Approved March 25, 1992
Date

MINUTES OF THE Senate COMMITTEE ON Labor, Industry and Small Business.

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

1:30 ~~a.m.~~p.m. on March 18, 19 92n room 254-E of the Capitol.

All members were present except:
Member present were: Senators Daniels, Ehrlich, Martin, Morris, Oleen, Petty, Salisbury, Sallee, Strick and Thiessen.

Committee staff present:
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes Office
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:
Donald P. Schnacke, Executive Vice-President, Kansas Independent Oil and Gas Association, Topeka
Leonard Schuckman, Jr., Safety and Risk Manager, Abercrombie Companies, Wichita
Edward R. Miller, Vice President, Human Resources, Learjet, Inc., Wichita
Roland Smith, Executive Director, Wichita Independent Business Association, Wichita
Mark Russell, President, LaSiesta Foods, Inc., Topeka
Michael Russell, CEO, Evaluation Rehabilitation Services, Kansas City, Missouri
Representative Rochelle Chronister

HEARING ON SB 666 - Workers compensation, accidental injuries, defenses, limits, exclusions procedures, impairment and administrative appeal panels

Donald P. Schnacke, Executive Vice-President, Kansas Independent Oil and Gas Association, Topeka, appeared on behalf of 1,000 independent oil and gas producers and drilling contractors. He testified they are very concerned about the rapid rise in rates for workers compensation insurance in Kansas. A 62% rate increase is being proposed for oil and gas drilling activities this year. He said the key to slowing down rate increases appears to be in emphasizing good safety practices in oil field operations and legislative reform of the Kansas Workers Compensation Act, see Attachment 1. He introduced Leonard Schuckman, Jr.

Leonard Schuckman, Jr., Safety and Risk Manager, Abercrombie Companies, Wichita, related the rising workers compensations costs to oil and gas companies. He said there is a need for an improved definition as to the intent and purpose of workers compensation as it relates to an accidental injury. He stated it is necessary to amend the "work disability" provision in the law to make it absolutely clear that work disability would not exist if the employee does work for wages comparable or equal to the average gross wages the employee was earning at the time of the injury. He supported SB 666 with the intent to bring equity and fairness to all parties concerned, see Attachment 2.

Edward R. Miller, Vice President, Human Resources, Learjet, Inc., Wichita, encouraged the passage of SB 666 in its present form. He stated they are experiencing more employees having either drug or alcohol impairment as a contributing factor to their work related injuries. He supported the elimination of aging or stress as compensable factors; the definition that recreational and social activities are not compensable factors; that carpal tunnel remains a part of the scheduled injuries; and a medically objective definition of disability, see Attachment 3.

Roland Smith, Executive Director, Wichita Independent Business Association, Wichita, testified there is a crisis in the cost of workers compensation insurance that may cause some small businesses in the WIBA to close their doors. He believes the passage of SB 666 is essential and will help reduce the cost of workers compensation insurance, see Attachment 4.

Mark Russell, President, LaSiesta Foods, Inc., Topeka, testified in support of SB 666. He cited workplace injuries, many of which were caused by mistakes by employees, and fraud as being factors in the escalating cost of workers compensation insurance. He also stated that the way to increase compensation to employees for their work-related disabilities, is to limit attorney compensation to reasonabale levels, see Attachment 5.

Michael Russell, CEO, Evaluation Rehabilitation Services, Kansas City, Missouri, stated there has been much discussion regarding the legislative mandate for a vocational rehabilitation referral; however, under the Act only the assessment is mandatory, rehabilitation services are not. Since 1987, there has been a 28% increase in work related accidents being reported in the state and in 1991, there were more than 80,000 workers compensation claims filed in Kansas. In the same year there were 1,680 vocational rehabilitation cases closed by private rehabilitation vendors, or less than 2% of all the claims in the state. He said the vocational rehabilitation work product in Kansas is only one subject to review by the Division of Workers Compensation. With the adoption of a professional code of standards for Qualified Rehabilitation Professionals, a guideline to judge work has been established and punitive actions can now be taken against rehabilitation vendors who do not comply. Overall, vocational rehabilitation is cost effective, not a cost driver. Numerous studies have shown that for every dollar spent on vocational rehabilitation, between $10.00 and $30.00 is saved.

Mr. Russell said many injured workers lack the skills or expertise necessary to work with their employers in modifying or changing their jobs; or do not know how to enter job searchs or look for jobs; or even how to qualify for state or private re-training programs. Without vocational rehabilitation, most injured workers are left helpless, see Attachment 6.

Representative Rochelle Chronister submitted prepared testimony in support of SB 666, see Attachment 7.

The Committee meeting was adjourned at 2:30 p.m.

GUEST LIST

COMMITTEE: LABOR, INDUSTRY & SMALL BUSINESS DATE: March 18, 1992

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Bud Langston	Topeka, KS	KRCC
Patty Perdaris	Lenwood, KS	Fortis
Kathy Schauwecker	O.P. Kansas	Yorks
Mark Bytels	Wichita	Fortis
Dick SanTner	Topeka	Oxford Health Care
DICK TIEMANS	TOPEKA	DHR/WORKCOMP
Mike Russell	KANSAS CITY	E.R.S.
Bill Morrissey	Topeka	DHR/Work Comp
J.P. Small	TOPEKA	LEARJET, INC
ED MILLER	WICHITA	LEARJET INC.
A G. WARNER	Topeka	
Mike Zeokin	Kansas City	US Affordable Rehab.
D. WAYNE ZIMMERMAN	OLATHE	PROF. REHABILITATION MGMT. INC.
JANET STUBBS	Topeka	KBA of Kansas
LESLIE ROSENBLUM	KANSAS CITY	K.C.A.
MARK RUSSELL	TOPEKA	LA SIESTA FOODS
Anthony Hensley	Topeka	State Representative
DON C. SMITH	Dodge City	
DAVE SCHNEIDER	TOPEKA	Legislative Intern
TERRY LEATHERMAN	Topeka	KCCI
BRAD SMART	"	B & V
Dian Schmanke	"	ICIOGA
Tom Tunnell	"	KS GRAIN & FEED ASSN
NORM WILKS	"	KASB
Edward Austin	Wichita	WIBA

GUEST LIST

COMMITTEE: LABOR, INDUSTRY & SMALL BUSINESS DATE: _____

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
L. McCORNISH	Topeka	NAII
Whitney Damron	Topeka	McGill & Associates
Art Brown	KC.	KS. UBR Dealers
Jim McHaff	Topeka	KS AFL-CIO
R Frey	"	KTLA
Wayne Maichin	"	KS. AFL-CIO
Joe Tanganic	"	KCA
Rick Liby	"	Gehrt & Roberts

KIOGA

KANSAS INDEPENDENT OIL & GAS ASSOCIATION

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(316) 263-7297 • FAX (316) 263-3021
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TESTIMONY OF DONALD P. SCHNACKE
EXECUTIVE VICE PRESIDENT
KANSAS INDEPENDENT OIL & GAS ASSOCIATION

BEFORE THE SENATE COMMITTEE ON LABOR, INDUSTRY, & SMALL BUSINESS
RE: SB 666 - WORKERS COMPENSATION

MARCH 18, 1992

We appreciate the opportunity to appear before your committee in support of SB 666. I am appearing on behalf of the Kansas Independent Oil & Gas Association which has a membership of over 1,000 individuals and companies throughout Kansas. Our members are small independent oil and gas producers and drilling contractors.

On March 5, 1992, your committee heard very good testimony on this subject from Thaine Francis and his son, John, representing Francis Casing Crews, Inc. of Garden City, Kansas. Their testimony is typical of what you would hear if all our members had an opportunity to appear before your committee.

Our industry is very concerned about the rapid rise in rates for workers compensation insurance in Kansas. Oil and gas field activity is normally close to, if not at, the top of the risk classifications each year. A 62% rate increase is being proposed for oil and gas drilling activities this year.

In October, 1991 we sponsored a one-day conference on issues arising from dramatic workers compensation rate increases in the Kansas oil and gas industry. The conclusion reached at the meeting was that the key to slowing down rate increases appears to be in emphasizing good safety practices in oil field operations and legislative reform of the Kansas Workers Compensation Act. We are pleased you are dedicating considerable time and thought to this issue during the 1992 session. We consider this a very important issue and vital to the future of our industry.

We have one conferee with testimony on this subject we would like to present to you. He is Leonard Schuckman, Jr., Safety and Risk Manager for the Abercrombie Companies in Wichita. Abercrombie Companies have long been active in oil and gas drilling, production and trucking. Mr. Schuckman is presently serving as Chairman of the KIOGA Insurance Committee.

Donald P. Schnacke

SB&A SB
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Attachment 1

CONTRACTOR
ABERCROMBIE DRILLING, INC.

THE ABERCROMBIE COMPANIES

150 N. MAIN, SUITE 801 • WICHITA, KANSAS 67202-1383 • 316-262-1841

OPERATOR
A.L. ABERCROMBIE, INC.

TESTIMONY OF
LEONARD SCHUCKMAN, JR., CSP
REFERENCE
SENATE BILL NO. 666
WORKERS COMPENSATION
MARCH 18, 1992

Thank you Madam Chairman. My name is Leonard Schuckman. Safety and Risk Manager Abercrombie Companies in Wichita, Kansas. Our companies are engaged in oil and gas drilling, production and trucking in the State of Kansas for the past 37 years.

I have been a safety professional for nearly 25 years, with 12 years being with an insurance carrier in numerous states. I come before your committee with a background that offers respect and understanding for the insurance industry, the workers compensation system and the economic position of the employers. I also have a sensitivity for the employee when he or she sustains a job related injury. I also have a respect for values - what is right and what is wrong, pure common sense standpoint to the employee and also to the employer.

I probably do not need to deliver a background on our industry status in this state however, I would like to relate to you our company's situation. In 1982 we had 300 employees, where today we have 80. Our drilling payroll was approximately 3.1 million, where today it is approximately $750,000. To say that we have had poor economic times since 1986, is an understatement. Jobs are still in jeopardy. Wages remain low. Health insurance is not available and in some cases unaffordable to workers or his or her family. Operations costs continue to escalate and included is the workers compensation premium cost.

In 1991, our industry took a major workers compensation rate increase. Today, our drilling rate is $18.95, $15.18 for drivers, $5.52 for oil and lease operations, and $14.93 for well servicing (cleaning and swabbing) per $100.00 payroll. These are probably some of the higher workers' compensation rate charges in the state. They also impact mainly the small owner/operator company operations.

The above are basic figures that reflect workers compensation as we may understand them. There is more to this picture for our industry. In Kansas, it is estimated that 80% of our oil & gas lease operators are insured through normal insurance policy underwriting with the other 20% placed in the assigned risk pool. If the same oil and gas lease operator has a drilling rig, a well servicing rig, or a trucking operation, 80% of those companies are placed in the assigned risk pool with the other 20% insured under normal insurance policy underwriting. Just the opposite. For the oil and gas drilling contractors, 80% to 90% of them are in assigned risk pool. Well servicing contractors having pole or derrick mast rig and other service related companies, 60% to 70% are in the assigned risk pool.

H.L. & L. & B.
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When companies are placed in the assigned risk pool they are subject to extreme penalties referred as "ARAP" charges (Adjusted Rate Assigned Premium). A company could be subject to a maximum premium surcharge of 25% the first year and 49% the second year if they remain in the pool.

> Example - an oil and gas lease operator with one drilling rig. There is a $50,000 manual premium x experience modifier 1.40 = $70,000 times 49% ARAP charge of $34,300 - actual premium charge is $104,300. This is the bottom line on workers compensation insurance costs that is effecting our industry companies.

An insurance carrier receiving a company under assigned risk, will provide basic claim service and little, if any, safety assistance in accident prevention. It is not a positive position for an insured to be in and expect to get out of the pool.

As employers, we have an obligation to provide a safe and healthy working environment for our employees. Safety and risk control provides economic savings to companies and prevents accidents or controls the chance factor towards accidents.

An accident or occupational disease related to the job, shall be medically treated expeditiously and effectively. The medical profession needs to treat the injured worker for the medical condition rather than the fear for the legal implication to follow i.e., depositions, subpoenas and testimony in Court or even medical malpractice. They need to understand the positions of employers and be willing to work with employers to return the injured to work. As one doctor told me, he hates workers compensation cases because they are nothing but a problem to him. With current trends and possible attitudes of our medical community regarding workers compensation, we will find ourselves in the same position as with the health care system. The medical community needs to work on controlling medical costs and they need to work with employers to return people to work.

There is a need for an improved definition as to the intent and purpose of workers compensation as it relates to an accidental injury. Employers have had to take responsibility for conditions related to degenerative conditions that are the direct result of aging process or due to off the job cummulative trauma. Degenerative back conditions, knees, hips, and hearing loss are common examples. Any injury or aggrevation to a pre-existing condition shall be treated accordingly. Eliminate current practices to award benefits for pre-existing conditions and prohibit a claimant to accumulate more than 100% disability in a lifetime for injuries or conditions.

I believe it is necessary to amend the "work disability" provision in the law to make it absolutely clear that work disability would not exist if the employee does work for wages comparable or equal to the average gross wages the employee was earning at the time of the injury.

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We hope that realistic reform can be expedited as proposed in Senate Bill 666. Do not force Kansas employers into a position as employers in other states - take a risk, operate uninsured. If an accident occurs, let the employee determine recourse and the employer to skip out. We need to continue respecting the rights of the employees and the employer but, we cannot force the small employers to close their businesses and for workers to lose their jobs.

You are to be commended for your insight and understanding of our situations in the state. Therefore, I support Senate Bill 666 with the intent to bring equity and fairness to all parties concerned.

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Attachment 2-3

Senate Labor, Industry & Small Business Committee
Testimony of
Edward R. Miller
Vice President Human Resources
Learjet Inc.

March 18, 1992

I have reviewed the proposed Senate Bill 666, currently before you as the Senate Labor and Industry committee. I would like to express Learjet Inc.'s support relating to this bill. Specifically, the bill does an excellent job of cleaning up some areas which have been a constant source of abuse on the part of employees over the course of several years. I want to express my opinion that these modifications are very appropriate and would strongly encourage your passage of this bill in its present form.

We are experiencing more and more employees having either drug or alcohol impairment as a contributing factor to their work related injuries. For the past several years, Learjet has tested employees on a pre-employment basis for drug usage as a part of our pre-employment screening. In addition, we have began testing employees following a work-related injury for drug abuse. For 1992, we have found that between 3 and 4 percent of the applicants who we would like to hire will test positive for drugs. However, on a post-accident basis, we find over 5 percent of our employees test positive for one of five drugs in our tests. Learjet does not currently test for alcohol. However, pending regulations by the U.S. Department of Transportation may well require us to do so in the immediate future. I would expect that work-related injuries could result in an even higher percentage for alcohol than we currently experience with drug tests on a post-accident basis. We believe this disallowance is an essential part of the proposed legislation.

We support the elimination of aging or stress as compensable factors. More and more employees are citing stress related causes for seeking compensable injuries. Clearly, stress is a factor existing in modern day life and we do not believe, as such, it should be viewed as a compensable factor since it can be created by many causes; both inside and outside the work place. Further, it is difficult if not impossible, to assess what amount of stress is caused by work or other influences not related to work. In fact, many injuries that we cover in worker's compensation are caused by personal problems brought to the work place.

We support your definition of "accident" to disallow compensation for disability developed over time, such as the normal aging process.

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Attachment 3-1

We also appreciate the definition that recreational and social activities are not compensable factors. Simply because an employee chooses to associate with co-workers outside of the work place should not result in compensation under workers compensation law. Just this week, an employee was eating lunch in the company cafeteria. During lunch, he reached into his pocket for a handkerchief and managed to sprain his finger. He visited our company nurse who treated the injury. However, the employee was not satisfied and sought medical care, including x-rays and treatment at the emergency room. This employee returned to work and wanted this emergency room treatment to be covered by worker's compensation. Clearly, the injury was not a compensable case unless you consider that eating in the cafeteria is incidental to his employment with the company. Your modifications to this bill will make this clear to all involved.

Many larger companies create clubs and non-profit associations because employees like to associate with co-workers. This should not be a cause for liability of their employer under worker's compensation simply because they do it under the auspice of one of many social or recreational clubs existing which are formed for the benefit of the employees. If a group of employees form a baseball team and an employee breaks an ankle sliding into second base, should this be a worker's compensation case? I do not believe it should.

We are pleased that carpal tunnel remains a part of the scheduled injuries and recognize that distinction is specific and direct on the part of the Senate bill and would urge you to pay special attention to it as you look at a similar House Bill with many of the same reforms.

I would like to express our unqualified support of this bill. Hopefully, an employee would never be injured in the work place. That goal is somewhat idealistic but we as employers must work toward that end. For those employees who are injured, we recognize the need to expediently resolve their medical treatment, return them to work and compensate them for their medical expenses and loss of earning power during treatment.

Our efforts must be focused to provide a quick return to work and accommodation of limitations an employee suffers. A work related injury is traumatic to the injured employee. The quicker we can resolve the conflict the better the resolution for the employee. They return to work and continue to do the job they were hired to do. The less disruption, to either the employee or the job they were performing, the better the employee feels and the more productive he or she remains. The basic premise of worker's compensation has been to provide an exclusive remedy for the employee who suffers a work place injury. This means a quick resolution by the principal's of the case, specifically the employee and employer. Third parties do not contribute to quick resolution, they simply add complexity and hard feelings from the employee toward the employer. We believe other proposed revisions, including a medically objective

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definition of disability reaffirm this intent.

Please give your support to this bill when it is voted upon by your committee. If you have any additional questions, I would be glad to provide you with additional information.

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WICHITA INDEPENDENT BUSINESS ASSOCIATION
Riverview Plaza Suite 103 • 2604 W. 9th St. N. • Wichita, Kansas 67203-4794
(316) 943-2565 FAX (316) 943-7631

ROLAND E. SMITH, *Executive Director*

March 18, 1992

STATEMENT TO: Senate Labor, Industry and Small Business Committee
FROM: Roland Smith, Executive Director
SUBJECT: Senate Bill 666

Chairperson Salisbury and members of the committee, I am Roland Smith, Executive Director for the Wichita Independent Business Association. WIBA is an association of locally owned business in the Wichita trade area.

There is a crisis in the cost of Workmans Compensation that may cause some small businesses in the WIBA membership to close their doors. The latest request for increases is mind boggling and intolerable in the small business sector. With the high property tax load, escalating health insurance costs and workmans compensation costs out of control, this has become an impossible situation for many small businesses.

I will not take the time to make repeat statements in support of the various provisions in this bill other than the statement that WIBA believes the passage of SB 666 is essential and will help to reduce these costs.

Speaking on behalf of over 110O small independent businesses in the Wichita trade area we urge you to vote for the passage of SB 666.

Thank You!

SLI + LB
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Attachment 4

TESTIMONY ON SENATE BILL 666
BEFORE THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS
By Mark B. Russell, President of La Siesta Foods, Inc.

Madam Chair and members of the Committee, my name is Mark Russell and I am the president of La Siesta Foods, Inc. in Topeka, Kansas. I have been actively involved in various aspects of workers' compensation insurance for many years, including recently serving on the Insurance Commissioner's Task Force on Workers' Compensation Insurance. I appreciate the opportunity to appear before you today in support of Senate Bill 666. We must get a handle on the increased expenses of workers' compensation insurance before it drives Kansas business either bankrupt or out of state. It is my opinion that many of the proposals in this bill can help.

The employer needs help in controlling this program because many of the current reasons for the increases are out of their control. I became concerned when our workers' compensation insurance expense skyrocketed commencing in 1985. As any good businessman would, I began to research the reason for the increase to find a way to rein in this cost. I believe that this research has given me some insight into the system "from the trenches", and would like to take this occasion to share my observations with you.

Many times the employer is painted as an unfeeling, uncaring and greedy corporate giant. Well here I am, and I hope that you do not feel that an appropriate characterization. Most people think of the president of Colgate-Palmolive sitting in New York, but most of Kansas employers are home-based companies like La Siesta. I admit to being concerned about profits, but that is really the basis of our economy and an American tradition. Profitability keeps my company alive, and provides good jobs for my employees. While I cannot claim to know every employee's name, I do know a number of them. I do follow all of our work place injuries, mainly for two reasons. I want the employee to receive the most efficient health care possible in order to return them to the normal life style quickly. I also am concerned at the nature and extent of injuries to determine if there are ways to avoid them in the future. In short, I care what happens to them, and I know if you talked with the large corporate employers they would say the same thing. None of us sit around in a

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smoke-filled room considering ways to save money at the expense of our employees' health.

How do many work place injuries occur? My experience is that they are mistakes, and normally by employees. One of my dockmen is inattentive, and drives over another employee's foot when the second employee is helping him load a truck. A new employee jumps on a forklift (on which he has never been trained) because it looks so easy to drive and the dockman has left the key in it, and winds up driving off of our loading dock. An employee knows that it requires two people to light our gas ovens, but tries to do it himself causing a minor explosion because too much gas comes out before he can get back from the valve to light the burners. Fortunately, all of these people were not seriously injured. But the employers' responsibility in all of this is to bear the financial responsibility for their employees' mistakes, and learn from them. But no one can anticipate all of the mistakes that their employees will make, and therefore a completely safe work place is not possible. Injuries will occur, however the reasons for those injuries are not due to employers being unconcerned about employee safety.

Some injuries are cumulative injuries, and the employer may or may not know the reason for the injury. I currently have an administrative employee who developed tendonitis in her elbow one month after going to work for us. She claims that it is work-related because she has not changed her personal life since going to work for us. However, none of the previous workers in that position have ever developed an injury, nor any other employee in her area. The only difference between her and the rest of the administrative employees is that she is older, and this injury is really more closely related to normal aging. Unless I can prove that her injury is not work-related, and we have not tried to do that, it is covered by workers' compensation. My policy is currently being charged for her three weekly physical therapy treatments and biweekly doctor's examinations, and the rest of the office staff is working overtime to cover her time away from work while she receives medical attention. I have an employee who slips and falls while at work, and requires medical attention because her back hurts after the fall. She winds up going through 6 months of physical therapy and vocational rehabilitation for her back. However, the physician tells her that her condition will never get

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better until she loses the approximately 100 pounds that she is overweight. The physical therapist attempts to get her to follow a strict diet as part of her therapy program. Workers' compensation paid her temporary total disability during the time that she was unable to work, and gave her a partial disability award due to her back injury. We need to recognize that there are times when the employer is really an innocent bystander, and not hold them accountable just because the employee claims that the injury began at work. After all, one-half of the employee's waking hours are spent at work and the odds for those injuries to be noticed at work are pretty good.

The workers' compensation program is viewed by some as "easy money", and some injuries are manufactured to take advantage of the system. These types of claimed injuries can be intentional, where the employee sets up a minor accident. After the incident, the employee complains of an injury that they know cannot be confirmed or denied by a doctor. We had an employee who worked on our taco line packaging product. She claimed that she hurt her shoulder lifting 50 pound boxes. Let me assure you that there are no 50 pound boxes of tacos. She eventually saw three doctors, none of them could find any source of her pain. The third doctor performed an arthroscope, the results of which were totally negative. She was given a partial disability rating based solely upon her pain complaint, and received about $5,000. She came back to our plant waving the money in cash to show her fellow workers what she had gotten. You can imagine what happened to our workers' compensation claims in the next six months. These types of claims come from people who have worked the system before, and are very difficult to dispute unless you have a lot of time and money to investigate their claim. Insurance companies would rather pay the loss (which runs up the loss ratios and effectively increases premiums) rather than spend the money to investigate (which is an administrative expense and not recovered through higher experience modifiers). Fraud is a major player in the escalating costs and must be addressed.

Employees have a significant financial interest in their claims. They can be easily convinced that a minor ache is a significant injury when a few thousand dollar potential for a partial disability is presented to them. There are a number of times that an employee has received a minor injury, only to become a major disability after they have visited an attorney. The physicians that we

use for treatment notice a marked difference in their relationships with the patient/employee after a claimant's attorney becomes involved. Regardless of our physician's reputation, the claimant attorney wants to change to a different physician in order to maximize the award. This hurts the employee's confidence in the current treating physician. There is a good reason for using a company-designated physician. All of the ones we use have toured our facilities. They have seen where the employee works, and we think that makes them more effective in treating our employee. I have never had one physician referred by a claimant attorney contact us to determine what the work conditions were like, if there are other observations of the employee's injury which would assist the physician in treating the employee, whether there is light duty work available, or maintain a constant dialogue of the progress during the employee's recovery. That is what we require of our company-designated physicians. It makes us a partner in the employee's recovery. The claimant attorney physicians merely take the employee off work, and arrive at surprisingly high estimation of disability to maximize the award. I have never had a claimant attorney contact us to see about the best way to reintroduce the employee into the work place, they want that employee off work for the most time possible to maximize the award. The system, which was devised to minimize administrative procedures and get benefits to the worker quickly, is now totally bogged down with legal maneuvering which tends to make the employer and employee adversaries. All of this to maximize the award. When the employee does fully recover, the chances of a smooth return to work are reduced because of the battles fought in the hearing process. Further, I see many of my employees lose 25% of the award that they would have gotten without legal representation go to an attorney just for filing a set of papers and attending a couple of hearings. If we really want to increase the money to employees for their work-related disabilities, let us limit attorney compensation to reasonable levels when all they are doing is filing papers that could be prepared by the State for the employee. I fully support the idea of advising the employee what the system will provide without the services of the attorney. In many cases, it may be more than they would get after the "maximized" award is shared with legal counsel.

Companies are concerned about work place accidents both from a financial standpoint and compassion, and employees can avoid many accidents through

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caution and common sense. Business has historically accepted the premise that any injury that occurs at work is the responsibility of the employer. However, the program has become so broad and administratively expensive that what is now needed are some boundaries so that businesses can deal with reasonable increases in the cost of the program from year to year. We have spent hundreds of thousands of dollars modernizing our plants with workers' safety as a primary concern. The result has been a 24% increase in base rates last year, a threatened 42% increase this year (the manufacturing sector average), and do not forget that in 1990 the insurance commissioner approved an additional modifier for those in the assigned risk pool. That resulted in a 19% increase for La Siesta in 1990 on top of the 5% general increase in base rates. My company has made an investment in our facilities to improve work place safety at the same time that we have been faced with a 90% increase in insurance over a three year period. We cannot afford to do that forever. Rather than taking something away from employees, I view many of the provisions of this bill as giving to both the employer and employee. Business needs a reasonable containment of the program to exist, and without the employer there is no employee. This bill is a "win-win" proposition.

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Attachment 5-5

Presentation/Testimony to: Senate Labor & Industry Committee

Date: March 18, 1992

Speaker: Michael Russell

I. Good Afternoon. Thank you Chairperson Salisbury and Senate Committee members for allowing me to speak to you today. I am grateful to be here.
   A. My name is Michael Russell and I am a Vocational Counselor. I am here today to address and discuss the rehabilitation portion of bill 666. But before I go any further, I would like to begin by stating that I have broken my presentation into two parts. The first part is a somewhat autobiographical perspective concerning the evolution I've witnessed over the past five years in Kansas. The second part is comprised of statistics and facts regarding vocational rehabilitation.
   B. As I stated, I am a vocational Counselor as well as the C.E.O. of E.R.S. a small independent rehab. company operating in KS.
   C. I've been in private rehab. some eight years. I began my career with another rehab. co. in Iowa and in the spring of 1987, I was promoted/transferred to KS. My job was to develop a vocational unit - comprised of Counselors, Evaluators and Placement Specialists in accordance with the 1987 KS "New" Workers Compensation Act (K.S.A. 44-501).

II. The past five years I've participated in an evolutionary process.
   A. To begin with, after 7/1/87, it took 10 to 12 months before we saw any significant number of cases under the new act.
   B. It then took another 12 to 18 months before the statutory language was interpreted and specific criteria established to determine; How to write a Rehab. Plan; and what services were (or were not) appropriate for a given case.
   C. Thus, it was approximately 2.5 years into the Act before many of the procedural questions surrounding the Rehab portion of the bill were known. Yet, even after this amount of time, other problems persisted. Some of the major problems were:
      1. Q.R.P. (Qualified Rehabilitation Professional). When the Act was passed, Strict credentialing and qualifying of

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Counselors, Evaluators and Placement Specialists (those professionals working in the field) was written into the statute. These high standards are good; however, until recently there were too few Q.R.P.'s living and practicing in the state to service the needs of the employers and carriers adequately.

   a. There was more of a supply of claimants in the system then there were Q.R.P.'s to develop and write plans.

2. This shortage of Q.R.P.'s resulted in quality and timeliness problems for many vendors as most Q.R.P.'s had too many cases to handle efficiently.
3. By recruiting from other states, graduate school programs and state D.V.R., an adequate balance between Q.R.P.'s and claims has been achieved in the past year or so.
4. Another problem. Because there was virtually no industry in KS before 1988, we did not have a Standard of Professional Ethics until this month - 3/92
   a. Thus, there has been no formal procedure or method to discipline Q.R.P.'s or vendors.
5. The third major problem was uneducated/uninformed employers. From 1987 to 1991, many employers were unaccustomed to vocational rehab.. Therefore, they were not adequately informed concerning there role or responsibilities under the new act.
   a. In the past two years, we have been seeing more employers not only informed about the law and their obligations, but also more willing to work with rehab. and return an injured worker to the workplace.
   b. The three most successful tools we have utilized in returning injured workers to their same employer;
      1. A humanitarian responsibility;
      2. A financial necessity (reducing work disability awards);
      3. And A.D.A

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III. In the past several months, however, employer motivation to work with rehab. in creating jobs for injured workers has been diminishing/deceasing. Inevitably, a lack in employer willingness or motivation to return injured workers to work will increase rehab. costs.

A. Decisions such as Hughes vs. Inland Container have reduced the incentive to take injured workers back to work.

B. In 1987, the intent of the new act was to return an injured worker to productive employment at a job which paid the same (or comparable) wages as they received before the injury. If the employer was successful in re-employing the injured worker, the employer would be required to pay any "functional impairment" compensation to the employee, but not "work disability" compensation.

a. By relieving employers of the responsibility of paying a large work disability award, motivation exists to work with rehab. and return the injured worker to productive employment.

C. Decisions such as Hughes allow for work disability awards even when the intent of the new act is met; thus, many employers have lost their incentive to re-employ injured workers. Consequently, rehab. costs will go up as the Q.R.P. must now enter into a job search or consider a training option to successfully return the injured worker back to work at a comparable wage.

IV. There is no argument that some parts of the systems need to be corrected and changed; however, one point I would like to stress is that we (all of us involved in the new act) employers, carriers, the Division of Work Comp., private rehab. vendors and even the attorneys have been in a learning curve. With the evolution of the past five years, we (as an industry) have matured; guidelines for rehab. have been established, education with employers has been successful, and a professional code of standards has been adopted. However, with all that, the intent of the 1987 Act has been clouded and the claimants are the ones caught in the middle. We need to get back to the original intent of the 1987 Act and work together to

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assure consistency. In my opinion, the Act of 1987 has never had a real opportunity to prove its effectiveness.

V. Next, I'd like to address the facts concerning workers compensation and vocational rehabilitation in Kansas.

1. To begin with, there has been much discussion regarding the legislative mandate for a vocational rehabilitation referral; however, under the Act only the assessment is mandatory - rehab. services are not. In addition, I do not consider KS a truly mandatory rehab. state. In this state, claimants can settle their claim in lieu of the vocational assessment. In other "so called" mandatory rehab. states (such as California or Minnesota) a claimant cannot settle their claim prior to the vocational assessment.
2. Since 1987, there has been a 28% increase in work related accidents being reported in the state and in 1991, there were more than 80,000 workers compensation claims filed in Kansas. In the same year there were 1,680 vocational rehabilitation cases closed by private rehab. vendors, or less than 2% of all the claims in the state.
3. Of the 1,680 cases closed by vocational rehabilitation in 1991, the statewide average case cost $3,684 (see attached statistics). The publishing of these statistics is an excellent check and balance system for employers and insurance carriers as many rehab. vendors compete to be more cost effective, thus more competitive. In fact, at E.R.S. we have managed to maintain an average case cost of around $2,600.

4. One large Kansas self-insured indicated that vocational rehabilitation was running between 2-4% of his total budget.

5. The vocational rehabilitation work product in Kansas is the only one subject to review by the Division of Workers Compensation; moreover, with the adoption of a professional code of standards for Q.R.P.'s, a guideline to judge work has been established and punitive actions can now be taken against rehabilitation vendors who do not comply.

6. Overall, Vocational Rehabilitation is cost-effective, not a cost driver. Numerous studies

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have shown that for every dollar spent on vocational rehabilitation, between $10.00 and $30.00 are saved. N.W. National Insurance, for example, conducted a study in 1990. They looked at long-term disability claimants who suffered industrial injuries. Their findings concluded that for every $1.00 spent on vocational rehabilitation, $30.00 was saved. The savings occurred in such areas as long-term disability payments, welfare, social security disability payments and other public assistance programs. Thus, by not utilizing vocational rehabilitation, there is a cost shifting and not a cost savings.

6. Vocational Rehabilitation is humanitarian. Many injured workers lack the skills or expertise necessary to work with their employer in modifying or changing their job; or do not know how to enter a job search or look for a job; or even how to qualify for state or private re-training programs. Without vocational rehabilitation, most injured workers are left helpless.

In conclusion, I would like to state that while there is some initial cost associated with the current Vocational Rehabilitation mandated system, as the statistics demonstrate, it is limited to less than 2% of all Kansas Work Comp. claims, obviously the claimants in most need of such services. Moreover, the return on investment to employers and tax payers for Vocational Rehabilitation is enormous.

I thank you for your time.

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Attachment 6-5

STATE OF KANSAS

ROCHELLE CHRONISTER
REPRESENTATIVE, THIRTEENTH DISTRICT
WILSON-WOODSON COUNTIES
CHERRY AND WEST CHERRY TOWNSHIPS
IN MONTGOMERY COUNTY
ROUTE 2—BOX 321A
NEODESHA, KANSAS 66757-0321

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
RANKING REPUBLICAN: APPROPRIATIONS
MEMBER: ECONOMIC DEVELOPMENT
REAPPORTIONMENT
JOINT COMMITTEE MEMBER: HEALTH CARE ISSUES FOR THE '90'S
BOARD MEMBER: KANSAS TECHNOLOGY ENTERPRISE CORP. (KTEC)
KANSAS ADVOCACY AND PROTECTIVE SERVICES (KAPS)

TESTIMONY ON SENATE BILL 666

TO: Senator Alicia Salisbury, Members of the Senate Labor, Industry and Small Business Committee

FROM: Representative Rochelle Chronister

DATE: March 18, 1992

I have contacted a number of manufacturers and business people in my district in regard to House Bill 3023 which is a companion bill to Senate Bill 666 which is before you today.

I am very supportive of the changes which have been proposed in Senate Bill 666 and have enclosed several of the letters which I have received in reply to my inquiry about workers' compensation. All of these manufacturers are aware that their letters are also being used in support of Senate Bill 666.

Thank you for your attention to this matter.

HB 3023 & SB
3/18/92
Attachment 7-1

Wells Cabinet, Inc.
R.R. 4, Box 171
Fredonia, KS 66736

Telephone
316-378-2618

Fax
316-378-~~4442~~
2831

March 10, 1992

Rep. Rochelle Chronister
Statehouse, Room 182-W
Topeka, KS 66612

Dear Rochelle:

The workman's comp rate for our wood products manufacturing business increased from a rate of $5.12 per $100 in 1991 to $6.70 per $100 in 1992. The 1992 figure represents an increase of 30% over the previous year.

In the eighteen years we have been in business, we have never had a workman's comp claim in excess of $300-$500 for the year and to my knowledge, only two cases where the claim was anything more than a one time $20 doctor's office call. Even these claims amount to no more than $100 total in eighteen years.

The premium for my 1992 workman's comp, due on 3/31/92, is $6,005.00. This premium does not provide for coverage on either my husband or myself as we have always found personal coverage to be unaffordable. This premium will provide coverage for four full time and two part time year round employees and three or four college and/or high school students who work for us in the summer.

For only the second time since starting this business, we are facing lay-offs due to a slow economy and the skyrocketing costs of doing business. At present, we have laid off two part time employees in 1992. Both are drawing unemployment almost equal to their weekly wages. As we face replenishing our unemployment account, we are well aware of the increase we will receive next year in that regard.

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Attachment 7-2

AEROSPACE MFG. CORP.

511-515 MADISON
FREDONIA, KANSAS 66736
(316) 378-4441
FAX (316) 378-4442

March 11, 1992

Rep. Rochelle Chronister
State House, Room 182-W
Topeka, Kansas 66612

Dear Rochelle:

Thank you for your informative letter concerning workman's compensation. This is, of course, of utmost concern to all businesses, and could be the final straw for some small businesses.

We have personal knowledge of abuse of workman's comp and the increased premiums paid by the employer because of the abuse. I certainly do not know how this can be stopped but the reform bill should certainly help. I am concerned that it is easier for the insurer to pay the claim than to thoroughly investigate.

Item 24 of this bill which doubles the mandatory coverage to $20,000, should, I feel, be increased. We started in business 30 years ago, and the $10,000 figure was in use at that time, and wages have certainly more than doubled during that period.

Disability insurance is available at a relatively low cost compared to workman's comp. Would it be possible for an employer with 5 employees or less to show proof of disability coverage and be excluded from workman's comp.

I continue to hear of losses the insurance industry is having with workman's compensation, yet, the outcry from this industry when alternate ideas are putforth makes you wonder. We certainly do not receive a guarantee that we will make a profit each year, but do not go looking for jobs on which we know we will lose money.

I commend you for this bill as it does cover many of the loopholes presently being used, and know nothing can completely eliminate abuse of this law.

Sincerely,

Lu Fink

S B & I
3/18/92

Attachment 7-3

Midwestern Litho
321 North 6th St. P. O. Box 31
Fredonia, Kansas 66736
Phone 316-378-2912 • 316-378-2491
FAX 316-378-2341

DELAINE PEKRUL
OWNER & MANAGER

There is something totally wrong with the insurance industry. The way it looks to me is the insurance companies are charging three times for the same insurance

1. Workers Comp
2. Liability Insurance
3. Medical Insurance

I pay Workers Comp, I pay Liability insurance in case someone gets hurt on my property. I pay 60% of employees Medical insurance, which has a accident writter on it.

You about have to have all three of these if you want to keep good workers

If these three keep going up, a SD&SB small business like mine can not survive, and where will the U.S. be without small business. (over) 3/18/92

Attachment 7-4

DENISON, INC.
MEDICAL AND INDUSTRIAL GASES
415 MADISON — P. O. BOX 502
FREDONIA, KANSAS 66736
316-378-4148

March 5, 1992

KANSAS INSURANCE DEPARTMENT
MR. RON TODD, COMMISSIONER
420 S. W. 9th St.
Topeka, Kansas 66612

Re: National Council On Compensation Insurance (NCCI) Proposed 31% Workmen's Compensation Rate Increase - Attached Newspaper Article - Enough Is Enough! WE CAN'T TAKE ANY MORE!!!!

Dear Commissioner Todd:

I was quite shocked this morning when I read the attached news article in the Wichita Eagle. I see that NCCI is at it again having just filed for a 31% average in workmen's compensation rates. As we both now the June 1, 1991 24% state-wide rate increase which you approved is not yet even one year old.

Kansas business can not stand another rate increase of this magnitude. In Southeast Kansas our economy is depressed and such an increase in operation costs will simply cause more businesses to close their doors. We both know that there is way too much abuse of the workmen's compensation system going on in this day and age and this must be stopped. I know that there are a number of so called reform bills before the legislature this session and I hope that the legislature will have the determination to address this issue and do something to lower or hold the line on costs.

Enough is enough! This ever upward trend in workmen's compensation costs must be stopped! If this 31% increase is approved it will mean that inside of a year Kansas business will have faced an over 50% increase in workmen's compensation costs. That is just not acceptable. I am going to be showing to all of my commercial clients a copy of this letter so that they will know that I wrote to you in opposition to this increase. I will also ask my clients to wrote you concerning this matter. I would appreciate a written response from your office so that I can also show your response to my customers.

I urge you not to approve any form of workmen's compensation rate increase at this time. Thank you for listening and if there is anything that I can possibly do to get this rate increase disapproved please let me know. I am,

Yours Truly,

Howard L. Alger

Howard L. Alger
Denison, Inc., President

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Attachment 7-5