Approved February 20, 1992
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

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

9:04 a.m./~~p~~m. on February 12, 19 92 in room 526-S of the Capitol.

All members were present except:
Rep. Flottman - excused
Rep. Sluiter - excused

Committee staff present:
Jerry Donaldson, Principal Analyst
Barbara Dudney, Committee Secertary

Conferees appearing before the committee:
Terry Leatherman, Exec. Dir., Kansas Industrial Council, KCCI
Vaughn Burkholder, attorney at law, Foulston & Siefkin, Wichita, Ks.
Gary Michael Korte, attorney for Iowa Beef Processors, Inc., Emporia, Ks.
Glen R. Bowman, President, Celltron, Inc., Galena, Ks.
David A. Cooper, Safety Manager, Cessna Aircraft Co., Wichita, Ks.
Roger Morris, Gill Studios, Inc., Lenexa, Ks.

The meeting was called to order at 9:04 a.m., by the chairman, Rep. Anthony Hensley.

Chairman Hensley stated that the purpose of the meeting was to hear proponents on House Bills no. 2872 and 2873. He said that these bills were requested for introduction by the Kansas Chamber of Commerce and Industry (KCCI). He explained that House Bill No. 2872 would enact a "fraud" statute under the workers' compensation law by prescribing penalities for certain false statements and representations made by claimants. He also described the four provisions of House Bill No. 2873: (1) to disallow use of "unauthorized medical" for an impairment rating, (2) to permit appeals of preliminary hearing decisions, (3) to make it clear that "work disability" compensation will not be paid to persons who can return to work and earn a comparable wage, and (4) to provide an "offset" for permanent total compensation paid to persons who qualify for retirement programs. He then introduced the proponents:

Terry Leatherman, Executive Director, Kansas Industrial Council, KCCI, provided each committee member a copy of "Workers' Compensation in Kansas: A Business Perspective" (attachment #1). He also provided and read written testimony in support of the two bills (attachment #2). He then introduced other proponents:

Vaughn Burkholder, attorney at law, Foulston and Siefkin, Wichita, stated that House Bill No. 2872 would enact a "fraud" statute to punish claimants who intentionally make false statements or knowingly fail to disclose material facts pertinent to their workers' compensation claim. He said they should also be required to repay any benefits they receive resulting from fraudulent claims. He went on to read written testimony in favor of House Bill No. 2873 (attachment #3). Mr. Burkholder answered questions from committee members.

Mr. Leatherman then introduced Gary Michael Korte, attorney for Iowa Beef Processors (IBP), Inc., Emporia, who distributed and read written testimony in support of the bills (attachment #4). In his testimony, Mr. Korte described several examples of fraudulent workers' compensation claims.

The next proponent was Glen R. Bowman, President, Celltron, Inc. Galena, who provided information regarding the increasing workers' compensation insurance costs to his company. He also cited three examples of claims filed against his company which he alleged to be fraudulent (attachment #5).

David A. Cooper, Safety Manager, Cessna Aircraft Company, Wichita, distributed and read written testimony in support of the bills, and which also contained a list of "Goals for Modern Workers' Compensation Systems" (attachment #6).

Roger Morris, Gill Studios, Inc., Lenexa, appeared in support of the bill. In his written testimony, he described how his company has established a safety committee comprised of four members, two each from management and the labor union. He said that, effective January 1, 1992, his company has implemented a safety incentive program to reward safe work habits (attachment #7).

Chairman Hensley announced that, due to the lack of time, two more proponents of House Bills no. 2872 and 2873 will be heard on Monday, February 17, 1992.

The meeting was adjourned at 10:05 a.m.

GUEST LIST

COMMITTEE: House Labor and Industry DATE: Feb 12, 1992

NAME	ADDRESS	COMPANY/ORGANIZATION
Terry Leatherman	Topeka	KCCI
Glen Bowman	Galena	Celltron/Inc
Gary Korte	Emporia	KCCI –
[illegible]	Wichita	KCCI
David A. Cooper	Wichita	Cessna / KCCI

WORKERS' COMPENSATION IN KANSAS
A Business Perspective

Presented by

Kansas Industrial Council

A Division of

Kansas Chamber of Commerce and Industry

February 1992

Labor + Industry
2-12-92
attachment #1-4

Introduction

Years of growing concern over the condition of workers' compensation peaked on June 1, 1991, when a bill arrived on the doorstep of the Kansas business community. On that day, a 24% average overall increase in workers' compensation insurance rates went into effect. The 24% insurance rate increase will generate over $70 million additional dollars in Kansas, which is more than all workers' compensation insurance premiums generated just 15 years ago.

Workers' compensation costs are not only spiraling in Kansas, but in the rest of the country. In the September 1991 edition of *Governing*, it is pointed out that national workers' compensation costs doubled in the last half of the 1980s, rising to $53 billion. According to *John Burton's Workers' Compensation Monitor*, an authoritative newsletter on this subject published by Rutgers University, the nation's employers now set aside 2.1% of their payroll to pay workers' compensation costs. That's up from 1.26% in 1984. For some manufacturing and construction companies prone to workplace injuries, workers' compensation costs reach up to 50% of the company's payroll.

Spiraling costs have sparked the Kansas business community to ask tough questions. Why are these costs soaring? Is the system out of control? How should the process be reformed? As these questions began to mount, the initial temptation was to point fingers at elements of the system. Blame our problems on greedy lawyers, profiteering insurers or doctors, employers who forego safety for profit, or employees taking advantage of the system.

However, in the summer of 1991, the Kansas Chamber of Commerce and Industry determined that finger pointing would not solve the problems with workers' compensation in Kansas. Instead, a volunteer Task Force of KCCI members was assembled. The Task Force began its work by accepting a basic principle; the Kansas workers' compensation system should ensure workers injured on the job prompt and effective medical care and fair compensation. The Task Force was then charged with reviewing all elements of the system and developing reform recommendations to return the system to achieving this important goal.

The work of the KCCI Task Force on Workers' Compensation is broken into six chapters, representing the elements which comprise workers' compensation in Kansas. Each chapter first attempts to inform, then presents a business perspective for improving this element in the workers' compensation process.

The reform recommendations in this report have been reviewed and endorsed by KCCI's Human Resources Committee and the Kansas Chamber's Board of Directors. In addition, a major division of KCCI, the Kansas Industrial Council, accepted the responsibility of publishing this report and will support the workers' compensation reforms in this report during the 1992 session of the Kansas Legislature.

The cost of workers' compensation may have driven the formation of the KCCI Task Force on Workers' Compensation, but making workers' compensation cheaper has not been the Task Force's mission. Kansas business has no intention to abandon its pledge to care for and compensate employees for job-related injuries and illnesses. The business perspective presented in this report is intended to reform the workers' compensation system to permit employers to achieve this important promise.

Terry Leatherman
Executive Director
Kansas Industrial Council
Kansas Chamber of Commerce and Industry

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CHAPTER 1....THE WORKERS' COMPENSATION LEGAL PROCESS

How the Kansas Workers' Compensation Legal Process Works.

What employers must provide workers' compensation in Kansas?

The Kansas Workers' Compensation Act requires virtually all Kansas employers to provide workers' compensation coverage for their employees. The only exceptions in the Act are:

1) Agricultural pursuits
2) Employers with less than $10,000 gross annual payroll
3) Members of a Firemans Relief Association which has elected not to come under the Act
4) Services performed by a qualified real estate agent as an independent contractor

When is a Kansas employer liable to pay workers' compensation benefits?

When an employee suffers an injury or illness which arises out of and in the course of employment, the employer is liable to provide workers' compensation. Kansas law provides three exceptions where an employer is not liable. Those exceptions are:

1. The injury was the result of the employee's deliberate intention to cause the injury.
2. The employee willfully failed to use a guard or protection provided by the employer.
3. The injury was substantially caused because the employee was intoxicated, or because of the employee's use of any non-prescribed drugs, chemicals, or other compounds or substances.

In drafting the first words in the Kansas Workers' Compensation Act, the Kansas Legislature saw fit to place the burden of proof upon the employee to show their right to workers' compensation benefits. However, the common practice in Kansas ignores this provision in Kansas law and instead places the burden with the employer and/or insurance carrier.

What is the first step in the system's legal process?

When an injured employee wishes to pursue workers' compensation benefits, the first step is to notify their employer of their injury within 10 days. Next, the employee is required to notify their employer of their intentions to pursue workers' compensation benefits through a written claim. An application for a hearing is filed with the Kansas Division of Workers' Compensation, which dockets the case. The next step is usually to request a "preliminary" hearing before an Administrative Law Judge (ALJ).

During the preliminary hearing, the ALJ typically determines whether the medical treatment and temporary benefits are appropriate. If the injured worker has reached medical stability, vocational rehabilitation can also be considered.

At this point, the process waits for the injured worker's medical condition to become stable or for the employee to conclude a vocational rehabilitation program. When that happens, the parties return before the ALJ for a final, or "regular" hearing. During this hearing, the employee's testimony is presented and dates are set when other evidence must be submitted. When all the evidence has been submitted, Kansas law requires the ALJ to render a decision on the case within 30 days.

Are there avenues to appeal ALJ decisions?

Once an ALJ has rendered a decision, all parties have 10 days to file for a review of the decision by the Kansas Workers' Compensation Director. At this appeal level, oral arguments are presented to the Director or an Assistant Director. New evidence is not permitted. The Director's office is required to reach a final decision on the appeal within 90 days.

The Workers' Compensation Director is required to wear two hats in Kansas. First, the person is an administrator responsible for the operation of a state agency. Second, the Director is a judge who renders decisions on cases. The Director's dual role has been criticized because the Director selection process is political, which may not be appropriate for a critical judicial officer in the state's workers' compensation process.

Besides the appeal avenue to the Director, parties are permitted to appeal to the district court where the injury occurred. Cases heard in district court are "trial de novo" based on the evidence submitted at the ALJ level. There are also critics of the district court appeals process who say workers' compensation law knowledge and philosophy vary widely among district court judges in Kansas.

Within 30 days after a district court decision is rendered, the parties may appeal to the Kansas Court of Appeals. Finally, cases can be appealed to the Kansas Supreme Court.

TABLE 1

WORKERS' COMPENSATION CASELOAD IN KANSAS
(For Fiscal Year 1991)

Accidents Reported	87,896
Applications for Preliminary Hearings	5,721
Applications for Regular Hearings	6,693
Applications for Director's Review	334
Awards Appealed to District Court	232
Decisions by Court of Appeals/Supreme Court	40

(SOURCE: 17th Annual Statistical Report, Division of Workers Compensation, Kansas Dept. of Human Resources, July, 1, 1991)

The Kansas Legal Process...The Business Perspective

Workers' Compensation Fraud

It is impossible to determine how prevalent workers' compensation fraud is in Kansas. However, the system is ripe for abuse, since no disincentive exists to discourage fraud. Currently, if a fraudulent claim is believed, valuable benefits are awarded. If fraud is detected, the only possible punishment is the perjury statute, in which sworn witnesses are exposed, but is very rarely pursued by authorities. In fact, if the fraud is uncovered after benefits have been paid, the fraudulent party is permitted to keep their "ill-gotten gains" in Kansas.

For an employer or insurance carrier which has been wrongfully required to pay benefits to a fraudulent party, their only recourse is to pursue reimbursement from the Kansas Workers' Compensation Fund. This is hardly a satisfactory remedy, since the Fund is financed by an annual assessment from employers.

To remedy this situation, Kansas should enact a workers' compensation "fraud" statute for persons who intentionally make false statements or knowingly fail to disclose material fact. The fraud statute should require the fraudulent persons to repay any benefits they have received and expose them to criminal penalties, including fines and/or imprisonment.

Streamline the legal process

Every state has a workers' compensation legal octopus, yet few have as many tentacles as the Kansas legal process, where a workers' compensation case may weave its way before an Administrative Law Judge, the Workers' Compensation Director, District Court, the Court of Appeals, and finally the Kansas Supreme Court.

Besides being cumbersome, a higher indictment of the state's legal process is its failure to achieve judicial consistency. A key component to the system's judicial process is the Workers' Compensation Director. Since the Director is a political appointee, a wide political pendulum is introduced into the judicial process.

A second area of judicial inconsistency appears in district courtrooms in Kansas. Social philosophy and workers' compensation law knowledge varies widely among district court judges. As a result, decisions rendered can vary, depending on which district court hears a case. **To bring greater judicial consistency and to streamline the appeals process, Kansas should eliminate appeals to the Workers' Compensation Director and to District Courts and should establish a Workers' Compensation Commission as the system's appeals arm.**

Thirty-four states currently have Workers' Compens Boards or Commissions in place to hear cases. By establishing a Commission which employs judges well-versed in workers'compensation law and are free of political influence, Kansans should receive more judicial consistency. However, a critically important element to achieving this goal is developing a Commission selection process which employs qualified judges and is free of political influence.

Permit appeals of preliminary hearing rulings

Currently, Kansas law greatly restricts appeals of preliminary hearings. The inability to appeal preliminary hearings results in manifest injustice which significantly increases costs when preliminary orders are improper, substantially lengthens the time required to complete litigation, and encourages misrepresentation of facts and evidence at the preliminary stage.

As a result, Kansas should permit appeals from preliminary hearings in the same fashion as appeals from regular hearings.

Develop dispute resolution techniques to reduce litigation

The need will always exist for a workers' compensation legal process to resolve differences in cases. **However, the Kansas Legislature should closely examine where differences typically develop and design dispute resolution concepts which would resolve areas of contention and steer the case away from a courtroom.**

One dispute resolution technique which would encourage fair and prompt resolution of workers' compensation claims is to establish attorney fee limitations. This could be achieved by requiring employers and insurance carriers in disputed cases to submit a written settlement offer to the employee. If the settlement offer is rejected and the case is litigated, the attorney fee would be based on the compensation awarded to the claimant above the settlement offer.

Another dispute resolution concept concerns advertisements by claimant attorneys. The advertisements promote workers' compensation litigation by attempting to link the acquisition of legal services with qualifying for workers' compensation benefits. Kansas should require these advertisements to disclose that workers' compensation is a right afforded to all employees injured on the job, regardless of whether they are represented by an attorney. This information should also be included on standard contracts between a claimant and their attorney.

CHAPTER 2....COMPENSATION FOR AN INJURED WORKER

How are Injured Workers Financially Compensated in Kansas?

A workplace injury occurs. The worker who suffered the injury is assured they will receive prompt and effective medical treatment by the Workers' Compensation Act. However, since medical science cannot always achieve the goal of making the employee as healthy as they were prior to their accident, the Act provides for financial awards to compensate the injured worker for the lasting effects of their injury.

Workplace fatalities

According to the Division of Workers' Compensation, there were 74 workplace fatalities in Kansas in fiscal year 1991. When a fatal workplace accident occurs, the Kansas Workers' Compensation Law calls for the payment of compensation to surviving dependents, up to a maximum of $200,000. In addition, funeral expenses of up to $3,200 are allowed by the Act.

TABLE 2

FATAL WORKPLACE ACCIDENTS IN KANSAS

	FY 91	FY 90	FY 89	FY 88	FY 87
TOTAL ACCIDENTS	87,896	81,501	72,674	69,933	67,386
FATALITIES	74	53	67	70	69

CAUSE OF FATAL ACCIDENTS IN FY 1991

Transportation accident (car & airplane)	19
Struck by or against an object	14
Contact with electricity, radiation, temp. extremes	7
Fall to a lower level or same level	6
Bodily reaction (stress or strain)	5
Caught in, under, between	2
Vibrating objects (rough machines)	1
Objects handled (cuts, knife, ax, glass, tools)	1
Miscellaneous	19

(Source:17th Annual Statistical Report, Division of Workers' Compensation, Kansas Dept. of Human Resources, July, 1, 1991)

Permanent total disability

When an injury has rendered an employee completely and permanently incapable of engaging in any type of substantial and gainful employment, they are permanently totally disabled. Individuals who are determined to have a permanent total disability are eligible for up to $125,000 in compensation benefits.

In the workers' compensation legal process, an injured worker can be determined to be permanently totally disabled if they have suffered the loss of vision in both eyes, the loss of both hands, both arms, both feet, or both legs, or any combination. In addition, total paralysis or incurable imbecility or insanity which are the result of an injury and are independent of any other causes may be determined to constitute a permanent total disability. Finally, a person can be declared to be permanently totally disabled through a judicial determination, "in accordance with the facts."

Permanent partial disability

An injured employee is also entitled to disability compensation when their injury results in a disability which is partial in character, but permanent in quality. There are two types of permanent partial disability compensation, scheduled injuries and "general body" disability.

Scheduled injuries

An employee who suffers a scheduled injury is eligible for a specific number of weeks of compensation. The amount of the weekly compensation is two-thirds of the individual's gross average weekly wage, up to a maximum of $289. The percent of disability is then multiplied by the weeks of eligibility to determine how long weekly compensation will be paid.

Compensation for all individuals with "scheduled injuries" is intended to compensate the injured worker for their loss of function, or "functional impairment." Scheduled injury cases do not qualify for compensation for loss of earning capacity, or "work disability."

Prior to 1987, carpal tunnel syndrome and similar "overuse" injuries to the arms were compensated as general body disabilities and were eligible for work disability awards. However, in 1987, the Kansas Legislature classified repetitive use injuries as a scheduled injury. In the legislative sessions that have followed, the classification of carpal tunnel syndrome has become a heated issue. Annual attempts have been made to reclassify repetitive use injury as a general body disability, making large work disability awards possible. These attempts have been opposed by the Kansas business community.

TABLE 3

Effective July 1, 1991
TABLE OF MAXIMUM BENEFITS
Kansas Workers' Compensation Law

Medical and hospital allowances		No Limit
Death benefit to dependents, spouse		$200,000
Burial Allowance		$3,200
Permanent total disability		$125,000
Temporary total disability		$100,000
Partial disability		$100,000
Maximum weekly benefits	(7/1/85 to 6/30/86)	$239
	(7/1/86 to 6/30/87)	$247
	(7/1/87 to 6/30/88)	$256
	(7/1/88 to 6/30/89)	$263
	(7/1/89 to 6/30/90)	$271
	(7/1/90 to 6/30/91)	$278
	(7/1/91 to 6/30/92)	$289

	Maximum Weeks	Compensation at $289 week
Arm	210	$60,690
Forearm	200	$57,800
Hand	150	$43,350
Leg	200	$57,800
Lower leg	190	$54,910
Foot	125	$36,125
Eye	120	$34,680
Hearing, both ears	110	$31,790
Hearing, one ear	30	$8,670
Thumb	60	$17,340
Finger 1st (index)	37	$10,693
Finger 2nd (middle)	30	$8,670
Finger 3rd (ring)	20	$5,780
Finger 4th (little)	15	$4,335
Great toe	30	$8,670
Great toe, end joint	15	$4,335
Each other toe	10	$2,890
Each other toe, end joint only	5	$1,445

Amputation through joint considered loss to next higher schedule. Partial loss of a member is compensable on a pro-rate basis.
Allowance of 10 percent and not over 15 weeks healing period.

"General body" disability

Permanent partial injuries which do not appear on the list of scheduled injuries are considered "general body" disabilities. Persons with a general body disability are eligible for 415 weeks of disability payments. To determine the weekly payment, the injured worker's gross weekly wage is multiplied by two-thirds, which is then multiplied by the percent of their disability. This computation formula determines the "functional impairment" compensation an individual will receive.

Unlike scheduled injuries, individuals with general body disabilities may also receive "work disability," if it is greater than the "functional impairment" compensation the employee would receive. How "work disability" is computed has been a subject of significant controversy, highlighted by a 1990 Kansas Supreme Court ruling in the case of Hughes v. Inland Container Corporation.

In Hughes, the court held that a two-part test must be performed to determine an injured employee's "work disability." First, you must determine the injured worker's percentage loss in ability to perform work in the open labor market. Second, you must determine the injured worker's pencentage loss in ability to earn comparable wages to those earned at the time of injury. In the Hughes case, these two percentages were averaged to determine the employee's overall work disability.

Since the Hughes decision, some lower courts have held an injured worker can receive a work disability award despite the fact they have returned to work at wages equal, or even greater, than their preinjury wages. The theory behind these decisions is the employee has sustained a loss in their ability to perform work in the open labor larket (the first part of the Hughes test) even though they are earning preinjury wages (the second part of Hughes).

Issues Involving Compensation....The Business Perspective

A re-examination of "work disability"

The Hughes decision was the Kansas Supreme Court's interpretation of the Kansas Legislature's 1987 reforms regarding "work disability." In 1987, the Legislature amended the portion of Kansas law relating to "work disability" to read,

> *"The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the ability to perform work in the open labor market and to earn a comparable wage has been reduced....There shall be a presumption that the employee has no work disability, if the employee engages in any work for wages comparable to the average gross weekly wage that the employee was earning at the time of the injury."*

The legislative intention in 1987 was clear. If an employer was able to re-employ an injured employee at a job which paid the same wages as they received before their injury, the employer would be required to pay "functional impairment" compensation to the employee, but not "work disability" compensation. If the employer was not able to re-employ the employee, but supported a successful vocational rehabilitation program for the injured employee which led to a new job at comparable wages, the employer would not be liable for work disability compensation. Work disability would apply only when the employer failed to find work at a comparable wage for their injured employee at their business or through vocational rehabilitation.

There is great logic behind this presumption. The purpose of workers' compensation is to get an injured worker healthy and return them to productive employment. By relieving employers of the responsibility of paying a large work disability award, legislators were creating a climate to encourage employers to get injured workers back to work.

However, since the Hughes decision, this noble intention has been lost. By permitting an injured employee to receive a large disability award even if they are back at work with no loss in wages, the courts have removed a large employer incentive to re-employ these workers or promote successful vocational rehabilitation.

The Kansas Legislature should again amend the "work disability" provision in the law to make it absolutely clear that work disability does not exist if the employee engages in any work for wages comparable to the average gross weekly wage that the employee was earning at the time of their injury.

Disability compensation for retirees

Permanent total disability compensation is awarded to individuals who suffer workplace injuries that have rendered them completely and permanently incapable of engaging in any type of substantial and gainful employment. However, in 19 states, permanent total compensation is reduced if an individual receiving compensation is eligible for Social Security income. In Colorado, legislation passed in 1991 calls for the cessation of permanent total benefits at age 65.

Conceptually, disability compensation is intended to replace income a worker can no longer earn following an injury. **With this concept in mind, Kansas should adopt an offset provision for compensation paid to individuals who have reached retirement age and/or qualify for retirement income programs.**

TABLE 4

STATES WITH A SOCIAL SECURITY OFFSET PROVISION IN PERMANENT TOTAL DISABILITY CASES (1/1/91)

ALASKA	MINNESOTA***
ARKANSAS	MONTANA
CALIFORNIA	NEVADA
COLORADO	NEW JERSEY
FLORIDA	NEW YORK
LOUISIANA*	NORTH DAKOTA
MAINE	OREGON
MASSACHUSETTS	UTAH
MICHIGAN**	WASHINGTON
	WISCONSIN

*La-Benefits reduced so that combined Social Security and W.C. benefits do not exceed 80% of pre-injury wages.

**Mich-Benefits are reduced if claimant is eligible for Social Security and such benefits are not being coordinated.

***Minn-After $25,000 in disability is paid, offset is applied to Social Security and other government disability benefits.

(SOURCE: 1991 Analysis of Workers Compensation Laws, U.S. Chamber of Commerce)

CHAPTER 3.... MEDICAL CARE FOR AN INJURED WORKER

How is medical care provided in workers' compensation?

A basic right of an injured worker is to receive prompt and appropriate medical treatment for their injury. The Kansas workers' compensation law provides that the employer has the duty to provide medical care and the right to select the treating physician for an injured worker. Inasmuch as the choice of a treating physician may have an impact on the progress and outcome of the claim (the length of time the injured employee is off work, the ultimate impairment rating, final work restrictions, etc.), the designation of the treating health care provider is significant.

While Kansas law permits employers to select the initial health care provider in workers' compensation, the law contains two important provisions to protect employees who are unhappy about the medical care they are receiving. First, the law permits the injured worker to request that the Director of Workers' Compensation appoint a new health care provider when the employer's choice of physician is not satisfactory.

A second "check and balance" allows an injured employee to incur up to $350 in medical charges for examination, diagnosis, or treatment with a doctor of the employee's choice without prior authorization by their employer or a workers' compensation court. This provision in the law is called "unauthorized medical" and is directed toward allowing an injured worker to obtain a "second opinion" from another source regarding appropriate health care.

Do health care costs represent a significant portion of the cost of workers' compensation in Kansas?

It should come as no surprise that providing medical care to injured employees is a major portion of the cost employers pay in providing workers' compensation. Nationally, medical expenses now represent more that 40% of the total cost of workers' compensation claims, up from 30% only a decade ago (*Nation's Business,* August 1991).

Spiraling health care costs appear to have reached Kansas as well. In 1991, the National Council on Compensation Insurance (NCCI) anticipates medical benefits paid by workers' compensation insurance providers to Kansas businesses will exceed $113 million, and will represent 45% of the estimated $251 million in losses anticipated during 1991. If self-insuring employers are included, around $130 million will be spent in 1991 to provide medical care to injured workers.

TABLE 5

MEDICAL COST VS. INDEMNITY COST IN KANSAS

YEAR	LOSSES PAID[1]	INDEMNITY %[2]	MEDICAL %[2]
1985	$120,755,675	61.2%	38.8%
1986	$134,554,116	60.1%	39.9%
1987	$147,885,631	56.8%	43.2%
1988	$164,553,813	55.8%	44.2%
1989	$184,857,801	54.7%	45.3%
1990	$222,309,953	—	—

(SOURCE: [1]Kansas Insurance Dept. [2]National Council on Compensation Insurance

How are the vocational rehabilitation needs of injured workers addressed in Kansas?

The concept behind vocational rehabilitation is that some employees, as a result of their workers' compensation injury, will be unable to perform work for the employer they had at the time of their injury. For those employees, vocational rehabilitation is an opportunity to receive the training and assistance they need to productively return to the labor force.

According to the Division of Workers' Compensation, there were 2,411 total rehabilitation cases on hand, as of June 30, 1991. During that year, the Division reports that 2,631 rehabilitation cases were closed. The Division also reports the average cost for rehabilitation service per case to be $2,464.

Medical Care Issues...The Business Perspective

Maintain "employer choice" of the treating health care provider

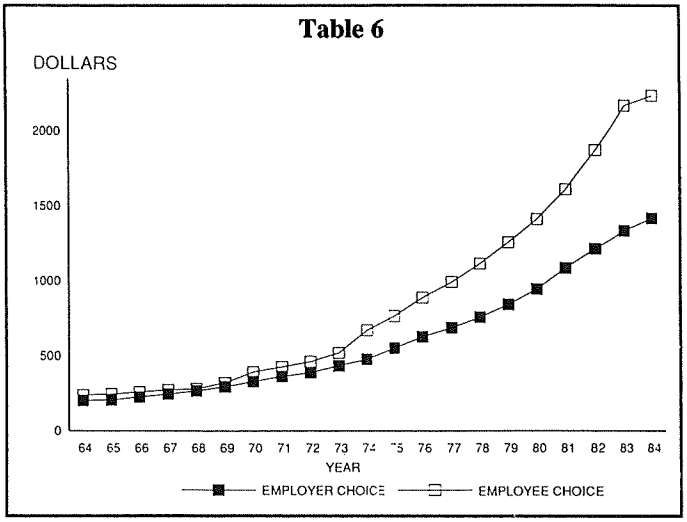
Who should select the initial health care provider in workers' compensation cases? This critical issue has become an annual battleground before the Kansas Legislature. Proponents of stripping this right from employers argue employees should be allowed to choose their own health care provider, since the employee has the greatest stake in their own treatment.

Unfortunately, the heated debate over this political issue is unfairly simplified to "employer choice" or "employee choice." In truth, the real effect of this change would be to abandon the current "checks and balance" approach to providing health care. While the current system permits employers to select the treating health care provider, the employee has safeguards. Those employee safeguards are using "unauthorized medical" and/or appealing for a physician change through the system's legal process.

In addition, a need to change the medical care selection process is not supported by statistics compiled by the Kansas Division of Workers' Compensation. Of the thousands of workers' compensation cases involving medical treatment in FY 1991, there were only 52 formal requests for a change in physician. In short, a need for change of the health care selection process does not exist in Kansas.

Finally, a body of statistical evidence exists which clearly indicates that medical costs skyrocket in states where "employer choice" is abandoned for "employee choice."

Table 6



NOTE: The graph represents the workers' compensation medical costs in a study of 33 states during a 20-year time period (1964-84). In every year, "employer choice" states had lower average medical costs with the difference growing throughout the sample period. The difference in medical costs grew from 15% in 1964 to 36.5% in 1984.

(SOURCE: National Council on Compensation Insurance Digest, September, 1991.)

"Unauthorized medical" should be restricted to medical care only

In this report, it has been pointed out the "unauthorized medical" allowance is an important element in Kansas' "checks and balance" approach to health care delivery. To balance a system which permits an employer to select the initial health care provider, "unauthorized medical" permits an injured employee to incur up to $350 in medical charges from a health care provider chosen by the employee.

At least, that is how the system is supposed to work. However, this $350 allowance is typically used by the worker for a "rating report" by a doctor specializing in the examination of workers' compensation claimants for the purposes of giving an impairment rating and physical restrictions.

Unauthorized medical is intended to be used to obtain a legitimate alternative opinion regarding an injured worker's condition and need for medical care. It is clearly unfair to require the employer to pay for the claimant's "expert" medical witness when the sole purpose of the examination is to obtain an opinion which will increase an award to the claimant. The misuse of the unauthorized medical allowance should be stopped, since this practice is outside the employer's responsibility to ensure that the employee is receiving proper medical attention for their injuries.

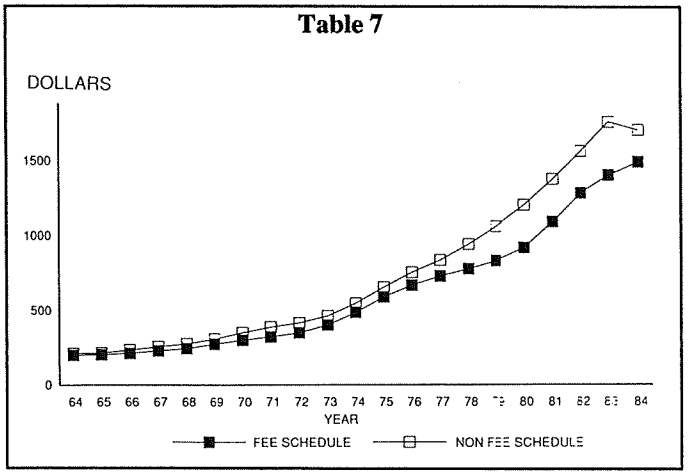
Implement a medical fee schedule and utilization review process in Kansas

In 1990, Kansas became the 30th state to recognize the need for medical cost containment in workers' compensation when a bill was signed into law calling for implementation of a medical fee schedule and utilization review process. Unfortunately, Kansas does not appear close to becoming the 27th state to implement a medical fee schedule.

The legislation approved in 1990 called for an advisory panel to develop a medical fee schedule which would "be reasonable, shall promote health care cost containment and efficiency with respect to the workers' compensation health care delivery system, and shall be sufficient to ensure the availability of such reasonably necessary treatment, care and attendance to each injured employee to cure and relieve the employee from the effects of their injury."

As the months mount since this call for action became law, the medical fee advisory panel should be encouraged to achieve its mission to develop a medical fee schedule which controls the cost associated with medical treatment and vocational rehabilitation in workers' compensation.

Table 7



NOTE: The graph represents the workers' compensation medical costs in a study of 33 states during a 20-year time period (1964-1984). The difference in "fee schedule" and "non-fee schedule" states has grown from 5.5% in 1964 to 12.5% in 1984, with differences in excess of 20% in the early 1980's.

(SOURCE: National Council on Compensation Insurance Digest, September, 1991.)

Achieve the legislature's intentions regarding vocational rehabilitation.

In legislation passed in 1987, the Kansas Legislature created certain procedures which must be complied with in order for an employee to be eligible for a vocational rehabilitation assessment. However, since the legislation became law, vocational rehabilitation assessments are now being awarded without the claimant being required to comply with the specific criteria in the statute.

Vocational rehabilitation is intended as a source of retraining for employees who can not return to their employment or find other employment at a comparable wage. **The workers' compensation system should follow the specific legislative provisions adopted in 1987 and disallow the use of vocational rehabilitation as a guarantee of employment when an employee, through their own actions, ceases employment or is unwilling to obtain new employment in the open labor market.**

CHAPTER 4.... WORKERS' COMPENSATION INSURANCE IN KANSAS

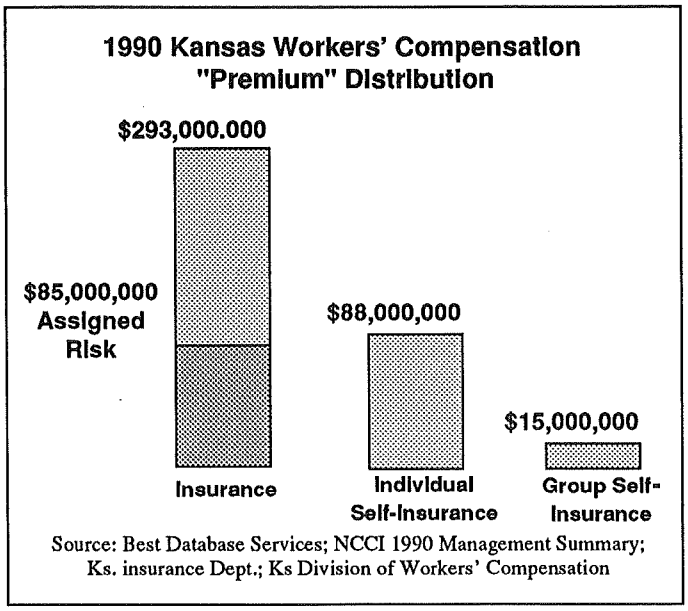
How do Kansas employers provide workers' compensation insurance?

In Kansas, employers meet their obligation to provide mandatory workers' compensation coverage in several ways: the purchase of insurance, individual self-insurance, group self-insurance, or by participating in the residual market.

To operate as a self-insurer, an employer must be qualified by the state to provide self-insurance. According to the Division of Workers' Compensation, there were 160 businesses qualified as self-insurers in 1991, representing approximately $88 million in premium dollars. There were seven group funded self-insurance pools.

The residual market, or assigned risk plan, is for employers who cannot purchase coverage through normal workers' compensation insurance markets. The residual market has become the largest segment of the total workers' compensation insurance market. In fact, its premium volume now more than doubles that of the largest single private writer of workers' compensation insurance. According to NCCI's Workers' Compensation Reinsurance Pools Management Summary for calendar year 1990, the Kansas assigned risk pool has grown from $68.6 million in written premium in 1989 to $84.6 million in 1990, and from 24.1% of the market to 27.7%.

Table 8



Source: Best Database Services; NCCI 1990 Management Summary; Ks. insurance Dept.; Ks Division of Workers' Compensation

Table 9

WORKERS' COMPENSATION INSURANCE EXPERIENCE IN KANSAS

Year	Premium Written	Increase/Decrease
1971	$30,278,679	———
1972	$34,622,948	+12.5%
1973	$37,024,905	+6.5%
1974	$48,829,189	+24.2%
1975	$60,931,943	+19.9%
1976	$74,905,244	+18.7%
1977	$95,030,094	+21 2%
1978	$111,624,578	+14 9%
1979	$118,240,623	+5.6%
1980	$141,189,216	+16.3%
1981	$156,207,756	+9 6%
1982	$154,944,245	- 1%
1983	$147,137,981	-5.3%
1984	$141,097,428	-4.2%
1985	$172,985,620	+18.4%
1986	$208,167,277	+16.9%
1987	$223,674,161	+6.9%
1988	$257,039,527	+13.0%
1989	$264,102,264	+2.7%
1990	$293,475,000	+10.0%
1991	$334,562,000 (est.)	+12.3%, (est.)

(Sources: Kansas Insurance Department, Best Database Services)

Why are workers' compensation insurance costs increasing?

On July 1, 1991, workers' compensation insurance rates were authorized to be increased by 24% in Kansas. The 24% average overall increase was the largest in Kansas history. In terms of dollars, the rate increase meant Kansas employers will pay insurance companies $77 million additional dollars for workers' compensation insurance, and over $340 million dollars overall. In approving the rate increase, Kansas Commissioner of Insurance Ron Todd said, "Kansas private insurance companies have been paying $1.20 in benefits and expenses for every $1.00 of income received in premiums."

While benefits, particularly medical compensation, have been rising at dramatic levels in the last few years, there are also numerous expenses involved in administering workers' compensation insurance. These include the transactional costs for defending a claim, which must be paid even if no indemnity or medical benefits are made, overhead expenses, taxes including fees to the Division of Workers' Compensation and premium taxes, the assessment for the residual market, the assessment for the second injury fund, and profit.

The assigned risk plan represents the major "hidden cost" of workers' compensation in Kansas. As of December 31, 1990, private insurance companies writing workers' compensation insurance in Kansas were required to pay an assigned risk plan assessment of 22.9%. In 1982, the assigned risk plan assessment was 1.36%.

In other words, for every dollar taken in premium by private insurance companies, 22.9 cents must be paid to fund the assigned risk plan. The assigned risk assessment is not paid by self-insured businesses or pools.

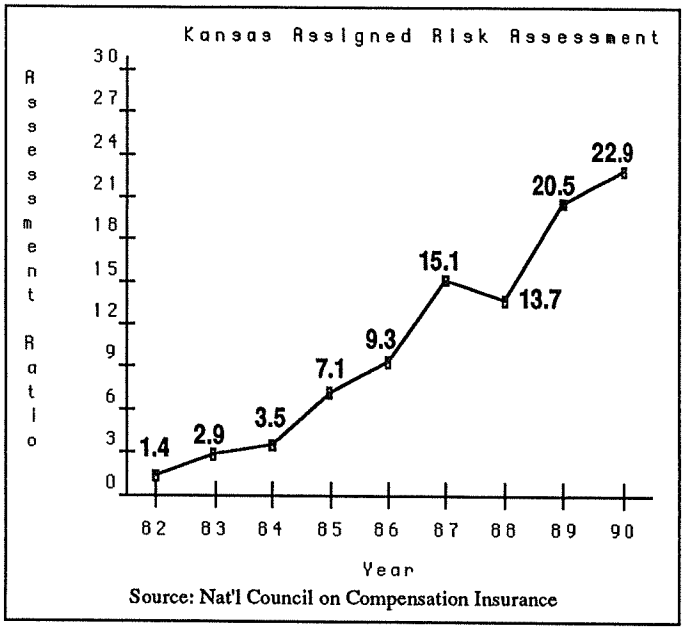
Another "hidden cost" is the 14% assessment required to finance the Kansas Workers' Compensation Fund, also known as the "second injury fund." In 1990, insurance carriers were required to pay 14 cents of every premium dollar to maintain the second injury fund. Unlike the assigned risk assessment, self-insuring pools and individual self-insureds also contribute to the second injury fund.

What steps have been taken to lower the Assigned Risk Assessment?

In an effort to reduce the plan's underwriting losses and to provide employers an incentive to reduce claims and leave the plan, Kansas implemented an Assigned Risk Adjustment Program (ARAP) in 1990. The ARAP Program contains a premium surcharge formula for assigned risk employers, based on their individual loss experience, up to a maximum surcharge of 25% of premium.

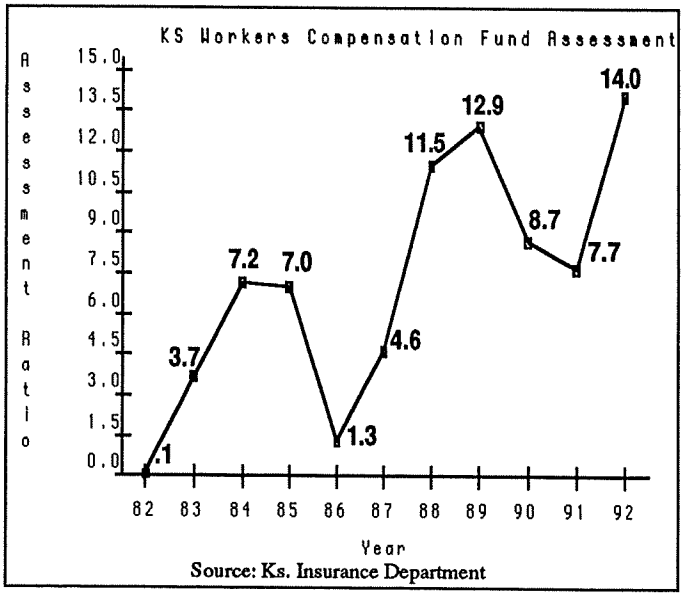
A legislative proposal has also been considered to lower the assigned risk assessment load by requiring group funded self-insurance pools to pay the assessment. It is suggested the exemption from paying the assigned risk assessment is an artificial incentive to create self-insurance and pooling programs, because such programs can avoid over 20% of the normal cost of providing workers' compensation coverage. However, opponents to this proposal question the ability of self-insurance programs to continue, if required to contribute to the cost of the assigned risk plan.

Table 10a



Source: Nat'l Council on Compensation Insurance

Table 10b



Source: Ks. Insurance Department

What is the Kansas Workers' Compensation Fund?

The Kansas Workers' Compensation Fund is also known as the Second Injury Fund, and covers benefits paid to workers with a pre-existing disability which contributes to a workplace injury. The Fund also covers overpayments to insured workers by insurance companies where required by statute. In addition, the fund assumes the benefits responsibilities of insolvent employers.

In FY 1991, total funds available in the workers' compensation fund totaled nearly $25 million. Of that, 68% of the revenue was generated from assessments, 15% came from a general fund entitlement from the state of Kansas, and the rest was a carryover from the previous year.

When the workers' compensation fund was first created, all revenue for the fund came from Kansas general tax revenues. In the mid-70s, the policy of sharing the workers' compensation fund responsibility by the state and employers began when the annual state contribution to the fund was capped at $4 million. In 1992, the fund's financial contribution arrangement will change again, when the state of Kansas halts its financial contribution to the workers' compensation fund.

Table 11

KANSAS WORKERS' COMPENSATION FUND

	FY 91	FY 90	FY 89	FY 88	FY 87
Impleadings	2,772	2,181	1,933	1,862	1,603
Closed Cases	1,578	1,811	1,472	1,455	1,107

	ASSESSMENT	FUNDS AVAILABLE	EXPENDITURES
FY 91	$17,030,546	$24,966,096	$24,951,676
FY 90	$17,137,820	$25,140,635	$21,381,373
FY 89	$22,595,122	$26,852,851	$23,085,771
FY 88	$17,983,751	$22,231,729	$22,222,603
FY 87	$6,542,599	$11,741,087	$11,724,535

(Source: Kansas Insurance Dept.)

Workers' Compensation Insurance...The Business Perspective

KCCI's role in workers' compensation insurance increase requests

In many ways, insurance rate increases are a reflection of the law and not an area of reform. However, when rate increase requests directly lead to tens of millions of dollars from Kansas employers, it is also important to explore what role KCCI, as the voice of Kansas business, should play when rate increase requests are filed.

After the filing of future rate increase requests, KCCI will contact the National Council on Compensation Insurance (NCCI) to obtain complete information regarding the rate filing. With the utilization of detailed claim information beginning in 1992, additional data information gathered by insurance companies will allow employers to perform better risk management, as well as providing public policymakers with relevant data for effective cost control.

KCCI will to continue to inform employers of rate filings through mailings and informational meetings, and work toward education of employers about the workers' compensation system, so they can be better educated consumers.

Kansas should not implement a competitive state insurance program

A proposal has been introduced in Kansas to add another element to the state's insurance marketplace, a state-operated workers' compensation fund. State funds currently exist in 20 states. Six of the state funds are monopolistic, which means private insurance companies are not permitted to write workers' compensation insurance in those states. In the other 14 states, the state fund competes with private insurance companies for workers' compensation insurance business.

Supporters of the competitive state fund concept say these programs can offer employers lower insurance rates, since the state programs have no profit motive and less tax liability than private insurers. In addition, supporters contend state funds offer residual market employers the best opportunity to locate insurance outside of the assigned risk plan.

However, the creation of a competitive state insurance fund program is not a viable solution to the current Kansas workers' compensation insurance dilemma, since state-created competitive funds merely add another insurance carrier to the market without addressing the cause of rate inadequacy, which is escalating medical costs and indemnity benefits.

Additionally, the recent experience in several competitive fund states of funds being raided by state legislators to cover shortages of state general revenues is another reason that state funds do not assist in solving workers' compensation problems, and may in turn create new problems.

The concept of "24 hour coverage" is not a viable solution for Kansas

In several states, a novel insurance concept which dissolves the boundary between occupational and nonoccupational accidents and diseases is being considered. The concept is called "24 hour" insurance coverage. The mechanisms for achieving the dissolution involve integrating the coverage and benefits offered by state workers' compensation systems with the coverage and benefits available through other public and private insurance programs.

State legislative activity in this area is being led by Florida, which included a provision permitting employers to obtain a 24 hour insurance policy and a policy to insure indemnity benefits in order to satisfy that state's workers' compensation requirements. Other states which are considering 24 hour styled legislation include California, Minnesota, Oregon and Alaska.

Any 24 hour coverage program would need to harmonize the disparate features of workers' compensation benefits with employee benefit programs. The former are mandated by statute and the latter are offered by employers as a part of a bargain for compensation package. In addition, problems with regard to funding such a program would need to be carefully considered, in light of the fact that workers' compensation is totally employer funded, while current disability and health benefits are often at least partially funded by employees. The use of deductibles and co-payments must also be addressed when considering the possibility of 24 hour coverage.

The future of the Workers' Compensation Fund should be explored

The original concept of the Workers' Compensation Fund was to encourage employers to employ individuals with disabilities, by providing a fund to pay workers' compensation benefits to these employees if their pre-employment disability contributed to an injury or illness. However, passage of the Americans with Disabilities Act (ADA), and companion legislation in Kansas, should lead to a re-evaluation of the need for the Workers' Compensation Fund.

The ADA is sweeping civil rights law which demands employers make employment decisions on a person's qualifications and permits the disabled to compete for employment by requiring employers to reasonably accommodate their needs. The ADA challenges all Americans to view the disabled community in a new light. Instead of seeing how a disability limits a person, look at how accommodations will permit them to be productive.

In light of the ADA, the Kansas business community should closely examine how the state's workers' compensation system views disabled Kansans. That examination should begin with the need for the Workers' Compensation Fund to provide an employer incentive to hire the disabled, since it is now illegal not to employ qualified persons because of a disability.

CHAPTER 5....KANSAS WORKERS' COMPENSATION ADMINISTRATION

Who is in charge of workers' compensation in Kansas?

The responsibility for administering the Kansas Workers' Compensation Act rests with the Kansas Division of Workers' Compensation in the Kansas Department of Human Resources. The Division of Workers' Compensation employs 60 people who manage the various aspects of workers' compensation in the state.

Management of this agency is the responsibility of the Kansas Workers' Compensation Director, who oversees the four sections which make up the Division of Workers' Compensation.

1. Judicial

The Judicial section is comprised of Administrative Law Judges, who hear cases on request by an injured worker, employer, or insurance company. Kansas law permits the Division to employ 10 Administrative Law Judges.

2. Administrative

The Administrative section processes all incoming documents and provides information on programs or individual cases. This section is also responsible for the program to permit employers to self-insure their workers' compensation liability.

The Administrative section also publishes information which is available to employers. Publications include the Division's quarterly newsletter, *News and Views from Workers' Compensation* and the Division's annual Statistical Report.

3. Claims Advisory

The Claims Advisory section is an informational arm of the Division for injured workers, employers, insurance carriers and attorneys regarding workers' compensation liabilities.

Another informational service provided is the Dial-Up Research Program.

4. Rehabilitation

The Rehabilitation section directs and audits the vocational and physical rehabilitation needs of injured workers with insurance carriers, self-insureds, private vocational rehabilitation vendors and the Department of Social and Rehabilitation Services to monitor a worker's return to employment through appropriate vocational rehabilitation services.

The Secretary of the Kansas Department of Human Resources is responsible for appointing the Director of Workers' Compensation in Kansas. Unlike many other unclassified positions in state government, the Director is appointed to serve a four-year term in office, rather than serving at the pleasure of the Secretary. In addition, the appointment of the Director is performed at the mid-term in the gubernatorial election cycle.

Funding for the Division of Workers' Compensation comes from annual assessments of insurance companies writing workers' compensation insurance in Kansas and from self-insuring employers. Individual assessments are based on workers' compensation losses during a given calendar year. In FY 1992, the Division of Workers' Compensation estimates their budget to be $3.2 million.

TABLE 12

FOR INFORMATION ABOUT WORKERS' COMPENSATION IN KANSAS

Kansas Department of Human Resources
Division of Workers' Compensation
600 Merchants Bank Tower, 800 S.W. Jackson
Topeka, KS. 66612-1277

General Information	(913) 296-3441
Director's Office	(913) 296-4000
Rehabilitation	(913) 296-2050
Claims Advisory	(913) 296-2996
or toll free	(800) 332-0353
Self-Insurance	(913) 296-3606
Topeka Law Judges	(913) 296-7012

Workers' Compensation Administration....A Business Perspective

The workers' compensation director selection process

The Kansas Legislature has recognized how divisive partisan politics can be in the administration of workers' compensation by developing a Director selection process which protects the Director following a change in gubernatorial administration. However, legislative efforts have not slowed the swinging of the pendulum which sways across the political spectrum in the appointment process of Directors of the Division of Workers' Compensation.

The most effective step the Kansas Legislature could take in depoliticizing the position of Director would be in removing judicial responsibility from the office. In addition, the Legislature should abandon the current process of appointing a Director to a four-year term for the process used in selecting other unclassified government positions of serving at the pleasure of the appointing Secretary.

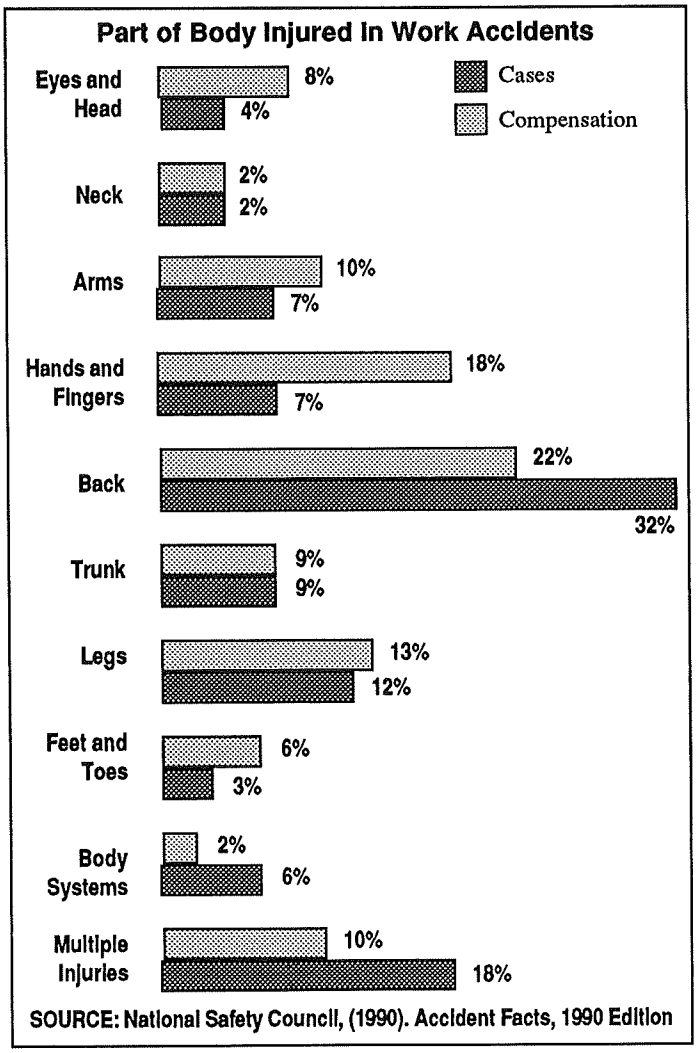
CHAPTER 6...A CHALLENGE TO KANSAS BUSINESS FOR GREATER SAFETY

Regardless of any reforms of the Kansas workers' compensation system, one fact will remain. Once a workplace injury occurs, it will always be costly, in human terms and dollars. The only way to control workers' compensation is to provide a workplace where injuries do not occur.

The most important factor in improving safety is attitude. If the employee has a positive attitude toward safety and their job, that employee will be a safer worker. If a worker has a positive attitude toward supervisors, management, and fellow workers, that employee will be a safer worker. If a worker is convinced management is really concerned about their safety, the employee's attitude will be reflected in performance.

Another key factor is education. Most injuries are caused by an "unsafe act." The employee was not trained to do the job functions properly, took a short cut, or thought "it won't happen to me."

Table 13



SOURCE: National Safety Council, (1990). Accident Facts, 1990 Edition

Another important factor is empathy, or the ability of employers to place themselves in the position of employees. The ability to look at a workplace situation from another set of eyes lets you balance issues of safety against the too-often competing issue of productivity.

Ideas to consider for your business' safety program

A safety program requires commitment from all levels of management. The following are elements which are included in safety programs at existing Kansas businesses.

*Every level of management must accept responsibility for providing a safe place to work.

*A Safety Committee is a resource to help discover hazards and promote safety. A committee of managers and employees can play an important role; however, the ultimate responsibility rests with management.

*Safety should be a condition of employment. As one Kansas company describes it, "Safeti" is spelled with an "I" and each employee is responsible to work safely.

*When an injury occurs, hold a meeting at the accident site, where the injured employee describes what occured to co-workers and management. However, it is critical to make clear the meeting is not intended to embarrass the worker, but to help others from experiencing the same injury and develop solutions for problems.

*Identify how a work environment contributes to injury and how to correct problems through ergonomics.

*Require ongoing safety training. Besides job-specific safety training, it is important to stress safety, on and off the job. This can be accomplished through programs for employees which stress safe lifestyles. Most Kansas communities have programs available on subjects like drug and alcohol abuse, mental health, or proper nutrition and diet. An added benefit of non-work health programs is signaling to employees your concern for them, on and off the job.

*Keep the safety culture alive by celebrating safety milestones. A celebration can be as simple as providing coffee and donuts at break or presenting safety-conscious employees with a gift. Celebrations promote safety by rewarding past performance and directing employees toward the next celebration milestone.

...vide a "light duty" program

An important component of a work safety program is providing "light duty." Light duty is an option employers face when an employee suffers an injury that will temporarily prevent them from returning to normal duties. When developing a light duty program, consider the following:

* People return to full productivity sooner when they remain in the workplace, even though they may not initially be able to perform their normal job or work a full shift. The employee feels better about their condition if they are back in normal surroundings.

* It takes effort to arrange for light duty, or different worker schedules. However, any work that the employee is able to perform is preferable to paying and receiving no services.

* Community doctors should be invited to the workplace for "coffee and a tour" of the facilities, to help the doctors understand a business' willingness to work with them in providing light duty or partial shifts to aid in the recovery of their patients. Be sure the doctor knows that the company will want to leave the decision regarding light duty in their hands, but the company will cooperate with the patient's recovery by providing light duty. This offering must be made with much sincerity and with credibility. Promises must be kept or the doctor may not permit light duty the next time. During the tour of the plant, point out the types of jobs employees perform, as well as examples of light duty jobs.

* Be willing to accommodate employees with temporary light duty during a difficult illness that is not work related. This attitude breeds a culture of being at work each day. Employees recognize the company cares enough about them to accommodate their needs during abnormal times.

The Kansas Safety and Consultation Service...an employer resource

The Kansas Department of Human Resources offers a free and confidential consultation program which includes the following menu of services.

*Written Program Review
*Record Keeping Review
*A walk through of production and warehouse operation to identify physical hazards
*Sampling of operations for excessive noise or high levels of air contaminates
*Employee training
*Ergonomics Hazard Review

If you are interested in finding out more about this service, call the Kansas Department of Human Resources at (913) 296-4386.

MEMBERS OF THE KCCI TASK FORCE ON WORKERS' COMPENSATION

Bud Anderson, Hallmark Cards, Topeka
Bill Barnes, Modine Manufacturing, Emporia
Tammy Benschoter, Jostens, Topeka
Pamela Blackburn, Atkinson Industries, Atchison
Vaughn Burkholder, Foulston & Siefkin, Wichita
Lori Callahan, Bennett, Dillon & Callahan, Topeka
Rebecca Campbell, Tomahawk Construction, Kansas City
Tom Carr, Occupational Center of Central Kansas, Salina
Jeff Casale, Zephyr Products, Leavenworth
Terry Clites, Blackburn Inc., El Dorado
David Cooper, Cessna Aircraft Company, Wichita
William Duckworth, Stauffer Communications, Topeka
Kay Fischer, Capital City Distribution, Topeka
Joe Furjanic, Kansas Chiropractic Association, Topeka
Charles Harvey, Hallmark Cards, Kansas City, Mo.
Linda Hibbs, GEC Precision Corporation, Wellington
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Phil Jarvis, Rubbermaid, Winfield
Dina Jemison, DINA, Pittsburg
Jack Kerns, Funk Manufacturing, Coffeyville
Gary Korte, IBP, Inc., Emporia
Barbara Logan, Automotive Controls Corporation, Independence
Buz Lukens, Insurance Management Associates, Wichita
Larry Magill, Independent Insurance Agents of Kansas, Topeka
Becky Majher, Rubbermaid, Winfield
Susan Millard, The Quaker Oats Company, Topeka
Roger Morris, Gill Studios, Inc., Shawnee Mission
Vernon Nikkel, Excel Industries, Hesston
Joseph Noble, Adams Business Forms, Topeka
Jim Parmelee, Taylor Forge Engineered Systems, Paola
Greg Peck, Hill's Pet Products, Topeka
Georgianna Peterson, Manville Sales Corporation, McPherson
Karl Romig, Great Western Manufacturing Company, Leavenworth
Jim Schwartz, Kansas Employer's Coalition on Health, Topeka
Tom Slattery, Associated General Contractors of Kansas, Topeka
Alan Steppat, Pete McGill & Associates, Topeka
Jacki Summerson, Manpower Temporary Services, Topeka

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Kay Fischer, Capital City Distribution, Topeka
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Vernon Nikkel, Excel Industries, Hesston
Ronald Nold, The Coleman Company, Wichita
Jim Parmelee, Taylor Forge Engineered Systems, Paola
Norm Sherbert, General Motors, Denver, Colo.
Clarence Smith, Automotive Controls Corporation, Independence
Mike Smith, Gates Rubber Company, Iola
Sid Symes, Didde Corporation, Emporia
Jerry Waddell, Kansa Corporation, Emporia
Rick Wallace, St. Luke's Hospital, Wellington
Anthony Wayne, Goldblatt Tool Company, Kansas City

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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 2872 & 2873 **February 12, 1992**

KANSAS CHAMBER OF COMMERCE AND INDUSTRY
Testimony Before the
House Labor and Industry Committee
by

Terry Leatherman
Executive Director
Kansas Industrial Council

Mr. Chairman and members of the Committee:

I am Terry Leatherman. I am the Executive Director of the Kansas Industrial Council, a division of the Kansas Chamber of Commerce and Industry. Thank you very much for the opportunity to explain why the Kansas Chamber supports the passage of HB 2872 and HB 2873, which encompass a portion of the business perspective of how the Kansas workers' compensation system should be reformed.

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.

Labor + Industry
2-12-92
Attachment #2-1

HB 2872 and HB 2873 are the product of a major initiative by the Kansas Chamber to study workers' compensation and develop needed reforms. Along with my testimony, I have distributed a copy of **Workers' Compensation in Kansas...A Business Perspective** to the members of the Committee. I hope you find this report to be an informative review of the workers' compensation process in our state and an objective analysis of how the system could be improved to benefit employers and injured workers.

HB 2872 and HB 2873 contain five workers' compensation reforms which the Kansas Chamber supports. In brief, those reforms are:

1) To restore employer confidence that workers' compensation only benefits workers who are truly injured on the job, a workers' compensation "fraud" statute should be enacted to expose individuals who pursue benefits or payments through fraudulent actions to civil and criminal penalties.

2) To encourage employers to support efforts to re-employ employees who suffer workplace injuries, make it clear that "work disability" compensation will not be paid to individuals who can return to work and earn comparable wages.

3) To allow all parties an opportunity to correct an injustice delivered at the administrative law judge level, permit preliminary hearing decision to be appealed in the same manner as regular hearing decisions.

4) To halt the current practice of using employer "unauthorized medical" for non-medical care purposes, clarify the legislative intention of unauthorized medical is for medical care and may not be used for "disability ratings."

5) To limit an employer's exposure in permanent total disability cases replacing income lost by an employee, reduce compensation benefits by the amount the employee receives in retirement income.

Two of the members of KCCI's Task Force on Workers' Compensation have agreed to appear before the Committee today to explain the provisions in much further detail than I have and to answer the Committee's questions regarding HB 2872 and HB 2873. They are Mr. Vaughn Burkholder, an attorney with the Wichita law firm of Foulston and Siefkin, and Mr. Gary Korte, the Senior Litigation Attorney for IBP, Incorporated in Emporia.

Mr. Chairman, thank you for this forum to present the business perspective of reform for the Kansas workers' compensation system. With your permission, I would like to present Mr. Burkholder and Mr. Korte.

H.B. 2872

February 12, 1992

Testimony Before the
House Labor and Industry Committee
by
Vaughn Burkholder
Attorney at Law
Foulston & Siefkin

Mr. Chairperson and Members of the Committee:

I am Vaughn Burkholder. I represent numerous employers with regard to their workers compensation claims, and am a member of the Kansas Chamber of Commerce and Industry Task Force on Workers Compensation. Thank you for this opportunity to express the reasons why I am in favor of the passage of HB 2872.

Under current Kansas Law, there is no real disincentive for individuals to present fraudulent workers compensation claims. Presently, if a fraudulent claim is believed by the administrative law judge, valuable benefits may be received by the defrauding claimant. If the fraud is discovered before benefits are awarded, the claimant simply does not receive the benefits. If, on the other hand, the fraud is uncovered after benefits are received, the fraudulent claimant is not required to repay the benefits. Instead, the only remedy of the defrauded employer is to request reimbursement from the Workers Compensation Fund. However, since the Fund is totally financed by an annual assessment from employers and insurers, this merely amounts to the defrauded party being required to reimburse itself.

As it currently exists, an unscrupulous claimant has no reason not to "take a chance" on obtaining benefits by fraud. The perjury laws (which are applicable to all sworn testimony) are rarely if ever invoked in workers compensation claims. Quite simply, a fraudulent claimant has nothing to lose.

To remedy this situation, Kansas should enact a workers compensation "fraud" statute such as HB 2872 to punish persons who intentionally make false statements or knowingly fail to disclose material facts. Not only should fraudulent claimants be required to repay any benefits they have received, they should also be exposed to criminal penalties for their actions.

Similar provisions already exist in the unemployment compensation statutes to deter fraud in that area of employment benefits. Therefore, HB 2872 should also be enacted into the workers compensation statutes to discourage fraudulent testimony by claimants.

I urge that this committee support the passage of HB 2872.

Labor & Industry
2-12-92
Attachment #3-1

HB 2873 February 12, 1992

Testimony Before the
House Labor and Industry Committee
by
Vaughn Burkholder
Attorney at Law
Foulston & Siefkin

Mr. Chairperson and Members of the Committee:

I am Vaughn Burkholder. I represent numerous employers with regard to their workers compensation claims, and am a member of the Kansas Chamber of Commerce and Industry Task Force on Workers Compensation. Thank you for this opportunity to express the reasons why I am in favor of the passage of HB 2873.

There are several areas in which existing workers compensation legislation needs to be amended to promote fair utilization of the benefits provided thereunder.

Section 1: Unauthorized Medical Allowance

One of the problem areas is the "unauthorized medical allowance" of $350.00 provided in the Workers Compensation Act. The original intent of this provision was undoubtedly to allow an injured worker to obtain a second opinion regarding diagnosis and/or treatment, if the worker was dissatisfied with the medical care authorized by the employer. In many instances, the $350.00 allowance is properly used for a bona fide second opinion of this nature.

However, abuses of the $350.00 allowance frequently occur. Many times, it is simply used by the claimant's attorney to obtain an examination and "rating report" from a physician, the sole purpose of which is to give the claimant a higher impairment rating and more restrictive work limitations than the authorized treating physician has found appropriate. In these instances, the unauthorized medical allowance is not being legitimately used for a second opinion that benefits the health of the injured worker. Instead, the $350.00 is being used solely for the purpose of litigation. In effect, the employer is made to pay the costs of the "expert witness" chosen by the claimant's attorney.

This is an unfair use of the $350.00 unauthorized medical allowance and is certainly not the use for which it was originally intended. Accordingly, HB 2873 is designed to address this problem by ensuring that the unauthorized medical allowance is properly used where the employee has questions about the appropriateness or efficacy of the medical care which his employer is required by statute to provide.

Section 2: Retirement Benefits Offset

The second area of concern occurs when an injured worker who is receiving permanent total disability benefits becomes eligible to receive retirement benefits. Permanent total disability benefits are designed to compensate an injured worker for the complete loss in ability to earn wages in the open labor market because of a work-related injury. In other words, permanent total disability benefits replace the worker's lost income.

With this "income replacement" theory underlying the payment of permanent total disability benefits, it does not make sense that a claimant should simultaneously be receiving retirement benefits, which are also designed to take the place of wages once the worker has decided to leave the open labor market and retire. Otherwise, the claimant is in effect "double dipping" by receiving two payments of benefits, each of which is designed to replace loss of income. Once the worker becomes eligible for retirement benefits, whether public or private, then it is time that the statutorily mandated workers compensation payments be reduced by the amount of the retirement benefits for which the worker is eligible.

Once again, this is another area in which the statutory language needs to be amended so as to further the underlying purpose of the Act.

Section 3: Work Disability

One of the most important areas of concern regards the granting of "work disability" where the injured worker has the ability to return to work at a wage comparable to what the worker was earning at the time of the injury. The current statute provides a presumption of no work disability above the medical impairment where the worker can make the same wages after the injury as before. However, the courts have begun to interpret the presumption so liberally that even employees who are back to work at the same job and making the same wages as before the injury are being found entitled to work disability exceeding their medical impairment rating.

These "windfall" awards are a major reason why the Workers Compensation Act was amended in 1987 to base work disability on a percentage of lost wage earning ability in the open labor market rather than on a lost percentage of the ability to perform the precise duties of the job the claimant was performing at the time of their injury. However, because the law as currently written allows the judge to find that the presumption is rebutted, we are once again returning to the "bad old days" when an employer returns the injured worker to a job at the same or higher wage, but the worker still receives a large work disability award based on a theoretical loss of wage earning ability.

Therefore, the current language of the statute must be amended to ensure that employers are given a fair incentive to return their injured workers to employment by eliminating windfall work disability awards under these circumstances.

Section 4: Appeal of Preliminary Hearings

The final area in which reform is needed regards the appealability of preliminary hearing rulings. Although final questions regarding the nature and extent of the claimant's disability and the compensability of the claim are reserved until the final regular hearing, it is also true that at many preliminary hearings that issues regarding temporary disability benefits and medical benefits worth tens of thousands of dollars are at issue. It is not uncommon for claimants to receive months or even years of temporary total disability benefits based on just a few minutes testimony at a preliminary hearing. With these sorts of issues routinely at stake, preliminary hearing orders ought to be appealable to the office of the Director of Workers Compensation.

* * * *

I urge that this committee support the passage of HB 2873. Thank you for your attention to these remarks. I will be happy to answer any questions you may have.

COMMENTS RELATING TO HOUSE BILL 2873

Chairman Anthony Hensley, members of the committee:

Good morning, I am Gary Michael Korte, I am here at the request of Mr. Terry Leatherman, the lobbyist for the Chamber of Commerce to speak regarding HB 2873. As there are several provisions of HB 2873, I will break them down into sections. I will today be speaking regarding unauthorized medical compensation and the appeal of preliminary hearings.

Yesterday I decided to do a very unscientific test in my own office, beginning at letter A I went through my file drawers and picked out the first ten workers' compensation cases wherein unauthorized medical had been paid. Out of the first ten cases only two Claimant's had used unauthorized medical for purpose of evaluation and medical treatment. The other eight Claimant's had used the unauthorized medical allowance for the purpose of obtaining a functional impairment rating. K.S.A. 44-510(c) provides for use of $350.00 in unauthorized medical by the Claimant to consult a health care provider of the employees choice for purpose of examination, diagnosis or treatment. The Supreme Court for the State of Kansas in Fisher v Rhodes Construction Company, 190 Kan 448 (1962) found that there was no provision in the Act requiring the employer to pay the fee of a physician selected by an injured employee for the purpose of making an examination of him and testifying on his behalf at the hearing on his claim for compensation. Fisher at 452. The Supreme Court went on to say "surely the legislature never

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intended, even by the amendment, that such provision could be used by an injured employee for the purpose of evaluating his claim and obtaining testimony on his behalf." Fisher at 453. Unauthorized medical is intended for a specific purpose. It is intended to provide medical treatment to a Claimant who for some reason is either receiving inadequate treatment or receiving no treatment from the employer or from the insurance company. Unauthorized medical was never intended to be used a shopping device for the Claimant to procure a higher functional impairment rating. The Supreme Court in Fisher v Rhodes Construction found such activity to be improper and yet today it is present in a vast majority of the workers' compensation cases. We are asking that the use of unauthorized medical be restricted to its originally intended purpose, that being the providing of medical examination, diagnosis and treatment to the injured worker rather than rating shopping for the purpose of obtaining a higher award.

HB 2873 - APPEAL OF PRELIMINARY HEARINGS

K.S.A. 44-534a allows for preliminary hearings to be held after a Claimant has filed a seven day demand letter and after the employer is provided seven days notice from the Director's office. The demand letter need only be filed once with the Director. Thereafter preliminary hearings can be scheduled with a minimum of seven days notice to the employer. At these hearing, employers and insurance companies can be held liable to pay tens of thousands of dollars in temporary benefits, medical treatment and vocational rehabilitation benefits all without benefit of the right to an appeal. If the administrative law judge makes a mistake, rules improperly, misconstrues evidence, or provides an order which flies in the face of the facts, the employer, the insurance company and the Claimant are totally without recourse. Appeal is allowed only if it can be shown that the administrative law judge violated his jurisdiction in ordering or denying benefits. If the administrative law judges order deals with temporary total, medical or vocational rehabilitation, the odds are very much in favor of the Director's refusal to hear any such appeal even though the due process rights of the parties may have been violated.

Recently at a preliminary hearing a Claimant, after alleging left hand, arm and shoulder problems, appeared at the hearing with braces on both his left and right forearms and wrists. The testimony showed the Claimant injured his right wrist three weeks after terminating his employment with the employer. He further admitted the injury to his right wrist and forearm had occurred

while changing a tire on his car. The alleged justification for requesting medical was that he had to overcompensate on the right side due to the injury to his left hand. Even though the injury occurred three weeks after the termination of employment and was clearly involved in a non-work activity, medical was ordered to the Claimant's right hand and forearm. An appeal to the Director was denied as the administrative law judge was found to be well within his rights to order medical treatment from a preliminary hearing. The fact that the right hand injury did not arise out of and in the course of his employment and the employer was provided no notice of the right hand claim until the preliminary hearing can not be argued because appeals to the Director are not allowed under K.S.A. 44-534a.

While the law does allow reimbursement for mistakes discovered down the road, the reimbursement is from the Kansas Workers' Compensation Fund, which is funded to a large extent by contributions from employers and insurance companies. Under K.S.A. 44-534a employers and insurance companies are reimbursed with their own money for any overpayments made to the Claimant. There is no current law allowing employers and insurance companies the right to reclaim these monies from Claimant's when overpayments are made. If future awards are made, there can be deductions from these future awards, but if the Claimant is paid beyond that to which he is entitled, there is no right to reimbursement from this unjustly benefited Claimant.

Under Kansas Administrative Regulation 51-3-8, certain pretrial stipulations are discussed at the regular hearing. The stipulations deal with issues regarding compensability of the claim, whether the injury arose out of and in the course of employment, whether proper written claim was provided, whether notice of the alleged accident occurred or whether the Respondent was prejudiced by the lack of said notice. These pretrial stipulations are taken prior to the regular hearing, but are not taken as a matter of course prior to the preliminary hearing. Any of these issues could eliminate a Claimant's right to compensation. A Claimant seeking compensation for an injury which did not arise out of and in the course of his employment could be provided temporary benefits, including medical and temporary total, over a period of many weeks or months involving many thousands of dollars and the employer would have absolutely no right to appeal this decision.

After the preliminary hearing the Statute allows the administrative law judge only five days to decide the issues. With such time constraints it is easy to see how mistakes can and will be made. The right to review these decisions from an appeal of the preliminary hearing, similar to that provided at a regular hearing could be a tremendous cost saver to employers and insurance companies and could shorten the judicial process in workers' compensation matters. These decisions will ultimately be heard at the regular hearing, whether an appeal from the preliminary hearing is allowed or not. What is being avoided is

the long term delays and potentially very expensive preliminary orders resulting in substantial overpayments to Claimant's and substantial reimbursements from the Workers' Compensation Fund.

To allow appeals of preliminary hearings is simply to allow the parties fair treatment through the judicial process. These preliminary appeals would be available to Claimant's should they be denied benefits. We are not asking to create a one sided law, we are asking to create a law which protects the due process rights of all parties.

The only way to make mistakes by the administrative law judges correctable, is to allow appeals from the preliminary hearings. I appreciate the opportunity to speak before this committee.

EMPORIA AREA
CHAMBER OF COMMERCE

P.O. BOX 417 / EMPORIA, KS 66801 / 316-342-1600 / FAX 316-342-3223

February 11, 1992

The Honorable Anthony Hensley
Room #278-W, State Capitol
Topeka, KS 66612

Dear Representative Hensley:

The Emporia Area Chamber of Commerce works very closely with our local manufacturing firms to help them remain a viable part of our economy. For the past several years we have actively worked to bring about needed changes in workers' compensation.

There are two bills before your committee that will have a significant effect on improving the current workers' compensation laws - HB 2872 and HB 2873.

The provisions of HB 2872 will help protect business from any possible fraudulent claims. The definitions of work disability in HB 2873 address limitations of disability, appeal procedures, unauthorized medical allowance and compensation awards which are all very important provisions to improve the current situation.

I believe that the businesses in Emporia are genuinely concerned about the welfare of their employees and have taken measures to prevent injuries. It is important for employers to remain competitive and continue to provide jobs.

We support these two bills and urge your committee to favorably consider them.

Sincerely,

Joe Wood
President and Chief Executive Officer

JW/lab

cc: Representative Jim Lowther
Representative Elaine Wells
Representative Steve Wiard
Representative Doug Lawrence
Representative Don Rezac
Kansas Chamber of Commerce and Industry, Topeka, KS

CELLTRON INC.
SERVICE THRU TECHNOLOGY
810 W. 7th St. • P.O. Box 98 • Galena, KS 66739 • 316-783-1333 • FAX 316-783-1332

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February 12, 1992

To: KANSAS HOUSE LABOR AND INDUSTRY COMMITTEE

Reference: Proponents for Worker's Compensation Reform Bills HB2872 and HB2873

Celltron, Inc., Galena, Kansas is a manufacturer of electrical cable assemblies and wiring harnesses for military and commercial application. Celltron presently employs 90 people.

Celltron, like most other Kansas manufacturers, is experiencing tremendous cost impact from the upward spiral of Worker's Compensation Insurance. As an example, Celltron's cost for coverage in 1991 was $14,221.00. Next month we will be renewing our insurance and have been told the cost will be $45,149.00. This increase can be tied to several reasons, one being increase in claims. Celltron suspects the three largest claims against our record are all fraudulent claims. Listed below are brief descriptions of what has transpired.

Claim #1:

On June 26, 1990, employee claimed pain in hands and arms that was caused by work related repetitive motion. She went to a local doctor who reported she did not show signs of carpal tunnel. She revisited the doctor on 8/26/90 at which time her condition had improved. On 9/14/90 Celltron received notice from her lawyer asking for disability benefits which she was already receiving. A short time later, we received word that the insurance company had paid her $8,242.00 to settle the claim. The rest of the story is that claimant and husband had a fight the night before her complaint and that her hands and arms were bent backwards during the fight.

Claim #2:

Employee reported at 7:05 A.M. (Reported to work at 7:00 that she injured her thumb when she placed a cable on work table. The report of the accident was on 6/11/90, wherein she continued to complain of pain and on 7-12-90, surgery was performed, then

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on 9/14/90 she reported she as not happy with her recovery and was sent to a specialist in Springfield, MO. The doctor indicated there was no way of measuring pain and no way of knowing if hers was real.

The employee finally returned to work 10/1/90 after a couple of weeks at work she requested time off to visit someone in Colorado. Because of her poor attendance record and without vacation time accurred, her request was denied. She got mad and quit her job. The next day the pain magically returned, she had additional surgery and was able to go to Colorado, as planned. She is still being "rehabilitated" under Workman's Compensation. In one of the rehabilitation conferences, she stated that her thumb was "grabbed" by an automatic machine that was used at Celltron. <u>This is blatantly untrue, since Celltron does not have such equipment and never has had equipment as she described.</u>

Celltron has found out that this person has had other Worker's Compensation claims against other employers in the past.

Claim #3:

Employee reported 8/3/90 that her elbow was hurting because of her job. She was sent to a local hospital and diagnosed to have tennis elbow. Since that time claimant has seen 11 different doctors (as of 2/14/91) and none of the doctors could find anything wrong with her. She refused to work with the rehab. people. On 2/14/91, an offer was made to settle the claim which was rejected by the claimant's lawyer. On 4/11/91, her lawyer requested another hearing and as a result, the administrative law judge sent her to still another doctor in Wichita. By now she was claiming neck and shoulder pain and headaches. Again, this doctor concluded that medical treatment is not needed.

On 10/25/91, the insurance company lawyer notified Celltron that worker's compensation benefits had been cutoff. The case is still open to date, because the claimant intends to go to Mayo Clinic in an attempt to find something before a settlement can be made.

<u>Disability payments for over a year seems ridiculous since 12 or 13 doctors cannot find any work related medical problem.</u>

In view of the above, there appears to be a terrible injustice in the Worker's Compensation System in that an employee can claim anything and not be questioned. Whereas, the employer is

always guilty and when proven they are not guilty, the Administrative Law Judge will continue to allow payments and settlements that are unrealistic.

Celltron and other businesses in Kansas will not be able to continue to be competitive and/or survive if reforms in the Workers Compensation System is not accomplished soon.

Respectfully submitted,

Glen R. Bowman

Glen R. Bowman
President
CELLTRON, INC.
Galena, Kansas

Cessna

Testimony to the Labor and Industry Committee on House Bill 2872 and House Bill 2873 on February 12, 1992.

By David A. Cooper

Safety Manager
Cessna Aircraft Company

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Points concerning HB 2872-

Worker's Compensation Fraud -
The portion of the bill I will address is the area concerning recovery from persons who fraudulently received worker's compensation benefits or payments. Up to now, we've been unable to re-coop benefits paid to an individual if the case was found to be noncompensable. This does not preclude anyone from at least trying the system "on" to see what they can get. ---Even if they lose, by the time a decision is made, several thousand of dollars have been spent. On several occasions we've been able to pursue the second Injury fund to re-coop the monies spent; however, these cases are few and far between.

There seems to be a very negative mood by ALJ's to award something at preliminary hearings to the claimant. When this is done, the case is very difficult to get reversed.

This bill also ties into HB 2873 in the area of "appeal of the preliminary hearing.

HB 2873-

#1) Concerning "Work Disability" the area of the law concerning "Work Disability" needs to be addressed. If an employee is injured and after sufficient healing process is returned to work in a job of same or comparable wage, there shall be no "Work Disability". If the employer does not return worker, then appropriate Voc. Re-hab programs shall be followed and the employer shall pay for the program. If there is a work disability because the employer does not return the employee than the employer should pay. But again, if returned to work where is the work disability?

A specific case in point involves and employee who was inspired in 1988 in a fall, sprain to back with buldging disk. Employee healed and returned to same job (lead) same place. Employee has not missed time and continues to draw same pay with appropriate raises. A law suit (w/c) has since incurred stating 50% job disability due to availability of work in open labor market because of his restrictions. --Employee is not in the open labor market and is earning excellent wage at regular job. Where is job disability? Where is work disability- Appealed to Director and awaiting decision-----

Similar story on the work disability issue concerning an employee who retired voluntarily!

GOALS FOR MODERN WORKERS" COMPENSATION SYSTEMS:

* To provide adequate and equitable benefits to injured workers.

* To promptly pay those who are eligible.

* To encourage employees to return to work.

* To create self-executing non-litigious systems for delivering worker's compensation benefits.

* To effectively administer the system.

* To impose affordable and stable costs on employers and insurers.

February 10, 1992

To: Honorable Representative Anthony Hensley
Chairman, Kansas House Labor and Industry Committee

Gill Studios, Inc. is interested in supporting legislation to reform the Kansas Worker's Compensation System. Our primary concern is the safety and welfare of our employees. We spend a great deal of time and money to ensure that all employees are protected by working in a safe, secure environment.

In March of 1982 we established a safety committee. This committee consists of two (2) members of management and two (2) members of the union. It has been extremely successful in making our plant a safer place to work.

Our concerns regarding this matter can be emphasized by the following facts:

In 1988 we had forty-six reported accidents with 43 lost-time days. In 1991 we had fifty-eight reported accidents with 679 lost-time days. This is an increase of over 1400% lost-time days while the number of employees only increased 6-1/2%. Our processes and plant layout did not significantly change during this period. Our insurance premiums for 1992 will be increased 75% over our 1991 premium cost.

We have taken positive steps to make our employees aware of the increased number of accidents, costs, etc. Effective 1/1/92 we implemented a safety incentive program designed to reward safe work habits with cash and merchandise prizes. We have employed Peak Performance Systems to educate and encourage employees to work safely.

We need your support of HB2872 and HB2873 to help us ensure that deserving employees are protected and that Kansas employers remain competitive.

We had an employee take advantage of the system last year. Had HB2872 been in effect, we could have pursued a fraud claim. Had we been able to file a fraud claim, this employee may not have been able to file a claim or may not have been absent for six months. I will give a verbal explanation of this case.

We would like you to also support HB2873 to stop claimants from using the unauthorized medical payment to obtain an independent rating. An appeal system should be put into place that protects the rights of claimants and employers.

Please consider passage of Bill #HB2872 & HB2873.

Thank you.

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