approved Plan where recommended, the Monitor immediately shall retain the services of a qualified Rehabilitation Provider to undertake such Evaluation and/or to furnish such Plan. All costs incurred in the Monitor's obtaining such services, and all costs of services furnished by the Rehabilitation Provider, shall be borne by the Employer.

B. Failure Or Refusal Of Employee:

Failure or refusal by an injured employee to participate in either the Evaluation or the Plan, where required, shall result in the forfeiture of one hundred percent (100%) of the employee's entitlement to receive workers' compensation lost wage benefits for the entire period of such refusal; subject, however, to the following:

(1) If within three (3) months from the date of such refusal, the employee commences participation in a Plan, the employee shall be entitled to receive a lump sum payment in an amount equivalent to twenty-five percent (25%) of the lost wage benefits previously forfeited by him, calculated from the date of the referral up to the time employee commences participation in the Plan; and

(2) If the employee successfully completes the rehabilitation process by becoming employed for a period of thirty (30) consecutive business days after completion of the Plan, the employee shall be entitled to receive an additional lump sum payment in an amount equivalent to twenty-five percent (25%) of the lost wages benefits previously forfeited by him.

(3) The lump sum payments described in subparagraphs (1) and (2) above shall be available only once to an employee who refuses to participate in the rehabilitation process.

Section 10. PAYMENT OF WORKERS' COMPENSATION BENEFITS DURING REHABILITATION PROCESS; TRIAL PERIOD FOR RETURN TO WORK.

A. Payment of Benefits During Rehabilitation Process:

(1) The Employer (or the insurance carrier in appropriate cases) shall be responsible for payment to the injured employee of all temporary total disability benefits such employee is entitled to receive pursuant to the state workers' compensation law. Such benefits shall be paid throughout the period of time during which the injured employee is unable to work and is participating in an approved Plan.

(2) When an injured worker is employed or is able to work under the circumstances described in Paragraph B-1 below, during either the evaluation process or the participation in a Plan, the employer (or the insurance carrier in appropriate cases) shall be responsible for payment to the injured employee of such

temporary partial disability benefits as the employee is entitled to receive pursuant to the state workers' compensation law. Such benefits shall be paid in accordance with Paragraph B-2 below.

B. Trial Period for Return to Work:

(1) An injured employee who is receiving payments for temporary total disability benefits pursuant to the state workers' compensation law during the rehabilitation process may, under the following conditions, return to work for a trial period not to exceed ninety (90) days:

(a) The employee has received a release from his treating physician (or has in his possession an impartial medical opinion) indicating that he may safely return to the workplace; and

(i) The employee has requested to return to work, and his employer has agreed that he may do so; or

(ii) The employee has been found to be capable of engaging in "Suitable Gainful Employment", as defined herein, and his employer (or insurance carrier) has procured such Suitable Gainful Employment on his behalf.

(2) During the trial period, the employer's obligation to pay temporary total disability benefits to the employee shall be suspended. During the suspension period, the employer shall pay to the employee the usual wages associated with such re-employment,

together with any temporary partial disability benefits the employee is entitled to receive under the state workers' compensation law.

(a) If during the trial period, the employee, by reason of his disability, is unable to continue to work, the employer shall reinstate the employee's previously suspended temporary total disability payments.

(b) If at the end of the trial period, the employee is able to continue working, the employer's obligation to pay temporary total disability benefits shall cease on the date the employee returns to work

Section 11. RESOLUTION OF DISPUTES.

As set forth in Section 2-B above, any disputes concerning an employee's entitlements hereunder, suitability of Plans, or other issues arising under this Act first shall be submitted to the Administrator for resolution. Prior to making a determination on any issue in dispute, the Administrator may request the affected parties to meet and confer informally to reach a resolution consistent with this Act.

Any party who disagrees with a resolution determined by the Administrator, or the Monitor's response to objections under Section 8, shall have access to the regular appeal procedure under the state workers' compensation law.

Section 12. MISCELLANEOUS PROVISIONS.

A. A determination that an injured employee is "permanently and totally disabled" under the state workers' compensation law may not be issued until such employee has completed participation in a Rehabilitation Evaluation and Plan, where required.

B. Rehabilitation costs shall be considered medical expenses for ratemaking purposes.

Comment: Rehabilitation costs are generally considered to be a part of medical losses. There are some concerns, however, in identifying the costs of housing or transportation items needed to accommodate severely disabled employees. Such costs should be approved as loss items.

Kansas Chamber of Commerce and Industry

A consolidation of the Kansas State Chamber of Commerce, Associated Industries of Kansas, Kansas Retail Council

March 27, 1986

TO: Members of the House Committee on Labor & Industry

RE: KCCI Position on SB 365

In the interest of clear communication, I write to clarify the position of the Kansas Chamber of Commerce and Industry on SB 365.

First, as to the genesis of that bill, KCCI participated in a series of meetings during the fall of 1984 with representatives of the state AFL-CIO and the Division of Workers' Compensation hoping to reach agreement on proposed changes to the workers' compensation law. As I recall, an interim committee had just voted to introduce SB 9, which was drawing fire from many sides. Our meetings were not designed to iron out differences between our respectives sides on SB 9, but rather to identify areas of the law where we agreed that changes needed to be considered.

There were two areas of agreement:

1. that vocational rehabilitation of injured workers was not occurring because of the Antwi v. C-E Industrial court decision, and

2. that the Workers' Compensation Fund, which was designed to provide an incentive to take previously injured individuals back into the workplace, was not providing the intended incentive, again largely because of court decisions.

In reaching those two "agreed" conclusions, we also identified many areas of the law where agreement would perhaps never be reached. Our intent, then, became to seek solutions to those areas of mutual concern...to solve the solvable.

KCCI and the AFL-CIO each submitted a list of proposed changes to Bill Morrissey, Assistant Director, Division of Workers' Compensation. He was asked to draft language for our review based on his

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expertise in workers' compensation matters and understanding of the positions of the respective parties.

Rather than have this language reviewed by a large group, it was agreed that legal counsel would be asked to conduct the review of any subsequent negotiations. The final document, if one could be developed, would be submitted to the legislature.

Following prolonged negotiations between Free Haag, Wichita, who represented KCCI interests, and George McCullough, Topeka, who bargained for the AFL-CIO, a proposal was taken to the Senate and introduced on March 22, 1985, just over one year ago.

That bill, SB 365, was passed by the Senate on a vote of 40-0 on April 4 of last year and forwarded to your committee.

SB 365 is supported by KCCI Board policy. One of our Major Legislative Objectives for 1986 is "legislative action to provide for meaningful and voluntary vocational rehabilitation, re-establishment of the viability of the second injury fund, and other changes designed to concentrate expenditures on the needs of injured workers." Your committee chairman is correct in characterizing the procedure by which SB 365 was formed as "informal." Please be assured, though, that both organizations formally favor the concepts of SB 365.

As to potential amendment to the bill, those concepts which were woven together to create the fabric of SB 365 are, obviously, critical to any agreement on the bill. I do not believe that every word in the bill must be left intact by your committee. Our intentions were never to tie the legislature's hands. Instead we hoped to identify areas where changes could be made which could serve the needs of all sides.

You have heard that the Kansas workers' compensation law is basically a good law. I guess we "basically" agree. But how good is a law, originally designed to provide a remedy for work-related injury cases and eliminate the need to go to court, if more administrative law judges are needed to handle the ever increasing case load? How good is the law when viewed from the perspective of an average increase in insurance rates statewide last year of 10% and a request already filed this year for another 17% increase? In fact, some classifications of employment are proposed to increase by more than 48% in this year's filing. It appears time our basically good law was made better.

The intentions of those members of KCCI and the AFL-CIO in creating the concepts of SB 365 were honorable. I believe both KCCI and the AFL-CIO want full consideration of the subject and contents of SB 365. How could we ask you to enact something wrong just because we reached an agreement? All we ask is that, in your deliberations, you keep in mind that passage of any

change in the workers' compensation law must reflect the balance which was intended in the original law. That was what we used as a guide in our proposals to you. A balanced law with balanced administration serves all Kansans. We at KCCI have always stood ready to work with legislators and others to make intelligent decisions. We stand in the same posture today.

Sincerely,

ROB HODGES
Executive Director
Kansas Industrial Council

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