

MINUTES OF THE House COMMITTEE ON Labor and IndustryThe meeting was called to order by Representative Anthony Hensley

Chairperson

a

9:08 a.m./~~p.m.~~ on March 5, 1991 in room 526-S of the Capitol

All members were present except:

Rep. Douville

Rep. Gomez

Committee staff present:

Jim Wilson, Revisor

Jerry Donaldson, Research Assistant

Barbara Dudney, Committee Secretary

Conferees appearing before the committee:

James K. Villamaria, Kansas Insurance Department

Jim Yonally, Dir. of the Ks. Chapter of the National Federation of Independent Business

The meeting was called to order at 9:08 a.m. by the vice-chairman, Rep. Darrel Webb. Rep. Webb informed committee members that the chairman, Rep. Anthony Hensley, would be late due to his participation in another meeting.

Rep. Webb announced that the hearing on House Bill No. 2401 would continue and he introduced James K. Villamaria, Supervising attorney of the Workers' Compensation Fund, Kansas Insurance Department.

Mr. Villamaria explained that the Insurance Department was neither a proponent nor opponent of House Bill No. 2401. He presented background information on the history and financing of the Workers' Compensation Fund. He said the Fund utilizes the legal services of 72 attorneys throughout the state on a negotiated contract basis. He said these attorneys are selected because of their experience in the area of workers' compensation law.

Mr. Villamaria explained that the legal fees for representing the Fund are \$60 per hour. This compares to the average rate of \$88 per hour charged by attorneys who do similar defense work. The payment of any legal fee over \$1,500 must have written approval from the Insurance Commissioner's office. He said his office is constantly evaluating the quality of legal services.

According to Mr. Villamaria, the Insurance Commissioner feels that as administrator of the Fund he has two major responsibilities: that the Fund operate in a manner as to encourage employers to hire or retain handicapped employees, and that Kansas tax dollars be wisely spent since \$5 million in the Fund comes from the state general fund. Mr. Villamaria added that any change in the current system should take into account these concerns.

Mr. Villamaria concluded by pointing out that the Insurance Commissioner believes that the current system has provided the Fund with high quality legal representation at a very reasonable costs. However, if the committee wants to change the legal services bidding process, he suggested awarding these services to attorneys who have experience in workers' compensation litigation and have demonstrated their skills through ratings by their peers in professional publications such as the Martindale-Hubbell Law Directory (attachment #1). He then answered questions from committee members.

Vice-chairman Webb announced that the hearing on House Bill No. 2401 was closed, and that the hearing would resume on House Bill No. 2313.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor and Industry,
room 526-S Statehouse, at 9:00 a.m./~~p~~m. on March 5, 1991

Jim Yonally, Director of the Kansas Chapter of the National Federation of Independent Business, presented additional information on House Bill No. 2313 (attachment #2). He suggested that the bill be amended to allow the Insurance Commissioner to set up experience ratings and premium discounts for employers who have not had to file a workers' compensation claim in three or more years by using information obtain from the National Council on Compensation Insurance (NCCI).

Chairman Hensley resumed the chair and announced the hearing on House Bill No. 2313 to be closed.

The chairman announced that several committee members have expressed an interest in discussing and taking final action on the following House bills: 2076, 2153, 2155, 2313 and 2401. He said that, beginning tomorrow, the committee will discuss and take final action on these bills.

The meeting was adjourned at 9:55 a.m.



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TESTIMONY BEFORE THE
HOUSE COMMITTEE ON LABOR AND INDUSTRY

by

JAMES K. VILLAMARIA
SUPERVISING ATTORNEY

KANSAS WORKERS'S COMPENSATION FUND

Mr. Chairman, members of the Committee, my name is Jim Villamaria, I am a staff attorney with the Kansas Insurance Department. My primary responsibility is the supervision and administration of the Worker's Compensation Fund. I thank you for the opportunity to appear before you this morning to present the Insurance Departments views concerning House Bill No. 2401.

As the chairman is aware, a representative from the Insurance Department traditionally addresses the committee to report on the status of the Fund. If I may, I would like to take a moment and explain generally the Worker's Compensation Fund.

The Worker's Compensation Fund is created pursuant to K.S.A. 44-566 (a) for the purpose of encouraging the employment of persons handicapped as a result of specific impairments by relieving employers, wholly or partially, of worker's compensation liability resulting from compensable accidents suffered by these employees.

The Worker's Compensation Fund's budget for FY 1991 totals 25 million dollars. Funding for the Fund comes primarily from three (3) sources. The first of which is a four (4) million dollar allotment from the State General Fund. Due to an across the board one and three-fourths percent budget cut, The state general fund allotment for FY 1991 totalled \$3,930,000. However, the House Appropriations Committee on February 21, 1991, removed this allotment from the Insurance

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attachment #1*

Departments budget. Therefore, if the budget, as it now stands is approved, commencing FY 1992 the Worker's Compensation Fund will be funded almost entirely from assessments on insurance carriers, self-insurers and self funded worker's compensation pools. The State, therefore, will no longer have a fiscal involvement in the Worker's Compensation Fund.

A second source of funding comes from an assessment against insurance carriers and self-insurers pursuant to K.S.A. 44-566 a(b). For FY 1991 the Fund assessed for seventeen (17) million dollars. The amount paid by each of these entities is based on a percent of the actual paid losses of insurance carriers writing worker's compensation insurance and on employers operating under self-insurance worker's compensation plans within the state during calendar year 1989.

The final primary source of funding comes from payment by employers where an employee is killed in an otherwise compensable accident, but in which there are no eligible dependents (non-dependent death), and miscellaneous reimbursements; (repayments to the Fund from insolvent employers).

As directed by statute the Commissioner of Insurance is empowered to administer, represent and defend the worker's compensation fund in cases in which the Fund has been implead. Currently, there are over 5000 active, open worker's compensation fund cases.

At present, the Fund utilizes the services of seventy-two (72) attorneys throughout the state on a negotiated contract basis. Each contract attorney has been retained because of their extensive experience in the area of worker's compensation law. New cases are assigned to attorneys using a rotational basis as determined by the geographical location in which they practice. Great emphasis is placed on having local attorneys handle cases which arise out of their various regions of the state.

Legal fees are based on \$60 per hour for services rendered in representation of the Fund. Any legal fee accumulating in excess of \$1500 must have express written approval from our office. Fees in excess of \$2500 will only be allowed in unusual circumstances. A telephone survey conducted by my staff revealed that firms doing similar defense work charge between \$70 and \$95 per hour. The average hourly rate equaled \$88/hour.

During testimony before the committee last week Representative Patrick, a proponent of this bill, indicated that the amount of attorneys fees paid

by the Fund has doubled over the past five years. While I am not sure what facts the representative based his statements on, the statistics compiled by my staff tend to refute the Representatives assertion. At the end of fiscal year 1986 the Worker's Compensation Fund had 2,515 active cases. Through January of this year there were 5,055 active files. An increase of over one hundred percent. During the same period of time attorneys fees rose only 60% from \$1,497,818.13 in FY 1986 to \$2,402,730.45 in FY 1990.

Defense costs when represented as a percent of the overall expenditures by the Fund have actually decreased each FY from 1987 through 1989. During FY 1987, 16.6% of the Fund expenditures went to defense costs. In FY 1988 this figure shrank to 10.49%, dropping even farther during FY 1989 to 10.21 percent. We saw a one percentage increase in defense costs in FY 1990 over over 1989.

It should be noted that dollar wise our attorneys fees in FY 1990 were nearly equal to those of FY 1989. However, the overall expenditures of the Fund decreased by nearly two (2) million dollars in FY 1990, thus resulting in the higher percentage.

We are constantly evaluating our attorneys performance both internally and through outside sources. The feedback our office has received from judges and members of both the claimants and insurance defense bar is that our attorneys are professional in their conduct and provide excellent representation.

The commissioner recognizes that as the administrator of the Fund he has at least two major responsibilities. First, and foremost, he must insure the Fund is operated in such a manner as to serve the public policy of the State of Kansas to encourage employers to hire or retain in their employment persons afflicted with an impairment which constitutes a handicap in obtaining employment. The legislature has provided the means for financing this Fund by providing a yearly contribution to the Fund from the state general fund plus assessments to be levied against all insurance carriers, self-insurers and group-funded workers compensation pools. The monies allocated to the Fund are to be used to provide incentives for employers who knowingly and with purpose establish personnel policies which provide a level playing field in the job market for handicapped job applicants as well as injured employees desiring retention following disabling injuries. Consequently, the Fund is something more than just a source for payment of compensation such as an excess coverage line. The commissioner must not only

make decisions as to the reasonableness of payments that are made from the Fund but he must also insure the payment are made in support of the public policy to encourage the hiring and retention of handicapped workers.

Consequently, the Fund plays a unique role in the rather complicated mechanism which has developed to provide protection for Kansas employees who suffer job-related personal injuries in that it not only must support an important public policy but is, at the same time, provides a substantial amount of resources devoted to the care and treatment of injured workers. In this regard, the Commissioner has a responsibility to the taxpayers of Kansas to insure that the general fund contribution is applied to support the public policy. He must also insure that the interests of the insurers, self-insurers and group funded plans are addressed equitable and as efficiently as possible.

The commissioner believes that, over the years the Fund has operated, a significant number of attorneys and law firms have been identified as having developed the specialized expertise that he can use to administer the Fund to meet the objectives just outlined. He further believes that such legal services are required in administration of the Fund to preclude the Fund from devolving into an open-ended excess line coverage mechanism which would serve no desirable public policy but will be seen as nothing more than a means of transferring liability.

The commissioner believes that the foregoing concerns should be considered in any plan to replace the present system. He would hope that full consideration be given to the problems that everyone realized are inherent in the procurement of professional services where it is most difficult to develop objective measurement standards due to the specialized and personal nature of the services sought. Any proposal to reduce the procurement process to a rock bottom low-bid policy will ignore the need for experience and demonstrated ability to perform in this specialized area. While such a standard may work well when the state purchases tangible items, it is much more difficult to develop specifications for bidding on the provision of personal, professional services. Any system that would lock the state into long term contracts with an inexperienced low bidder could, and in all probability would, provide the Fund with representation by individuals and firms who would be required to reinvent the wheel in an on-the-job

effort to develop the expertise required to serve the stated public policy. The consistency in administering the Fund, which can only be provided by individuals with expertise in the worker's compensation area along with a good appreciation of the public policy to be supported, would suffer greatly from contractual relations with individuals and firms whose only qualifications would flow from their willingness to submit the lowest bid.

The Commissioner would like to reiterate that he believes the current system has provided the Fund with excellent representation at a very reasonable defense cost. He further believes that a wide distinction can be made between the legal skills necessary to provide a litigated defense of the Worker's Compensation Fund and the mostly routine filing of motions and pleadings associated with the collection work at the University of Kansas Medical Center. However, if the wisdom of the Legislature is to require the commissioner to substitute the bidding process for his judgment and discretion in the procurement of legal representation for the Fund, he would hope that the specifications for the bids would provide, insofar as possible, the following: (1) A requirement that successful bidders must have demonstrated their competency through ratings by their peers in such professional publications as the Martindal-Hubbell Law Directory and inclusion in directories of recommended insurance attorneys. and (2) they possess experience in worker's compensation litigation, specifically, in litigation involving representation of the Worker's Compensation Fund.

The Commissioner stands ready and eager to cooperate with the committee in addressing any concerns it may have regarding the Fund.

Workers' Compensation Fund Statistical Information

Number of Impleadings Involving
the Workers' Compensation Fund

<u>Fiscal Year</u>	<u>Number</u>	<u>Percentage of Increase</u>
1988	1,862	
1989	1,933	4%
1990	2,181	13%
1991 (Estimated)	2,674	23%

Active Cases Against the
Workers' Compensation Fund

<u>At the End of Fiscal Year</u>	<u>Number</u>	<u>Percentage of Increase</u>
1988	3,413	
1989	3,906	14%
1990	4,289	10%
1991 (Estimated)	5,355	25%

Monthly Payments Made From the
Workers' Compensation Fund

<u>At the End of Fiscal Year</u>	<u>Number</u>	<u>Total Amount of Monthly Payments</u>	<u>Average Monthly Payment Per Case</u>
1988	301	\$132,531	\$440
1989	338	148,727	440
1990	364	152,950	420
1991 (Through Jan)	340	128,500	378

Awards Against the Workers'
Compensation Fund by Fiscal Year

<u>Fiscal Year in which Awards were Made</u>	<u>Number of Awards</u>	<u>Average Amount of Award</u>
1988	999	\$15,287
1989	1,067	14,108
1990	1,055	13,061
1991 (Through Jan.)	518	13,912

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attachment #2*

Individual Awards Against the Workers'
Compensation Fund by Fiscal Year

<u>Fiscal Year</u>	<u>Between \$50,000 and \$74,999</u>	<u>Between \$75,000 and \$99,999</u>	<u>\$100,000</u>
1988	33	16	1
1989	30	12	0
1990	28	8	1
1991 (To date)	18	3	0

Percentage of Impleadings that Resulted
in Awards Being Made Against
the Workers' Compensation Fund
(Extracted from Closed Claim Reports)

<u>Cases Closed in Fiscal Year</u>	<u>Number of Impleadings</u>	<u>Number of Awards</u>	<u>Percentage of Impleadings Resulting in Awards</u>
1988	1,455	1,037	71%
1989	1,466	1,058	72%
1990	1,811	939	52%
1991 (Jan.)	794	665	84%

Attorney Fee Expenses

<u>Fiscal Year</u>	<u>Total Per Fiscal Year</u>	<u>Percentage of Increase</u>
1988	2,330,799	
1989	2,356,858	1%
1990	2,402,730	2%

Average Attorney Fees

<u>Fiscal Year</u>	<u>Per Impleading</u>	<u>Per Active Case</u>
1988	1,252	\$683
1989	1,219	603
1990	1,102	560
1991 (Estimated)	1,073	568

Percentage of Increases from 1988 to 1991

Attorney Fees	23%
Impleadings	44%
Active Cases	48%

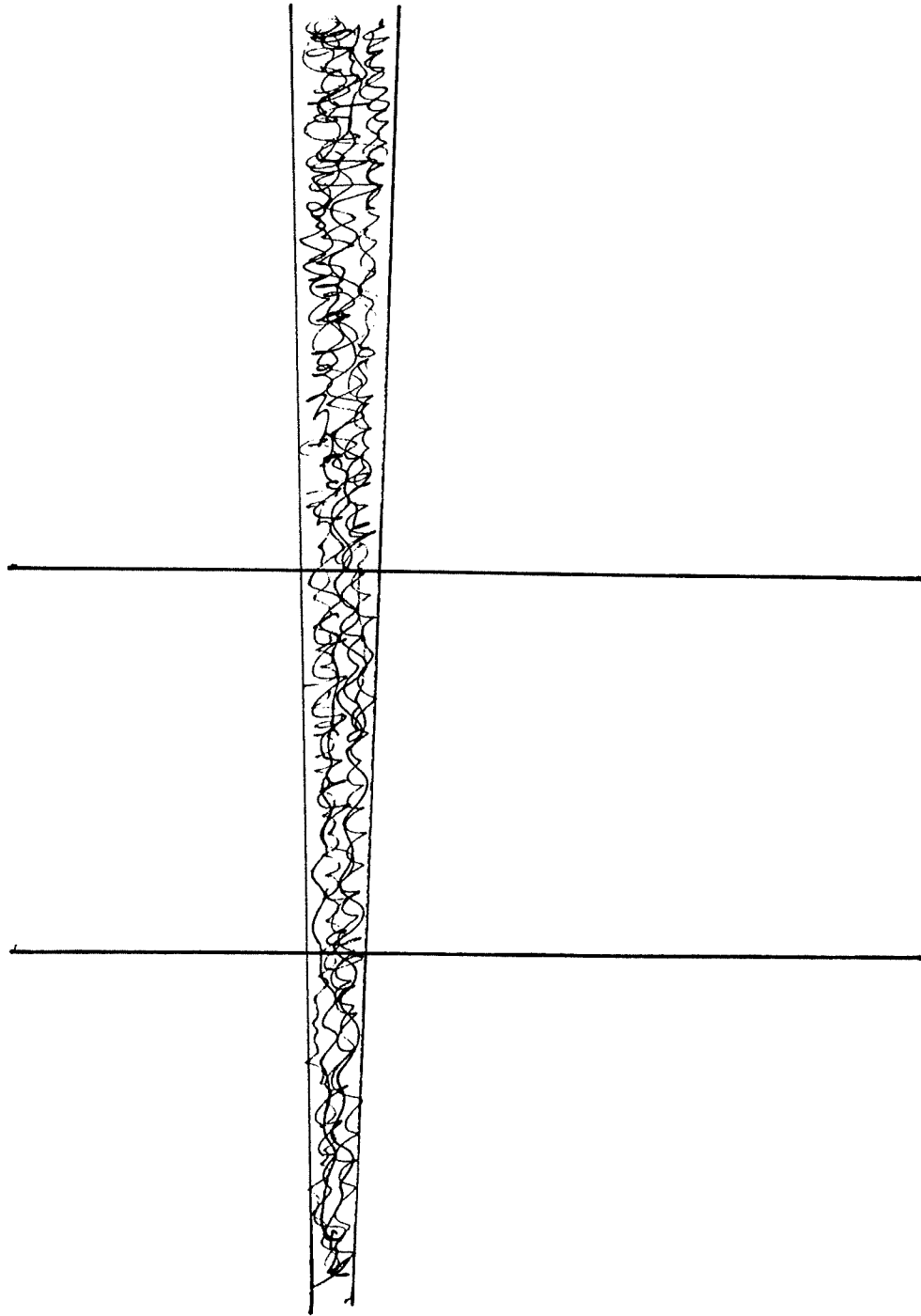
Impact of HB 7313 (Discount for "no claims")

Average Annual Premiums



\$5,000

\$1,750



"Group"

3

2

1

Job assignment Category (600+)