Approved April 7, 1989
Date

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS.

The meeting was called to order by Senator Alicia L. Salisbury at
Chairperson

1:35 ~~xxx~~/p.m. on March 29, 1989 in room 527-S of the Capitol.

All members were present except:

Senator Paul Feleciano - Excused

Committee staff present:

Gordon Self, Revisor of Statutes Office
Mary Allen, Committee Secretary

Conferees appearing before the committee:

Dennis Horner, Kansas Trial Lawyers Association
Mike Germann, Boeing Military Airplanes
Vaughn Burkholder, Boeing Military Airplanes
Terry Leatherman, Kansas Chamber of Commerce and Industry
Merlin Wheeler, Emporia Area Chamber of Commerce
James P. Schwartz, Jr., Kansas Employer Coalition on Health
Larry Oakley, Beech Aircraft Corporation
Rich McKee, Kansas Livestock Association

The meeting was called to order by the Chairman, Senator Alicia L. Salisbury.

Senator Morris moved that the minutes of the March 15, 1989, meeting of the Committee be approved. Senator Ehrlich seconded the motion. The motion carried.

Substitute for House Bill 2506 - An Act concerning workers compensation; relating to compensation for certain permanent partial disabilities.

Dennis Horner, Kansas Trial Lawyers Association, presented testimony to the Committee in support of Sub. for HB 2506, the provisions of which would remove repetitive use conditions (carpal tunnel syndrome) from the list of scheduled injuries in resolving workers' compensation cases and would place them back in the Workers' Compensation Act as injuries to the body as a whole. Mr. Horner stated that the bill provides for more adequate compensation for workers with significant disability and restrictions in both upper extremities. He said that since the affliction of carpal tunnel syndrome has such devastating ramifications, it seems only fair that the workers should be justly compensated. (See Attachment I for copy of his testimony.)

Mike Germann, Boeing Mititary Airplanes, introduced Vaughn Burkholder, Attorney representing Boeing Military Airplanes, to speak in opposition to Sub. for HB 2506. Mr. Burkholder pointed out that the focus of the 1987 revisions in the Workers' Compensation Act is on returning the injured worker to a productive place in society by making available a system of vocational rehabilitation benefits. These benefits, he said, are available whether the worker's injury falls within the category of so called "scheduled" disabilities or is a general disability. He emphasized that industry cannot be assessed the additional cost of vocational rehabilitation without curbing other costs such as high monetary awards for repetitive use conditions. (See Attachment II for copy of his testimony.)

Terry Leatherman, Executive Director of the Kansas Industrial Council of the Kansas Chamber of Commerce and Industry, spoke in opposition to Sub. for HB 2506. He stated that the proposed change in the workers' compensation system, as presented in this bill, regarding repetitive use conditions would place a heavy financial hardship on existing Kansas business and would seriously erode efforts at economic development in Kansas. (See Attachment III for copy of his testimony.)

Also appearing in opposition to Sub. for HB 2506 was Merlin Wheeler, Chairman of the Board of Directors of the Emporia Area Chamber of Commerce. Mr. Wheeler said that it is the position of his organization that this bill, which would delete bilateral repetitive use conditions from the schedule of injuries, is regressive, contrary to earlier compromises affecting the entire scheme of the Workers' Compensation Act, and should not be enacted into law. (See Attachment IV for copy of his testimony.)

James P. Schwartz, Jr., consulting Director of the Kansas Employer Coalition on Health, testified before the Committee in opposition to Sub. for HB 2506. He discussed the concessions made by all parties in the passage of the 1987 Workers' Compensation Act and noted that the balance of interests encompassed by the Act is now threatened by the proposed removal of repetitive use conditions from the injury schedule. (See Attachment V for copy of his testimony.)

Larry Oakley, Administrator of Workers' Compensation for Beech Aircraft Corporation, appeared in opposition to Sub. for HB 2506. He observed that passage of this bill would cause a considerable financial burden on responsible employers and would undoubtedly return Kansas to the pre-1987 Workers' Compensation Act where the trade-off for large permanent partial disability awards was that the injured worker did not return to work as frequently as he or she does today. (See Attachment VI for copy of his testimony.)

Robert Lincoln, Personnel Manager of Dolly Madison Cake Company in Emporia, presented testimony in opposition to Sub. for HB 2506 by letter. (Attachment VII)

Rich MeKee, Kansas Livestock Association, appeared before the Committee in opposition to Sub. for HB 2506. He said that the beef business is on the verge of moving into a new era of product development by providing retail ready products processed at the packing plant level. He noted that Kansas has a chance of capturing this business if business conditions including workers' compensation laws are competitive with neighboring states. (See Attachment VIII for copy of his testimony.)

Senator Morris moved that the Committee recommend Substitute for HB 2506 unfavorably. Senator Ehrlich seconded the motion. The motion carried. Senator Martin asked to be recorded as voting no.

Chairman Salisbury announced that the minutes of this meeting would be circulated to members of the Committee. Members should contact the Committee Secretary if they have any corrections. It there are no corrections, the minutes will stand approved as written.

The meeting was adjourned at 2:20 p.m. by the Chairman.

Senate Labor, Industry & Small Busine
March 29, 1989

GUEST LIST

NAME	REPRESENTING
Mike Germann	Boeing Military Airplanes
Rob Hodgson	KTA
Bob Ream	Boeing Military Airplanes
Jim Schwartz	Ks Employer Coalition on Health
Robin O'Dell	Division of Workers Comp
Robert A. Anderson	Director, Division of Worker's Compensation.
~~ROD LAKE~~	~~KASB~~
Mary Jo Kaufman	KASB
Merlin D. O'Keefe	Emporia Area Chamber of Commerce
Joe Wood	Emporia Area Chamber of Commerce

March 29, 1989

Testimony of Dennis L. Horner for the Kansas Trial Lawyers Association

RE: HOUSE BILL 2506

I. BACKGROUND

Prior to July 1, 1987 and the revision of K.S.A. 44-510d to include section (23), persons suffering from repetitive use and disability to both upper extremities were evaluated, rated and compensated based upon a percentage of disability to the body as a whole. The 1987 modification to K.S.A. 44-510d requires that bilateral carpal tunnel is treated as two scheduled injuries.

II. CONTRAST & COMPARISON

The practical application of the "new" law is readily seen by reviewing an award and directors review in Ronald C. Johnson v. Kretschmar Brands and/or Workers Compensation Fund, Docket No. 125,944.

Mr. Johnson is a 37 year old married father of four children with a G.E.D. and a 20 year work history of manual labor requiring use of both upper extremities.

Johnson injured himself May 29, 1987 but attempted to return to work for respondent at lighter duty. His condition deteriorated requiring him to terminate in November, 1989. Claimant was paid $4.75 per hour and averaged $261.25 per week.

The adminstrative law judge (ALJ) applied pre July 1, 1987 law and awarded Johnson 100% disability to the body by virtue of medically imposed work restrictions. The award of compensation would pay Johnson $75,000.00 over approximately 8 years or $9,375.00 per year.

The Director of Workers' Compensation considered the the record and found Johnson was able to return to same work

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Attachment I

after the initial injury. In addition, it was determined claimant's accident date should be the last date worked, or November 30, 1987. By determining the date of accident in November 1987, subsection (23) of K.S.A. 44-510d came into effect. The application of the new law resulted in Johnson receiving an award of $9,851.62 which sum included temporary total compensation during treatment of $2,438.52.

III. HOUSE BILL 2506

This bill would more adequately compensate workers with significant disability and restrictions in both upper extremities. Application of the proposed change would naturally provide a more rational and humane basis for compensating claimant. However, House Bill 2506 would almost never produce the end result of the ADJ's award in Johnson. K.S.A. 44-510e has been amended to delete "work disability". The judges must now determine the extent to which the ability of the employee to perform work in the open labor market and to earn comparable wages has been reduced. Further, K.S.A. 44-510e includes a presumption of no "work disability" if the employee returns to work for comparable wages after the accident. It appears claimants will be compensated on loss of employability and ability to earn wages rather than inability to perform a spcific job.

If claimant returns to the same job and wages, compensation would be awarded based on functional disability to the body as a whole. Assuming Johnson was given a functional rating of 12% to the body, his compensation over 8 years for permanent disability would approximate $9,746.00.

If, however, claimant was unable to return to his employment and earn a comparable wage, the award could be higher. For instance, assume Johnson could no longer earn $261.25 per week, but was capable of earning approximately two-thirds (2/3) of his original wage. Johnson would be entitled to $20,952.00 paid over 8 years.

IV. PRACTICAL AFFECT ON WORKERS

Many claimants find they face the same problems as Ronald Johnson. Since most laboring workers rely on the use of both upper extremities, disability from repetitive use often means a job change. Geographic location and educational background often restrict an injured workers options for retraining and/or new employment and lower wages normally follow.

Medical literature suggests that women are three times as likely as men to suffer disability from carpal tunnel syndrome. Whether employed in a factory, on assembly line or behind a typewriter, women can suffer tremendous loss of marketable skills and loss of income if stricken by carpal tunnel syndrome.

Since the affliction of carpal tunnel syndrome has such devastating ramifications, it seems only fair that the workers should be justly compensated. House Bill 2506 merely allows some degree of just compensation for a dibilitating injury.

Sincerely,

Dennis L. Horner

DLH/da
Attachments A & B

BEFORE THE DIVISION OF WORKERS' COMPENSATION
FOR THE STATE OF KANSAS

RONALD C. JOHNSON	Claimant)	
vs.	)	
KRETSCHMAR BRANDS and/or WORKERS' COMPENSATION FUND	Respondent)	Docket No. 125,944
and	)	
HOME INSURANCE COMPANY and/or WAUSAU INSURANCE COMPANY	Insurance Carrier)	

AWARD

This award entered this 31st day of August, 1988.

Appearances

Fred Spigarelli appeared on behalf of the Claimant; Garry W. Lassman appeared on behalf of the Respondent/Insurer, Home Insurance Company; Thomas P. Fay and Pat Fay appeared on behalf of the Respondent/Insurer, Wausau Insurance Company; and Leigh C. Hudson and Zachery E. Reynolds appeared on behalf of the Workers' Compensation Fund.

Record

The record in this matter consists of the transcripts of hearing dated February 25, 1988 and March 2, 1988, and the deposition of Edward J. Prostic, M.D.

Stipulations of Wausau Insurance Company

1. The Claimant was injured in Crawford County, Kansas on May 29, 1987.

2. Claimant met with personal injury by accident arising out of and in the course of employment with Respondent.

3. Respondent admits notice.

4. The relationship of employer/employee existed on the date of accident.

5. The parties are covered by the Kansas Workers' Compensation Act.

6. Timely written claim was made.

EXHIBIT A

7. Wausau Insurance Company is the Insurer.

8. No temporary total compensation has been paid. Medical has been paid in the amount of $67.00.

Stipulations of Home Insurance Company

1. Respondent denies notice, but claims no prejudice.

2. The relationship of employer/employee existed on the dates of accident.

3. The parties are covered by the Kansas Workers' Compensation Act.

4. Timely written claim was made.

5. Home Insurance Company is the insurer after June 21, 1987.

6. Temporary total compensation was paid from December 1, 1987 through January 11, 1988 at the rate of $126.67 for a total amount of $763.02. Medical was furnished by Home Insurance Company but the record is silent as to the total amount.

Issues

1. Whether written claim was timely made.

2. Nature and extent of disability, if any.

3. Average weekly wage.

4. Whether Claimant is entitled to additional temporary total disability benefits.

5. Whether Claimant is entitled to medical, unauthorized, future, mileage or reimbursement.

Findings of Fact & Conclusions of Law

Having heard the testimony of the Claimant and having reviewed the evidentiary record herein, the Administrative Law Judge, in addition to the stipulations of the parties, finds as follows:

1. This Court finds that the Claimant suffered from one injury, which as stipulated by the parties, occurred May 29, 1987 and it is therefore not necessary to include the issues between the Claimant and the insurance carrier, Home Insurance Company in this award.

2. This Court will not allow Wausau Insurance Company to unilaterally withdraw its stipulation of timely written claim.

3. At the time of the regular hearing, Claimant, Ronald C. Johnson, was 37-years old, married, and the father of four children. He had a G.E.D. high school diploma and his work history included laying railroad tracks, a carpenter, roofer, and a truck driver. He began employment with Respondent in September 1986. At the time Claimant suffered his work related injury, his job description was that of rail coordinator, which involved taking meat from the freezers and pushing them on overhead rails while they were attached to 'trees'. While doing this duty in May 1987, Claimant's fingers started turning numb and falling asleep and when he would awake in the morning, his fingers would be drawn into claws. This condition was reported to his supervisor in the last part of May, 1987. Claimant further injured his hands when a 'tree' broke on May 29, 1987. This Court finds that the Claimant injured his hands and wrists in a job related accident in May 1987, since that is the first time he sought medical attention and advised his supervisor of his physical problems. The job as rail coordinator required repeated use of his hands in gripping, grasping, turning, pushing, and pulling. These 'trees' weighed 1,500 - 2,700 lbs., and would ride on rollers down the rail. A number of these 'trees' had defective rollers and at times, required two or three men to push one loaded 'tree'. This job was performed by Claimant from 10 - 12 hours per day for approximately 50 - 64 hours per week.

4. Claimant began his employment at $4.00 per hour and when he terminated his employment, he was receiving $4.75 per hour with time and one-half for overtime and fringe benefits that included payment of hospitalization insurance. Claimant's average weekly wage is $261.25 per week plus fringe benefits, which were not provided, which this Court will find to $50.00 per week for a total average weekly wage of $310.25.

5. Claimant was seen by various physicians and on December 1, 1987 and December 7, 1987, he had a surgical procedure done by Dr. Ramirez for bilateral carpel tunnel release on each hand. He was given an anesthetic by Malcom C. Freeman, M.D., for these procedures, which said bill in the amount of $528.00 is found to be authorized medical and is ordered paid by the Respondent and its insurance carrier, Wausau Insurance Company. Claimant returned to work on January 18, 1988, and is entitled to one additional week of temporary total disability from January 11, 1988 until January 18, 1988, which is ordered paid by the Respondent and its insurance carrier, Wausau Insurance Company. Claimant returned to work for the Respondent, not as a rail coordinator, but was given light duty jobs that did not require the same physical movements of his hands that the job as a rail coordinator required. At the time of the regular hearing, Claimant had not been physically able to do a full weeks work on this light duty job. This Court finds that Claimant is 100% disabled from doing his job for the Respondent as a rail coordinator. On February 16, 1988, Claimant was examined by Edward J. Prostic, M.D., an orthopedic surgeon. Dr. Prostic diagnosed Claimant as having developed bilateral carpel tunnel syndrome and impingement syndrome of his left shoulder with a possible irritation of the ulnar nerve at the elbow, and he rated Claimant at 10% to the body as a whole on a functional basis. In his opinion, Claimant would have difficulty returning to any work that required repeated, forceful use of his hands.

6. Future medical will be considered by the Court upon proper application to the Director. Claimant is entitled to unauthorized medical up to the statutory limit of $350.00.

A W A R D

WHEREFORE, AWARD OF COMPENSATION is hereby made in favor of the Claimant, Ronald C. Johnson, and against the Respondent, Kretschmar Brands, and its Insurer, Wausau Insurance Company, for an accidental injury sustained on May 29, 1987. As a result of his accidental injury, Claimant is entitled to 7 weeks temporary total disability at the rate of $206.84 per week or $1,447.88 followed by compensation at $206.84 per week not to exceed $75,000 for a 100% permanent partial general body disability.

As of August 26, 1988, there would be due and owing to the Claimant 7 weeks temporary total compensation at $206.84 per week in the sum of $1,447.88 plus 58 weeks permanent partial compensation at $206.84 per week in the sum of $11,996.72 for a total due and owing of $13,444.60 which is ordered paid in one lump sum less any amounts previously paid. Thereafter, the remaining balance of the $61,555.40 shall be paid at $206.84 per week until fully paid or until further order of the Director.

Medical expenses incurred by Claimant as a result of her accidental injury shall be awarded to be paid by the Respondent/Insurer as set forth in Finding No. 6 above.

Fees necessary to defray the expenses of administration of the Workers' Compensation Act are hereby assessed against the Respondent/Insurer to be directly paid as follows:

Patricia K. Smith Transcript of Hearing dated 3-2-88	$233.20
Martin D. Delmont, C.S.R. Transcript of Hearing 2-25-88	251.25
Hostetler & Associates Deposition of Edward J. Prostic, M.D.	217.65

IT IS SO ORDERED.

Dated this 31st day of August, 1988.

John D. Clark
Administrative Law Judge

BEFORE THE DIVISION OF WORKERS COMPENSATION
STATE OF KANSAS

RONALD C. JOHNSON S.S. #497-52-4076 Claimant	)	
VS.	)	
KRETSCHMAR BRANDS Respondent	)	Docket No. 125,944
AND	)	
HOME INSURANCE COMPANY and/or WAUSAU INSURANCE COMPANIES Insurance Carriers	)	
AND/OR	)	
KANSAS WORKERS' COMPENSATION FUND	)	

O R D E R

Now on the 7th day of October, 1989, the application of the respondent and carrier Wausau Insurance Companies for a Director's Review of an award entered herein by Administrative Law Judge John D. Clark on August 31, 1988, comes on before Director Robert A. Anderson in Parsons, Kansas.

Claimant appeared by his attorney, Fred Spigarelli of Pittsburg, Kansas; respondent and carrier Home Insurance Company appeared by their attorney, Garry W. Lassman of Pittsburg, Kansas; respondent and carrier Wausau Insurance Companies appeared by their attorney, Thomas P. Fay of Overland Park, Kansas; and the Workers' Compensation Fund appeared by its attorney, Leigh C. Hudson of Fort Scott, Kansas.

The respondent and carrier Wausau Insurance Companies present the following issues for review: (1) whether the claimant suffered any disability as a result of an accidental injury on or about May 29, 1987; (2) whether the claimant suffered any work disability as a result of a permanent partial general bodily disability under K.S.A. 44-510e; and, (3) whether claimant average gross weekly wage should include $50.00 per week for fringe benefits.

The Director, having heard the statements of counsel and having reviewed the entire evidentiary record including the correspondence and pleadings of the parties, finds:

1. The claimant suffered an accidental injury on May 29, 1987, that only temporarily incapacitated him. Claimant fully recovered from that accident without sustaining any permanent disability.

2. The claimant suffered an accidental injury to his upper extremities as a result of a repetitive use condition occurring in opposite upper extremities with the date of accident being the claimant's last day at work, November 30, 1987. The claimant is entitled to compensation computed as separate scheduled injuries to each extremity with the percentage of loss of use thereof increased by 20% of the determined loss of use to each such extremity. K.S.A. 44-510d(a)(23).

3. The claimant's average weekly wage is found to be $261.25 per week. The award, which included $50.00 per week in fringe benefits found by the Administrative Law Judge, is modified to reflect an average weekly wage based on the claimant's testimony concerning full-time hourly employment and overtime compensation.

The respondent argues the issue of nature and extent of disability and suggests that the claimant should have been awarded compensation based on an accident date of November 30, 1987, and not on the finding of the Administrative Law Judge that the claimant suffered an accidental injury on or about May 29, 1987.

The claimant has the burden of proof as set forth in K.S.A. 44-508(a) indicating he must persuade the trier of fact by a preponderance of the credible evidence that his position on an issue is more probably true than not true. The claimant has

failed to meet his burden of proof that he suffered any permanent partial impairment to the body as a whole as a result of his accidental injury of May 29, 1987. The claimant testified he suffered an accidental injury to his right upper extremity when a meat tree broke on that date, but that he did not have any disabling effects. The record supports a finding that the claimant was only temporarily, incapacitated and has fully recovered without sustaining any permanent disability as a result of the May 29, 1987, accident. If the compensable injury has completely subsided and the injury no longer produces at least some disability, an injured worker is not entitled to an award for permanent partial disability. Harris v. Cessna Aircraft Co., 9 Kan. App.2d 334, 336, 678 P.2d 178 (1984).

The Administrative Law Judge found the claimant sustained injury to his "hands" when a tree broke on May 29, 1987. The Administrative Law Judge has the benefit of seeing the claimant testify in person and based his decision on that testimony and a review of the evidentiary record submitted by both parties. However, under certain circumstances, as in a Director's Review pursuant to K.S.A. 44-551, when the evidence is written, documentary in character or in the form of depositions or transcripts, the duty of the trier of fact is to decide for itself what the facts establish, substantially as it does in the original case. Where controlling evidence on the issue of fact provides the trier of fact with no peculiar opportunity to evaluate the credibility of witnesses, it is the responsibility of the court of appellate review to decide what the facts establish. Watson v. Clay, 202 Kan. 366, 450 P.2d 10 (1969).

In establishing the existence, nature and extent of disability, testimony of a claimant may be considered as well as medical evidence. Chinn v. Taylor, 219 Kan. 196, 547 P.2d 751 (1976). The existence, nature and extent of the disability of an injured worker is a question of fact, and medical testimony is not essential to the establishment of these facts. It is not necessary that a worker's disability be given a medical name or label. A fact finder is free to consider all the evidence and decide for himself the percentage of disability claimant suffered. The number or percentage a doctor supplies is not controlling in establishing a percentage of disability. Carter v. Koch, 12 Kan.App.2d 74 (1987).

The claimant testified that he experienced pain in both upper extremities starting around June, 1987, and that the pain was continuous and gradually got worse up until he was no longer able to perform his job and had to take himself out of the work force on or about November 30, 1987. The evidentiary record consists of only one medical doctor's testimony. Dr. Prostic testified by deposition that he examined the claimant after he had had surgery performed on his upper extremities for carpal tunnel release. Dr. Prostic was of the opinion the claimant suffered from a 10% permanent partial impairment to the body as a whole as a result of his carpal tunnel syndrome, the resultant surgery and the claimant's alleged complaints of shoulder and elbow impingement. A careful review of the entire evidentiary record supports a finding that the claimant suffered an accidental injury as a result of a series of mini-traumas to the upper extremities. The record does not support the claimant suffered any permanent partial impairment to the shoulder. In fact, Dr. Prostic found no objective findings to indicate the claimant had any permanent partial impairment to the body as a whole as a result of disability to the shoulder. The record does not indicate the claimant ever complained of any shoulder pain to any physician, other than Dr. Prostic. The Director finds the claimant's testimony during the regular hearing is credible concerning his accidental injury of mini-traumas to the upper extremities; however, the claimant has failed to prove it is more probably true than not true that he suffered any resultant disability or permanent partial impairment or injury to his shoulder. It is the situs of the resulting disability, not the situs of the trauma, which determines the benefits available. Bryan v. Excel, 239 Kan. 688 (1986); Fogle v. County, 235 Kan. 386 (1984).

The claimant has alleged an injury as a result of a series of mini-traumas starting on or about June of 1987. The claimant produced no medical evidence or other testimony, other than his own, to substantiate his version that he suffered an accidental injury in the course and scope of his employment prior to July 1, 1987. Dr. Prostic first saw the claimant after he had had carpal tunnel release. Other doctors who saw the claimant prior to his surgery and prior to his termination of employment, were not deposed. On the other hand, the claimant's work history demonstrates that the claimant continued to work for the respondent until November 30, 1987, when he took himself out of the labor force and had bilateral carpal tunnel surgery soon thereafter.

The claimant argues at Director's level that the claimant's accidental injury date should be shown to be May or June of 1987, when the claimant alleges he first

started having symptoms of what was later diagnosed as bilateral carpal tunnel syndrome. The respondent argues that the claimant's accidental injury date, if at all, should be found to be November 30, 1987, the date the claimant was no longer able to continue to work for the respondent. Although there was no direct statutory authority or Kansas case law on point, if the claimant's argument is adopted, we would be accepting the "discovery rule" which applies where a compensable injury occurs at one time, but the employee, acting as a reasonable person, does not recognize its "nature, seriousness and probable conscionable character" until later. Orr v. Lewis Central School District, 298 N.W.2d 256, 257 (Iowa, 1980). If we accept the respondent's argument, we would adopt the "cumulative injury rule" which is treated by Professor Larson under the heading "gradual injury," which applies when the disability develops over a period of time and the compensable injury itself is held to occur at a later time. McKeever Custom Cabinets v. Smith, 379 N.W. 2d 368 (Iowa, 1985) (citing 1b A Larson, Workers Compensation Section 39.10 [1985]).

The Kansas Court of Appeals, in Downs v. IBP, Inc., 10 Kan.App.2d 39, 41, 691 P.2d 42 (1984), held that a series of trauma resulting in a work-related injury is a compensable accident. Syl. 2. The Court, in Downs, stressed that, as early as 1919, a compensable "accident" was defined to include a situation where the physical structure of the worker gives way under the stress of usual labor [Gilliland v. Schmidt Co., 104 Kan. 771, 777, 180 P.2d 793 (1919)], and that injury resulting from a dozen or more of the same or similar accidents all occurring in the course of employment, is compensable. Winkleman v. Boeing Aircraft Co., 166 Kan. 503, 508, 203 P.2d 171 (1949); Demars v. Rickel Manufacturing Corp., 223 Kan. 374, 573 P.2d 1036 (1978). [See also Schubert v. Peerless, 223 Kan. 288, 573 P.2d 1009 (1977), holding the date of accident or disablement arises on the date an employee leaves his employment because the occupational disease renders him unable to continue his work.]

It is clear that the claimant has met his burden of proof that he suffered an accidental injury by a series of mini-traumas while in the course and scope of his employment with the respondent, and that he has resulting disability to both his upper extremities. Since 1931 and prior to July 1, 1987, when two hands or feet are injured, compensation is not figured under the schedule in K.S.A. 44-510d, but as a percentage of disability to the body as a whole. Honn v. Elliott, 132 Kan. 454; Hardman v. City of Iola, 219 Kan. 840 (1976). However, on July 1, 1987, the Kansas Legislature amended K.S.A. 44-510d(a)(23) so that when an employee is entitled to compensation for repetitive use conditions occurring in opposite upper extremities, whether occurring simultaneously or otherwise, the compensation shall be computed as separate scheduled injuries to each such extremity and the percentage of loss of use thereof shall be increased by 20% of the determined loss of use of each such extremity.

If the claimant's theory that the discovery rule is in effect, or should be adopted in Kansas, then he would be entitled to a full body disability, and any work disability proven in the evidentiary record. However, if the respondent's theory that the "cumulative injury rule" is impliedly in effect in Kansas, or should be adopted, then the claimant is limited to compensation based upon a scheduled injury to each upper extremity plus 20% based on the 1987 amendment to K.S.A. 44-510d(a)(23).

Accordingly, we must address whether Kansas should adopt the cumulative injury rule and whether the evidentiary record supports that rule in this case.

Respondent's counsel has submitted the case of McKeever Custom Cabinets v. Smith, Supra. Although the case is not of precedential value, it is certainly persuasive. In that case, the court noted when trying to address the same issue of whether the state should adopt a cumulative injury rule, that some jurisdictions confine workers' compensation benefits to disabilities arising from "accidents" which somewhat narrows liability. Id. at 373, citing Larson Section 39.10, 40.00. The court, in McKeever, further stated that in Iowa liability is broader because it is founded on "injuries" arising out of and in the course of employment. (Citations omitted.)

After reviewing the McKeever case and the factual similarities of the case at hand, the Director finds that the Kansas statute is similar to the Iowa statute; and that the cumulative injury rule should be adopted in Kansas. That is not to say if the claimant had produced credible medical evidence or his own testimony that was uncontroverted, reasonable and probable, the claimant's version could not be accepted and that the accident under those circumstances could not have been found to have occurred in May or June, 1987. However, although testimony of the claimant may be

considered, as well as medical evidence (Chinn v. Taylor, Supra.), controverted evidence that is improbable or unreasonable can be disregarded. Demars v. Rickel, Supra. The Director finds the claimant's testimony concerning his medical problems with his upper extremities occurring in late May or June, 1987, can be disregarded since it is controverted and improbable; and that it does not establish as more probably true than not true the claimant's allegations as to the date of accident.

Taking the testimony of Dr. Prostic and the claimant together, under the statutory obligation of K.S.A. 44-501 to view the evidence as a whole, the Director concludes that the claimant suffered an accidental injury as a result of a series of mini-traumas culminating on or about November 30, 1987. The Administrative Law Judge's finding that the claimant suffered an accidental injury with resulting disability on or about May 29, 1987, and had a resulting work disability as a result of his pre-July 1, 1987, whole body injury, is modified to find the claimant suffers from separate scheduled injuries to each upper extremity in compliance with the 1987 amendment to K.S.A. 44-510d(a)(23). The claimant has suffered a 10% loss of use to each upper extremity.

Applying the cumulative injury rule, the Director finds the claimant sustained his compensable injury when he left employment in November, 1987, triggering the respondent's insurance carrier with coverage on that date to pay workers' compensation benefits as required by statutory and case law. Home Insurance Company's policy was then in effect requiring it to discharge the respondent's liability. Wausau Insurance Companies did not have coverage in November, 1987, and has no liability for the claimant's disability. There is no evidence to substantiate any apportionment.

Although the Legislature is in a better position to determine what circumstances require equitable apportionment with respect to disability from repetitive minute trauma, in absence of a specific statute on the subject, it appears to be applicable only in those rare cases in which substantial and almost uncontroverted medical testimony permits precise allocation of responsibility between or among different employers or insurance carriers. However, in any event, in any case in which employment immediately preceding an employee's temporary total disability is conceded to have been a contributing cause of such disability, the injured employee is entitled to receive full benefits promptly from an insured then furnishing coverage, whether or not a right to equitable apportionment against a former insurer or employer may exist. See e.g. Michels v. American Hoist & Derrick, 269 N.W. 2d 57, Syl. 3 (Minn. 1978).

The final issue to be addressed is whether it was proper for the Administrative Law Judge to assess $50.00 per week fringe benefits and add that amount to the average weekly wage. The claimant has the burden of proof in establishing each and every element of his right to compensation by proving that his theory on the case is more probably true than not true. In an evidentiary record, a claimant is at a distinct disadvantage in establishing the amount of his average weekly wage. It is assumed that the respondent will voluntarily provide this information, and as a matter of practice, respondents normally do. However, before fringe benefits can be figured as part of a claimant's average weekly wage, those benefits must be discontinued. Maxwell v. Topeka, 5 Kan.App.2d 5, 611 p.2d 161 (1980). No evidence in the record establishes that at the time of the submission of this case, those benefits were discontinued or the value of any such benefits, if they were discontinued. In the event the claimant is no longer working for the respondent in another capacity and his fringe benefits have been discontinued, if counsel cannot reach an agreed upon order concerning the fringe benefits, claimant's counsel may have the option of filing for review and modification pursuant to K.S.A. 44-528. However, it is inappropriate for the Administrative Law Judge to arbitrarily set fringe benefits at a $50.00 per week level. If the claimant had testified that he received fringe benefits in the value of $50.00 per week and that testimony was uncontroverted, then the Administrative Law Judge's decision concerning the average weekly wage would have been proper. Under the circumstances, the claimant's average weekly wage is modified from $310.25 per week to $261.25 per week, which is the wage information the claimant testified to and that which was uncontroverted in the record.

All other findings of the Administrative Law Judge not inconsistent with the findings set out in this order are affirmed.

IT IS THEREFORE ORDERED, DECREED AND ADJUDGED that the award entered herein by Administrative Law Judge John D. Clark on August 31, 1988, is hereby affirmed in all respects, with the exception that the Director finds the claimant suffered only a temporary aggravation on May 29, 1987; that he suffers from a 10% loss of use to the

right upper extremity and a 10% loss of use to the left upper extremity. The Administrative Law Judge Judge's finding of a 100% permanent partial general bodily impairment rating is hereby modified; the claimant's average weekly wage is found to be $261.25 per week. Claimant is entitled to 7 weeks of temporary total disability compensation at $174.18 per week in the sum of $1,219.26. The claimant is thereafter entitled to a 10% loss of use of the right upper extremity, which is computed as 21 weeks of permanent partial compensation at $174.18 per week in the sum of $3,657.78; and additional compensation of $731.56 which reflects the increase of 20%, for a total amount of compensation for the upper right extremity of $4,389.34. The claimant is entitled to a 10% loss of use of the upper left extremity which computes as 210 weeks minus 7 weeks of temporary total times 10% for 20.30 weeks times $174.18 a week, plus an additional 4.06 weeks at $174.18 per week, for a total amount of $4,243.02 for the upper left extremity. The claimant is entitled to total compensation of $1,219.26 in temporary total compensation; $4,389.34 in compensation for loss of use of the right upper extremity; and $4,243.02 for the loss of use of the upper left extremity; or a total award of $9,851.62, less any amounts previously paid. The entire amount is due and owing.

Filed in the Division of Workers Compensation on February 16, 1989.

Robert A. Anderson

ROBERT A. ANDERSON
WORKERS COMPENSATION DIRECTOR

Copies to:
Fred Spigarelli, Attorney at Law, P.O. Box 1447, Pittsburg, Kansas 66762
Thomas P. Fay, Attorney at Law, 10975 El Monte, Suite 225, Overland Park, Kansas 66211
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Leigh C. Hudson, Attorney at Law, P.O. Box 866, Fort Scott, Kansas 66701
Administrative Law Judge John D. Clark

STATEMENT BEFORE
SENATE LABOR AND INDUSTRY COMMITTEE

Regarding Proposed Amendment
To Kansas Workers Compensation Act, H.B. 2056

Presented By
Vaughn Burkholder, Attorney at Law,
Foulston, Siefkin, Powers & Eberhardt

On Behalf of
Boeing Military Airplanes

March 28, 1989

Thank you, Madam Chairman, for this opportunity to address the Committee regarding H.B. ~~2056~~ 2506, a proposed amendment to repeal K.S.A. §44-510d(23).

This statute was enacted in 1987 as part of a comprehensive change in the Kansas Workers Compensation Act. For Kansas workers injured on or after July 1, 1987, the focus is now on returning the injured worker to a productive place in society. This is accomplished by making available to the injured worker a system of vocational rehabilitation benefits. As presently enacted, these benefits are available whether the worker's injury falls within the catagory of so called "scheduled" disabilities under K.S.A. §44-510d or is a general disability.

To focus on K.S.A. §44-510d(23) without considering the entire legislative scheme that was adopted in 1987 takes it unfairly out of context. One very important factor that compelled the adoption of the 1987 amendments -- and specifically the adoption of this statute -- was cost containment. Industry could simply not be assessed the additional cost of vocational rehabilitation without curbing other costs, such as extremely high monetary awards for repetitive use conditions.

Those who criticize K.S.A. §44-510d(23) forget that employers now have a vested interest in returning the injured employee to work. Deleting repetitive use conditions from the "schedule" and again making them a general disability will not increase the injured worker's right to vocational rehabilitation, which is and should be the goal. Whether the worker has sustained a

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scheduled disability or a general disability, the employee is entitled to a job at a comparable wage to the job he or she held before the injury. If necessary, formal retraining or reeducation is available at the employer's expense to accomplish this goal.

Repetitive use conditions do not occur solely to employees in one occupation. They occur to persons who work on assembly lines for large companies. They occur to men and women who work as secretaries or computer operators in nonindustrial settings, or as construction workers, or as dishwashers in family owned restaurants. Irrespective of their job and irrespective of their gender, every employee who develops a repetitive use condition as a result of their job duties possesses the same entitlement under the current system -- to continue in or return to employment at the same earnings as before. This is the purpose of the Workers Compensation Act as amended in 1987 and this is the goal toward which the entire system works today, including the statute which H.B. 2056 seeks to repeal.

Repealing K.S.A. §44-510d(23) will do nothing to bring Kansas closer to that goal. Repeal of this statute is simply one step toward returning to the same unacceptable situation that the 1987 amendments were designed to remedy. Costs will once again rise without long-term benefit to the individual worker, or to employers, or to the economic welfare of this state as a whole.

The ability to work is far more important than the monetary compensation that may be received. The money will soon be spent, but the ability to work lasts a lifetime.

We urge this committee not to support H.B. 2056 and not to repeal K.S.A. §44-510d(23).

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 First National Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

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

HB 2506

March 29, 1989

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

Senate Committee on Labor, Industry and Small Business

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Madam Chairperson and members of the Committee:

I am Terry Leatherman, the Executive Director of the Kansas Industrial Council of the Kansas Chamber of Commerce and Industry. I am here today to urge you to reject the provisions of HB 2506, which attempt to remove repetitive use conditions from the list of scheduled injuries in resolving workers compensation cases.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

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Two years ago, the need to revamp the Kansas workers compensation system was recognized by the Kansas Legislature. The result was the 1987 reform of the system, which was applauded by not only the Kansas Chamber, but by the Kansas AFL-CIO and the Kansas Trial Lawyers Association. At the heart of the reform was interpreting repetitive use conditions as a scheduled injury, instead of a permanent partial disability.

Now, HB 2506 threatens to undo the progress made in reforming the system. It seems appropriate to remind the committee of the reasons why reform was needed two years ago, and of the problems that would be resurrected by adopting HB 2506.

For existing Kansas industry, the reforms of 1987 brought the relief needed to assist them in competing with industry in other states. Prior to the reform, there were cases where the costs to produce a product in Kansas was much higher than in other states, producing the same product. There is no question but that the liberal interpretation of repetitive use condition cases and the annual double-digit hikes in workers compensation insurance premiums, significantly increased costs for Kansas employers.

This added cost made it more difficult for people who recruited industry in Kansas. A prospective business would study workers compensation law and costs, at that time, and quickly decide to settle elsewhere. In fact, it reached the point where some existing Kansas industries were considering expansion plans in neighboring states. The reform of the system made Kansas much more attractive to industry, and that is creating more jobs for Kansans.

There is little argument that the proposed change in the workers compensation system, regarding repetitive use conditions would place a heavy financial hardship on existing Kansas business and would seriously erode efforts at economic development in our state. Further, returning repetitive use injury to the category of permanent partial disability does not safeguard the worker. The 1987 reforms embraced the concept of vocational rehabilitation. Now, along with the scheduled injury award, the door is also open for vocational rehabilitation, which can keep the injured worker on a payroll, and not on a welfare roll.

Finally, the issue before you today strikes at the heart of what workers compensation is all about. Workers compensation was born to provide an injured worker prompt payment for work related injury in a non-adversarial setting. Prior to the 1987 reforms, the system was mired in excessive litigation, employee-employer battling, spiraling medical costs, huge increases in employer workers compensation expenses, and drowning efforts to bring economic expansion to Kansas. Do not turn back the clock to 1987. Reject HB 2506. Thank you for considering my comments, and I would be glad to attempt to answer any questions.

EMPORIA CHAMBER OF COMMERCE • P.O. BOX 417 • EMPORIA, KANSAS 66801 • PHONE (316) 342-1600

M E M O

TO: Senate Labor, Industry and Small Business Committee

FROM: Merlin G. Wheeler
Chairman of Board of Directors
Emporia Area Chamber of Commerce

SUBJECT: Sub. HB 2506/Workers' Compensation
Repetitive Use Conditions

MEMBERS OF THE COMMITTEE:

I. Historical Perspective:

During the 1987 Legislative session, representatives of labor and employer groups reached compromise positions on several workers' compensation issues, resulting in the passage of reform legislation that accomplished the following three major changes:

1. Bilateral repetitive use conditions were classified as scheduled injuries rather than general bodily injuries.

2. The standard for calculation of permanent partial disability compensation was changed.

3. Vocational Rehabilitation was emphasized as a goal of the workers' compensation system with sweeping changes made in the methods of providing these services.

All of these changes were integral component parts of the 1987 reforms, without which many of the aspects of the legislation beneficial to both employers and employees would not have passed.

HB 2506 was introduced to clarify the method of reimbursement to the Workers' Compensation Fund for awards which are reduced or overturned on appeal. To this extent the bill had little opposition. However, during House debate additional provisions were added which deleted bilateral repetitive use conditions as scheduled injuries. It is this additional feature which is deemed objectionable by the organization I represent.

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II. POSITION STATEMENT.

It is the position of this organization that the features of this bill which delete bilateral repetitive use conditions from the schedule of injuries is regressive, contrary to earlier compromises affecting the entire scheme of the Workers' Compensation Act, and should be deleted upon consideration by the Senate and this Committee.

III. RATIONALE FOR POSITION STATEMENT.

In 1987, the Emporia Area Chamber of Commerce provided testimony in support of the changes made which demonstrated that failure to enact the reform legislation had and would continue to have a detrimental effect upon our ability to attract new business and industry and provide much needed new employment opportunities. In fact, we had documented one business enterprise which had refused to even consider relocation of a plant to Emporia once it learned of the prior Kansas position on bilateral repetitive use conditions.

In addition, the Chamber had surveyed existing business and industry and found that as many as 500 new jobs would not ever become available in our community unless significant reform was made, particularly in the treatment afforded bilateral repetitive use conditions.

The Chamber, through its Governmental Affairs Task Force, has continued to monitor the effect of the 1987 legislation and the instant proposed change on its economic development efforts. In this regard the following conclusions are evident:

1. The 1987 legislative changes merely created an environment where our workers compensation costs did not automatically disqualify Kansas for consideration for industrial expansion and relocation.

2. Insufficient time has passed for the administration and court systems to assess the effect of the 1987 legislation on both employers and employees.

3. Workers Compensation costs have continued to escalate despite the favorable changes made in 1987.

4. The effect of deleting bilateral repetitive use conditions from the schedule of injuries would undoubtedly increase the cost and burden on employers (and ultimately consumers) for the provision of workers' compensation coverage.

5. The legislative change suggested in this bill will not only undo significant compromises previously made, but will return Kansas to an extremely disadvantageous position in our efforts to attract new business and industry.

6. No medical evidence exists to support a position that bilateral repetitive use conditions should be treated any differently than any other bilateral diagnosis since it is a treatable disorder and one from which complete relief or considerable improvement is obtainable from various treatment methods. (See attached correspondence from Dr. James N. Glenn, Diplomate of American Board of Orthopaedic Surgery.)

IV. CONCLUSION.

The Emporia Area Chamber of Commerce respectfully requests your favorable consideration in deleting from Sub HB 2506 the provisions which have the effect of classifying bilateral repetitive use conditions as a general bodily disability.

Respectfully Submitted:

Merlin G. Wheeler
Chairman of the Board

EMPORIA ORTHOPEDIC ASSOCIATES, CHARTERED

1601 STATE STREET
EMPORIA, KANSAS 66801
(316-343-1191

Diplomates of
American Board
of
Orthopaedic Surgery
James N. Glenn, M.D., F.A.C.S.
David J. Edwards, M.D., F.A.C.S.

Michael L. Montgomery, M.D.

March 10, 1989

The Honorable Gerald Karr
The State Senate
State Capitol Building
Topeka, KS 66612

Dear Senator Karr:

Yesterday, I was told that there had been an amendment slipped on a bill that was passed with the amendment pertaining to bilateral carpal tunnel syndrome diagnosis with the intent to return to the old way of looking at this with respect to Workers' Compensation. If this has indeed occurred, it is another tragedy for Kansas.

Strictly from the medical point of view, the diagnosis of bilateral carpal tunnel syndrome is no different than any other bilateral diagnosis whether it be bilateral fractured forearms, or bilateral fractured ankles or any number of other analogies. The fact of the matter is that if the diagnosis of carpal tunnel syndrome is correctly made then it is a treatable disorder and in my experience a complete relief or considerable improvement is obtainable by one of various treatment methods and only in extremely rare cases should there be any significant permanent partial physical impairment (so-called disability) as a residual of that diagnosis and treatment. To put it simply, if the correct diagnosis is made and if the patient (worker) allows appropriate treatment to be carried out then there should be virtual complete relief of the problem and therefore no reason for any "disability" to exist over a long period of time. The fact of the matter is that oftentimes these patients have other problems, such as muscular and tendon problems and other various joint aches and pains that go along with the kind of work that they are doing and those problems may indeed persist after relief of the specific carpal tunnel syndrome.

Again, it is my contention that bilaterality of this syndrome should be treated no differently that if it occurs singly in either wrist. Any relevance attached to the simultaneous (bilateral) occurrence of carpal tunnel syndrome in one person exists only while the syndrome is going on and has no relevance beyond the time that it is treated and improved or cured. I would be happy to discuss this situation if it is not clear.

Sincerely yours,

James N. Glenn, M.D.

JNG/lkh

3-10-89 We also sent this letter to
Senator Fred Kerr
Representative James Lowther
Representative Jeff Freeman.

lkh

Kansas Employer Coalition on Health, Inc.
1271 S.W. Harrison • Topeka, Kansas 66612 • (913) 233-0351

Kansas Employer Coalition on Health
Position Statement
on Substitute for HB 2506

by
James P. Schwartz Jr.
Consulting Director

March, 1989

The Kansas Employer Coalition on Health opposes the amendment to Substitute for HB 2506 that would delete the provision in the Workers' Compensation Act treating repetitive use conditions occurring in opposite upper extremities as separate scheduled injuries.

The 107 employers who constitute the Coalition share a concern about the soaring cost of purchasing health care for our 350,000 employees and dependents in Kansas. Workers' Compensation in particular is a growing concern because the cost of medical care provided under Workers' Compensation is rising faster than any other source of employers' health care expense.

Workers' Compensation in Kansas was made more equitable by the Workers' Compensation Act of 1987. That act addressed many concerns of both labor and industry. Both parties "won" when the Act was passed. Both parties made concessions in order to achieve a complete package of legislation that was acceptable and beneficial to all.

The balance of interests encompassed by the Act is now threatened by the proposed removal of repetitive use conditions from the injury schedule.

We feel that the extraction of balanced, recently passed provisions is counterproductive. Thus we urge that the repetitive use amendment be eliminated from HB 2506.

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3-29-89
Attachment V

Beech Aircraft Corporation
P O Box 85
Wichita KS 67201-0085 USA

316 681 7111
Telex 71 203603

Beechcraft
A Raytheon Company

REMARKS BY LARRY OAKLEY
REGARDING THE SUBSTITUTE FOR HOUSE BILL 2506
KANSAS SENATE
LABOR AND INDUSTRY COMMITTEE
MARCH 29, 1989

Thank you Madame Chairperson, members of the committee. My name is Larry Oakley, I am the Administrator of Workers' Compensation for Beech Aircraft Corporation, Kansas' second largest private sector employer. We employ 6,100 individuals in Wichita, Salina and Andover. We are a qualified self-insured employer, as well as a certified vocational rehabilitation vendor under the Kansas Workers' Compensation Act. I know the workers' compensation and rehabilitation systems intimately having experienced a serious work-related injury eleven years ago which mandated a complete change in direction for my career. Prior to implementing Beech's rehabilitation and self-insurance programs, I worked for several private employers including the Machinists Union, who were funded by state and federal grants for the purpose of providing job development, job placement and vocational rehabilitation services to disabled workers.

We thank you for the opportunity to appear today in opposition to the substitute for House Bill 2506. The deletion of the language, as proposed in lines 275 through 281, which currently exists in K.S.A. 44-510d(a)(23), will cause a considerable financial burden on responsible employers. Under the current law a claim for bilateral repetitive use conditions provides for a 20% increase in the determined loss of use to each such extremity.

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Attachment VI

Also, each injured worker who is unable to obtain a post-injury comparable wage is eligible to receive vocational rehabilitation services at the expense of their employer. A claim under the current schedule that would cost an employer/self-insured approximately $15,000-20,000 for a permanent partial disability settlement, would as a "body as a whole" claim, have the potential to cost an employer in excess of $100,000 per claim. At Beech, we average only between 15 to 20 repetitive use claims per year. However, the potential additional cost to us could be in excess of 1.6 million dollars per year. In comparison, our entire workers' compensation budget for 1988 was $1.8 million.

As you know, the intent of the Kansas Workers' Compensation Act, as amended in 1987, is to return an injured worker to work at a comparable wage, not enrich them financially on the short-term to later have them become a long-term burden on the taxpayers of this state after the settlement runs out.

Since July 1987 when the law changed, Beech Aircraft has experienced over 600 workers' compensation claims. To date, every one of our employees, including 43 with repetitive use conditions, who have reached maximum medical improvement and desire to return to work, have either returned to the job they held at the time of their injury, been reassigned to another job which accommodates their medical restrictions or been retrained to perform other duties within our corporation. Beech started

a proactive rehabilitation program for our employees in May of 1985 which has been cost-effective and successfully returns our injured workers to comparable wage.

By changing the law to make bilateral repetitive use conditions a "body as a whole" injury, this change would serve to modify the law as it was passed in 1987 and place a considerable additional financial burden on responsible employers. This change would undoubtedly return us to the pre-July 1, 1987 workers' compensation law where the trade-off for large permanent partial disability awards was that injured workers did not return to work as frequently as they do today.

Thank You.

Larry Oakley
Jim Gregory
Beech Aircraft Corporation
(316) 681-7145

INTERSTATE BRANDS CORPORATION
1525 Industrial Road, Emporia, KS 66801
(316) 342-6811

DOLLY MADISON BAKERY ™

March 29, 1989

Ms. Alicia Salisbury
Chairperson of Labor, Industry, Small Business
State House
Topeka, KS 66612

RE: Committee Hearing
HB 2506

Madame Chairperson and Committee,

My name is Bob Lincoln and I'm currently the Personnel Manager of Dolly Madison Cake Company located in Emporia, Kansas.

It is my understanding that your committee will be addressing HB 2506, which previously passed through the House with an amendment attached addressing Carpal Tunnel Syndrome.

As Dolly Madison is in the bakery business, I shouldn't be concerned, as many believe Carpal Tunnel Syndrome is exclusive to the meat industry. That simply is not true. I would agree that Carpal Tunnel Syndrome seems to have been an epidemic in recent years with many industries. Dolly Madison has had several diagnosed Carpal Tunnel injuries since the first of 1979. Being in the manufacturing business, our most important asset is our people. If an employee sustains an on-the-job injury, we want that employee treated and returned to work as soon as possible within the medical restrictions.

Workers compensation statutes were changed and/or modified following several compromised bills that were passed two years ago. Carpal tunnel was to be scheduled injury and Vocational Rehab was passed, just to mention a few.

In 1988 Dolly Madison reduced injuries from 224 to 192 through purchasing new equipment, modifying older equipment, safety training, as well as job modifications. This is a decrease of 14%. Even with these efforts, our workers compensation costs rose 26%. No insurance policy covered those costs as we are self insured. If this bill, as passed in the House of Representatives, were to pass through the Senate, the impact on business in the State of Kansas would be more lost jobs.

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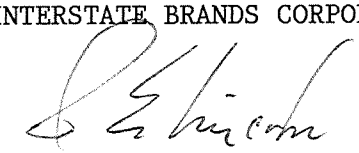
In closing, I apologize to you and other Committee Members, that I was unable to attend this hearing, but sincerely hope you and the Committee will not allow this or any other attempt to revert back to where employees received large sums of monies, returned to work for the same employer, doing the same job, as was the case before Carpal Tunnel Syndrome statutes were corrected.

Sincerely,

INTERSTATE BRANDS CORPORATION



Robert E. Lincoln
Personnel Manager

REL:ab

Kansas Livestock Association

2044 Fillmore • Topeka, Kansas 66604 • Telephone: 913/232-9358

Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

STATEMENT

OF THE

KANSAS LIVESTOCK ASSOCIATION

IN REFERENCE TO

House Bill 2506

WORKERS COMPENSATION

BEFORE THE LABOR, INDUSTRY and SMALL BUSINESS COMMITTEE

SENATOR ALICIA SALISBURY, CHAIRMAN

Presented by

Rich McKee

Executive Secretary, Feedlot Division

March 29, 1989

The Kansas Livestock Association is a trade organization made up of over 10,000 members located in all 105 Kansas counties. KLA, founded in 1894, has members who are actively involved in numerous aspects of livestock production which include cow-calf/stocker producers, feeders, feedlots, sheep producers, swine operators, and general farming and ranching enterprises.

Good afternoon! The Kansas Livestock Association is concerned over the amendments contained in House Bill 2506 dealing with the repetitive use issue. The cattle, grain, and packing industries have provided an economic boom for the Kansas economy. Each of these three specific industries are heavily reliant on the other. If costs of operating a packing plant in Kansas become uncompetitive with other states the packing industry will leave and/or could be forced to pay less for its raw products, cattle. At the very least future expansion would be doubtful.

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The beef business is on the verge of moving into a new era of product development by providing retail ready products processed at the packing plant level. Kansas has a chance a capturing this business if business conditions, including workmen compensation laws, are competitive with neighboring states.

Thank you for considering our position on House Bill 2506.

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your Committee on Labor, Industry and Small Business

Recommends that Substitute for House Bill No. 2506, As Amended by House Committee of the Whole

"AN ACT concerning workers compensation; relating to compensation for certain permanent partial disabilities; securing the payment of compensation; payments made pending appeal and review; requiring reimbursement in certain cases; amending K.S.A. 44-532 and K.S.A. 1988 Supp. 44-510d and 44-556 and repealing the existing sections."

Be not passed.

_____Chairperson