Approved February 21, 1991
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry.

The meeting was called to order by Representative Anthony Hensley at
Chairperson

9:00 a.m./~~p.m.~~ on February 12, 1991 in room 526-S of the Capitol.

All members were present except:
Representative Cribbs - Excused
Representative Douville - Excused

Committee staff present:
Jim Wilson, Revisor
Jerry Donaldson, Research Assistant
Barbara Dudney, Committee Secretary

Conferees appearing before the committee:

Dennis Horner
Terry Leatherman
James P. Schwartz, Jr.

The meeting was called to order at 9:00 a.m. by the chairman, Rep. Anthony Hensley.

Chairman Hensley announced that committee members had received additional written testimony on House Bill No. 2076, the Family and Medical Leave Act, from Hilda Enoch, President of the Kaw Valley Chapter of the Older Women's League, Lawrence, Kansas (attachment #1). He also announced that written testimony had been received from Edward R. Miller (attachment #2) an Rep. George Gomez (attachment #3), who were conferees in the hearings on House Bill No. 2076.

The chairman called committee members' attention to a copy of a letter written to him from Dwight Wicker, Director of Professional Relations of Blue Cross and Blue Shield, in response to an inquiry on why Blue Cross and Blue Shield has not provided information on medical fees to the Medical Fee Schedule advisory panel created by 1990 Substitute for House Bill No. 3069 (attachment #4).

The chairman also called committee members' attention to three documents related to the complaint of Bryan G. Howard, claimant, concerning alleged ethical violations by a vocational rehabilitation vendor and attorneys involved in this particular case (attachments #5, #6 and #7).

Chairman Hensley opened the hearings on the following bills:

House Bill No. 2153, extending from 90 to 200 days the time for filing an occupational disease claim under the workers' compensation act.

House Bill No. 2154, providing for payment of permanent total disability benefits for life.

House Bill No. 2156, increasing workers' compensation benefits by 25% when an injury is caused by an employer's willful, gross or wanton failure to provide guards or protections.

The chairman announced that the time for testimony on these bills would be divided equally between proponents and opponents with each side allotted 20 minutes.

He then introduced Dennis Horner, representing the Kansas Trial Lawyers Association, as a proponent to House Bills No. 2153, 2154 and 2156.

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.

On House Bill No. 2153, Mr. Horner suggested an amendment on Page 1, line 43, to add language clarifying that the 200 day time limit does not begin until the injured worker knows or should have known of the existence of the occupational disease and the cause of the occupational disease.

On House Bill No. 2154, Mr. Horner pointed out that under current law the maximum workers' compensation benefit to persons with permanent total disability is $125,000, and assuming a maximum weekly rate of $278, the benefits would end in 8½ years. Mr. Horner said the $125,000 cap should be removed because after 8½ years many workers with permanent total disability end up on SRS public assistance programs.

On House Bill No. 2156, Mr. Horner explained the bill is intended to address the increasing problem of employers who knowingly or recklessly expose their employees to unsafe machinery. He stated that the bill contains two basic provisions related to employee safety in the workplace: the worker is entitled to seek noneconomic damages or total lost wages against the employer and, if the employer fails to use permanent disability or death benefits (attachment #8).

Mr. Horner answered questions from committee members.

The chairman introduced conferees as opponents to the bills:

Terry Leatherman, Executive Director of Kansas Industrial Council, Kansas Chamber of Commerce and Industry, spoke to the principles behind workers' compensation and that employers pay all costs for a system which benefits injured workers. In turn, employers benefit from workers' compensation by protecting them from costly civil court actions. He pointed out that a 30.9% increase in workers' compensation rates is pending before the Kansas Insurance Commissioner. He said that insurance premiums paid by employers have increased from $31 million in 1970 to $264 million in 1989, a 750% increase. He opposes the three bills because they will complicate the system and discourage employer and employee cooperation.

Mr. Leatherman stated that of the three bills, KCCI is most concerned about House Bill No. 2156. He believes this bill abandons the "no-fault" principle behind workers' compensation. He said KCCI opposed House Bill No. 2154 because by repealing the $125,000 cap on permanent total disability employers would be unprotected from unlimited costs. He said once an injured worker has exhausted $125,000 in benefits, the employer's responsibility does not end: Kansas law requires employers to pay medical benefits for the life of the permanently disabled worker. He said that if the committee decides to provide lifetime permanent total disability benefits, the decision on whether an injured worker is permanently totally disabled should be made by medical diagnosis, rather than by judicial determination. He said KCCI opposes House Bill No. 2153 because no date certain can be set for when a worker contracted an occupational disease (attachment #9). Mr. Leatherman answered questions from several committee members.

Chairman Hensley then announced that the next conferee, Mr. Schwartz, will be unable to attend tomorrow's meeting and has requested to give testimony in opposition to not only House Bill No. 2154, but also House Bill No. 2155 and 2157, which are scheduled for hearing tomorrow:

House Bill No. 2155, increasing unauthorized medical from the current $350 to $1,000 under the workers' compensation act.

House Bill No. 2157, providing for unauthorized vocational evaluations not to exceed $500 under the workers' compensation act.

James P. Schwartz, Jr., Consulting Director, Kansas Employer Coalition on Health, Inc., said that the three bills would increase workers' compensation insurance costs at a time when those costs are undergoing record increases. He reiterated that the workers' compensation system is supposed to be a "no-fault" system. He stated that in 1987 the Legislature created a balance between labor and management with emphasis on vocational rehabilitation. He said House Bill No. 2154, the concept of "managed care" is violated. House Bill No. 2157 creates the same problem and takes a step backward to the "blank check" mentality (attachment #10).

The meeting was adjourned at 10:15 a.m. The next meeting will be February 13, 1991, 9:00 a.m. in room 526-S.

GUEST LIST

COMMITTEE: House Labor & Industry DATE: Feb 12, 1991

NAME	ADDRESS	COMPANY/ORGANIZATION
Terry Leatherman	Topeka	KCCI
Lisa Getz	Wichita	KS Asso. for Small Business
Steve Kearney	Topeka	Pete McGill & Assoc.
Tom Slattery	Top	AGC of Ks
Bob Totten	Topeka	K-C-A
Jeff Montague		Budget
Diana Burkhardt	Topeka	KS Ins. Dept.
[illegible] Hagood	Topeka	City of Topeka
[illegible]	"	KTLA
[illegible]	Kansas City	KTLA
John Ostrowski	Topeka	AFL-CIO
Wayne Maichel	Top	KS AFL-CIO
Jim DeHoff	"	" " "
Harry W. Helser	"	" "
Jim Schwartz	Top	KECH
Richard Thomas	Top	DHR Work Comp
Robert A. Anderson	Topeka	Director, Div. of W/C.
David A. Shufelt	Topeka	Asst. Dir. Div of Work Comp
R.G. Frey	"	KTLA
Lori Callahan	Topeka	AIA

①

1500 El Dorado Dr.
Lawrence, KS 66047
Feb. 5, 1991 — 1 a.m.!

Rep. Anthony Hensley, Chr.
House Labor and Industry Committee
State Capitol Bldg.
Topeka, KS 66612

Re HB 2076, Family & Med. Lv. Act

Dear Chair Hensley -- and Members of the House Labor & Industry Committee,

We've only read today about the hearings going on to determine the fate of the Family & Med. Lv. Act. -- We're unable to come down to testify, yet we still hope it's not too late to plead for the continued life of this legislation.

It is family insurance and assurance that our state is concerned with the plight of this most basic unit in our society -- that people will no longer be torn between the financial disaster of leaving their jobs -- or the emotional disaster of abandoning sick loved ones who desperately need their special attention to handle sudden, pressing home urgencies.

Often the weeks at home reestablishing routine and stability, locating necessary services providing the critical early love and support and nurturing a spouse or elderly parent -- or new child needs -- makes a world of difference

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attachment #1-1

in the life of this family, -- for years to come!

Too often, an older woman, loyal to her work for many years, one of that "sandwich generation" -- with growing children and aging parents, must leave her financial security, her health and retirement benefits, to care for an elderly parent -- or seriously ill child -- at a time when this family needs financial support the most. -- Without this legislation, people are forced to make this hard choice -- which no European State requires of its citizens; long ago, far, far ahead of us, each has instated more liberal family leave measures -- to nurture and protect their families. We leave people, at their most vulnerable time, strictly at the mercy of their employers. They need more insurance and assurance than this that their urgent, dire need will be supported and protected by law!

Oftentimes -- much, much too often, because the State does not intervene to help prevent further deterioration, loved ones are forced into nursing homes prematurely -- and the State, in the long run is saddled with a hefty (now, budget-depleting) Medicaid expense! -- Even willing to be the unpaid caregiver, and volunteering to leave her work to do so, we still do not recognize and support the value & the merit -- & the wisdom of this temporary measure.

We urge that you will!

Kaw Valley Chap. Older Women's League
Hilda Enoch, Pres.

HOUSE & LABOR INDUSTRY COMMITTEE

TESTIMONY OF

EDWARD R. MILLER

FAMILY AND MEDICAL LEAVE ACT
HB 2076

FEBRUARY 6, 1991

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear before your committee today and express my opinion regarding House Bill 2076, the Family and Medical Leave Act.

I am the Vice President Human Resources at Learjet Inc. in Wichita, KS We currently employ approximately 2300 individuals within the State of Kansas. We believe our employees represent one of our most valuable assets to our Corporation.

Please be aware that this bill, if passed in its present form, would create a serious hardship upon businesses currently in Kansas.

Employee benefit plans are designed to balance both the employee's needs with the employer's needs. In most cases, leaves of absence's are currently arranged between the employee and employer to deal with hardships caused by personal or family priorities. Learjet, for example, currently provides mothers with time off when dictated by medical requirements for the birth. This ranges from four to six weeks following birth until they return to work. We compensate these employees at varying levels of full pay, 2/3 pay or $10 per day in addition to earned sick leave until they are physically able to return to work. I do not believe there should be additional time dictated by state law. Please allow the employer and employee work out reasonable accommodation between the two parties.

If a state law was enacted in this area, this would become a minimum expectation on the part of all employees. They would then routinely request time off for these events, requiring employers to make additional judgement decisions as to the medical necessity.

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attachment #2-1

According to the proposed act, this would require up to 10 weeks off over a two year period for family illness. Would this be in one hour increments, one week increments, or one continuous leave of absence? Each of these variations would have a different impact upon an employer, none of which are particularly desirable.

I believe that the Kansas Legislature is moving into a very complex area of employee relations which should be determined by each employer. If you dictate unpaid leaves, what other are of employee benefits will be next? Should laws also be passed which dictate the amount of vacation, sick leave and holidays to be taken? These are within the scope of the employer and employee or their representative. Why should leaves of absence be treated any differently?

Currently, American industry is moving from fixed benefit schedules to a flexible benefit approach. To dictate minimum coverages flies in the face of employers attempting to provide different and varied approach to a employee benefit program for an increasingly diverse work force.

Learjet experiences approximately a 3% unpaid absenteeism rate among our workforce. If you add this additional requirement, we will see an increase to at least 4% absence because these leaves will become a minimum entitlement, not a benefit. Learjet currently offers employees an opportunity to take sick leave to care for family member who is ill up to the amount of sick leave available. The addition of unpaid leaves would require us to reexamine this policy due to the costs of additional time off which would be provided.

Speaking to one final point, this bill is represented as unpaid time. Please be aware that the fringe benefit costs are over $11,000 yearly for each employee of Learjet and approach 50% of pay for fringe benefits. As such, these fringe benefit costs would continue even though the time off is unpaid. Thus, a 10 week absence would cost Learjet over $2,000 for each of these absences.

This bill has a significant economic impact upon employers. The costs are real. Leave the administration of employee benefits in the hands of the employers. This is an area that belongs in the hands of employers and their employees or representatives. The job market and the wishes of employees should dictate these policies, not a statute designed for all.

GEORGE GOMEZ
REPRESENTATIVE, 57TH DISTRICT
1120 OAKLAND
TOPEKA, KANSAS 66616
(913) 235-0857 HOME
(913) 296-7691 CAPITOL OFFICE

STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER: JUDICIARY
LABOR AND INDUSTRY
LOCAL GOVERNMENT

February 7, 1991

TESTIMONY BEFORE THE HOUSE COMMITTEE
ON LABOR AND INDUSTRY
REP. GEORGE GOMEZ

I come before you today to speak in favor of house bill 2076.

A year ago my wife and I had some direct experience with this area. A year and three days ago my wife gave birth to a bouncing baby girl. My daughter Anna and her mama are sitting at the back of the room today.

We made many preparations for birth. A scheduled pregnancy leave of 10 weeks was not a preparation that worked.

Joanne was then employed by a large corporation with many retail stores in the area.

She wanted to take longer than the 6 weeks of leave offered by the company as policy. Local management had no problem with a longer leave. They thought it was a good idea.

The company hired a 40 hours a week full time person in preparation for her leave. This new employee was promised full time work after the 6 week leave-- even though there was only a need for 20 hours a week.

Joanne wanted to trade positions with the new employee. and was willing to cut back to 20 hours a week, something that would benefit her and the company. She would have to float between stores and give up her fixed store location. The company would have saved 20 hours a week after the pregnancy leave and 40 hours a week during the leave.

This did not happen. Instead some manager in Texas said no. Local management's hands were tied.

Though supported by local management, though it would cut company costs and help out two different workers, Joanne's blue light special was a take it or leave it. She chose to leave it. She quit. You see it's kind of hard to nurse a baby when you work up to 12 hours at time with no break even for lunch. It gets a little uncomfortable.

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attachment #3-1

With 10 weeks of unpaid leave, she might have chosen to stay. This is one of those stand out experiences that we as representatives share with our constituents. Except, we as representatives can help with by changing the law.

Lastly, please remember this bill is not only about babies. In my neighborhood, it is not uncommon to take care of a parent or grandparent until death, at home. I know from personal experience that the last few days with a dying family member can be as precious and enriching a time as the birth of a baby. Please support house bill 2076.

Blue Cross Blue Shield of Kansas

1133 S. W. Topeka Boulevard
Topeka, Kansas 66629-0001

Local Corporate Phone #- (913) 291-7000
Corporate 800 Number - (800) 432-0216

February 8, 1991

Representative Anthony Hensley
Room 278 West
State Capitol
Topeka, Kansas 66612

Dear Representative Hensley:

Concern has been expressed by members of the House Labor and Industries Committee about Blue Cross and Blue Shield's refusal to share its maximum allowable payment schedules with the Director of Workers Compensation in his attempt to establish a fee schedule for Workers Compensation. I addressed this position in some detail with the medical fee schedule advisory panel this summer. We believe this position to be understandable and reasonable from a practical business viewpoint as well as a public policy viewpoint.

I explained to the panel that the amounts Blue Cross and Blue Shield pay to hospitals, physicians and other providers of health care services are established through negotiations between the parties. Some providers agree, through contract, to accept these amounts as payment in full; these are known as "contracting providers". Being able to purchase health care services for less than provider charges, and to assure our subscribers they will be "held harmless" from higher amounts than we pay if they use contracting providers, are integral elements of our approach to the health insurance market, keeping our premium rates as low as we can and still providing subscribers with an assurance of levels of coverage.

The amounts we pay providers, then, is proprietary information, of substantial value to us in our competition with other health insurers. Many of our competitors would like to take advantage of the extensive work we have done in this area. Just as a steel company is unlikely to tell its competition how much it paid for iron or coal and from whom, neither does Blue Cross want to assist its competitors. We feel, and rightly so, that divulging this information to the Legislature or the Director would compromise our competitiveness. Such information presumably would be subject to the Open Records Act. Moreover, many of our competitors also write workers compensation insurances and would presumably have access to the information as a result.

In addition, those with whom we contract -- the providers themselves -- might resent our disclosure of such information, and it might make it difficult for us to contract in the future. If what Blue Cross and Blue Shield of Kansas pays to acquire services is known to everyone, then all other payers likely will seek to pay providers what we pay.

1941 1991
Years of Caring for Kansans

Further, if our maximum allowable payments were a matter of public record, it likely would have an inflationary effort on the cost of health care for our subscribers. In paying for services, we pay the lesser of a provider's charges or our maximum allowable payment level. Not even contracting providers know what those levels are for all services they perform. In contracting, we permit them to send us their charges and we will tell them if they are over our allowances, and by how much, but only if a small percentage of their charges exceed the allowances; if a provider is "testing" the system by sending in highly inflated charges in order to find our what our maximum allowable payments are for all services, we simply do not respond. As a result, many providers charge less than our allowances. If our allowances were made public, there might be a strong temptation for some providers to raise all of their charges to our allowance levels, unduly increasing ultimate costs to our subscribers.

We think this rationale helps explain our concern about divulging this information.

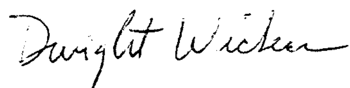
We appreciate the difficulty the Director encounters in seeking to establish a fee schedule which is fair to providers of services yet is not unduly costly to employers. We have a staff of five (5) people who continually review and update this information.

I discussed with the panel and described a scenario that might work as a payment mechanism. As an alternative to our fee schedules, I suggested using the Medicare allowance, which is readily available. In fact, that listing was provided to the panel this past summer during my testimony. It was suggested the Medicare allowances might be used as a base, inflated by 10, 20 or 30 percent if such allowances were too low to be acceptable by large numbers of providers. Then by asking providers to sign contracts a network of providers could be created and made available that was willing to treat workers compensation subscribers at a guaranteed price and provide balance billing protection. I also offered our expertise to help answer any questions the Director or his staff might have implementing such a plan.

Since the meeting this past summer. I have also had time to reflect on another possibility of a fee schedule. Some of our competitors in the health insurance field also sell workers compensation insurance. Those that do almost universally belong to the Health Insurance Association of America. The HIAA has established a fee schedule for use by members. We might suggest that the Committee ask the HIAA, or any of its members, for that fee schedule.

If you have questions of concerns on this matter, please contact Nancy Zogelman or myself.

Sincerely,



Dwight Wicker, Director
Professional Relations Operations and Reimbursement

cc: Nancy Zogelman

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I.

BEFORE THE DIVISION OF WORKERS COMPENSATION
FOR THE STATE OF KANSAS

Bryan G. Howard, Claimant,	)	
vs.	)	
Airwick/Airkem Professional Products, Respondent,	)	Docket No. 126,562
and	)	
Self-Insured, Insurance Carrier.	)	

ORDER

Decision rendered this 23rd day of November, 1988.

Appearances

J. Greg Kite, Wichita, Kansas, appeared on behalf of the Claimant. Aubrey G. Linville, Salina, Kansas, and Charles W. Hess, Wichita, Kansas, appeared on behalf of the Respondent and Insurance Carrier.

Record

The record in this matter consists of the transcript of motion hearing, dated May 18, 1988; the deposition of Robert L. Eyster, M.D., dated May 18, 1988; the transcript of motion hearing, dated July 29, 1988; the deposition of Sharilyn K. Young, dated August 31, 1988; the deposition of Sharilyn Young, dated October 17, 1988; the transcript of motion hearing, dated November 2, 1988; the transcript of motion hearing, dated November 3, 1988; and the correspondence and pleadings of the Court file.

Issue

1. The Claimant is requesting temporary total disability benefits under K.S.A. 44-510g(e) between June 23, 1988, and July 29, 1988. The Claimant is alleging that Respondent, having agreed to an additional vocational rehabilitation evaluation and the payment of temporary total disability benefits, then improperly terminated temporary total disability benefits.

Findings of Fact

K.S.A. 44-510g(e)(1) provides that a vocational rehabilitation evaluation produces a vocational rehabilitation report.

K.S.A. 44-510g(e)(2) provides that, once a vocational rehabilitation report is sent to the Division of Workers Compensation, copies are furnished to each party. If either party disagrees with the report, the Vocational Rehabilitation Administrator shall confer with the vocational rehabilitation counselor, the Claimant, and the Respondent.

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attachment #5-1

Director Rule 51-24-1 does indicate that the Rehabilitation Administrator shall be the coordinator between the parties seeking vocational rehabilitation and the private rehabilitation vendor. The same rule sets forth that the Rehabilitation Administrator shall keep all interested parties advised as to the progress of an evaluation report in a timely manner.

At issue is the particular actions of this particular Respondent attorney firm in directly meeting with Jeanette Scher, operating as the vocational rehabilitation vendor PERC, and PERC's rehabilitation counselor, Sharilyn Young, and the Respondent attorneys intentionally using financial and psychological pressure to change counselor Young's vocational rehabilitation findings.

In accordance with the Division of Workers Compensation's guidelines, Sharilyn Young had promulgated a vocational rehabilitation evaluation and a vocational rehabilitation plan, (Young deposition Exhibits 5 and 6). Sharilyn Young had done prior vocational rehabilitation consultations, in March, 1988, with the Claimant, and her vocational rehabilitation findings in the vocational rehabilitation evaluation and plan are corroborated by her prior consultations, and the independent consultant reports prepared by PERC's job placement specialist..

In particular, these documents identify that the Claimant has certain medical restrictions regarding his ability to work: the Claimant is restricted from lifting between 20 and 25 pounds on a single basis, repetitive lifting over 15 pounds, and is restricted from prolonged sitting. Regarding the availability of jobs, these reports indicate that the Claimant was in the need of a job development process. The vocational rehabilitation plan, Exhibit 6, indicates that, because of the Claimant's medical restrictions, the Claimant is prevented from returning to his same job, and that prolonged traveling was not compatible with the Claimant's medical restrictions. The vocational rehabilitation plan called for 26 weeks of job placement services. Further, the documents indicate that the Claimant was interested in participating in the vocational rehabilitation process. In a letter by Counselor Young on May 6, 1988 (Young deposition Exhibit 11), the Claimant is described as being energetic, and actively looking for work.

On May 19, 1988, a meeting was held between the vocational rehabilitation provider, Jeanette Scher, PERC, Sharilyn Young, the vocational rehabilitation counselor, and the Respondent attorneys, at the Respondent attorney's law offices. The meeting was called by Respondent attorney, Gary Winfrey, who had supervisory authority over the two other Respondent attorneys, attorney Martens, and attorney Hess. Attending that meeting were Gary Winfrey, attorney Martens, attorney Hess, the vocational rehabilitation vendor, Jeanette Scher, operating as PERC, and PERC's rehabilitation counselor, Sharilyn Young.

Sharilyn Young testified that, prior to going into the meeting, her supervisor and the owner of PERC, Jeanette Scher, reminded Sharilyn Young that this Respondent attorney firm was one of PERC's main clients. The Administrative Law Judge finds that Sharilyn Young's testimony in this regard is credible.

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The meeting began with certain statements from attorney Gary Winfrey, telling Sharilyn Young, in Jeanette Scher's presence, that the Respondent firm was dissatisfied with the vocational rehabilitation findings and reports, and that, in essence, unless the reports were better prepared, PERC may lose this firm's future vocational rehabilitation business. This constitutes an intentional financial pressure upon the vocational rehabilitation counselor by all three of these Respondent attorneys, and this was done with the silent acquiesce and approval of Jeanette Scher, owner, and operating as PERC.

The facts show that there were areas of legitimate concern by Respondent attorneys: late receipts of reports, certain clerical mistakes regarding the average weekly wage, and other such matters.

However, as attorney Hess himself testified, one of the Respondent's main contentions and objectives was to have so-called Respondent input into the vocational rehabilitation process. The facts show that all three Respondent attorneys, in turn, directly questioned the vocational rehabilitation counselor, Sharilyn Young, on her rehabilitation findings regarding at least three Workers Compensation Claimants.

At that meeting, attorney Hess, in the presence of Gary Winfrey and Jeanette Scher, made direct and specific suggestions regarding the vocational rehabilitation findings on the vocational rehabilitation plan and rationale, (Young deposition Exhibit 5, and Young deposition Exhibit 13). A finding favorable to the Claimant, saying that the Claimant's medical restriction for light work was complimentary to radio sales, was deleted. Regarding job availability, chemical sales were eliminated from the portion dealing with availability of work. The vocational rehabilitation plan itself was shortened. While Sharilyn Young testified that some of the deletions and corrections were mere clarifications, the Administrative Law Judge disagrees. Such matters as eliminating statements regarding the Claimant's medical restrictions, eliminating categories of jobs, such as chemical sales, and shortening the plan, work in a manner severely disadvantageous to the Claimant; and directly involve complex factual and legal issues of which the vocational rehabilitation counselor may be unaware. These changes were not for the injured worker's benefit, nor were they based upon the receipt of any additional information: the changes were for litigation purposes, and were adverse to the injured worker's interest. The changes were made under the influence of attorney Winfrey and attorney Hess.

Following this meeting, Shárilyn Young prepared proposed vocational rehabilitation findings regarding this Claimant which, in their final form, are contrary and contradictory to her previous findings and opinions that were embodied in her promulgated vocational rehabilitation evaluation and report, (Young deposition, Exhibit 5 and 6). The final form, (Young deposition, Exhibit 15), was the product of Sharilyn Young's proposed findings that were changed by attorney Hess, (Hess Exhibit No. 1).

For example, in the final vocational rehabilitation progress report, (Young deposition Exhibit 15), the Claimant is listed as showing no interest in vocational rehabilitation. The subsequent findings are negative in content, and negative in overall tone. The progress report is critical of the Claimant. The progress report reaches the conclusion that the Claimant's injury has not negatively impacted upon the availability of work for the Claimant.

The facts show that these findings are not the result of any action or inaction by the Claimant.

Sharilyn Young testified that as a result of the meeting with Respondent's attorneys, and comments by Jeanette Scher, she believed that she was obligated by Jeanette Scher and Gary Winfrey to allow attorney Hess to make direct suggestions regarding her proposed rehabilitation findings. Attorneys Hess and Winfrey believed they had the authority to directly tell her how and what her findings should be. Sharilyn Young's testimony is credible, and is corroborated by the testimony of attorney Hess, and by Hess deposition Exhibit 1, to wit:

Hess deposition Exhibit 1 is Sharilyn Young's proposed rehabilitation findings, and attorney Hess' own handwriting showing additions, deletions, and amendations. Some of the changes were grammatical, but accordingly changed the emphasis of the findings, and the overall tone of the progress report.

One particular change, a deletion of a medical restriction, was more than grammatical, and shows that attorney Hess was, in fact, revising and amending proposed rehabilitation findings of the vocational rehabilitation counselor.

Further, the testimony of attorney Hess corroborates the testimony of Sharilyn Young that upon Gary Winfrey calling the meeting and making statements regarding financial incentive to PERC, that all three Respondent attorneys directly questioned Sharilyn Young in that meeting about her specific rehabilitation findings on several cases. This questioning occurred with the silent acquiesce and approval of Jeanette Scher.

Therefore, it appears that there was an intentional effort to change the rehabilitation counselor's findings, using direct psychological and financial pressure: The financial pressure was exerted through Gary Winfrey's opening statements, as corroborated by Jeanette Scher telling Sharilyn Young that this Respondent attorney firm was one of PERC's clients; the psychological pressure existed as all three attorneys, in turn, directly questioned Sharilyn Young on specific, factual issues, in a setting where she did not have the protection of the Rehabilitation Administrator's independent authority.

There can be no question that Sharilyn Young actually did deliver proposed vocational rehabilitation findings to this Respondent attorney firm, and that attorney Hess actually made substantive changes in the proposed rehabilitation findings.

Regarding Jeanette Scher's activities in this case, they were biased against the Claimant, in favor of the Respondent, and engineered for litigation purposes. They show intentional intereference with the objective findings of the rehabilitation counselor.

As a medical manager, Jeanette Scher decided to send the Claimant for an independent medical evaluation by Dr. John Hered. The authorized and treating physician, Dr. Robert Eyster, had already reviewed the MRI study, diagnostically finding that the Claimant's bulging discs were symptomatic. Dr. Eyster was discussing disc surgery with the Claimant. It does not appear Dr. Eyster was requiring an independent reading of the MRI study.

Jeanette Scher eliminated remarks critical of Dr. Hered in Sharilyn Young vocational rehabilitation counsultation report. This was interference, adverse to the Claimant's interests, and favorable to the Respondent's interest. (Young deposition Exhibit 3 and Exhibit 4).

In her subsequent actions, she required her vocational rehabilitation counselor to attend a meeting with the Respondent's attorneys; and allowed the Respondent attorneys to directly question her rehabilitation counselor regarding specific rehabilitation findings; and allowed the Respondent attorney, Hess, to make changes in proposed rehabilitation findings.

The testimony of both Sharilyn Young and attorney Hess to the effect that specific rehabilitation findings of two other Workers Compensation Claimants were also discussed at the meeting, and in Jeanette Scher's presence, raises the strong suspicion that PERC's attitude toward the vocational rehabilitation process is not confined to this particular case.

Regarding the Division policy of allowing Respondents to select the vocational rehabilitation vendor, Respondent attorneys were thereby able to exert financial pressure upon a vocational rehabilitation counselor, and thereby gain direct interference with the independence and integrity of the vocational rehabilitation counselor or the rehabilitation provider.

Claimant's Motion is therefore sustained.

IT IS SO ORDERED.

DATED this 23rd day of November, 1988.

David V. Jackson
Administrative Law Judge

copies: Robert A. Anderson, Director
J. Greg Kite
Aubrey G. Linville

KANSAS DEPARTMENT OF HUMAN RESOURCES

Division of Workers Compensation
600 Merchants Bank Tower, 800 S.W. Jackson, Topeka, KS 66612-1227
Information -- 913-296-3441 / Fax -- 913-296-0839

Director's Office -- 913-296-4000
Topeka Law Judges -- 913-296-7012
Rehabilitation -- 913-296-2050
Claims Advisory -- 913-296-2996
Self Insurance -- 913-296-3606
Medical Utilization Review -- 913-296-0846

Joan Finney, Governor
Michael L. Johnston, Secretary

January 31, 1991

Honorable Bruce E. Miller
Disciplinary Administrator
Kansas Judicial Center
301 W. Tenth Street, Room 278
Topeka, KS 66612

Re: Compliance with Rule 207(c)

Dear Mr. Miller:

This letter follows my brief telephone conversation with Mr. Stanley Hassett of your office on Thursday, January 31, 1991, concerning an alleged ethical violation that has been brought to my attention.

Enclosed please find a copy of an "initial order" in a show cause hearing entitled in Re: Progressive Evaluation and Rehabilitation Consultants, Inc.

As a matter further explanation during the legislative session of 1989, allegations of vocational rehabilitation vendor misconduct and alleged ethical violations by attorneys attempting to influence a vocational rehabilitation vendor surfaced during testimony before the House Labor and Industry Committee and the Senate, Labor, Industry & Small Business Committee.

At that time, approximately February 1989, several legislators in general and specifically Representative Kerry Patrick expressed concerns that the Division of Workers Compensation did not file an immediate formal ethical complaint with your office concerning the allegations made against attorneys, Gary Winfrey and Charles Hess of the Kahrs, Nelson law firm in Wichita, Kansas.

I advised both the House Labor and Industry Committee and the Senate, Labor, Industry & Small Business Committee that a show cause hearing would be convened and that if a finding of fact and/or conclusion of law indicated that ethical violations may have occurred, that I would forward a copy of the hearing examiner's decision to your office for review.

This letter and the attached enclosure is in compliance with my obligations under Rule 207(c) of the Rules of Supreme Court.

Although I had been given the impression by other third parties, that this matter had been brought to your office's attention by one or more parties and investigated with the finding of no probable cause, I do not have any direct information that would verify that statement.

It is my intent to advise the current chairpersons of both the House Labor & Industry Committee and the Senate, Labor, Industry & Small Business Committee and Representative Kerry Patrick that an "initial

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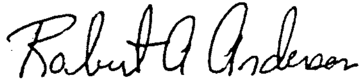
order* has been received and forwarded to your office for your review, in compliance with my obligations under Kansas Supreme Court Rule 207(c).

If I can assist you or provide any records from the Division of Workers Compensation in this matter, please do not hesitate to contact me.

Yours truly,



Robert A. Anderson
Workers Compensation Director

mr

Enclosure

pc: Honorable Alicia Salisbury, Chairperson, Senate, Labor, Industry & Small Business Committee
Honorable Anthony Hensley, Chairman, House Labor & Industry Committee
Honorable Kerry Patrick, State Representative

KANSAS DEPARTMENT OF HUMAN RESOURCES

Division of Workers Compensation
600 Merchants Bank Tower, 800 S.W. Jackson, Topeka, KS 66612-1227
Information -- 913-296-3441 / Fax -- 913-296-0839

Director's Office -- 913-296-4000
Topeka Law Judges -- 913-296-7012
Rehabilitation -- 913-296-2050
Claims Advisory -- 913-296-2996
Self Insurance -- 913-296-3606
Medical Utilization Review -- 913-296-0846

Joan Finney, Governor
Michael L. Johnston, Secretary

January 31, 1991

The Honorable Anthony Hensley
Chairman
House Labor & Industry Committee
State House, Room 278-W
Topeka, Kansas 66612

Re: Department of Human Resources v. PERC
Show-Cause-Hearing

Dear Representative Hensley:

As you should recall, during the 1989 Legislative Session incidents of alleged vocational rehabilitation vendor misconduct were brought to the House Labor & Industry Committee's attention. I advised the Labor & Industry Committee during the 1989 session that a show-cause hearing had been convened and further advised the committee during the 1990 session that the matter had been submitted to a hearing officer for decision on December 15, 1989.

Today, some 13 1/2 months after submission of findings of fact and conclusions of law by A. J. Kotich (then chief counsel for the Department of Human Resources), we received the hearing officer's decision. Enclosed is a copy of that written decision. I am providing you with a copy, as promised, and will allow you to determine if individual copies should be distributed to all committee members.

If you have any questions, after having had an opportunity to review this "initial order," please feel free to contact me. You will note on Page 39 of the order under the heading Recommendations, the hearing officer recommends the adoption of more specific rules and regulations or perhaps a comprehensive code of ethics concerning vocational rehabilitation counselors and vendors to cover situations which are not as clear-cut as this. In that regard, an Advisory Committee on Vocational Rehabilitation consisting of representatives of labor, industry, attorneys, vocational rehabilitation counselors and the insurance industry have studied this issue since I directed the Vocational Rehabilitation Administrator to appoint the committee in March, 1989. Their efforts over the past year and a half have resulted in specific rules and regulations concerning vocational rehabilitation vendor conduct and adoption of a code of ethics that I feel confident, if passed as formalized rules and regulations under the Kansas Administrative Regulations, will become model rules that other states will adopt. At the present time we are about 30 days away from starting the formal process to have the rules and regulations adopted. You may recall my testimony during the 1989 Legislative Session that after my appointment as Director but prior to the above captioned case being brought to our attention, we had taken steps to develop rules and regulations concerning vocational rehabilitation vendor conduct. However, it was the concerns of the House Labor & Industry Committee and the Senate Labor, Industry & Small Business Committee that generated the need to establish a code of ethics for vocational rehabilitation vendors in the state of Kansas.

The work product of the Vocational Rehabilitation Advisory Committee, i.e. the rules and regulations concerning vendor conduct and a proposed code of ethics, will be highlighted at the International Association of Accident Boards and Commissions All Committee Conference in Fort Lauderdale, Florida, in March, 1991, and again at the International Association's Central States Annual Meeting to be held in Topeka in June, 1991. Several states have expressed an interest in receiving copies of our formalized

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rules and regulations once they are adopted as Kansas Administrative Regulations so those states can either adopt or adjust those rules and regulations to their specific needs.

Yours truly,

Robert A. Anderson
Workers Compensation Director

RAA:lre

Enclosure

pc: Michael L. Johnston, Secretary of Human Resources

KANSAS
TRIAL LAWYERS ASSOCIATION

Jayhawk Tower, 700 S.W. Jackson, Suite 706, Topeka, Kansas 66603
(913) 232-7756 FAX (913) 232-7730

TESTIMONY
OF THE
KANSAS TRIAL LAWYERS ASSOCIATION
BEFORE THE
HOUSE LABOR & INDUSTRY COMMITTEE

February 12, 1991

HOUSE BILL 2153 - Occupational Diseases

The Kansas Trial Lawyers Association appreciates the opportunity to express its support for HB 2153.

This bill would amend K.S.A. 44-5a17 thereby allowing workers disabled by occupational diseases the same time limit to file claims as those workers who suffer acute, apparent and immediately disabling injuries. At present, the statute requires claims to be made within 90 days after disablement. This statute penalizes and places at a disadvantage those workers who suffer occupational disease. Many occupational diseases, such as cancer or asbestosis, do not manifest themselves or become symptomatic as quickly as other injuries. Medical expense for occupational disease may be just as great and disabilities may be greater. It seems, therefore, workers with occupational disease should have the same time limits to proceed with their claim.

While HB 2153 by itself is certainly an improvement in the law, we would like to propose an amendment, which is attached to our written testimony.

Those of you who were in the legislature last session will recall the debate on HB 2689, which enacted a special provision to the statute of limitations for victims of latent diseases caused outside the workplace. Our amendment incorporates the language from that bill, which is now law. It makes it clear that the 200-day time limit does not begin until the worker knows or should have known of 1) the existence of the disease and 2) such disease's cause.

We encourage you to act favorably on HB 2153, including the amendment we have proposed. Thank you.

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Amendment to HB 2153

On page 1, line 43 strike the word "in" and then strike the remainder of subsection (c) beginning on line 43 and ending on page 2, line 9.

In lieu of the language struck above, insert the following:

"to the time to discover a disease which is latent, in which event written notice of an occupational disease shall be given no later than 200 days after the date when the disease and such disease's cause have been made known to the worker, or to the worker's dependents in the event of death, or when the worker, or the worker's dependents in the event of death, should have been aware of the disease and the disease's cause. The provisions of this subsection shall apply to all occupational disease claims upon which proceedings are first commenced by the filing of an application for hearing or preliminary hearing with the director after the effective date of this act."

8-2

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TESTIMONY
OF THE
KANSAS TRIAL LAWYERS ASSOCIATION
BEFORE THE
HOUSE LABOR & INDUSTRY COMMITTEE

February 12, 1991

HOUSE BILL 2154 - Permanent Total Disability

The Kansas Trial Lawyers Association appreciates the opportunity to express its support for HB 2154.

This bill would amend K.S.A. 44-510(f) which sets the maximum payments to persons with permanent total disability. To be classified as having "permanent total disability" a worker must be precluded from engaging in any gainful employment. While those workers who might be classified as totally disabled comprise a minute percentage of claims, the horrendous physical and financial hardship inflicted on these workers cannot be ignored.

The current maximum benefit is $125,000. Assuming the worker qualified for the maximum weekly rate of $278, the benefits would end in 8 1/2 years.

Imagine a 30-year old husband or wife and parent of two children who becomes totally disabled from any work. The worker's benefit would expire before his/her 39th birthday; however personal and family obligations will most certainly continue. For the most severely injured and disabled citizens, the Kansas Workers' Compensation Act serves as little protection or help. The practical application of this statute will render most workers incapable of providing for their families and encourage application to Kansas Department of Social and Rehabilitation Services. We recognize the overwhelming pressures on SRS to provide income and services. They don't need to be further burdened by needs for assistance that could be provided and administered through other sources.

We encourage you to act favorably on HB 2154. Thank you.

KANSAS TRIAL LAWYERS ASSOCIATION

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TESTIMONY
OF THE
KANSAS TRIAL LAWYERS ASSOCIATION
BEFORE THE
HOUSE LABOR & INDUSTRY COMMITTEE

February 12, 1991

HOUSE BILL 2156 - Civil Liability/Protective Guards

The Kansas Trial Lawyers Association appreciates the opportunity to express its support for HB 2156.

This bill seeks to address a growing problem in the work place of employers who knowingly or recklessly subject employees to hazardous machinery, equipment or environments. House Bill 2156 provides two separate ways to promote safety in the work place. First, the language on P. 1, line 33 - P. 2, line 15 would make a limited change in the current law which precludes a worker from pursuing common law tort damages for noneconomic damages or total lost wages against the employer, regardless of how flagrant the employer's conduct may be. House Bill 2156 would modify K.S.A. 44-501 to allow disabled workers to pursue common law tort actions against their employers where the acts and omissions of the employer constitute willful, gross or wanton conduct. In the event the employee recovers, said recovery would be reduced by the workers' compensation benefits received and to the extent the recovery exceeds a workers' compensation award, it would be credited against future workers' compensation benefits. The entire purpose of this proposed amendment is to encourage safety in the work place. The threat of civil liability should provide an incentive to employers to act responsibly.

The second proposal of House Bill 2156 relates to statutes and regulation requiring guards or the employer's failure to use a proper guard. A 25% increase over what otherwise would have been awarded for temporary or permanent disability or a death benefit would be imposed by this change in the law. Again, this bill seeks to encourage employers to follow all existing law requiring guards and safety equipment by imposing this additional liability.

We encourage you to act favorably on HB 2156. Thank you.

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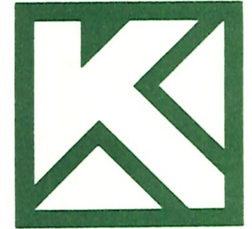
LEGISLATIVE TESTIMONY



Kansas Chamber of Commerce and Industry

500 Bank IV 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 2153, 2154, 2156 February 12, 1991

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Labor and Industry

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for this opportunity to express KCCI's concerns about the impact the series of bills being considered today would have on the Kansas workers' compensation system.

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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In my remarks today, I will attempt to briefly present some general information about the workers' compensation system in Kansas. Following the general remarks, I hope to review each of the three bills before the Committee today.

The guiding principle behind workers' compensation is to quickly identify a workplace injury has occurred, provide prompt medical care to the injured worker and reasonably compensate the worker for the lasting effects of their injury. Workers' compensation is unique from other forms of insurance in that employers are responsible for paying all costs for a system which benefits injured workers. Employers also benefit from workers' compensation by protecting them from costly civil court actions. The workers' compensation process works best when it leads to prompt and effective medical care for an injured worker which returns them to their job, and when it avoids a combative atmosphere developing between the employer and employee.

However, like other forms of insurance, workers' compensation insurance costs are skyrocketing. Currently, a 30.9% overall increase in workers' compensation insurance rates is pending before the Kansas Insurance Commissioner. In the past 20 years, insurance premiums paid by Kansas employers has climbed from $31 million in 1970 to over $264 million in 1989. An increase of more than 750%, not including the pending 31% increase. In Kansas today, 25% of employers cannot purchase workers' compensation insurance in the private insurance marketplace, driving them into the Kansas Assigned Risk Insurance pool.

In recent years, the Kansas Legislature has passed workers' compensation legislation which attempted to streamline the workers' compensation administration process, embraced the fundamental philosophy of returning a 'now-healthy' worker to the workplace, and attempted to relieve employers of constantly spiraling costs. Some examples of this type of legislation are the lifting of the "100-day rule" in the vocational rehabilitation assessment process and the formation of a workers' compensation medical fee schedule last year.

However, the package of workers' compensation bills before the Committee now appear to reverse that trend of the Kansas Legislature. Instead of streamlining a complex system, they complicate it. Instead of encouraging employer/employee cooperation, they encourage employer vs. employee in a courtroom.

Of the three bills before you today, KCCI is most concerned about HB 2156, legislation to open the door to civil lawsuits and disability payment increases when an attorney can build a case against an employer. Please consider what would be abandoned by advancing this bill through the legislature.

1. The Kansas workers' compensation system is essentially "no-fault." There is a provision in the law shielding an employer from a workers' compensation claim if an employee deliberately causes their injury, fails to use provided guard or protection or is injured because they are intoxicated. These employer protections are justified in order to permit the employer to establish a base for developing a safe workplace for the benefit of all employees.

Beyond these basic rules, however, fault is not an element in determining the merit of a workers' compensation claim. By abandoning this principle in HB 2156, employers would be encouraged to build their defense against an attorney's claim of fault instead of striving to provide prompt care and compensation to their employees.

2. A constant complaint KCCI hears about the current workers' compensation system is the involvement of attorneys in the process. The Kansas Chamber readily concedes claimants' attorneys bring a needed element to the system by guarding the rights of employees in the process. However, HB 2156 will add greatly to the role attorneys play in the system.

3. HB 2156 will cause workers' compensation costs to grow, and expand. Besides increasing the already spiraling costs of workers' compensation insurance, this bill will also drive costs upwards for employer liability insurance.

HB 2154 would make disability payments in permanent total disability cases payable for life, by removing the existing $125,000 cap. For several reasons, KCCI feels the current compensation in these cases is reasonable and proper. First, let me again stress the no-fault concept of the system insures medical care and compensation for the injured worker, with few exceptions. In exchange for providing and financing the system, an employer deserves some protection against unmanageable costs. That is the main reason why disability caps exist, and why they should be retained.

In addition, it is important to point out an item which is often overlooked in a debate to remove permanent total disability caps. An employer's responsibility towards a permanently totally disabled worker goes beyond paying weekly disability payments. Kansas law currently requires employers to pay medical benefits for the life of the permanently disabled worker. In short, an employer's responsibility does not end when the final weekly disability check is sent to a permanently totally disabled employee. The employer will continue to provide for the medical well-being of the injured worker for life.

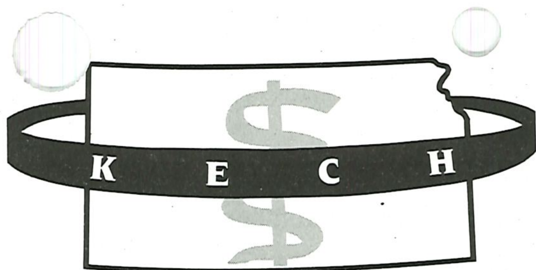
KCCI feels removal of the permanent total disability cap is unwarranted and cannot support HB 2154. However, if the Committee is swayed to supporting the concept driving this legislation, the Kansas Chamber would urge you to make sure lifetime permanent total disability checks are provided to people who are truly permanently totally disabled. K.S.A. 44-510c permits a judicial determination that a permanent total disability exists. In addition, the statute lists medical conditions which constitute a permanent total disability. If it is the Committee's intention to provide lifetime permanent total disability payments to the most serious workers' compensation cases, it appears proper to base the decision on medical diagnosis, rather than a judicial determination.

HB 2153 would extend from 90 to 200 days the time an employee has to notify an employer of disablement from an occupational disease. Supporters of the legislation have contended the change would level the playing field, by allowing workers the same time to file an occupational disease claim as permitted in accidental injury cases.

If occupational disease and accidental injury represented an apples-to-apples comparison, then the increase in the deadline to report would be justified. However, there are major differences. In the case of accidental injury, a date can be established when the accident happened. Because no date can be set in occupational disease cases, notice is set at the date of disablement, meaning the occupational disease has reached a stage where the employee is unable to perform their job. Because of the difference, it is appropriate to limit the employee to 90 days to initiate a workers' compensation claim.

Once again, thank you for considering KCCI's position on this series of workers' compensation measures. It is the Kansas Chamber's hope you agree these bills would send the workers' compensation system down a road which Kansas employers, and employees, do not wish to travel.

I would be pleased to attempt to answer any questions.



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

Testimony to House Labor and Industry Committee on Workers' Compensation Legislation

by James P. Schwartz Jr.
Consulting Director
February 12, 1991

I am Jim Schwartz, consulting director for the Kansas Employer Coalition on Health. The Coalition is 100 employers across Kansas who share concerns about the cost-effectiveness of healthcare purchased for our 350,000 Kansas employees and dependents.

The Kansas Employer Coalition on Health is deeply concerned about the recently introduced bills concerning Workers' Compensation in Kansas. Some of these bills are primarily matters of employee relations and are best left to other conferees to discuss. But three of these bills (HB 2154, 2155, and 2157) directly threaten to inflate work-comp insurance costs at a time when those costs are undergoing record increases.

Rather than testify redundantly about all three bills, I offer these remarks today as applicable to them all.

First, we concede that these bills have appeal. It seems desirable to allow more payment and flexibility to workers injured on the job. After all, the compensation allowed under present law is clearly less than would typically be awarded in a successful damage suit. But Workers' Compensation is not intended to discover fault and fully compensate victims of negligence. Instead, we have a no-fault system in which both sides give up potential benefits in the interest of speedy compensation and reduced cost of litigation. Employers surrender the burden of proof on the part of employees, and employees surrender unlimited awards and unlimited medical choice.

In 1987 the legislature re-evaluated the balance of interests and fashioned a historic Workers' Compensation law. Especially prominent was the growing awareness of the importance of rehabilitation. Both labor and management made concessions to create the balance. It was landmark legislation, emphasizing the big picture.

Now that balance is being threatened — not by re-evaluating the weight of all the counterbalancing elements, but by focusing on the small picture and manipulating a few elements in isolation. The clear intent is to move the pivot point in favor of one side.

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All this comes in a year when work-comp insurers are asking for a 31% premium increase. That kind of increase is as much a blow to labor as it is to management — because it means there'll be less money in the till for raises and other employee benefits. Instead of fighting over shares of an ever-dwindling pie, we really ought to be concentrating on why the pie is shrinking.

HB 2154 is an example of shifting the balance of interests to render a larger pie slice for labor.

HB 2155 deals a blow to what's come to be called "managed care." Managed care refers to an arrangement in which a professional healthcare manager oversees treatment to make sure it is cost-effective. Such a situation is what makes HMOs and PPOs more cost-effective than health plans where physicians and patients are authorized to over-prescribe and over-consume. In Kansas, the employer's right to designate treatment source is what makes managed care possible for work-comp cases. To the extent that you give patients license to purchase unmanaged care, you're throwing gasoline on the fires of medical inflation.

Remember that under Workers' Compensation, patients don't have deductibles, coinsurance or any other financial stake in their medical expenses. Employers bear the whole load. In exchange, employers get to designate the healthcare provider in cases where charges are significant. HB 2155 erodes this concept by almost tripling the limit into a range that we consider to be quite significant.

Some may argue that the passage of the medical fee schedule for work-comp last year obviates the need for directing patients to preferred providers. Let's be clear about this. The fee schedule helps small employers (who are less likely to have access to a preferred provider network), whereas the authority to direct care is the main cost-containment tool of large employers (who are able to negotiate contracts with providers). All employers, large and small, desperately need help containing healthcare costs. This bill harms them.

HB 2157 creates the same sort of problem as does 2155. By giving patients more license to purchase services without accountability, we take a step backward toward the "blank check" mentality that has so thoroughly made a shambles of our health insurance system.

Mr. Chairman and members of the committee, we urge you to resist efforts to unbalance the delicately hung system of Workers' Compensation in this state. For that reason we ask that you oppose HB 2154, 2155 and 2157.