

Approved April 1, 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

1:00 ~~am~~/p.m. on March 19, 1992 in room 254-E of the Capitol

All members were present except:

Members present were Senators Daniels, Ehrlich, Feleciano, 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:

Don Stehley, Medical Personnel Pool of Wichita, Inc., and Personnel Pool of Wichita, Inc., Wichita  
L. Eric Loewe, Counsel, National Association of Independent Insurers, DesPlaines, Illinois  
Hoot Gibson, Fund Manager, Builders' Association Self-Insurers Fund of Kansas, Kansas City, Missouri  
Janet Stubbs, Executive Director, Home Builders Association of Kansas, Topeka  
Terry Leatherman, Executive Director, Kansas Industrial Council, Topeka  
Doug Lindahl, President, Kansas Chapter of the National Association of Rehabilitation Providers in the Private Sector, Wakefield  
Bud Langston, Director, Kansas Rehabilitation and Clinical Consultants, Topeka  
Joe Furjanic, Executive Director, Kansas Chiropractic Association, Topeka  
Wayne Maichel, AFL-CIO, Topeka  
Mitchell D. Wulfekoetter, McCullough, Wareheim & LaBunker, Topeka  
Representative Rochelle Chronister  
James P. Schwartz, Jr., Consulting Director, Kansas Employer Coalition on Health, Inc., Topeka

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

Don Stehley, Medical Personnel Pool of Wichita, Inc., and Personnel Pool of Wichita, Inc., Wichita, testified the Medical Personnel Pool's premium for 1991 was \$23,115. Based on the same payroll for 1992 the premium will be \$63,256. This amounts to an increase of 40 cents per hour billed to cover the increase in premium. The Personnel Pool's premium for 1991 was \$25,544, and will be \$70,212 for 1992, which will increase the per hour billed 25 cents. Due to the increase, they lost their largest customer and will not win a contract they are presently bidding on.

Mr. Stehley stated one reason their workers compensation rates are high is due to large loses. He said their biggest problem is abuse and fraud. He suggested making the collection of claims more difficult; have insurance company adjustors actively pursue any questionable claim; make it mandatory the employee pay a small portion of the premium; and install a small annual deductible (\$150-\$200) that the employee would pay, see Attachment 1.

L. Eric Loewe, Counsel, National Association of Independent Insurers, Des Plaines, Illinois, testified workers compensation insurance premiums in Kansas doubled between 1981 and 1990. During the same period loses paid by insurers tripled. If Kansas is to regain some stability in its workers compensation system, the growth in benefits payments must be slowed. He said SB 666 addresses many of the major problems in the Kansas system and is an important step in an effort to regain some stability, see Attachment 2. In reply to questions from the Committee, he stated those states that have medical fee schedules have been able to control medical costs. Vocational rehabilitation statutes should be targeted so the people needing vocational rehabilitation are the ones that benefit.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Labor, Industry and Small Business,  
room 254-E, Statehouse, at 1:00 ~~xxx~~/p.m. on March 19, 1992

Hoot Gibson, Fund Manager, Builders' Association Self-Insurers Fund of Kansas, Kansas City, Missouri, testified despite their hard work to provide meaningful loss prevention/loss control services their Fund has become entangled in a litigious workers compensation system that encourages confrontation rather than a process that provides expedient relief to injured workers. He suggested amendments to **SB 666** to increase benefits for an injured worker who is permanently and totally disabled from a current maximum of \$125,000 to lifetime benefits, and increasing benefits to dependents as a result of a work related death from the current \$200,000 maximum to lifetime benefits, see Attachment 3.

Janet Stubbs, Executive Director, Home Builders Association of Kansas, Topeka reported on the results of a questionnaire she had submitted to the membership of Home Builders Association of Kansas. Attached to her testimony is a spreadsheet of the premiums of several codes associated with the construction industry which reflects the significant increases in premiums experienced by the industry, see Attachment 4.

Terry Leatherman, Executive Director, Kansas Industrial Council, Topeka, Topeka, testified in favor of SB 666. He stated several of the issues in SB 666 are reforms which KCCI proposed for legislation which has been introduced in the Kansas House. He suggested several amendments to SB 666. 1. on page 2, lines 10-12, disallowing benefits because of an employee's willful failure to follow the employer's policy relating to proper method of performing a task; 2. on page 2, line 23, and on page 3, line 2, disallowing benefits because an accident was caused due to impairment from alcohol or drugs; 3. on page 17, lines 29-38, provision for selection of alternate health care providers; 4. on page 21, lines 1-5, creation of a disability impairment panel to render impartial and binding opinions; 5. on page 45, lines 29-38, establishment of a workers compensation "fraud" provision. and 6. on page 51, creation of an administrative appeals panel, see Attachment 5.

Doug Lindahl, President, Kansas Chapter of the National Association of Rehabilitation Providers in the Private Sector, Wakefield, testified the only mandatory part of the current statute is the Vocational Assessment. This assessment process merely identifies the claimant's medical, vocational and educational history and points out what difficulties a person will have in returning to work in the open labor market at a comparable wage. He recommended that this remain unchanged. He had concerns about disallowing compensation for disabilities developed over a period of time; and the definition of "treat the injury" versus "cure and relieve". He was also concerned about the prohibition of continuation of temporary total benefits beyond the release for light duty unless the medical opinion addresses claimant's job duties, see Attachment 6.

Bud Langston, Director, Kansas Rehabilitation and Clinical Consultants, Topeka, testified since 1984 vocational rehabilitation, under the workers compensation act, has returned increasing numbers of employees back to employment. Last year there were 751 injured Kansas workers returned to work in comparison to 289 in 1984. 361 injured workers have been returned to work so far this fiscal year at an average wage of \$268 per week. This is a significant return of money into the economy that otherwise might not be there. The average cost of a vocational rehabilitation case in the system today is \$3,600. Vocational rehabilitation is the only service that returns money back into the system and keeps injured employees off of the public rolls.

Joe Furjanic, Executive Director, Kansas Chiropractic Association, Topeka, testified the Kansas Chiropractic Association has some major problems with SB 666. He said he would welcome an objective analysis of chiropractic treatment versus other type of care for like conditions. He would also like to see a study of insurance company "costs" in order to evaluate these

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Labor, Industry and Small Business,  
room 254 E, Statehouse, at 1:00 ~~xxx~~ p.m. on March 19, 1992

expenses to the workers compensation system in Kansas. Mr. Furjanic supported the medical fee panel as it exists in present law and encouraged implementation of the fee schedule. He stated the Kansas Chiropractic Association supports employee choice of physician. He also submitted a press release by Dr. Eugene M. Davidson, President, KCA and Dr. Larry Stout, Chairman, KCA Insurance Commissioner, in which they state recent studies in several states have shown chiropractic more effective than traditional medical care in treating musculoskeletal injuries, which were the most common injuries in Kansas from June 1990 to June 1991, see Attachment 7.

Wayne Maichel, AFL-CIO, introduced Mitchel D. Wulfekoetter.

Mitchell D. Wulfekoetter, an attorney with the law firm of McCullough, Wareheim and LaBunker, Topeka, appeared on behalf of AFL-CIO, and testified in opposition of SB 666. He cited some of the amendments to the Workers Compensation Act appear to drastically cut the injured workers benefits.

Mr. Wulfekoetter proposed the creation of a "safety czar", The safety czar should have the authority and obligation to issue warnings, levy fines and close businesses who operate in violation of the czar's mandates on both public and private property, with or without warning; implement ergonomics within the workplace and compel compliance; educate employees on safety matters and issue certificates of compliance as a prerequisite for obtaining workers compensation insurance annually and confidentially respond to complaints of employees reporting safety violations. He also proposed a statewide system of approved medical providers who would agree to charges fixed by the Director's office and rules and regulations fixed by the Director's office relative to second opinions. The claimant would be permitted to go to any of the approved providers.

Mr. Wulfekoetter listed inefficient claims adjusting strategies and out of proportion salaries of insurance company executives and sales agents as factors causing higher insurance rates.

He also proposed the Committee draft a statute which would tie private workers compensation insurance rates to the average cost increases of the self-insureds around the state, using the cost increases of the self-insureds as an indicator. Private workers compensation carriers should be given an additional 5% above the indicator, see Attachment 8.

Representative Rochelle Chronister submitted prepared testimony and correspondence in support of SB 666, see Attachment 9.

James P. Schwartz, Jr., Consulting Director, Kansas Employer Coalition, on Health, Inc., Topeka, submitted prepared testimony stating SB 666 contains a number of measures that will protect the workers compensation system from further loss of control, and protects the system against abuse, see Attachment 10.

Senator Morris moved to approve the minutes of February 26 and 27; and March 4, 5 and 6, 1992. Senator Sallee seconded the motion. The motion passed.

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

GUEST LIST

COMMITTEE: LABOR, INDUSTRY & SMALL BUSINESS

DATE: 3/19/92

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Bud Longston	Topeka, KS	KRCC
<i>Juan DuBac / IDI</i>	<i>5101 RICHARD KCKS</i>	<i>INTERCONNECT DEVICES, INC.</i>
Patty Perdavis	Leawood KS	Fortis, Corp.
Mark BERTELS	WICHITA	FORTIS CORP.
DICK THOMAS	TOPEKA	DHR/WOR12 COMP
Dick Santner	Topeka	Oxford Healthcare
Jan Nagel	SPRINGFIELD, MO	Oxford Healthcare
Doug Lindahl	RE. 1 B. 33 Enterprise KS.	Oxford Health care
<del>Walt Winkler</del>	Topeka KS	McHugh Construction
HG Warner	topeka KS	
Johnny	Topeka, KS	JOE CONROY CONSULTANT
D. WAYNE ZIMMERMAN	OLATHE	PROF. REHABILITATION MANAGEMENT, INC.
JANET STUBBS	Topeka	HBA OF KANSAS
LARRY MAGILL	TOPEKA	IND. INS. AGENTS OF KS.
George PUCKETT	WICHITA / TOPEKA	KS RESTAURANT HOPPY ASSN.
Tom Slattery	TOP	AGC of KS
Hot Gibsa	Kansas City, Mo.	Builders Assn Self Insur
Rick Liby	Topeka	Gehrt & Roberts
Frances Kastner	Topeka	Ks Food Dealers Assn
Joe FURJANIC	TOPEKA	KCA
Richard Mann	W	KTA
DICK CARTER	TOPEKA	Pete McGill & Assoc
Bill Morrissey	Topeka	DHR/Workers Comp
Terry Leatherman	Topeka	KCCT
ERIC LOEWER	Overland	NATI



**Medical Personnel Pool®**  
Home Care and Staffing Services

March 19, 1992

Senator Salisbury  
Members of the Committee

My name is Don Stehley. I am the co-owner and operator of two businesses in Wichita; Medical Personnel Pool of Wichita, Inc. and Personnel Pool of Wichita, Inc. Both supply temporary personnel to businesses and individuals in the Wichita area. Medical Personnel Pool supplies nursing personnel to hospitals, nursing homes, doctors offices and care in the home. Personnel Pool supplies clerical and industrial personnel. Both companies' Workers Compensation policy's term is from January 1 through December 31. Audits for 1991 premiums have been completed.

Medical Personnel Pool's premium for year 1991 was \$23,115.00. Based on the same payroll for 1992 Medical Personnel Pools' premium will be \$63,256.00, an increase of over \$40,000.00. This amounts to an increase of forty (40) cents per hour billed just to cover the increase in premium.

Personnel Pool's premium for year 1991 was \$25,544.00. Again, based on the same payroll for 1992, Personnel Pool's premium will be \$70,212.00, an increase of \$44,688.00. This necessitated a twenty-five (25) cent raise per hour billed. We have currently lost one of our largest and oldest customer because of this increase. Just this week we had the opportunity to bid on a very large contract, but because of the large Workers Compensation load we have virtually no chance of winning this bid.

Premiums for Medical Personnel Pool for the past three years have exceeded losses. Personnel Pool, however has experienced three rather large losses. By far the biggest part of those claims, in my opinion should never have been allowed. Just two examples are: One woman worked for us a total of seven (7) hours before claiming injury. She was awarded medical expenses, lost wages, rehabilitation, etc. for carpal tunnel syndrome. I ask how one can develop carpal tunnel syndrome in seven hours. This case resulted in an approximate \$25,000.00 pay out. A back injury claimed by a worker had the same resulting medical expenses, wages, etc. The orthopedic physician that examined him originally released him to go back to work, so he found an attorney and another doctor. We later found that this individual had a similar claim about five years before and had seven Worker Compensation claims in the past five years. These are just two of several questionable claims we have experienced over the past few years.

*SLD + SB*  
*3/19/92*

Our biggest problem is abuse and fraud. Workers Compensation has become a huge welfare program and in no way resembles the workers' injury insurance it was intended to be. Quite frankly, I am not sure Personnel Pool will be in business six months from now. We cannot survive these huge increases in premiums and I wonder how long the employers in Kansas and the rest of the country can tolerate this.

Briefly, here are some suggestions that might help stop abuse of the system:

1. Make collection of claims more difficult. (In most cases payout is automatic if a worker files a claim or goes to a doctor.)
2. Have insurance company adjustors actively pursue any questionable claim.
3. Make it mandatory if an employee wants workers compensation insurance they pay a small portion of the premium.
4. Install a small annual deductible (\$150-\$200) that the employee would pay. Nearly all other types of insurance have a deductible before payment is made.

I would be happy to discuss our problems and our thoughts on some possible solutions with you as a group or individually. We, business, the legislature and the work force, must find a way to stop these huge increases in insurance premiums.

Thank you very much for the opportunity to testify.

Don R. Stehley

*S L D + S B*  
*3/19/92*

*Attachment 1-2*

Testimony of  
L. Eric Loewe  
Counsel  
National Association of Independent Insurers  
2600 River Road  
Des Plaines, Illinois 60018

Regarding  
SB 666 - Workers' Compensation

before the  
Kansas Senate Committee on  
Labor, Industry, and Small Business

This statement is being offered on behalf of the National Association of Independent Insurers. The NAI is an association of property-casualty insurers whose members represent approximately \$31 million in workers' compensation premiums in Kansas. While our members include companies of all sizes, many are small insurers who concentrate on policies for smaller employers.

We wish to go on record in support of SB 666. The workers' compensation system must provide adequate benefits to injured employees and maintain some stability in costs if it is to remain vital into the next century, or even through the end of the 1990's. At the same time, the costs employers pay must cover the cost of the benefits if Kansas is to maintain a viable insurance market for employers of all sizes. The bottom line is the cost of the system to employers depends on what is being paid out in benefits and medical costs.

Employers in Kansas are only too aware that insurance premiums for workers' compensation essentially doubled between 1981 and 1990. During the same period losses paid by insurers - that is money paid directly to employees and to medical providers - more than tripled.

If Kansas is to regain some stability in its workers' compensation system, the growth in benefits payments must be slowed. We certainly do not advocate wholesale cuts in benefit levels but a combination of changes which would include tightening the system to make sure that benefits are being paid to those whose injuries are truly work related, addressing court decisions and law changes which have created the greatest opportunity for abuse, gaining more control over medical costs, streamlining the administration, and some targeted benefit reductions where there may be some inequities. SB 666 addresses many of the major problems in the Kansas system and is an important step in an effort to regain some stability.

*SLD + AB*  
*3/19/92*

*Attachment 2-1*



Some of the most important provisions in the bill include:

- **Medical costs:** According to the Workers' Compensation Research Institute, workers compensation medical costs have been growing at a rate approximately 50% faster than medical costs generally. We firmly believe that employers and insurers can take steps to reduce this growth with proper administrative and legislative support. SB 666 will give the Director more authority to set a medical fee schedule, provide medical providers with standing in disputes so employees will be shielded, and limit use of unauthorized providers to treatment only.
- **Covered conditions:** The injuries covered under workers' compensation have been expanded over the years, primarily by court decisions. In some cases this is justified due to changes in the work place or in medical knowledge. In others, the system has been broadened to include conditions which may be only marginally work related. SB 666 would clarify definitions to eliminate some of the conditions with tenuous work connection.
- **Vocational rehabilitation:** Vocational rehabilitation is an important part of a workers' compensation system. The best result in a workers' compensation injury is to assist an employee in return to work. Unfortunately, vocational rehabilitation as a mandatory benefit generally has not served its intended purpose. It has been used primarily to prolong cases and increase settlement values. A number of states have repealed mandatory rehabilitation including Colorado, Florida, and Washington. Our companies indicate that the addition of vocational rehabilitation to the Kansas system has not worked as it was intended. The amendments in SB 666 will help focus on those employees who will actually benefit from vocational rehabilitation and, through changes in the definition of permanent partial, will give employers and insurers greater incentives for providing rehabilitation in proper cases.
- **Permanent benefits.** Currently the definitions and determinations of permanent total and permanent partial disability have been broadened through court decision. The provisions providing for use of AMA Guides to determine impairment and to provide for loss of earning capacity benefits only to those employees who have not returned to work at a comparable wage or been vocationally rehabilitated will make the system more stable and objective. It will also give employers recognition for their efforts to re-employ employees or to provide vocational rehabilitation benefits.
- **Offset of retirement benefits.** Workers compensation benefits were intended to provide income while an employee is disabled, not to be a supplement for retirement. Offsetting retirement benefits from workers' compensation reduces the instances where workers' compensation will be used as a supplement but recognizes that some employees will have lost retirement benefits due to injury.

SLS & B  
3/19/92

Attachment 2-2

- Administration. SB 666 contains several provisions which, assuming proper implementation, will streamline the system and reduce litigation. The independent exams by members of the disability health care panel should provide more objective evaluations and eliminate the need for "dueling doctors." The claimant's advisory office which does an initial calculation of permanency benefits appears to be patterned after the Wisconsin system where the department provides a recommended rating on permanent partial cases. These are accepted in many cases and the system has worked very well in reducing litigation. Allowing employers an opportunity to present evidence at the preliminary hearing will significantly lessen the chances of fraud and of paying clearly noncompensable cases. Prehearing settlement conferences can shorten hearing time and encourage appropriate settlements. Kansas currently has a comparatively cumbersome appeals process which has been criticized for lack of predictability and consistency.
- Fraud. Requiring employees to repay fraudulently obtained benefits makes a lot of sense and will help to discourage fraud.

We appreciate this opportunity to provide the Committee with our views on SB 666.



## Builders' Association Self-Insurers' Fund

3801 S.W. TRAFFICWAY • P.O. BOX 32246 • KANSAS CITY, MO 64111  
PHONE 816/531-2642 • FAX 816/531-2335



Testimony - Kansas Senate Bill 666 - March 19, 1992

Time: 1:30

Place: Capital Building  
Topeka Kansas

Ladies and gentlemen of the committee:

My name is Hoot Gibson. I am the Fund Manager of the Builders' Association Self-Insurers Fund of Kansas, a group funded workers' compensation pool operating within an improved certificate of authority.

I appear today on behalf of the 225 participants in the Kansas Fund who contribute payments of approximately 3.5 million dollars per annum into a trust and who are members of the Builders' Association, the Heavy Constructors Association of the Greater Kansas City Area, the Associated General Contractors of Kansas or the Kansas Contractor's Association.

Our Fund began operation in the state of Kansas in January of 1984. We have worked hard to provide meaningful loss prevention/loss control services utilizing three loss control professionals and an aggressive in-house claim management team. Yet, despite these effective techniques, our Fund has become entangled in a litigious workers' compensation system that encourages confrontation rather than a process that provides expedient relief to injured workers.

Senate Bill 666 would provide much needed changes to a workers' compensation system that is struggling to keep its head above water. Last year, the Kansas Insurance Department authorized the largest workers' compensation rate increase in the state's history. Currently, the Department is considering another rate filing from the National Council on Compensation Insurance that would increase rates an additional thirty (30) percent. However, despite these massive increases, I believe we will continue to see the insuring community move away from workers' compensation in this state.

Our system is in desperate need of reform measures. We believe the following changes would be especially helpful:

- \* Pre-existing conditions would only be compensable if the work related aggravation of the condition was the primary component of the injury.
- \* Revise the vocational rehabilitation portion of the statute to become discretionary by the employer as opposed to mandatory.

*S. L. J. & S. B.*  
*3/19/92*

*Attachment 3-1*

- \* Revise the definition of a compensable "accident" to bar a workers' compensation claim for disability incurred over long periods of time such as the normal wear and tear associated with the aging process.
- \* Revise the definition of work disability to the extent that work disability does not exist if the employee returns to work at a comparable wage.
- \* Require without question that all accidental injuries on the job must be reported within ten days in order to be compensable.

We also believe changes are needed to further protect injured workers in Kansas. The following changes should be considered:

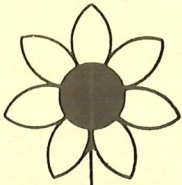
- \* Increase benefits for an injured worker who is permanently and totally disabled from a current maximum of \$125,000 to lifetime benefits. However, in order for a worker to qualify to be a permanent total he or she must be irrefutably permanently as well as totally lifetime disabled.
- \* Increase benefits to dependents as a result of a work related death from the current \$200,000 maximum to lifetime benefits.

Workers' compensation is a serious problem nationwide. Kansas is quickly rising to the top of the list as a state that is in critical condition. We strongly urge the committee to give serious consideration to these reform measures.

I have appreciated the opportunity to share a few thoughts with you today.

*S.L.G. & S.B.  
3/19/92*

*Attachment 3-2*



# HOME BUILDERS ASSOCIATION

OF KANSAS, INC.

Executive Director  
JANET J. STUBBS

## TESTIMONY

SENATE LABOR, INDUSTRY AND SMALL BUSINESS  
March 18, 1992

SB 666

### OFFICERS

#### President

VERNON WEIS  
P.O. Box 314  
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### H.B.A. ASSOCIATIONS

Dodge City  
Hutchinson  
Junction City  
Manhattan  
Montgomery County  
Salina  
Topeka  
Wichita

### PAST PRESIDENTS

Lee Haworth 1965 & 1970  
Warren Schmidt 1966  
Mel Clingan 1967  
Ken Murrow 1968  
Roger Harter 1969  
Dick Mika 1971-72  
Terry Messing 1973-74  
Denis C. Stewart 1975-76  
Jerry D. Andrews 1977  
R. Bradley Taylor 1978  
Joel M. Pollack 1979  
Richard H. Bassett 1980  
John W. McKay 1981  
Donald L. Tasker 1982  
Frank A. Stuckey 1983  
Harold Warner, Jr. 1984  
Joe Pashman 1985  
Jay Schrock 1986  
Richard Hill 1987  
M.S. Mitchell 1988  
Robert Hogue 1989  
Jim Miner 1990  
Elton Parsons 1991

### MADAM CHAIR AND MEMBERS OF THE COMMITTEE:

My name is Janet Stubbs, Executive Director of the Home Builders Association of Kansas, appearing today in support of worker's compensation reform necessary to resolve the crisis currently being experienced by the business community with regard to the increased insurance premiums.

Attached to my testimony is a spreadsheet of the premiums of several codes associated with the construction industry which reflect the significant increase in premium experienced by this industry.

Two weeks ago, my weekly legislative newsletter included a list of 6 questions which I included to obtain information on the experience of the leadership of the industry across the State. In particular, I questioned them regarding the losses experienced in the past 3 years and the safety programs in place for their business. The safety program information was requested because of testimony before the House which stated that Kansas employers appear to feel it is cheaper to pay for injured workers than develop safety programs.

It was really no surprise to me that each business has some safety measure in place with varying degrees of sophistication. Each owner/manager was very concerned about the safety equipment and practices of their employees and expressed frustration with the lack of cooperation they receive from their employees. I was advised by more than one employer that employees do not wear the safety equipment which is purchased for them---even after regular meetings and safety films.

My questionnaire requested that the loss experience information by each firm be broken down into two categories--medical vs. rehabilitation. Of the information received to date, none of the losses have included any rehab costs. However, there is irritation expressed by every owner with the handling of the claims. They believe they are being forced to pay for "injuries" which are received off the job, if at all. Cases are being left "open" even after the claimant has returned to work for another firm. Those employers with whom I spoke had worked with the employee to



*SHJ + SB*  
*3/19/92*

*Attachment 4-1*

return him to work at another position in their firm at the same salary being received at the time of the injury.

There were strong expressions of displeasure with the position in which they find themselves. They believe the system is being "milked" by the health care providers and the employees while they, the employers, have minimal control of their expenses. We see the insurance companies doing little, if anything, to encourage, assist, and reward for implementation of safety programs. Group funded programs find that such practices are extremely beneficial to their success.

In conclusion, we support the concept contained in SB 666 but encourage close scrutiny of revisions recommended to the rehabilitation provisions. I found no resentment expressed for potential expenses associated with rehabilitation requirements, if associated with "valid" claims and handled in a manner medically beneficial to the injured employee with the goal of returning the individual to work as soon as possible. They did resent the perceived ability of an injured worker to draw benefits for an extended period of time while not working or receiving rehabilitation.

The Home Builders Association of Kansas and the Mechanical Contractors Association of Kansas urge legislative action to improve/reform the worker's compensation system in a manner which reflects the concerns expressed by our membership through this testimony.

SLG + LB  
3/19/92

Attachment 4-2

WORKER'S COMPENSATION RATE INCREASES

CATEGORY	CODE	DEC. 1988	MAY 1990	INC. %	JUNE 1991	INCREASE%	TOTAL INC.%	POTENTIAL \$INC.	POTENTIAL %INCREASE	POTENTIAL TOTAL INC.
CARPENTRY-SHOP	2802	\$4.28	\$5.12	19.6	\$6.70	30.9	50.5	\$9.34	39.4	89.9
MILLWRIGHT-NOC	3724	\$7.62	\$7.52	-0.4	\$10.24	34.9	34.5	\$13.73	34.1	68.6
CEILING INSTALL	5020	\$7.40	\$7.32	-1.1	\$8.71	19.0	17.9	\$12.21	40.2	58.1
MASONRY-NOC	5022	\$9.75	\$9.60	-1.5	\$12.85	33.9	32.4	\$16.36	27.3	59.7
DOOR/FRAME	5102	\$4.74	\$5.05	6.5	\$6.81	34.9	41.4	\$10.33	51.7	93.1
FURN/FIX INST.	5146	\$4.96	\$4.53	-8.7	\$5.35	18.1	9.4	\$6.93	29.5	38.9
PLUMBING-NOC	5183	\$4.59	\$4.28	-6.8	\$5.77	34.8	28.0	\$8.39	45.4	73.4
ELEC. WIRING	5190	\$3.66	\$3.21	-12.3	\$4.33	34.9	22.6	\$7.01	61.9	84.5
CONC/CONS.NOC	5213	\$9.82	\$12.02	22.4	\$16.14	34.3	56.7	\$22.20	37.5	94.2
CONC. CON-RES	5215	\$8.86	\$7.74	-12.6	\$10.44	34.9	22.3	\$14.74	41.2	63.5
CON/CEMENT WORK	5221	\$5.58	\$6.28	12.5	\$8.47	34.9	47.4	\$12.51	47.7	95.1
CARPENTRY	5403	\$7.94	\$9.03	13.7	\$11.08	22.7	36.4	\$13.48	21.7	58.1
CARP/CAB. WORK	5437	\$5.61	\$5.21	-7.1	\$7.03	34.9	27.8	\$9.31	32.4	60.2
WALLBOARD	5445	\$7.40	\$7.32	-1.1	\$8.71	19.0	17.9	\$9.76	12.1	29.0
PAINT/PAPER HG.	5474	\$6.57	\$7.02	6.8	\$9.32	32.8	39.6	\$10.44	12.0	51.6
INSUL. INST.	5479	\$15.84	\$12.57	-20.6	\$14.84	18.1	-2.5	\$18.95	27.7	25.2
PLASTERING	5480	\$7.75	\$9.48	22.3	\$12.79	34.9	57.2	\$19.10	49.3	106.5
STR./RD PAV.	5506	\$5.73	\$5.64	-1.6	\$7.61	34.9	33.3	\$9.76	28.3	61.6
ST/RD CONST.	5507	\$8.37	\$8.66	3.5	\$10.22	18.0	21.5	\$12.31	20.5	42.0
SHEET METAL	5538	\$6.82	\$6.50	-2.9	\$8.77	35.0	37.9	\$11.15	27.1	65.0
ROOFING	5551	\$19.70	\$20.27	-4.7	\$27.36	34.9	39.6	\$37.85	38.3	77.9
EXEC. SUPR.	5606	\$1.43	\$1.63	14.0	\$2.20	35.0	49.0	\$3.56	61.8	110.8
CLEAN/DEBRIS	5610	\$4.16	\$4.35	4.6	\$5.87	34.9	39.5	\$7.86	33.9	73.4
CARP. 1 STORY	5645	\$9.20	\$8.10	-12.0	\$10.93	34.9	46.9	\$15.70	43.6	90.5
CARP/UND. 4 STY	5651	\$10.35	\$9.59	-7.3	\$12.94	34.9	42.2	\$20.96	62.0	104.2
EXCAVATION-NOC	6217	\$4.70	\$4.13	-12.1	\$5.57	34.9	47.0	\$8.42	51.2	98.2
SEWER/CONST	6306	\$8.68	\$6.89	-20.6	\$8.14	18.1	-2.5	\$12.24	50.4	47.9
ALARM INST.	7605	\$2.15	\$2.76	28.4	\$3.72	34.8	63.2	(\$3.71)	-0.3	62.9
CONT. PERM YARD	8227	\$3.68	\$3.03	-17.7	\$4.09	35.0	17.3	\$5.31	29.8	47.1
BLDG. MTR. DLR.	8232	\$4.12	\$4.59	11.4	\$6.19	34.9	46.3	\$7.91	27.8	74.1
CLERICAL	8810	\$0.27	\$0.28	3.7	\$0.37	32.1	35.8	\$0.47	27.0	62.8
BUILDINGS	9014	\$4.75	\$5.03	5.9	\$6.57	30.6	36.5	\$8.69	32.3	68.8
FLOOR COVERING	9521		\$4.11		\$5.32	29.4		\$7.73	45.3	

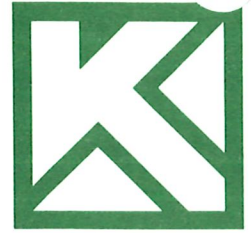
*LR & SB*  
*3/19/92*

*Attachment 4-3*

# 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

SB 666

March 5, 1992

KANSAS CHAMBER OF COMMERCE AND INDUSTRY  
Testimony Before the  
Senate Committee on Labor, Industry and Small Business  
by  
Terry Leatherman  
Executive Director  
Kansas Industrial Council

Madam Chairperson and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to appear today in support of SB 666.

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.

By my count at least, there are 38 different reform concepts of the Kansas workers' compensation system in SB 666. With any proposal of this magnitude, it should not be surprising to hear there are aspects of SB 666 which KCCI feels should be amended. Those

*TL + LB*  
*3/19/92*  
*Attachment 5-1*



suggested amendments are summarized on the final page of my testimony. However, since several of the issues in the bill are reforms which KCCI proposed for legislation which has been introduced in the Kansas House and many other elements in SB 666 are consistent with KCCI's efforts involving workers' compensation reform, the Kansas Chamber would urge the Committee's support for SB 666.

Prior to reviewing specific amendment suggestions for SB 666, I would like to speak in general terms why workers' compensation reform is needed in Kansas.

When the effects of last year's 24% average overall increase in workers' compensation insurance premiums are fully realized, Kansas employers will pay \$364,000,000 annually to private insurance carriers for workers' compensation insurance. In just seven years, the cost of private workers' compensation insurance has doubled. When you include self-insurance arrangements, workers' compensation insurance costs approach a half billion dollars annually in Kansas. These are today's costs. As this Committee knows, the potential for another wave of workers' compensation insurance increases is present with the pending 31.4% increase request, which is currently being considered by Kansas Insurance Commissioner Ron Todd.

The issue the Committee faces is how to grapple with spiraling cost. Pursuing this answer is complicated by the fact that specific cost information is very difficult to obtain. The situation creates a difficult paradox. Everyone shares a desire to make workers' compensation more affordable, yet you cannot say with certainty that following a certain path will achieve that goal.

The Kansas Chamber suggests we shine the light on the workers' compensation reform measures before you differently. Rather than being concerned about the cost effectiveness of an issue, they should be judged as to whether an issue alters an employer's responsibility to provide effective care and fair compensation to workers who are injured on the job. If a proposal indicates an excess in the system, even if it saves little in employer costs, it should be supported.

*SLG + AB*  
*3/19/92*

For instance, KCCI contends the "work disability" provision on page 25 of SB 666 meets this fairness challenge, by limiting compensation to functional impairment if an injured worker is employed at comparable wages after recovering from their injury.

In promoting workers' compensation reform, the Kansas Chamber has not asked for the Legislature's blessing to abandon the pledge employers give employees through workers' compensation to care for and compensate workers for job-related injuries and illnesses. However, the system does have excessive provisions which the business community no longer can afford. KCCI feels curbing those provisions will create the cost containment this Committee desires, while maintaining a system that responds to the needs of injured workers.

SLD & AB  
3/19/92

Attachment 5-3

## KCCI SUGGESTED AMENDMENTS TO SB 666

1. On page 2 - lines 10-12. Disallowing benefits because of an employee's willful failure to follow the employer's policy relating to proper method of performing a task.

KCCI feels this provision may not properly protect employees. KCCI would suggest this provision be amended to require employers show an employee had been instructed on how an action could lead to an injury, yet the employee failed to follow the instructions they had received.

2. On page 2 - line 23, page 3 - line 2. Disallowing benefits because an accident was caused due to impairment from alcohol or drugs.

KCCI would suggest further protecting employees by including the procedures employers are responsible to follow to receive an employee misconduct ruling in the Kansas Employment Security Law.

3. On page 17 - lines 29-38. Provision for selection of alternate health care providers.

KCCI feels the current "checks and balance" approach to selection of health care providers protects employers and employees, and would suggest deletion of this provision.

4. On page 21 - lines 1-5. Creation of a disability impairment panel to render impartial and binding opinions.

KCCI very much supports the concept of increasing objective decisions to workers' compensation medical issues and feels a disability impairment panel could achieve that challenge. However, KCCI would recommend Kansas employers and employees be challenged to take a prominent role in the selection of health care providers to serve on the disability impairment panel.

5. On page 45 - lines 29-38. Establishment of a workers' compensation "fraud" provision.

KCCI suggests this provision in SB 666 be replaced by the language contained in HB 2872 regarding workers' compensation fraud.

6. On page 51. Creation of an administrative appeals panel.

KCCI supports creation of an administrative appeals panel, however our support hinges on the panel being the "absolute" appeals arm of the process, and adoption of a selection process for the judges on the panel which significantly involves Kansas employers and employees.

*LD + SB*  
*3/19/92*

*Attachment 54*

TESTIMONY  
DOUG LINDAHL, M.S., C.I.R.S., R.P.C.  
MARCH 19, 1992

As the President of the Kansas Chapter of the National Association of Rehabilitation Providers in the Private Sector and the Kansas Chapter of the National Association of Service Providers in Private Rehabilitation, I thank you for this opportunity to comment regarding the proposed legislation. As a member and current State Chapter President of these two nationally affiliated professional organizations, I have been very interested in how vocational rehabilitation services are provided in the State of Kansas for several years. Prior to the law change in July, 1987, there were only a few of us in Kansas providing medical management and vocational rehabilitation services. As the law change increased referrals, there was an identified need for more professional in-service training and regulation. Unfortunately, the Division of Workers Compensation did not want to appear to support any particular professional association and, therefore, took over four years to define their own standards for provision of rehabilitation services. Those of us that have been professional association members have been aware of and, in most cases, abiding by our own association's professional standards for years and are now pleased that Kansas Workers Compensation has some accepted standards of practice. Since those standards have now just been accepted, I would encourage you to observe their implementation and encourage the Division of Workers Compensation to administer them aggressively so that any particular problems that have come to your attention during this hearing process, can be dealt with swiftly.

In order to address some of the individual issues that this legislation has brought up, please allow me to make some comments. First and foremost, you should be aware that the only mandatory part of the current statute that I am aware of is the Vocational Assessment. This assessment process merely identifies the claimant's medical, vocational and educational history and points out what difficulties a person will have in returning to work in the open labor market at a comparable wage. That is the only part that is actually mandatory. I would recommend that this remain unchanged since making the actual Plan mandatory increases opportunities for "game playing", litigation, and excessive costs. Rehabilitation counselors need to provide their recommendations on the best possible Vocational Rehabilitation Plan that they can come up with but claimants also need to be assisted in becoming as independent as possible so that the end goal is a return to work and independence, not dependence.

SLG & LB  
3/19/92

Attachment 6-1

Doug Lindahl, M.S., C.I.R.S., R.P.C.  
Testimony  
March 19, 1992  
Page 2

A good rehabilitation counselor is one that constantly provides information to all parties and assists the claimants in making appropriate decisions leading to their vocational independence.

As the attached R87-1 form indicates, injured workers currently do not have to be referred until they have been released with restrictions that make a return to the same job questionable. Different insurance companies and adjusters have different policies about when to make a referral but they do have a lot of discretion. Early referrals do increase the likelihood that an injured worker will return to work but early referrals are not currently required.

I would like to support certain topics addressed in the legislation that I feel can reduce the adversarial nature of this supposedly self-enacting legislation. If the intent of the 1987 Act was to disallow work disability if an employee returns to work for a comparable wage, then it should be so clarified. This would assist rehabilitation counselors in providing vocational rehabilitation services and not in serving as vocational experts for testimony purposes. Some provision might be appropriate for claimants to be protected against future retaliatory firing. Utilizing the AMA's guidelines for evaluation of permanent impairment might reduce the use of opposing doctors in establishing functional impairment ratings.

I have some concerns regarding other parts of this legislation that I would like to briefly comment on. Relying exclusively upon the medical definition of "permanent total disability" would, in my opinion, require doctors to become experts in vocational issues. We rely extensively on their ability to establish functional restrictions but feel that their ability to relate those restrictions to work settings, or modified work settings, might be inappropriate. I also have some concern regarding disallowing compensation for disabilities developed over a period of time. It is obvious to me that I am no longer eighteen years old and many of my claimants are also encountering physical problems in jobs that they handled successfully twenty years prior. Both employers and employees should work smarter and consider lighter duty activities. I feel that there should be some shared responsibility between the employer and the employee for career planning and job review. I have no easy solutions for this issue but feel that disallowing compensation would not be the appropriate emphasis. I also have some question regarding the definition of "treat the injury" versus "cure and relieve". Hopefully, this would not disallow such appropriate and often times essential items as durable medical equipment. Again, we need to insure that language in the Act does not add to litigation opportunities. I am also concerned regarding the prohibition of continuation of temporary total benefits beyond the release for light

S. J. v. S. B.  
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Attachment 6-2

Doug Lindahl, M.S., C.I.R.S., R.P.C.  
Testimony  
March 19, 1992  
Page 3

duty unless the medical opinion addresses claimant's job duties.  
Again, we are asking doctors to be experts in the claimant's job duties and not allowing for the 50 days currently provided for the Vocational Assessment if the claimant cannot return to their prior job.

As a participant in/and observer of the Workers Compensation system for the last eighteen years, it is my impression that many individuals have benefited from appropriate and timely vocational rehabilitation services. Now that standards have been established, emphasis should be placed on administering those standards to the benefit of the injured worker. Many cooperative efforts have existed for years between rehabilitation counselors, adjusters, respondent attorneys and claimant attorneys and all parties should now work together to see that the intent of the legislation to return workers to work is emphasized. I think that that intent is still in place and efforts to cut down on the litigation and lack of timeliness related to vocational rehabilitation should be investigated but that vocational rehabilitation itself be allowed to continue and meet the needs of the vast majority of Workers Compensation recipients that only want to return to work and reestablish their independence.

I thank you for this opportunity to visit with you and although my comments have been very general in nature, I would be glad to attempt to answer any questions that you might have.

S. L. J. AB  
3/19/92

Attachment 6-3

KANSAS DEPARTMENT OF HUMAN RESOURCES  
DIVISION OF WORKERS COMPENSATION

INSURANCE CARRIER STATUS REPORT

TO: Division of Workers Compensation  
Rehabilitation Administrator  
600 Merchants Bank Tower  
800 SW Jackson  
Topeka, KS 66612-1227

From (Insurance Carrier): \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State: \_\_\_\_\_ ZIP: \_\_\_\_\_  
Ins Ca File No \_\_\_\_\_  
Adjustor: \_\_\_\_\_ Phone(\_\_\_\_) \_\_\_\_-\_\_\_\_\_

Re: Claimant: \_\_\_\_\_ SSN: \_\_\_\_\_  
Street: \_\_\_\_\_  
City, State : \_\_\_\_\_ ZIP \_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_ Date of Birth \_\_\_\_\_  
Employer: \_\_\_\_\_  
Job description: \_\_\_\_\_

Accident date: \_\_\_\_\_

Claimant has lost \_\_\_\_\_ days as of \_\_\_\_\_ 199\_\_.  
(DATE FORM COMPLETED)

We have referred claimant on \_\_\_\_\_ 199\_\_ to \_\_\_\_\_  
(vendor) for medical management to assist claimant  
in obtaining maximum medical improvement.

We have referred claimant on \_\_\_\_\_ 199\_\_ to \_\_\_\_\_  
(vendor) to determine whether  
vocational rehabilitation services are needed.

We have not made a referral because:  
\_\_\_\_\_ Claimant returned to work on \_\_\_\_\_ 199\_\_.

\_\_\_\_\_ The claim is being denied as not compensable.

\_\_\_\_\_ Claimant's medical condition has not stabilized.  
Prognosis as to when condition will stabilize \_\_\_\_\_ 199\_\_.  
\_\_\_\_\_ Temporary total compensation (is) (is not) being paid. (Circle one)  
\_\_\_\_\_ Claimant will return to work for the same employer when released by  
attending physician. Estimated return to work date \_\_\_\_\_.  
\_\_\_\_\_ Other \_\_\_\_\_

*SLG + SB*  
*3/19/92*

*Attachment 6-4*



# Kansas Chiropractic

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ASSOCIATION

TESTIMONY IN OPPOSITION TO SB 666

SENATE LABOR, INDUSTRY AND SMALL BUSINESS COMMITTEE

JOE FURJANIC, EXECUTIVE DIRECTOR, KANSAS CHIROPRACTIC ASSOCIATION

MARCH 18, 1992

Madam chairperson and members of the committee, my name is Joe Furjanic. I am the Executive Director of the Kansas Chiropractic Association.

The Kansas Chiropractic Association has some major problems with SB 666.

First, at page 13 at line 1 changing the language "cure and relieve" to the word "treat" is addressed in the House bill summary at #27 stating that "current language is open invitation to prolonged chiropractic involvement." Whether or not this is true I don't know. I do know that on occasion chiropractic treatment does take a long time just as some medical treatment.

However, we also need to take a minute to look at other open invitations. A few weeks ago, Mr. Hager from NCCI handed out to the committee a brochure entitled "Charting The Course Toward Rate Adequacy: A summary of the steps involved in compiling a rate filing." You will notice that I have drawn a box around the second paragraph on page 4, the paragraph states:

In administered pricing states, assessing the costs *2291 SB*  
begins with overhead - the cost of issuing the policy, *3/19/92*



servicing the insured, providing loss prevention activities, auditing payrolls, settling claims, and defending the insured in court. Five categories of business overhead expenses are measured: acquisition costs and general expenses, overhead and capital expenditures, premium taxes, claims adjustment expenses, contingencies and profit. In a lost cost environment, NCCI does not address this issues; it is done by the individual insurer.

To my untrained eye, it appears that insurance companies say "trust me" to the NCCI when they submit their yearly cost estimates and "costs" include such items as defense costs of litigation, contingencies and profit. The cost of chiropractic care in the Workers Compensation system is a cost which can be tracked. We welcome an objective analysis of chiropractic treatment vs. other type of care for like conditions. We would also like to see a study of insurance company "costs" in order to evaluate these expenses to the Work Comp system in Kansas.

Further, you will notice slide #63 presented by Mr. Hager spoke about "Chiropractors and use of pain clinics - major contributors to cost increases." KCA was highly offended by his remarks that "In Oregon 20 chiropractors are now in jail for fraud." Actually 3 chiropractors and 1 medical doctor were convicted of fraudulent billing. I have enclosed information from the Chiropractic Association of Oregon which speaks to the turmoil that occurred in Oregon 2 years ago regarding Workers Comp.

*LRG + LB*  
*3/19/92*

*Attachment 7-2*

Another item on slide #63 is the medical fee schedule. KCA is in favor of the medical fee panel as it exists in present law and would encourage implementation of the fee schedule now.

Last, slide #63 addressed choice of physician and unauthorized care. At p. 17 lines 29 through 38 SB 666 attempts to modify the present employer choice/unauthorized medical procedure.

As you will recall, I brought to the committee over 11,000 signatures supporting employee choice signed by patients of doctors of chiropractic. KCA supports employee choice.

Thank you for this opportunity to speak. I would be happy to answer any questions from the committee.

*SLG v SB*  
*3/19/92*

*Attachment 7-3*

# Assessing Costs

When we update prices, we assess the costs of goods and services and compare them to the revenue collected under the old rates. The product sold by insurers is a promise to pay; the cost of the product is the sum of the liabilities incurred when the promise was made. Insurance is an unusual product, because we must set the price before we know the cost.

In administered pricing states, assessing the costs begins with overhead—the cost of issuing the policy, servicing the insured, providing loss prevention activities, auditing payrolls, settling claims, and defending the insured in court. Five categories of business overhead expenses are measured: acquisition costs and general expenses, overhead and capital expenditures, premium taxes, claims adjustment expenses, contingencies and profit. In a loss cost environment, NCCI does not address this issue; it is done by the individual insurer.

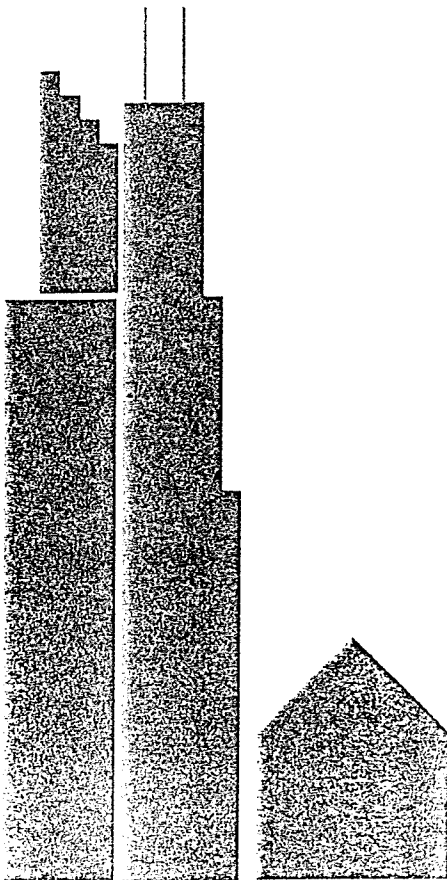
Establishing the expense levels in workers compensation is difficult. Policies cover businesses large and small, from the candy store on the corner to industrial giants employing thousands. The percentages of premium for the expenses involved in writing each of these policies will differ and the system has been refined to account for this cost. The small account will entail some of the same administrative and handling

costs as the large one, while producing a fraction of the premium.

After we have accounted for these costs of doing business, we are left with the essential question: how much is left to pay the benefits? The amount available to pay the losses is referred to as the balance point. These dollars pay for medical costs, vocational and physical rehabilitation, and provide income to the injured worker. Once we have determined the portion of the premium dollar available to pay benefits, we determine what portion is actually being paid out by dividing the actual losses by the premium. This gives us the actual cost (or loss) ratio.

Determining the projected cost ratio involves adjustments to the actual, and that is where the actuaries play their largest part. Without actuaries we are the prisoners of experience. Ratemaking would be like driving a car with its windshield painted black and trying to find our way by using the rearview mirror.

We begin this process by evaluating the historical record on the basis of current reality. Premiums collected under an old set of rates must be adjusted to current levels; that is, we must determine what they would have been if they had been collected under the current rates.



*RLG + SB*  
*3/19/92*  
*Attachment 7-4*

## NCCI KANSAS CLAIMS SURVEY MAJOR AREAS OF CONCERN REFLECTED IN RESPONSES

### COVERAGE OF LAW (CONTINUED)

- OVERALL INCREASE IN COSTS FROM INSTITUTION OF MANDATORY VOCATIONAL REHABILITATION AND THE SUPREME COURT DECISION IN HUGHES vs. ISLAND CONTAINER (DECISION REQUIRES CONSIDERATION OF BOTH REDUCTION OF ABILITY TO WORK IN OPEN MARKET [THIS INFLATES SETTLEMENT VALUE OF CASES] AND ABILITY TO EARN COMPARABLE WAGES).
- IMPAIRMENT DETERMINATIONS BY ALJs ARE TOO SUBJECTIVE.
- COURTS HAVE NOT SETTLED QUESTIONS RE DATE OF ACCIDENT FOR CUMULATIVE TRAUMA INJURIES.
- DECISION IN LOVE vs. McDONALD'S RESTAURANT WILL MAKE IT EASIER TO MEET TEST FOR TRAUMATIC NEUROSIIS.

SOURCE: SEPTEMBER 1991—13 CARRIERS PLUS ONE SERVICE PROVIDER.  
(CARRIERS WROTE IN EXCESS OF 66% OF W.C. IN KANSAS IN 1989.)



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## NCCI KANSAS CLAIMS SURVEY MAJOR AREAS OF CONCERN REFLECTED IN RESPONSES

### INCOME BENEFITS

- TTD ADJUSTED ANNUALLY (BASED ON STATE'S AVERAGE WEEKLY WAGES) = WORKER'S WAGE AT TIME OF INJURY + AVERAGE OF OVERTIME FOR 26 WEEKS PRECEDING THE INJURY. THE VALUE OF FRINGE BENEFITS DISCONTINUED BY THE EMPLOYER MUST ALSO BE INCLUDED IN THE AWW COMPUTATIONS.
- INTENT OF REVISED DEFINITION OF PERMANENT PARTIAL TO ENCOURAGE RETURN TO WORK AND VOCATIONAL REHABILITATION HAS BEEN ERODED BY AWS—SUPREME COURT. ALSO, NO CAP ON TIME ALLOWED TO PREPARE VOCATIONAL REHABILITATION PLAN APPROVAL. (TT BENEFITS CONTINUE THROUGH REHABILITATION PROGRAM).
- TWO-PRONG TEST FOR PPD (LOSS OF LABOR MARKET ACCESS AND LOSS OF EARNING CAPABILITY) WILL CONTINUE TO RAISE INCOME BENEFITS SIGNIFICANTLY.

SOURCE: SEPTEMBER 1991—13 CARRIERS PLUS ONE SERVICE PROVIDER.  
(CARRIERS WROTE IN EXCESS OF 66% OF W.C. IN KANSAS IN 1989.)



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## NCCI KANSAS CLAIMS SURVEY MAJOR AREAS OF CONCERN REFLECTED IN RESPONSES

### MEDICAL BENEFITS

- A FEE SCHEDULE APPROVED DURING LAST LEGISLATIVE SESSION HAS NOT BEEN USED.
- ALTHOUGH EMPLOYER HAS RIGHT TO CHOOSE PHYSICIAN, EMPLOYEE CAN GO TO THE DOCTOR OF HIS CHOICE, BUT IS HELD TO \$350 UNAUTHORIZED CARE LIMIT. (ALJs REPORTEDLY AUTHORIZE FREELY.)
- CHIROPRACTOR AND USE OF PAIN CLINICS—MAJOR CONTRIBUTORS TO COST INCREASES.

SOURCE: SEPTEMBER 1991—13 CARRIERS PLUS ONE SERVICE PROVIDER.  
(CARRIERS WROTE IN EXCESS OF 66% OF W.C. IN KANSAS IN 1989.)



63

## NCCI KANSAS CLAIMS SURVEY MAJOR AREAS OF CONCERN REFLECTED IN RESPONSES

### VOCATIONAL REHABILITATION

- NO REGARD TO ELIGIBILITY STANDARDS FOR VOCATIONAL ASSESSMENTS. ASSESSMENTS LONG DRAWN-OUT PROCESS.
- TESTIMONY OF REHABILITATION PROFESSIONALS INFLATE WORK DISABILITY SETTLEMENTS.
- WORKER MAY BE DUE BOARD, LODGING AND TRAVEL TO \$3,500 PER WEEK FOR 36 WEEKS IF NECESSARY TO MOVE RESIDENCE IN ORDER TO PARTICIPATE IN REHABILITATION PLAN.
- THE GENERALLY DEPRESSED ECONOMY HAS GENERATED A CLIMATE FOR EXTENSIVE VOCATIONAL REHABILITATION RETRAINING PLANS.

SOURCE: SEPTEMBER 1991—13 CARRIERS PLUS ONE SERVICE PROVIDER.  
(CARRIERS WROTE IN EXCESS OF 66% OF W.C. IN KANSAS IN 1989.)



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*Attachment 7-5*  
*8/19/92*  
*PKS/AB*

# Fraud program weeds out cheaters

Fraud, like a weed in a neglected garden, has taken root in the insurance business. It is so pervasive that insurance industry experts estimate that fraud, ranging from padded claims to organized crime, costs an overwhelming \$16 billion last year. While a few profit from such illegal activity, many pay. SAIF is putting a stop to fraud within its jurisdiction and actively pursuing those who commit it, according to Allan B. deSchweinitz, vice president of SAIF's compliance department.

"Those who are abusing the system will be caught and prosecuted through the civil or criminal justice systems," deSchweinitz said. He oversees SAIF's new Fraud Unit that investigates suspected workers' compensation fraud cases. Cases may involve an injured worker who files a workers' compensation claim for an off-the-job injury or an employer who falsely reports his/her payroll. Fraud activity can also involve medical providers who bill SAIF for treatment of an injured worker that was unnecessary, excessive or never performed.

Recently two Oregon medical providers discovered what SAIF's fraud investigations can do. A Brookings physician was placed on probation for 10 years and a Salem chiropractor will be fined \$50,000 as a result of SAIF's increased emphasis on eliminating fraud from the workers' compensation system.

## Audit uncovers discrepancies

Discrepancies in treatment of injured workers provided by a Brookings physician

surfaced when SAIF began auditing provider bills in 1986. SAIF's Medical Services Division staff discovered questionable charges—inappropriate prescriptions, unnecessary laboratory and x-ray work and excessive use of ultrasound equipment.

SAIF requested explanations for these billings from Randal L. Garcia M.D. When he could not provide adequate justification,

SAIF denied payment. Despite these denials, Dr. Garcia continued to bill for excessive treatment and inappropriate prescriptions.

SAIF notified the Oregon Board of Medical Examiners which conducted a hearing in June of 1988 and revoked Dr. Garcia's medical license on grounds of "unprofessional conduct." This revocation was suspended by the Board and Dr. Garcia was placed on 10 years probation with a number of terms and conditions.

## Restricting his treatment

SAIF then requested the director of the Department of Insurance and Finance (DIF) to invoke the Provider Sanction Statute that could restrict Dr. Garcia's treatment of injured workers for up to three years. This statute, passed by the 1987 Legislature, became effective Jan. 1, 1988. It enables the DIF director to impose sanctions on a medical services provider when his/her treatment on an injured worker is excessive, inappropriate or ineffectual. If such treatment is found to be repeated and willful, the director can declare the health care practitioner ineligible for reimbursement for a period not to exceed three years.

Ted Kulongoski, director of the DIF, ruled that Randal L. Garcia M.D. is ineligible for reimbursement for treating workers' compensation claimants for one year, effective Feb. 1, 1989. This is in addition to the ten-year probation which the Oregon Board of Medical Examiners placed on him.

"This is just the first case affected by the Provider

Continued on back

## FRAUD HOTLINE

A special toll-free telephone number, 1-800-282-8822, has been installed at SAIF to take calls from the public concerning suspected cases of fraud involving providers, injured workers or employers. The calls are confidential and will be thoroughly investigated. SAIF will inform the caller of the outcome of the investigation if appropriate. (See related story, back page, on Jeff Maldonado, newly hired SAIF investigator).



# Oregon employers choose SAIF

Several excellent businesses have recently moved their workers' compensation insurance coverage to SAIF Corporation.

With the addition of two new plans recently approved by the Department of Insurance and Finance (see story in the Special Update section), it is anticipated that other Oregon employers will be looking to SAIF for workers' compensation coverage.

The new policyholders, the industry they are in and the branches which service the account include:

- Douglas Pacific Veneer— veneer manufacturing—Eugene
- Pape Brothers Inc.—sales/service heavy equipment—Eugene
- Celco Enterprises Inc.— commercial leasing/financial service—Eugene
- Willamette View Inc.— retirement/nursing home facilities—Portland
- Interstate Distributor Company—long-haul trucking—Portland
- California Shellfish Company—seafood processing—Portland

- White Plywood Company—lumber—Salem
  - John Day Lumber Company—lumber—Bend
  - Bettendorf Enterprises Inc.— chip hauling—Medford
- "We are committed to making SAIF Corporation the premier provider of workers' compensation insurance through superior service and products. We appreciate the business of these new policyholders and look forward to providing them with service," said SAIF President Stanton F. Long.

## Fraud detection helps control costs

Continued from front  
Sanction Statute," said deSchweinitz. "SAIF Corporation will not tolerate those who are profiting illegally from the system. We will continue to audit, investigate and prosecute providers who attempt to cheat SAIF Corporation with fraudulent billings, excessive and inappropriate treatment of injured workers."

**Salem chiropractor to be fined**  
In a case filed by the Oregon Department of Justice on behalf

### Maldonado named chief investigator

Jeff Maldonado, the former chief deputy and administrative supervisor of the Jackson County Sheriff's Department, has been appointed Chief Investigator of SAIF Corporation's Fraud Unit, according to Allan deSchweinitz, vice president of compliance.

Maldonado will be responsible for investigating provider, claimant and employer fraud cases. He will work with the Department of Justice and other public agencies for prosecutions of civil and criminal cases. He has been with the county sheriff's department since 1971 as a patrol deputy, investigator and patrol sergeant. Maldonado has a Bachelor of Science degree in criminology from Southern Oregon State College and is a graduate of the Oregon Police Academy and the FBI National Academy in Quantico, Virginia.

of SAIF Corporation, Salem chiropractor Kent J. Wilson will be fined \$50,000 for fraud, according to an opinion issued by Marion County Circuit Judge Richard Barber. Judge Barber also recommended to the State Board of Chiropractic Examiners that Dr. Wilson's license to practice be revoked within 60 days.

Judge Barber's opinion found that Dr. Wilson and Lynn A. Wilson, his former wife and office manager, intentionally overbilled SAIF Corporation, destroyed computer records of overbillings and tried to convince employees not to testify about the activities. According to the judge, the Wilsons

also overcharged insurers for health aids and literature, billed and accepted overpayments and refunded the overpayments only if requested.

**Case under racketeering laws**  
The case was filed under Oregon's racketeering laws (Racketeering Influenced and Corrupt Organizations Act—RICO) and was the first such case against a health care provider, according to a statement issued by Attorney General Dave Frohnmayer. The Department of Justice will continue to work closely with SAIF to prosecute health care providers who submit fraudulent claims, Frohnmayer said.

## compnews

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3903 SW KELLY SUITE 150  
PORTLAND OR 97201

*Stewart*  
3/19/92

Published by Corporate Communications  
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Michael Satern: Art Director  
International Association of Business Communicators  
Oregon Columbia/ABC

*Attachment 7-7*

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District Offices: Baker 523-6342/Corvallis 758-1294/Klamath Falls 382-4454/North Bend 756-3118/Pendleton 276-4130/Roseburg 672-5826.

# Fraud, Medical Services achieve cost-sa

SAIF Corporation's crackdown on fraud and increased auditing of medical bills have achieved important milestones in reducing workers' compensation costs for policyholders.

At the same time, SAIF's automated claims handling system — another improvement in service — came on-line ahead of schedule, giving examiners the ability to handle claims efficiently, effectively and without costly delays.

The milestones were reached in the Fraud/Investigation Division, which recently received its 1,000th fraud referral, and the Audit Section of the Medical Services Division, which in August surpassed for the first time the \$1 million mark in savings for a single month.

Referrals to the Fraud/Investigation Division were, for the most part, generated by SAIF's fraud "hotline" (1-800-282-8822) and helped produce the following successes:

- Provided local authorities with information that has led to felony or misdemeanor charges against 10 workers accused of cheating SAIF. Seven of those pleaded or were found guilty and three more are awaiting trial. Another two dozen cases are pending.
- Obtained civil judgments totaling more than \$225,000 against two chiropractors and a medical doctor who intentionally overbilled SAIF. Civil racketeering lawsuits are pending against two other chiropractors and investigations are continuing into the activities of several other health-care providers.
- Nearly \$100,000 has been recovered by SAIF through restitution, demand letters, performance bonds and uncashed checks.

These activities have earned SAIF front-page coverage in the state's largest newspaper, numerous television news stories, and made workers' compensation a regular topic on radio talk shows.

Several policyholders have placed copies of SAIF's anti-fraud

advertisements in their businesses as a deterrent to cheating and SAIF's chief competitor has created its own fraud program in response to demands from its clients.

"I am very pleased with the work of the Fraud/Investigations Division to date, but the fact that after 10 months of operation we continue to open an average of seven new investigations per day points out the enormity of this

The new claims handling system (CHS) was activated by Dr. Herbert Aschkenasy, chairman of the SAIF Board of Directors, during a ceremony Aug. 1 to mark the official start of the automation of the Claims Division.

CHS is a software computer program designed for SAIF by Policy Management Systems Corporation (PMSC), which is a leading supplier of computer software to some of the largest in-

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*"The milestones were reached in the Fraud/Investigation Division, which recently received its 1,000th fraud referral, and the Audit Section of the Medical Services Division, which in August surpassed for the first time the \$1 million mark in savings for a single month."*

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problem in Oregon," said Allan B. deSchweinitz, SAIF vice president for compliance.

The Medical Audit Review Section (MARS) achieved its \$1 million in savings by auditing 36,000 medical provider bills in a single month. These audits reduced SAIF's medical payments by \$1,030,000 and pushed the total savings for the year to approximately \$6.3 million. MARS produced \$8.8 million in savings in all of 1988.

DeSchweinitz said the audits are necessary because medical costs in the workers' compensation system are increasing at an inflation rate 50 percent higher than medical costs outside the system.

"Workers' compensation medical care should have the same cost as all other medical care," deSchweinitz said. "The rest of the world lives with a normal inflation rate and medical providers in the workers' compensation system should be able to do the same."

He added that the \$1 million in reductions identified by MARS in just a single month indicate that "certain medical providers either don't know the rules or are intentionally trying to get more than they deserve."

insurance companies in the world. SAIF Corporation is the first insurance company to successfully undertake such an aggressive operation schedule.

The Claims Handling System has been programmed and customized for SAIF's needs and contains features that will give claims examiners more control

## Newspapers,

The following are excerpts from newspaper editorials and other comments regarding the 1990 Corporate Plan adopted by the SAIF Corporation Board of Directors on Aug. 25, 1989:

"...The measures adopted by SAIF's board of directors last week appear not just defensible but necessary ... These are logical business decisions."

Eugene Register-Guard,  
Aug. 30, 1989

"Stan Long of SAIF has done what he said he would do."

Salem Statesman Journal,  
Sept. 1, 1989

"...Calling a special session now would be a pure waste of time and tax dollars. This will

claims and make claims handling more efficient, consistent and timely.

Some of CHS's components include:

- A diary feature to help meet the deadlines that each claim generates. This feature reminds examiners of important dates in the life of each claim and the action that must be taken.
- More complete claim information, including data that will go directly into the computer system, eventually making hard copy files obsolete.
- A forms generator that will allow examiners to send personalized forms or letters directly to a claimant rather than passing the information to a claims assistant, who produced the form or letter.

The automated system was installed in SAIF's Critical Claims Unit, which handles the most serious, complex and potentially high-cost claims and will be installed and expanded to include other areas of the Claims Division beginning Dec. 1.

Other PMSC software programs will eventually be used to automate SAIF's Marketing, Underwriting and Accounting divisions.

## Attorneys allowed at IMEs

Tri-Met, Inc v. Albrecht

The Oregon Supreme Court has ruled that the Workers' Compensation Board may allow an injured worker's attorney to observe an independent medical examination despite the doctor's objections.

The case involved William Albrecht, a Tri-Met, Inc. employee who claimed workers' compensation for a permanent partial disability. Albrecht agreed to undergo an independent medical examination, but insisted that his lawyer be present.

The physicians who were to conduct the examination refused to proceed with the lawyer present and Tri-Met sought to suspend Albrecht's benefits on the grounds that he obstructed the examination.

Albrecht's position was upheld by the Workers' Compensation Board and affirmed by the Supreme Court.

"We see no basis to hold that the board erred as a matter of law if it finds that a worker did not obstruct an independent medical examination by deman-

ding to take along his attorney," the court said in an opinion by Justice Hans Linde.

The court went on to say that the forum for the "feud" over whether an examination has been refused or obstructed is either the director of the Department of Insurance and Finance, the board, or the Legislature. (Tri-Met, Inc. v. Albrecht, SC S36036)

The following are summaries of other Oregon appellate court decisions in workers' compensation cases:

- A worker who aggravates an existing compensable injury may be entitled to temporary total disability benefits even though he did not return to work following the original injury. (Dawkins v. Pacific Motor Trucking SC S35407).
- An injury suffered by a claimant while enrolled in an authorized training program could be treated as a new injury rather than an aggravation of an existing injury. (SAIF v. John L. Partible CA A50886)

## Others react to SAIF 1990 Corporate Plan

continue to be the case until someone comes up with a proposal that wins the support of a majority of lawmakers in advance."

Medford Mail Tribune,  
Aug. 31, 1989

"Our workers' comp system is too expensive and too inefficient. It needs major changes in the interest of both employees and employers, and their needs must take the forefront in the next debate over the system."

The World, Coos Bay,  
Aug. 28, 1989

"The problem isn't inside SAIF, it's the rules that SAIF is required to play by."

Joe Gilliam, National Federation of Independent Businesses

"...While we sympathize, it is hard to see how events could have played out otherwise for SAIF after the Legislature failed to act."

Salem Statesman-Journal,  
Sept. 13, 1989

(SAIF's financial situation) is a consequence of a larger problem: Workers' compensation costs are out of control because the system is manipulated far too much by special interests"

The Oregonian,  
Sept. 6, 1989

"I think we should let that subject (workers' compensation) lie fallow for a while."

State Sen. Grattan Kerans,  
D-Eugene

"The situation that's going on now with SAIF could make it (the Oregon assigned risk pool) worse."

Len Traidman, National Council on Compensation Insurance.

"If the Legislature doesn't do something now to bring down the costs of workers' compensation insurance, by 1991 a family of four will repay Oregon's businesses and governments about \$1,500 a year for the related workers' compensation costs of producing and selling the products they buy and for the public services they receive."

Jack Kalinoski, Associated General Contractors

*S. J. v. S. B.*  
3/19/92

*Attachment 7-9*





JOINT NEWS RELEASE  
Department of Justice  
SAIF Corporation

FOR IMMEDIATE RELEASE  
March 8, 1990

Three Oregon chiropractors have been arrested for theft and named as defendants in civil racketeering lawsuits for filing allegedly fraudulent workers' compensation claims with SAIF Corporation. ~~Civil racketeering lawsuits also were filed~~ against six other chiropractors who allegedly overbilled SAIF.

"The arrests and lawsuits today are the result of a five-month investigation conducted by investigators from SAIF Corporation and the Department of Justice that found \$357,725.36 in overbillings," said Attorney General Dave Frohnmayer. "Criminal charges were filed because three chiropractors converted non-existent maladies into on-the-job workers' compensation claims."

"Every dollar paid to a cheater is a dollar that an employer paid for workers' compensation coverage that doesn't go to a worker with a legitimate injury," said Allan deSchweinitz, SAIF Corporation vice president and chief compliance officer. "SAIF Corporation finds that intolerable."

- More -

*LS + SB*  
*3/19/92*

*Attachment 7-101*

Since creating a Fraud/Investigations Division a year ago, SAIF Corporation has developed 12 cases which ended in judgments or settlements with medical providers.

"As long as we get complaints about people cheating SAIF Corporation, we will investigate and take the appropriate legal action," deSchweinitz said. "When the cheating stops, we'll stop."

Arrested today were chiropractors Jeffrey Collins Utter, of the Utter Chiropractic Clinic, 3295 Triangle Drive S.E., Salem; Dennis Lynn Campbell, of the It's Your Health Chiropractic Clinic, 2015 Market Street, N.E., Salem; and David Allan Seward, of the Seward Chiropractic Clinic, 150 S. Maple, Yamhill. Police officers made the arrests after they and SAIF investigators today served search warrants at the three clinics.

Civil racketeering lawsuits filed against the three chiropractors ask for orders freezing their assets and prohibiting the defendants from tampering with or removing records and from participating in the workers' compensation system or treating injured workers. Hearings on those motions have been set for March 26th in Yamhill County and April 6th in Marion County.

Civil racketeering lawsuits against six other chiropractors allege that they violated Oregon law by billing SAIF Corporation more for services than they bill private

- More -

129 + 173  
3/19/92

Aluchan 7-11

persons. Named as defendants in those lawsuits are Miles Anderson, North Salem Chiropractic Clinic, Salem; Larry J. Glubka, Paradise Chiropractic Clinic, Springfield; Judd Mizrahi, St. Helens Chiropractic Clinic, St. Helens; John T. Checkal, Checkal Chiropractic Clinic, Canby; Steven A. DeShaw, Northwood Family Chiropractic Clinic, Woodburn; and Gerard Berardi, Mountain Park Chiropractic Clinic, Portland.

The investigation began in October 1989, when SAIF Corporation requested undercover investigators to investigate ~~allegations received through SAIF's fraud hotline~~ (1-800-282-8822) and other sources. The undercover investigators were examined by a chiropractor and a medical doctor who certified before and after the investigation that the investigators had no injuries. However, defendant chiropractors diagnosed and treated alleged injuries, and submitted claims to SAIF even though the investigators told the chiropractors that the injuries did not happen at work.

Specific allegations and legal actions against each of the defendants is described on the attached fact sheet.

# # # #

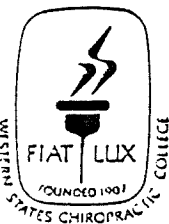
Contact: Marla Rae  
378-6002

Allan deSchweinitz  
373-8005

8400a

L L G + S B  
3/19/92

Attachment 7.12



April 18, 1990

Mr. Richard Schwarz  
Executive Director  
Oregon Federation of Teachers  
AFT/AFL-CIO  
9414 S.W. Barbur Boulevard  
Portland, Oregon 97219

Dear Mr. Schwarz:

As requested, you will find enclosed a summary critique of the SAIF data, which was undertaken by the Research Department of Western States Chiropractic College. This data has been widely distributed through the legislature and the media for the purpose of blaming chiropractors for the ills of the Oregon workers' compensation system.

SAIF's data analysis is, for all practical purposes, a comparison of the cost of M.D. office visits with the total cost of care provided by chiropractors. Secondly, they are comparing all M.D. cases - regardless of the nature of the injury or part of body affected - with D.C. cases, which are almost exclusively musculoskeletal in nature and affecting the neck or back. Thirdly, the data analysis does not account for crossovers, referrals, or consultations. Thus, a single claim may be counted under many different provider categories. This is most likely to increase the number of claims for the M.D. providers, thus in dividing the dollars spent by the number of claims, the M.D. quotient would be artificially small.

I have also included a paper entitled, SAIF, Statistics and FACTS, which describes some of the problems with the SAIF data in terms of reliability and validity. In our independent review of the SAIF provider payments report (CZPO12-B), we encountered numerous items for which there appears to be no rational explanation, e.g., attorneys and an M.D. panel listed as chiropractors, and shoe stores and department stores listed as medical physicians. In addition, there were numerous entries which certainly raised our eyebrows: \$63,951 charged to a single claim during a 12-month period, paid to Learning Services Corporation located in Boston (Interestingly, Learning Services has only a P.O. box and no telephone number); \$13,671 charged to a single claim (a new car?? for whom??); and expenses listed for providers, but not charged to any claim! These are just a few examples.

*S.L.S. & S.B.*  
*3/19/92*

WESTERN STATES CHIROPRACTIC COLLEGE 2900 N.E. 132nd Ave., Portland, Oregon 97230-3099 • (503) 256-3180

*Attachment 7-13*

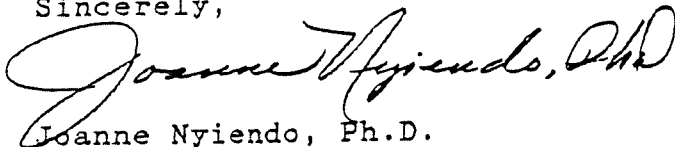
Accredited by:  
The Northwest  
Association of  
Schools & Colleges  
The Council on  
Chiropractic  
Education  
Member of:  
The Oregon  
Independent  
Colleges  
Association  
The Council for  
the Advancement  
of Secondary  
Education  
The American Public  
Health Association

Mr. Richard Schwarz  
April 18, 1990  
Page 2

All of these concerns were expressed by me to the representative of the SAIF Corporation from which the Provider Payments file was initially obtained, as well as to both Ted Kulongoski (September 10, 1989) and Annette Talbot of Senator Gratten Kerans' office (September 29, 1989).

SAIF has not been "up front" with the nature of their data or the analysis of their data. For this type of data to be used as the basis for a decision which would virtually exclude chiropractors as treating physicians within the workers' compensation system seems unconscionable. For the AFL-CIO to approve such a recommendation without a vote of its members also seems unconscionable. I urge you (OFT) to take whatever action is appropriate to deal with this injustice.

Sincerely,



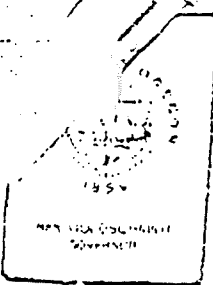
Joanne Nyiendo, Ph.D.  
Director of Research  
and Institutional Advancement

Enclosures

KC: Fred Colley, Ph.D.  
President, WSCC Faculty Association  
AFT/AFL-CIO Affiliate

SZJ + SB  
3/19/92

Attachment 7-14



Department of Insurance and Finance

21 LABOR AND INDUSTRIES BUILDING • SALEM, OREGON 97310

May 25, 1990

The Honorable Vera Katz  
Speaker of the House  
State Capitol  
Salem, Oregon 97310

Dear Representative Katz:

As you requested in our meeting May 7th, the Department of Insurance and Finance has examined SAIF's medical-cost data to address questions of proper interpretation and data quality. This data came from SAIF's detailed 1988 and 1989 provider payments reports (CZP012-8) and summary "Medical Costs by Provider Type: 1988" (samples attached).

Dr. Nylando's criticism of the use made of 1988 data is essentially valid: the data did not fairly compare actual medical costs among providers. The format used by SAIF was not suited for comparing average costs paid to one type of medical provider with another. Further, corrections to the detailed data which SAIF made before compiling the 1988 summary cannot be verified. SAIF made manual adjustments to the data before summarizing it, but did not keep a record of the changes.

After reviewing potential problems identified by Dr. Nylando for payments to specific providers, we concluded that the payments or adjustments were appropriate. But, the way these dollars were categorized by provider-type was sometimes wrong. Even when the dollars were assigned to the correct category, the way claims were counted was inaccurate. For example, the listing of general merchants (such as K-mart and Sears) categorized as "medical physician" turned out to be appropriate payments which should have fallen into the "clothing (voc)" group and not been counted as medical payments at all.

The negative amounts which appeared on the report were appropriate. They were adjustments which corrected for payments made in error or to reflect reimbursements from the Department for certain types of claims cost. The corresponding claims counts, however, were not corrected. It appears that when the wrong party was paid on a claim and the money was later recovered, the claims counts were never adjusted. Providers had incorrect zero claim counts if they supplied no tax identification number, due to a programming error.

*LDH/AB*  
*3/19/92*

Other line items which looked suspicious were legitimate. For example, the payment to Wildlife Safari turned out to be a case where Wildlife Safari was the employer receiving reimbursement for drugs which they had purchased for their injured worker. The large payment to Learning Services of Boston was for a permanently-total-disabled quadriplegic injured worker who is a ward of the court, which determined that he needed these extremely expensive services.

The way SAIF's report CZPO12-8 summarizes claims still has problems. However, even if the data were completely clean, the historical summary format is not suited for comparing different provider-types. The format in question is illustrated by the attached summary table, "Medical Costs by Provider Type: 1983." Part of the problem with this table is ambiguous labelling. This table represents the annual payments which SAIF made to medical providers during calendar year 1988, not the total costs of a group of "1988 claims". SAIF provided five summary figures for each type of medical service provider. These columns are labelled: "Total Cost," "Average Cost Per Claim," "Number of Claims," "Percent of Total Claims," and "Percent of Total Costs". None of these labels may be taken at face value.

The most serious misunderstandings arise from column D, "Number of Claims": it appears from line 31, the "Grand Total", that SAIF paid \$87,278,017 for medical services on 193,125 claims at an average cost of \$452 per claim. The "Number of Claims" column actually represents the sum of the total number of different claims served by each individual medical provider. For example, an injured worker who went to a chiropractor, and then to a medical doctor, who was referred to another MD, who was then admitted to a hospital, would be counted as four claims. This one claim would appear in the count for each of the provider types involved and twice for medical doctors. All four counts would be included in "Number of Claims". This is a departure from the usual use of the term "claim" to refer to one person's single compensable injury.

We have seen that "total costs" on this table are really annual payments and "claims" are really claims per provider with multiple counting; consequently, the averages and percents based on these figures do not mean what one would assume. We recommend that SAIF correct the erroneous provider-types, and rename the "total cost" and "percent of total cost" columns: "annual payments" and "percent of annual payments". In addition, they should delete the claims columns and add explanatory footnotes to minimize the chance of misinterpreting the data. If these actions were taken this table would present accurate data on the overall distribution of medical payments.

We also examined the 1989 SAIF detailed provider payments report (CZPO12-8). SAIF has tightened their data-editing since 1988, and the categorization by provider type has probably improved. However, we concluded that some of the same problems still exist, especially regarding how claims are counted.

SLD & SB  
3/19/92  
Attachment 7-H

The essential problem with the medical-cost data distributed by SAIF is that it cannot be tied back to claims information. The detailed listing was apparently designed to produce tax reports, not to analyze medical issues. One cannot compare similar claims, total costs, or services provided from this data. I don't want to belabor the point, but SAIF's summary data is confusing, easily misinterpreted, and does not tell policy-makers the things they need to know. Instead, we need to focus on how medical-cost data should be used as a basis for making public policy. To that end, as I'll discuss separately, DIF is developing a recommended format for all insurers to use in reporting medical data.

Sincerely,

*Dan Adelman*

Dan Adelman, Administrator  
Information Management Division  
Department of Insurance and Finance  
(503) 378-3254

CC: Theodore Kulongoski, DIF Director  
Matt Hennessee, DIF Workers' Compensation Division  
Annetta Talbot, Legislative Assembly  
Lloyd Athearn, Legislative Assembly  
Holly Robinson, Legislative Assembly  
Kathy Keene, SAIF  
Corlet Graff, SAIF  
Joanne Nylando, Western States Chiropractic College  
Rebecca Donatelli, OSU Dept. of Public Health

RA580/CQ

*SLD + LB*  
*3/19/92*

*Attachment 7-19*



Medical Costs by Provider Type

1989 vs. 1988

*Handwritten:* 3/19/92  
Attachment 7-18

	Total Costs 1989	Total Costs 1988	Total Cost % Change '89-'88	Ave . Cost per Claim 1989	Ave . Cost per Claim 1988	Cost/Claim % Change '89-'88	Number of Claims 1989	Number of Claims 1988	# of Claims % Change '89-'88
<b>Attending Physician</b>									
Medical Doctor	\$21,010,022	\$21,370,271	-2%	\$307	\$284	8%	68,426	75,357	-10%
Chiropractor	\$13,774,141	\$13,604,302	1%	\$691	\$703	-2%	19,929	19,358	3%
Osteopath	\$884,214	\$1,044,401	-18%	\$231	\$242	-4%	689	841	-22%
Dentist	\$413,041	\$464,353	-12%	\$599	\$552	8%	269	253	6%
Naturopath	\$237,474	\$199,262	16%	\$803	\$788	1%	332	297	11%
Podiatrist	\$83,173	\$73,588	12%	\$251	\$248	1%	60	56	7%
Nurse Practitioner	\$5,687	\$3,420	40%	\$95	\$61	36%			
<b>Sub-total</b>	<b>\$36,407,752</b>	<b>\$36,759,581</b>	<b>-1%</b>	<b>\$389</b>	<b>\$366</b>	<b>6%</b>	<b>93,525</b>	<b>100,482</b>	<b>-7%</b>
<b>Ancillary Services</b>									
Physical Therapist	\$3,952,098	\$3,858,146	2%	\$606	\$585	4%	6,519	6,599	-1%
Radiologist	\$3,399,563	\$3,058,896	10%	\$179	\$162	10%	18,996	18,901	1%
Psychologist	\$802,436	\$635,200	21%	\$1,185	\$1,134	4%	677	560	17%
Occupational Therapist	\$155,942	\$130,209	17%	\$878	\$597	12%	230	218	5%
Hospital	\$29,503,454	\$31,289,283	-6%	\$837	\$766	9%	35,237	40,850	-16%
Pharmacy	\$2,417,640	\$2,234,614	8%	\$258	\$234	10%	9,355	9,569	-2%
Supplies	\$1,546,642	\$1,692,316	-9%	\$423	\$435	-3%	3,660	3,889	-6%
All Others*	\$8,347,494	\$7,619,756	9%	\$709	\$632	11%	11,779	12,057	-2%
<b>Sub-total</b>	<b>\$50,125,269</b>	<b>\$50,518,420</b>	<b>-1%</b>	<b>\$580</b>	<b>\$545</b>	<b>6%</b>	<b>86,453</b>	<b>92,643</b>	<b>-7%</b>
<b>Total Costs</b>	<b>\$86,533,021</b>	<b>\$87,278,017</b>	<b>-1%</b>	<b>\$481</b>	<b>\$452</b>	<b>6%</b>	<b>179,978</b>	<b>193,125</b>	<b>-7%</b>
<b>Bill Reductions</b>	<b>\$9,835,100</b>	<b>\$8,893,800</b>	<b>10%</b>						
<b>Bill Volume</b>							<b>412,400</b>	<b>391,800</b>	<b>5%</b>
<b>Bills per Claim</b>							<b>2.29</b>	<b>2.03</b>	<b>11%</b>

## Medical Costs by Provider Type

1989

	Total Costs	Average cost per claim	Number of Claims	Percent of Total Claims	Percent of Total Costs
<b>Attending Physician</b>					
Medical Doctor	\$21,010,022	\$307	68,426	38%	24%
Chiropractor	\$13,774,141	\$691	19,929	11%	16%
Osteopath	\$884,214	\$231	3,820	2%	1%
Dentist	\$413,041	\$599	689	0%	0%
Naturopath	\$237,474	\$883	269	0%	0%
Podiatrist	\$83,173	\$251	332	0%	0%
Nurse Practitioner	\$5,687	\$95	60	0%	0%
<b>Sub-total</b>	<b>\$36,407,752</b>	<b>\$389</b>	<b>93,525</b>	<b>52%</b>	<b>42%</b>
<b>Ancillary Services</b>					
Physical Therapist	\$3,952,098	\$606	6,519	4%	5%
Radiologist	\$3,399,563	\$179	18,996	11%	4%
Psychologist	\$802,436	\$1,185	677	0%	1%
Occupational Therapist	\$155,942	\$678	230	0%	0%
Hospital	\$29,503,454	\$837	35,237	20%	34%
Pharmacy	\$2,417,640	\$258	9,355	5%	3%
Supplies	\$1,546,642	\$423	3,660	2%	2%
All Others*	\$8,347,494	\$709	11,779	7%	10%
<b>Sub-total</b>	<b>\$50,125,269</b>	<b>\$580</b>	<b>86,453</b>	<b>48%</b>	<b>58%</b>
<b>Total</b>	<b>\$86,533,021</b>	<b>\$481</b>	<b>179,978</b>	<b>100%</b>	<b>100%</b>

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	A	B	C	D	E	F
1						
2	<i>Medical Costs by Provider Type</i>					
3			1988			
4						
5		Total	Average cost	Number of	Percent of	Percent of
5		Cost	Per Claim	Claims	Total Claims	Total Costs
7	Attending Physician					
3	Medical Doctor	\$21,370,271	\$284	75,357	39%	24%
3	Chiropractor	\$13,604,302	\$703	19,358	10%	16%
0	Osteopath	\$1,044,401	\$242	4,320	2%	1%
1	Dentist	\$464,353	\$552	841	0%	1%
2	Naturopath	\$199,262	\$788	253	0%	0%
3	Podiatrist	\$73,588	\$248	297	0%	0%
4	Nurse Practitioner	\$3,420	\$61	56	0%	0%
5						
6	Attending Physician	\$36,759,597	\$366	100,482	52%	42%
7						
8	Ancillary Services					
3	Physical Therapist	\$3,858,146	\$585	6,599	3%	4%
0	Radiologist	\$3,058,896	\$162	18,901	10%	4%
1	Psychologist	\$635,200	\$1,134	560	0%	1%
2	Occupational Therapist	\$130,209	\$597	218	0%	0%
3	All Others*	\$7,619,756	\$632	12,057	6%	9%
4						
5	Ancillary Services	\$15,302,207	\$399	38,335	20%	18%
6						
7	Hospitals	\$31,289,283	\$766	40,850	21%	36%
3	Pharmacy	\$2,234,614	\$234	9,569	5%	3%
3	Supplies	\$1,692,316	\$435	3,889	2%	2%
0						
	Grand Total	\$87,278,017	\$452	193,125	100%	100%
4	Attending Physician	\$36,759,597	\$366	100,482	52%	42%
5	Ancillary Services	\$15,302,207	\$399	38,335	20%	18%
7	Hospitals	\$31,289,283	\$766	40,850	21%	36%
3	Pharmacy	\$2,234,614	\$234	9,569	5%	3%
3	Supplies	\$1,692,316	\$435	3,889	2%	2%

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TABLE II

<i>Medical Costs by Attending Physicians</i>					
1988					
Attending Physician	Total Cost	Average cost Per Claim	Number of Claims	Percent of Total Claims	Percent of Total Costs
Medical Doctor	\$21,370,271	\$284	75,357	39%	58%
Chiropractor	\$13,604,302	\$703	19,358	10%	37%
Osteopath	\$1,044,401	\$242	4,320	2%	3%
Dentist	\$464,353	\$552	841	0%	1%
Naturopath	\$199,262	\$788	253	0%	1%
Podiatrist	\$73,588	\$248	297	0%	0%
Nurse Practitioner	\$3,420	\$61	56	0%	0%
Attending Physician	\$36,759,597	\$366	100,482	52%	100%

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Attachment 7-21



# Kansas Chiropractic

ASSOCIATION

FOR IMMEDIATE RELEASE

FOR INFORMATION CONTACT:

Joseph M. Furjanic  
Executive Director  
KS. Chiropractic Assn.  
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Dear Editor:

The Kansas Chiropractic Association shares the concerns of labor and business in the high cost of workers compensation in Kansas. However, to correct a problem, it must first be identified.

The insurance industry is asking for another mammoth increase in premiums of 31.4 percent. This after the largest increase ever of 24 percent last year. Unfortunately, The National Council on Compensation Insurance who represents the insurance companies, cannot support their need. They have failed to complete a study to identify the reasons why claim costs continue to escalate which was to be given to the task force created by Mr. Ron Todd, Commissioner of Insurance by July 1, 1991. The Council has attempted to suggest fraudulent claims are a source of high costs, but it is doubtful if sufficient claims could exist to support such a dramatic increase.

The Kansas Chiropractic Association initiated steps last year to

(more)

have an independent group do a cost study on the effectiveness of chiropractic in treating musculoskeletal injuries which were the most common injuries in Kansas from June 1990 to June 1991. Recent studies in several states have shown chiropractic more effective than traditional medical care in treating this type of injury.

Our association encourages the legislature and the insurance commissioner to deny any rate increase until an independent firm can investigate and support such an increase. In the meantime, employers can continue to improve safety in the work place, and when injuries occur, obtain the most cost-effective care possible.

Respectively,

Dr. Eugene M. Davidson  
President, KCA

Dr. Larry Stout  
Chairman, KCA Insurance Comm.

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*Attachment 7-23*

PARTIAL SUMMARY OF KANSAS AFL-CIO' POSITION  
ON SENATE BILL 666

By Mitchell D. Wulfekoetter

March 19, 1992

Thank you, Madam Chairperson. My name is Mitchell Wulfekoetter and I appear before the Committee in basic opposition to Senate Bill 666. Although I am not a certified lobbyist for the AFL-CIO, they asked me to speak today and I appreciate the opportunity. Please understand that the AFL-CIO is interested in reducing the number of work accidents and preserving and improving the rights of injured workers. Knowing that's our interest, I would like to introduce a hypothetical worker who is a representative of the entire class of injured workers in Kansas.

Joe Hurt is a 33-year-old husband to Mary and father of 8-year-old Mindy, who is now beginning piano lessons, and 5-year-old Mark, who is starting kindergarten next fall. Joe and his wife have been paying off a note on their \$45,000 home for ten years. They make payments on Joe's 1986 pickup and on Mary's 1988 wood paneled station wagon. Joe has worked as a laborer for a home builder for 13 years. In February, Joe suffered a moderately severe accident at work, but for our purposes, the specific nature of his injuries is not important. Suffice it to say that Joe will miss four to six months of work while recovering and will end up with a permanent disability which includes continued moderate pain.

Please understand when working on the workers' compensation bills that the vast majority of the people affected by these laws can fit into the general scenario of Joe Hurt.

Proponents of this bill, and a similar bill in the House, have been covertly painting a picture that it's semi-luxurious and profitable to be in the position of Joe Hurt and have a compensable work comp claim. Ladies and gentlemen, I submit that this picture is far from the truth.

My firm, McCullough, Wareheim & LaBunker, has seven attorneys, five of which practice in the neighborhood of 95% workers' compensation law. Myself, I practice approximately 50% workers' compensation. Due to the nature of our firm, we had to have an attorney with experience in the vast area of law that is unrelated to workers' compensation. For the most part, that attorney is me. At least 25% of my practice is representing our firm's workers' compensation clients in matters such as defending foreclosures, defending repossessions, defending garnishments, and motioning the various district courts for either temporary or permanent reduction in child support obligations, due to decreases in our client's income. Ladies and gentlemen, if it exists, please free from your mind any picture that a person and family, such as Joe Hurt, is

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*3/19/92*

*Attachment 8-1*

placed into a semi-luxurious circumstance on account of the fact that he has a compensable workers' compensation claim.

With that in mind, I would like to examine the issue here and the current proposal. Insurance companies want to further cut the injured worker's benefits, and yes, oh yes, Senate Bill 666 certainly does that! Without addressing Senate Bill 666 line by line, I would simply like to identify a few of the amendments to show just how drastically the injured worker's benefits would be cut by Senate Bill 666. Following are a selected number of these amendments with an explanation as to the adverse effect to the injured worker and problems involved with the language selected.

Page 2, Lines 10-12

**Concept:** It appears that an injured worker would be totally denied compensation if he failed to follow the employer's policy relating to the proper method of performing a task.

**Problem:** This would totally eliminate compensation to an injured worker. The problem with this is the specific definition of the "proper method of performing a task or tasks". Extensive litigation (which clearly doesn't cut costs) will occur in an effort to define this in each case. In addition, must the employer's "policy" be written or oral. What happens in the case where on Joe Hurt's first day of work, his employer tells him to squat when lifting cinder blocks as opposed to bending over and lifting them with his back. Thirteen years later, Joe Hurt injures his back when lifting a cinder block by bending as opposed to squatting. Joe's employer has seen him lifting the cinder blocks in this fashion for the last 12 1/2 years, has accepted the profits from this work activity, and has never reminded Joe of the policy. Joe Hurt would be refused compensation. Negligence and contributory negligence have never been a part of workers' compensation laws, and should not be now.

Page 8, Lines 10-16

**Concept:** To be compensable, the employer's principal place of employment must be within Kansas, the hiring of the employee must have occurred in Kansas, and the injured worker must be a resident of Kansas.

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*3/19/92*

*Attachment 8-2*



**Problem:** This in many cases would be a complete denial of workers' compensation benefits. Assume that Joe Hurt and his family live in Jackson County, Missouri, that his employer is officed in Lenexa, Kansas, 13 years ago Joe was hired at the offices in Lenexa, Kansas, and for 13 years all of Joe's work was done in Kansas. (It is common in the Kansas City area and Wichita area for workers to live in Missouri and/or Oklahoma and work in Kansas.) If Joe was injured on a job in Overland Park, Kansas, he would be denied workers' compensation benefits. If Missouri had a similar law, then Joe would be denied workers' compensation benefits all the way around.

Page 10, Line 30

**Concept:** It appears that this is an effort to deny compensation to workers who are injured through a series of events as opposed to one single trauma.

**Problem:** This totally denies compensation to any worker who suffers an injury/impairment on account of repeated work-related tasks. Assume that Joe Hurt had spent five consecutive days lifting and carrying cinder blocks on a construction site. After the third day, Joe's back began aching, and at the end of the fifth day, he was experiencing a disabling impairment. Despite the fact that Joe had no prior back problems, and the fact that he went home every night for his last five working days and rested, he would be denied workers' compensation because there was no single "event" which caused his disabling back injury/impairment.

Page 18, Lines 29-43 and  
Page 19, Lines 1-12

**Concept:** It appears this is an attempt to offset dollar for dollar the benefits that an injured worker would receive if the injured worker had either previously received compensation for an injury to the same part of the body or could have received compensation to the same part of the body but failed to do so.

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*Attachment 8-3*

**Problem:** Assume that on July 1, 1988, Joe Hurt injured his low back at work but did not file or pursue workers' compensation benefits. He did not pursue his workers' compensation benefits despite the fact that he sustained a permanent injury to his low back. On February 5, 1992, Joe Hurt reinjured or aggravated the same condition while working for the same employer and that his permanent impairment increased. Under this amendment, it would be necessary for lawyers to try two separate accidents so as to figure out how much of an offset occurs on account of the previous injury. This must be done so that it is clear what compensation Joe Hurt waived by deciding not to pursue his previous accident. In such a case, Joe would receive only partial compensation for his injuries. It is unfair to punish Joe for not pursuing his previous claim as such omissions are justified by the fact that some injured workers simply seek medical care for work injuries and do not want to jeopardize their employment by pursuing permanent partial disability benefits. This clearly does not cut costs as double litigation will occur on many cases. It will also increase claims because the workers will not want to risk not receiving compensation for work-related injuries on account of this offset. Finally, if an aggravation to a preexisting condition is considered an inequity, any such inequity is solved by the Workers' Compensation Fund liability statutes.

**Page 19, Lines 32-37 and  
Page 24, Lines 9-13**

**Concept:** This creates an offset to permanent total disability cases (Page 19) and scheduled injuries (Page 24). This language requires a dollar for dollar offset from workers' compensation for each dollar received from either Social Security retirement or private retirement benefits.

**Problem:** This affects older injured workers who have paid into the Social Security system and/or paid into private pension programs for many years. These investments should not have any effect on workers' compensation benefits because retirement is planned for and

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calculated by a worker, whereas workers' compensation injuries are not. Additionally, post-injury income of an unretired worker has no effect on the worker's functional workers' compensation benefits, whereas post-injury retirement benefits under this amendment would cause a dollar for dollar offset for no justifiable reason.

In addition, I suspect that this law would not pass scrutiny under the Equal Protection clauses of the Constitution. This creates a class (i.e. older workers) and treats them differently than the remainder of citizens.

I also suspect that this is unlawful age discrimination under the Kansas Act Against Age Discrimination and the Federal Act Against Age Discrimination.

Admittedly, my practice does not specialize in age discrimination or Constitutional law issues, but before implementing this amendment, I urge that these issues be addressed.

**Page 20, Lines 34-43**

**Concept:** This amendment places the determination of temporary total disability in the hands of the physician chosen by the insurance company. It also requires the physician to evaluate the employee's actual job duties with the employer.

**Problem:** One of the primary purposes of workers' compensation is to provide immediate wage replacement. This law would cause a great delay in the injured worker's actual receipt of temporary total disability benefits because it requires the physician to evaluate the job duties of the injured worker. There will likely be differences in the job description given by the claimant and the job description given by the insurance company/employer. Narrowing down which job description is right will take an additional amount of time as litigation will frequently occur. This is not consistent with the primary purpose of immediate wage replacement and will not drive down costs as additional

time and expense will be involved in investigating and litigating the issue.

This amendment also places in the hands of the physician what, in many cases, will be a vocational decision which the doctor is not qualified to make. Assume that Joe Hurt has no education and his work experience includes only heavy manual labor. After three months of medical treatment, the doctor places temporary restrictions on him such as no lifting over ten pounds. The doctor would be placed into a situation where he would have to make a determination as to whether or not Joe Hurt has the qualifications to do a sedentary job. Again, the doctor lacks qualifications to consider these vocational factors.

Finally, assume, as I believe we can, that the doctor chosen by the insurance company has motivation to have the injured worker attempt to return to work as soon as possible. In the scenario where the injured worker is prematurely released to work, that injured worker might be subject to reinjury and the employer and insurance carrier would be exposed to an additional workers' compensation claim and additional medical expenses.

**Page 43, Lines 26-28**

**Concept:** This requires the injured worker to notify the employer within ten days of his injury.

**Problem:** Failure of the injured worker to notify his employer within ten days of his accident would completely bar recovery.

Assume in the past, on separate occasions, Joe Hurt has gone home from work with shoulder pain, back pain, or leg pain. In each of these previous occurrences, Joe Hurt's pains have resolved themselves after a couple of weeks. On February 6, 1992, Joe Hurt injured his back after lifting a cinder block at work. As before, he hoped and believed that these pains would go away with time. After two weeks of continued problems, Joe decides to tell his supervisor of his problem and the accident. Joe would be denied any and all

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compensation because he didn't tell his supervisor of the accident within ten days.

Currently, the law allows a denial of workers' compensation benefits, but only if the failure to give notice within ten days caused prejudice to the employer's interests. The current law allows the employer to establish prejudice such as had Joe reported the accident immediately and received immediate medical care, he would not have a permanent problem. Employers and insurance carriers are protected under the current law if failure to give notice prejudices their interests. Under the proposed amendment, Joe Hurt would be totally denied workers' compensation even if his failure to give notice within ten days made no difference to the employer in regards to the ultimate disability/impairment. There is no justification for this.

I went through a few of these amendments to point out that this bill, in fact, drastically reduces the benefits that Joe Hurt and his family would receive, depending upon the nature of his injury.

I sincerely submit that benefit cutting is not the cure to the alleged problem. Cutting benefits only jeopardizes Joe Hurt and his family's future. A close look at this bill reveals that for the most part the substantive changes do not cut or reduce benefits, they totally eliminate them. Joe and Mary would lose their house, they may lose their cars, their daughter, Mindy, would have to give up piano lessons, and their son, Mark, might not get a new pair jeans to start kindergarten. It is certainly possible that Joe Hurt would end up on other social welfare programs simply to house and feed his family. This raises an issue which interests me, yet admittedly, I'm not prepared to testify on it. You have, or will hear, testimony about states such as Oregon who have reformed their workers' compensation laws by cutting benefits. Time will tell how that reform will affect other social welfare programs in that and other states. I submit this as a factor to be considered, as it is clear in many cases under this amendment certain injured workers would be totally denied benefits. What programs will these injured workers be forced to turn to for housing and food? SRS? Who will bear the brunt of benefit reduction and elimination? Lending institutions, commerce? I suggest these because the people whose benefits are eliminated would likely end up filing for bankruptcy.

Now, I would remind you of the recent history of workers' compensation laws in Kansas and the continued requests of the NCCI for rate increases. In the last ten years, the benefits of the

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*Attachment 8-7*

injured workers have not increased, and in fact, have been cut. Specific examples of recent benefit cutting are:

1. Reduction in the amount of work disability afforded to claimants;
2. The removal of "liberal construction" on behalf of the claimant;
3. Taking bilateral carpal tunnel out of the scope of a whole body impairment and placing it as a scheduled injury.

Despite the history of a reduction in benefits, the NCCI comes in year after year requesting rate increases, and each year seems to be requesting a higher increase. Since benefits have not increased and have in fact decreased, it seems illogical to conclude that the alleged need for rate increases is resulting from the benefits the injured worker is receiving.

Please assume that I accept the conclusions of the NCCI in that the insurance companies need rate increases. Allow me to identify what I believe to be the major causative factors. After identifying these major causative factors, I will submit general concepts to focus on as cures. I submit that the major causative factors are an increase in work injuries, increased medical costs, inefficient claims adjusting strategies, and out of proportion salaries of insurance company executives and sales agents. Please allow me to address each.

**1. Increase in the number of work injuries.**

I submit the number of work injuries has increased due to the general lack of safety in the workplace. This exists because of a combination of the fact that employers can save money by failing to modify work environments and the lack of any regulatory incentive to create a safe work environment. It's my opinion that OSHA has been basically ineffective in bringing about safe working conditions.

I propose the creation of a "safety czar" with the broadest possible police powers. This safety czar should have, among other things, the following authority and obligations:

- a. issue warnings, levy fines, and close businesses who operate in violation of the czar's mandates on both public and private property, with or without warning;
- b. implement ergonomics within the workplace and compel compliance;
- c. educate employers on safety matters, and issue certificates of compliance as a prerequisite for

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*3/19/92*

*Attachment 8-8*

obtaining workers' compensation insurance annually. (Currently, the State issues driver's licenses, marriage licenses, dog and cat licenses, surely we can issue safety licenses.)

- d. Confidentially respond to complaints of employees reporting safety violations.

Attached to this testimony is a proposed amendment to the workers' compensation laws which creates a safety director. We would certainly support reviewing the actual legislation in regards to safety in the workplace from other states. By analyzing the attached proposal and all other similar legislation, we submit an amendment or an individual Act along these lines would provide safe working conditions and reduce the number of claims.

## 2. Increased medical costs.

The evidence seems clear that medical costs involved in a workers' compensation claim are higher than the medical costs provided to a similar patient who is not injured at work. I would suggest a few reasons for this and then make a general proposal.

Currently, and in the past, the insurance company has chosen the physician who will treat an injured worker. Although I did not attend the presentation, I understand that "national blue ribbon experts" were called upon to testify at the bequest of Senator Salsbury. I have been informed that those experts stated that those physicians were not chosen because of their competency but because they quickly returned workers to employment, give low impairment ratings, and write reports which constantly question the validity of the claim. I submit that these actions of the physicians chosen by the insurance companies add to the cost of medical care. Premature releases to return to work cause the reinjury which results in additional comp claims and additional medical care. Unjustified low impairment ratings force the claimant to second opinions in regards to impairment ratings, thus spawning litigation. Finally, reports from these physicians which constantly question the validity of the claim irritate both the patient and the adjuster. The claimant is irritated and wants to change physicians causing an increase in costs. The adjuster is irritated as he/she begins to believe the case is not compensable, thus spawning litigation which again increases costs.

We would suggest, as a point of discussion, a statewide system of approved providers similar to Blue Cross/Blue Shield. The approved providers would agree to charges fixed by the Director's office, and rules and regulations fixed by the Director's office relative to second opinions. The claimant is permitted to go to any of the approved providers.

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*Attachment 8-9*

We believe this concept would reduce medical costs by price regulations, by allowing the physician to concentrate on the important task at hand, i.e. treating the patient, by eliminating a true fear that injured workers have (i.e. that they are being treated by a company physician who is not concerned with the worker as a patient), and by allowing the adjuster and claimant and/or attorney access to necessary information.

Now, before addressing the final two causative factors of the alleged need for higher rates, I would like to express some confusion in regards to the political alignments on these issues. Admittedly, I am not terribly experienced in the legislative process. However, it appears to me that commerce is allied with the insurance industry in regards to this bill. Over and over, I've heard the quote that this is all a "cruel hoax on the employer." Personally, I'm not so sure that this isn't the case. What's happening is that the insurance industry is demanding more money from commerce. The insurance industry has gained the support of commerce by selling the idea that cutting benefits to the injured worker would eliminate the need to receive an increase in premiums. A close look from this perspective explains the quote that "this is a cruel hoax on the employer."

With this in mind, I will address the final two causative factors that I have identified. As I do so, I hope that the entities and individuals representing commerce seriously consider what's happening.

### 3. Inefficient claims adjusting strategies.

After practicing workers' compensation for almost five years, I have personally dealt with claims adjusters who are either incompetent in workers' compensation, generally vindictive to the injured worker, or implement inefficient adjusting strategies.

It is next to impossible to settle a claim on fair and reasonable terms with an adjuster that is incompetent. When an incompetent adjuster and I cannot come to terms, I am forced to file the claim which requires the involvement of a defense attorney. On some of these occasions, I am able to then settle the case as the defense attorney can better appreciate the claimant's position. On other occasions, cases are unnecessarily tried because the defense lawyer wants to get a piece of the action, i.e. attorney's fees. Regardless, it was the incompetency of the adjuster which necessitated the actual filing of the claim which thereafter drives up costs with attorney's fees and litigation expenses.

It is also next to impossible to settle a claim on fair and reasonable terms with an adjuster who is inherently vindictive

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towards an injured worker. I have personally experienced many adjusters with this mentality. It leads to lack of trust between the parties, unsuccessful negotiations, and subsequent litigation and involvement of a defense attorney. This clearly drives up costs.

Finally, inefficient claims adjusting strategy is a reality in many cases as well. A few examples come to mind. I have seen cases where an injured worker has received temporary total disability benefits continuing for as much as a year past the time when the physician released the worker to return to work. As the claimant's attorney, it would be unethical as his adversary to inform the insurance carrier that they may not be legally obligated to pay these benefits. Had the adjuster been efficient in keeping updated medical records, he/she would have been able to at least evaluate whether a legal obligation existed as far as providing these benefits.

Another example is where an adjuster retained a medical manager to accompany the claimant to his doctor's appointments. This specific example involved a relatively minor injury to the worker. It ended up with actual medical costs in the range of \$3,000. When we neared conclusion of the case, the adjuster inadvertently forwarded a copy of the medical manager's bill to my office when producing medical reports which I demanded. I believe the medical manager's bill was \$4,500. These are inefficient adjusting strategies and clearly drive up the costs.

**4. Out of proportion salaries of insurance company executives and sales agents.**

Admittedly, I have no hard data which I can point to in regards to the salaries of these executives and the commission incomes of sales agents. I do, however, have friends and acquaintances in the industry. About a year and a half ago, I was told about a party wherein an insurance sales agent was celebrating the fact that he had reached the \$200,000 per year commission income level. I have also spoken with people who have described to me the lifestyles and incomes of insurance company executives. These acquaintances have set as their goals to become high paid executives so that they can make the \$100,000, \$200,000 and even more annual salaries.

Maybe commerce ought to consider whether or not all this is truly a "cruel hoax on the employer".

We have a few proposals in regards to causative factors three and four. The first proposal is to not give the insurance industry the rate increases they are requesting. This would cause an internal house cleaning which would possibly focus on the problems of inefficient claims adjusting and out of proportion salaries. Again, I have no hard data to point to in regards to executive

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*3/19/92*

*Attachment 8-11*

salaries and sales agents' commissions, but I submit that if the information was voluntarily and honestly provided, I would not be far from accurate. We challenge commerce to evaluate their alliance with the insurance industry and question whether or not internal house cleaning would reduce the repeated requests of the insurance industry for increased rates.

Another proposal would be to draft a statute which ties private workers' compensation insurance rates to the average cost increases of the self-insureds around the state. The cost increases of the self-insureds will be the "indicator". Self-insureds are operated very efficiently due to the fact that they are nonprofit and have a direct interest in providing efficient adjusting strategies to cut their company's costs and exposure. Certainly, private workers' compensation carriers should be given an additional 5% above and beyond this "indicator", since they are for-profit entities.

In conclusion, I would ask the Committee to reevaluate the issue and consider the alternative proposals which I have outlined. Please remember that benefit cutting has been attempted in the past to alleviate the continued and increasing requests for rate increases. Despite previous benefit cutting, the NCCI is back again requesting a 34.1% increase above and beyond the 24% increase they got last year.

With great respect for this Committee, and with the understanding that I don't intend to offend anyone, I would like to remind you of the cliché: "Fool me once, shame on you; fool me twice, shame on me."

Please remember the family of Joe Hurt and the fact that this legislation severely impacts him and his family. Thank you for your attention, and I would be happy to answer any questions.

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*3/19/92*  
*Attachment 8-12*

K.S.A. 44-507. An amendment to the Kansas Workers' Compensation Act creating a safety director and deputies, and bestowing upon said safety director and deputies broad powers for the purposes of education and enforcement of safety in the workplace.

K.S.A. 44-507. Workers' compensation safety director; powers of safety director; creation of deputies; duties and obligations of safety director and deputies; employer's right to hearing and procedure therefor. (a) A primary purpose of the workers' compensation act shall be to promote safety within the workplace; it being specifically understood that prevention of injuries accrues to the benefit of employees, employers, insurance carriers, self-insureds, and the workers' compensation fund. Pursuant to this end, there is hereby created a safety director and deputies pursuant to K.S.A. 75-5708 as amended. The safety director and his deputies shall:

(1) Continuously study all issues of safety in the workplace with particular emphasis on the prevention of injuries and the practice of ergonomics. Said director shall be familiar with OSHA regulations and EPA regulations; although the director shall not be limited to those regulations in enforcement of safety for the state.

(2) The safety director and his deputies shall have broad police powers in the enforcement of actual safety violations. The safety director is hereby granted authority to enter onto any employer's premises, announced or unannounced, for the purposes of observing actual safety violations, and upon the observation of the same, shall have authority to issue warnings, levy fines, or prohibit said employer from continued operations pending correction of the safety violation. Whether or not a safety violation is occurring shall be determined within the sole discretion of the safety director or the deputies. In the event a warning is issued, a time certain shall be determined for correction of the violation. In the event a fine is levied, said fine shall not exceed one hundred thousand dollars (\$100,000.00) for each occurrence. In the event the employer is ordered to cease doing business, a violation of said order shall constitute an irrebuttable presumption that said employer is in contempt of court in Shawnee County unless directed otherwise by the safety director. The safety director shall implement rules and regulations governing the provisions of this section with the intent that the provisions of this section be applied uniformly to employers. Said rules and regulations shall be approved by the secretary of human resources. Nothing herein shall be construed to prevent the assessment of multiple fines for repeated occurrences.

(3) In the event the safety director issues a warning, levies a fine, or orders an employer to cease doing business, said employer shall comply with the safety director's directions. The employer shall have the right to appeal said order to the district court of Shawnee County unless directed otherwise by the safety

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*Attachment 8-13*

director. In the event said employer does not comply, the employer shall lose the right to appeal. The district court shall, within three (3) days of the safety director's action, set the matter for a summary hearing to determine whether the order of the safety director should stand, be modified, or be reversed. By request of either party, following the district court's order, the matter shall be set for a full evidentiary hearing. Further appeals shall be taken pursuant to the code of civil procedure to the appellate courts of Kansas.

(4) The safety director shall have broad authority to implement ergonomics and job modifications for the prevention of injuries in the workplace. In each such instance, the safety director shall consider the cost of the job modification or ergonomic implementation against the harm being caused, or likely to be caused, to the employee. If it is determined, within the sole discretion of the safety director, that the safety recommendation should be implemented, it shall be ordered to be complied with in a reasonable amount of time, but not more than thirty (30) days except for highly unusual circumstances. If the employer disputes said determination, the employer shall have the right to appeal to the district court of Shawnee County unless directed otherwise by the safety director. The employer shall have the right to stay the recommendation of the safety director by the posting of a bond in an amount determined by the district court.

(5) The safety director shall respond to and investigate complaints made by employees of the State of Kansas as to safety violations or safety concerns of any nature. Said complaints shall be treated with the utmost confidentiality by the safety director. No employer shall retaliate in any way against an employee for filing a complaint with the safety director. Nothing stated herein shall be construed as limiting the safety director's jurisdiction to responding to complaints by employees.

(6) It shall be the duty of the safety director to educate employers and workers as to safety matters. The safety director shall implement mandatory annual educational programs for all employers. The safety director shall establish by rules and regulations the minimum requirements which after July of 1993 shall be a prerequisite for the employer obtaining insurance under the Kansas workers' compensation act.

(7) Any employer within the State of Kansas who is subject to the jurisdiction of the Kansas Workers' Compensation Act is subject to the jurisdiction of the workers' compensation safety director and deputies.

(8) The authority vested in the safety director is specifically vested to the deputies created pursuant to K.S.A. 75-5708.

kn/2/26/92/safety

*129 + 1 B*  
*3/19/92*

*Attachment 8-14*



TOPEKA

HOUSE OF  
REPRESENTATIVES

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

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.

*SLC*  
*3/19/92*

*Attachment 9-1*

**Wells Cabinet, Inc.**

R.R. 4, Box 171

Frederonia, 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.

*S. J. B.*  
*3/19/92*

*Attachment 9-2*



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 66512

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 put forth 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 & S B*  
*3/19/92*



# 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 written 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 small business like mine can not survive, and where will the U.S. be without small business. (over)

SLD:LB  
3/19/92

Attachment-94



**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 write 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,

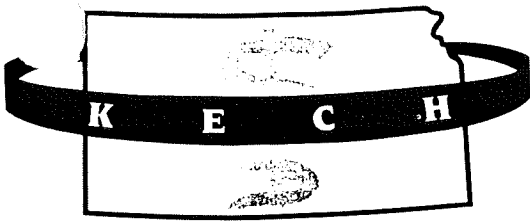
Yours Truly,

*Howard L. Alger*

Howard L. Alger  
Denison, Inc., President

*H.L. Alger*  
*3/19/92*

*Attachment 9-5*



## Kansas Employer Coalition on Health, Inc.

1271 S.W. Harrison • Topeka, Kansas 66612 • (913) 233-0351

**Testimony to  
Senate Committee on Labor, Industry and Small Business on  
SB 666  
(reforms to workers compensation act)**

by James P. Schwartz Jr.  
Consulting Director  
Submitted March 18, 1992

The Kansas Employer Coalition on Health is nearly 100 employers across the state who share concerns about the cost of health care purchased for our 350,000 employees and dependents.

We strongly support the direction taken by SB 666. A strong Kansas economy depends on maintaining an attractive business climate. Recent jumps in workers compensation premiums threaten that climate. SB 666 contains a number of measures that will help protect our workers compensation system from further loss of control.

While the root causes of workers compensation costs are complex, it seems clear that streamlining the system and protecting against abuse are basic components of meaningful reform.

*SLD + SB  
3/19/92*

*Attachment 10*