



COPY

RON TODD

COMMISSIONER OF INSURANCE

October 4, 1991

Mr. William D. Hager, President
National Council on Compensation Insurance
One Penn Plaza
New York, New York 10119

Dear Bill:

I am, of course, aware of your recent public pronouncements and other efforts to articulate your industry's position and problems relating to the workers' compensation dilemma. State insurance regulators have obviously not escaped your attention and criticism. I really don't have a quarrel with your observations. Your complaints about inadequate rates and the political games that seem to be played are not without validity and, as an industry spokesperson, you have an obligation to champion the interests of your members.

Having performed the courtesy of recognizing your right to express your views and even admitting the validity of some of your criticism, I must tell you that, at least in Kansas, your organization and the insurers you represent are destroying your credibility. As a new commissioner who stuck his neck out and absorbed tremendous public criticism for approval of the largest workers' compensation rate increase in recorded Kansas history, I must tell you I have been betrayed. I see no evidence whatsoever that insurers have relaxed their underwriting restrictions one iota. Risk after risk after risk is seeking approval as a self-insurer under the Kansas workers compensation law because their only other alternative is the workers' compensation plan and its even higher costs because they cannot find coverage in the voluntary market.

In addition, my approval of the increase was, with the agreement of your organization, accompanied by a direction to implement a study of Kansas loss claims for the purpose of identifying reasons why Kansas claims costs continue to increase. This study was to be completed by July 1 and my intention was to provide the information to a task force I intended to create (and have created) to focus attention on specific elements of the workers' compensation system which, according to the claims study, are contributing a disproportionate amount to the claims costs. Finally, in late August, we were provided general, unsubstantiated anecdotal,

Labor + Industry
2-10-92
attachment #1-1

Mr. William D. Hager
October 4, 1991
Page 2

information obtained from 13 insurers and one agency which was of absolutely no value to this office or the task force.

The totally unsatisfactory response to the directive included in my approval of the rate filing was then supplemented by a request that NCCI representatives attend the September 19, 1991 meeting of the task force and present data and credible information that would provide some direction to the task force. Two representatives did attend and I am convinced they made a sincere effort to be responsive to the task force's needs. However, the information presented was little more than a summary of ratemaking data which we could probably have extracted from our files. In other words, the information was informative as to the number of claims and how many dollars were spent but totally void of any helpful insight regarding what services the money actually purchased.

During my 35 plus years in insurance regulation, I have become accustomed to trade, advisory, statistical and rating organizations never having information that is good for anything except purportedly justifying higher prices but always having some project underway that promises a better tomorrow. The task force was not disappointed at the September 19 meeting because the NCCI representatives repeatedly noted that detailed claim information was now being collected for all states. Terrific! The only problem is we need information now and the only possible alternative we apparently have is to attempt to locate an individual insurer(s) that may have been interested in where all the claim dollars were really going. I know some self-insurers have this kind of data and we are going to see what we can obtain from that source but if any of your people have any ideas, I'm certainly willing to explore them.

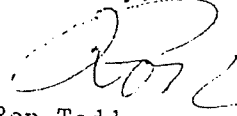
Finally, on more than one occasion and to more than one NCCI employee I have personally and directly invited, even urged, representatives of your organization to develop and suggest changes in the Kansas workers' compensation law and/or administrative processes that would ameliorate the constant and significant cost increases Kansas employers are experiencing. Not only have I had no response to these invitations but, as previously noted, I can't even obtain meaningful assistance that will identify or help identify the problem(s).

You are, of course, free to continue to castigate insurance regulators, legislators and others but as far as I'm concerned the organization you head is a key player. The NCCI is not only a rating organization, it is also a statistical organization. Therefore, you have or should have data that can be used far more effectively and for a far more responsible purpose than simply calculating an unaffordable price for workers' compensation insurance. Frankly, my 1991 experience

Mr. William D. Hager
October 4, 1991
Page 3

with the NCCI and the workers' compensation insurance industry is, for the first time, making me think about the potential advantages of some sort of state fund.

Sincerely,



Ron Todd
Commissioner of Insurance

RT:mmk

12

Testimony by
Ron Todd, Commissioner of Insurance
Before the House Committee on Labor and Industry
February 10, 1992

As Kansas employers know all too well, our workers compensation insurance system is in urgent need of major repair. Kansas is certainly not alone in this regard but the fact that other states are facing the same or greater problems is small comfort. In many respects, the workers compensation situation bears a striking resemblance to the health care and health care financing problems. That is, even though high and increasing rates carry the message of higher costs to employers, the insurance rate level is only a reflection of the cost, number and nature of benefits provided to injured workers.

There is, of course, one other possibility in that the insurance mechanism may simply be grossly inefficient or workers compensation insurance profits inexcusably high. The possibility of excessive profits is clearly refuted by the Report on Profitability by Line and by State produced by the National Association of Insurance Commissioners. The latest calendar year for which this report is available, 1990, discloses an underwriting profit of -20.5%, a total profit after taxes and investment results of 1.1% or a total return on net worth of 1.3%. Understandably, one year could be viewed as an aberration. However, when we look at the six year summary of the same reports, the average return on net worth for the 1985-1990 period was 6.3% on workers compensation in Kansas.

With further regard to the efficiency of the insurance mechanism, some of you may remember that my predecessor, Commissioner Bell, appointed a study group comprised of a wide range of interests including independent insurance agents to review all aspects of the workers compensation insurance component. During the summer and fall of 1990, this study group attempted to identify areas where the insurance mechanism was adding unnecessary costs and develop recommendations to not only address these deficiencies but also add efficiencies wherever possible. This

*Labor & Industry
2-10-92
Attachment #2-1*

effort produced about 26 different recommendations which if fully implemented would undoubtedly produce some insurance cost savings. Nevertheless, it is important to note that any such savings would be quite modest because no significant inefficiencies were detected. This seems to be confirmed by information obtained in the latest workers compensation insurance rate filing which shows that almost 79¢ of every \$1.00 of income is available for benefit payments if everything performs as projected. Unfortunately, the business has not followed these projections because providing insured workers' compensation benefits has been costing 93¢ of every \$1.00 of income which leaves only 7¢ for administrative costs.

This leads us to the inevitable conclusion that the number of workplace injuries and the workers compensation benefits and expenses flowing from those injuries is the area that must be addressed. Shortly after the 1991 legislative session, I directed a letter to the President of the Kansas Senate and the Speaker of the Kansas House of Representatives suggesting the creation of a special legislative committee to study the administrative and benefit structure of the workers compensation system. Such a study seemed advisable at that time -- and still does -- not only from the perspective of existing concerns but also because of pending workers compensation legislation which, if enacted, would further increase costs. For whatever reason, an interim study was not authorized last year.

However, because of the rapidly escalating costs of workers' compensation insurance, it seemed to me it was essential to have some sort of broad-based review of the problem from which it was hoped responsible, constructive and well-founded suggestions for change could be developed. Therefore, after it became clear the Legislative Coordinating Council did not include workers compensation in its 1992 study proposals, I created a study group comprised of the individuals listed on the attachment to my testimony.

As many of you will recall, my approval of the increase in the workers' compensation insurance rates last spring was accompanied by a direction to the National Council on Compensation Insurance to implement a study of Kansas workers' compensation claims to identify the types of losses and/or expenses that are generating a disproportionate expenditure of claims dollars. It was my intent to use this information to not only identify areas of the workers' compensation system that are driving costs upward at an unbearable rate and provide guidance with respect to the nature and degree of remedial change but would also be useful to you and your colleagues as objective support for whatever recommendations emerged.

Unfortunately, this careful planning did nothing but produce a most frustrating summer and fall for both me and the study group. The first information developed from the NCCI "claim study" was nothing more than a collection of anecdotal information that may very well be valid but was of no value whatsoever in designing and supporting helpful recommendations. Following my refusal to accept such information as a fulfillment of my directive, the National Council then appeared before the study group with a substantial amount of data which was indicative of how many dollars are being spent on claims but was not at all informative as to what the dollars were being spent for.

As the designated statistical agent for workers' compensation insurance, the National Council is the body to which individual insurance companies report loss and expense information. Consequently, our inability to obtain information that would even point the study group in the right direction really went beyond being a frustrating experience and reached the point of aggravation. I understand the members of this committee have been provided a copy of my letter to the president of the National Council and if you've read it, you may have detected some sense of my displeasure. Although several months late, this communication did, however, finally get their attention because soon thereafter I was advised that an independent actuarial firm had been retained to conduct a

sample closed claims study in Kansas. This study began January 20 and the final report and analysis is due March 15. After my previous disappointments, I can't promise you the information we receive will tell us everything we need to know but I've attached a copy of a claim form to my testimony which will give you some idea of the kind of information that is being developed.

All of this, of course, is in addition to the one inescapable fact we already know and that is workers' compensation costs are affected by the increasing health care costs to the same extent as private health insurance, government health programs and private and public programs whose costs are directly affected by the cost and use of health care services. However, this may or may not be a direct correlation so even in the area of medical benefits we need information about the nature of the injury, the part of the body affected, the relationship to work-loss benefits and so forth.

Finally, I simply want to remind you that the magnitude of workers' compensation insurance premiums is only a reflection of the costs of workers' compensation benefits and administrative costs. It is only because premium billings are the vehicle that delivers the message of these costs that the insurance mechanism can be and often is identified as the culprit. This is, of course, cause for concern but in my opinion the problem is much too serious to confine to parochial issues. The fact is too many employers can no longer afford to pay for workers' compensation insurance and obviously can't afford to directly pay or otherwise finance payment of the required benefits to injured employees. Employers don't really care whether it's an insurance problem, a statutory problem, an administrative problem or some combination thereof. Employers gain no comfort from the knowledge that the same problem exists in every state other than the fact that its scope diminishes the adverse competitive impact such costs would otherwise present. Employers do care, however, when workers' compensation costs

exceed their ability to pay and employers certainly care when the economic survival of their business is at stake.

Employees and all public officials should also be concerned. When businesses fail, jobs are lost -- tax revenue is lost -- and the economy of a community suffers. Consequently, I have never really understood the perpetual debate between business, labor and legislators with differing philosophies over reforms in the workers' compensation system. I understand the bargaining, the search for the truth and all the other nuances involved in the legislative process but there comes a time when selfish goals must be put aside and hands must be joined in trust and cooperation to solve a problem. Workers' compensation is at that point. It is a problem that must be solved and it is a problem that certainly doesn't need proposals enacted that will make the problem worse.

Workers Compensation Study Group

William C. Cohen, Jr., CPCU, Independent Insurance Agents of Kansas
IMA Plaza, 250 N. Water, Wichita, Kansas 67202

Thomas E. Slattery, Executive Vice President, Associated General Contractors of
Kansas, Inc., 200 West 33rd, Topeka, Kansas 66611

Wayne Maichel, Kansas AFL-CIO
110 West 6th Street, Topeka, Kansas 66603

Dr. John Wertzberger, American Academy of Disability Evaluating Physicians, Inc.
P. O. Box 127, Lawrence, Kansas 66044

Terry Leatherman, Kansas Chamber of Commerce and Industry
500 Bank IV Tower, Topeka, Kansas 66603

Bill Morrissey, Director of Workers Compensation, Kansas Department of Human Resources,
401 Topeka Boulevard, Topeka, Kansas 66603

Lori M. Callahan, American Insurance Association
Bennett, Dillon & Callahan, 1605 SW 37th, Topeka, Kansas 66611

Charles Petrik, Kansas Farm Bureau
2627 KFB Plaza, Manhattan, Kansas 66502

Dennis L. Phelps, Kansas Trial Lawyers Association
608 N. Broadway, Wichita, Kansas 67214

Ed Peck, CIC, Anderson-Peck Agency
3035 S. Topeka, Topeka, Kansas 66611

Jackie Summerson, Manpower Temporary Services
2901 Burlingame Road, Topeka, Kansas 66614

George Welch, Workers Compensation, Self-Insurance Fund
Landon State Office Building, Room 951-S, Topeka, Kansas 66612

Jack Stewart, Alliance of American Insurers
1501 Woodfield Road, Schaumburg, Illinois 60195-4980

Mark Russell, LaSiesta Foods, Inc.
3139 East 10th, Topeka, Kansas 66607

Michael R. O'Neal, Attorney, Gilliland & Hayes, P.A.
335 North Washington, Suite 260, P.O. Box 2977, Hutchinson, Kansas 67504-2977

