

Approved: 2/7/95
Date

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR.

The meeting was called to order by Chairperson Al Lane at 9:05 a.m. on January 24, 1995 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Bev Adams, Committee Secretary

Conferees appearing before the committee: George Gomez, Director of Workers Comp, KDHR
Susan Stanley, Assistance Attorney General, Fraud/Abuse Unit
-Division of Workers Compensation
Sharon Huffman, Kansas Commission on Disability Concerns
-KDHR, Legislative Liaison for ADA

Others attending: See attached list

George Gomez introduced Susan Stanley, Assistant Attorney General from the Fraud/Abuse Unit in the Division of Workers Compensation.

The 1993 Workers Comp Act set into place the ability to prosecute Workers Comp fraud and abuse administratively or criminally. The Fraud/Abuse unit has a staff of three investigators and a clerical person. During the last year they have opened 346 cases, 142 have been closed out, and 17% went on to further action, such as criminal action. Ms. Stanley furnished handouts that show some of the cases and statistics from her department (see Attachment 1). She finished by answering questions from the committee.

George Gomez finished the overview of the Workers Comp Department telling us about the effort of Kansas and the other states to set up a computer system called EDI. Each year 100,000 reports are filed in Kansas. The insurance companies enter each case into their computers and then a copy is mailed to the Workers Comp office where the files are entered into their computers. With the EDI, the files could be sent electronically. There have been monthly meetings held to develop EDI nationwide. He shared other statistics with the committee (see Attachment 2). Of the one million covered workers an average of 50 die in Worker Comp accidents each year in Kansas. He concluded by answering questions.

Sharon Huffman, Kansas Commission on Disability Concerns, Kansas Department of Human Resources (KDHR) appeared before the committee to bring the committee up to date with the Americans with Disabilities Act (ADA). The Act was passed to provide the 43 million Americans with disabilities some type of law to provide protection and offer legal recourse when their rights are violated (see Attachment 3). The ADA is a civil rights law. She also furnished the committee with three booklets on the Americans With Disabilities Act; one for the individual with a disability, one for employers and one with questions and answers about the Act. The booklets are available at her office at 1430 SW Topeka in Topeka.

The meeting adjourned at 10:06.

The next meeting is scheduled for January 25, 1995.

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE GUEST LIST

DATE January 24, 1995

NAME	REPRESENTING
RICHARD TOMAS	DHR / WORKERS COMP
SUSAN STANLEY	" " " "
Kerese Gomez	DHR WORK COMP
David Shufelt	" " "
Lisa Mendoza	KDOC
Raven Conklin	Sen. Louis Sae
Jon Newman	KS Governmental Affairs
Harry Henry	League of KS Municipalities
Michael Punt	KS WORKERS COMP
Alex Grogan	Barbee's Assoc.
Glen Nancy	SRS Rehabilitation Services
Benny Greis	D of A
Wayne Marcher	KS AFL-CIO
Bill Jance	Boeing
William [unclear]	KOPAC
Bob Brown	Construction Workers Assn
Freddie Gron	Am Institute of Architects
Phyllis East	Attorney General
Richard Smith	A.G.

FRAUD/ABUSE UNIT

STAFF

SUSAN G. STANLEY
Assistant Attorney General
Fraud/Abuse Unit
Division of Workers Compensation
800 SW Jackson, Suite 600
Topeka, KS 66612
(913) 296-6392

PHIL CLANTON
Special Investigator
Central (East to West)

GEORGE SCHUREMAN
Special Investigator
Southern One-Third (East to West)

DIANA TOY
Special Investigator
Northern One-Third (East to West)

LOU ANN GODFREY
Secretary

*Business, Commerce &
Labor*

1/24/95

Attachment 1

1-1

INVESTIGATIONS 1994 STATISTICAL DATA

JANUARY 17, 1994 - DECEMBER 31, 1994

Total Number Cases Opened	346	
Total Number Closed Cases	142	41%
Criminal Referrals	11	8%
Administrative Filings	5	3.5%
Insurance Dept. Cases	8	5.6%

CASES REFERRED FOR CRIMINAL ACTION OR FURTHER INVESTIGATION

Wabaunsee	1	Johnson	1
Sedgwick	1	Lyon	1
Douglas	1	Wyandotte	1
Reno	1	Harvey	1
Nemaha	1	Shawnee	1
Leavenworth	1		

CASES SENT TO INSURANCE COMMISSIONER

Johnson County	2
Shawnee	2
Cowley	1
Lyon	1
Sedgwick	2
No county shown	1

ADMINISTRATIVE FILINGS

KDHR vs Quaker Oats	Awaiting hearing
KDHR vs Taylor	Default
KDHR vs Axvig	Default
KDHR vs Penn	Awaiting hearing
KDHR vs Hubert	Awaiting hearing



Kansas Department of Human Resources

Joan Finney, Governor
Joe Dick, Secretary

DIRECTOR'S OFFICE
298-4000
REHABILITATION
298-2050
BENEFIT REVIEW
298-0848
INVESTIGATION
298-8392

DIVISION OF WORKERS COMPENSATION
800 S.W. JACKSON STREET, SUITE 600
TOPEKA, KANSAS 66612-1227

INFORMATION (913) 298-3441
FAX NUMBER (913) 298-0839

OMBUDSMAN/
CLAIMS ADVISORY
298-2998
SELF INSURANCE
298-3808
MEDICAL SERVICES
298-0848
DATA COLLECTION
298-4120

January 6, 1995

Mr. Marshall Crowther
Office of Insurance Commissioner
420 SW 9th
Topeka, KS 66612-1678

Dear Marshall:


Enclosed please find two lists which I hope shed some light on complaints we have received during 1994, regarding insurance companies.

List number one contains our case numbers which we show as referrals to your office. This list contains both referrals made early on which had no investigation accompanying them and several which would have contained investigations and a recommendation for action.

List number two contains 41 cases that have been opened against insurance companies. Thirteen of these are currently open and the subject of on going investigations, 28 of those have been closed. When you are set up to conduct investigations, we would be more than happy to transfer both the open and closed cases to your office. (Someone might want to review those closed cases to make sure that they agree with our conclusions.)

In the event that I can be of further assistance, please do not hesitate to contact me.

Sincerely,


Susan G. Stanley
Assistant Attorney General
Fraud and Abuse Investigations

SGS:lag
Attachments

LIST 1

<u>CASE NO.</u>	<u>COMPANY</u>	<u>OPEN/CLOSED</u>	<u>COUNTY</u>
94-00008	Liberty Mutual/Schwans	Open	JO
94-00010	Fidelity Ins/Presley	Closed	CO
94-00011	IBP/Jacob	Closed	LY
94-00012	Sentry Ins/Ward	Open	
94-00013	Fidelity (5)/Carpenter	Closed	JO
94-00069	Stewart, John B	Open	SG
94-00212	Hartford/Forgy	Open	SN

LIST 2

<u>CASE NO.</u>	<u>COMPANY</u>	<u>OPEN/CLOSED</u>	<u>COUNTY</u>
94-00072	Church Mutual/Cheyenne Nursing	Closed	JO
94-00120	INA/Jordan	Closed	SG
94-00121	Farm Bureau	Closed	SG
94-00123	Chubb Ins/Paddock	Closed	JO
94-00128	Chubb Ins/Sublett	Open	SG
94-00141	CIGNA/Amador	Open	SG
94-00143	Commercial Union/Palmer	Closed	CD
94-00171	Argonaut Ins/Deffenbaugh	Closed	WY
94-00178	American Family/Marrs	Closed	SW
94-00181	City Ins/Flores	Open	FO
94-00203	Liberty Mutual/Flores	Closed	SW
94-00215	USF&G/Stamps	Closed	SG
94-00216	Hartford/Booth	Closed	LY
94-00217	CNA/Zsamba	Closed	DK
94-00222	CIGNA/Mitchell	Closed	PN
94-00225	CNA/Riley	Closed	JO
94-00231	CIGNA/Falcon-Elliott	Closed	FO
94-00232	CIGNA/Murphy	Closed	SG
94-00234	CIGNA/Foster	Closed	SG
94-00235	CIGNA/Smith	Closed	SA
94-00237	Sentry/Cain	Open	JO
94-00244	CIGNA/Gluckman	Closed	KW
94-00247	CNA/Coke	Closed	JO
94-00253	Farm Bureau/Burkard	Closed	OFS
94-00265	Liberty Mutual/Pitre	Closed	JO

LIST 2

<u>CASE NO.</u>	<u>COMPANY</u>	<u>OPEN/CLOSED</u>	<u>COUNTY</u>
94-00266	State Farm/DeVore	Closed	WY
94-00267	Hartford/Laible	Closed	OT
94-00270	Crawford/Snyder	Closed	SG
94-00279	Travelers-Aldi/Davis	Closed	JO
94-00284	Aetna-Boeing/Arvidson	Closed	SG
94-00287	Liberty Mutual/Davis	Open	LB
94-00288	Aetna/Shipley	Open	NO
94-00300	USF&G/Silmon	Open	SG
94-00305	Allied Mutual/Leopard	Closed	SG
94-00306	Hartford/Porter	Open	GE
94-00318	Commercial Union/Harding	Open	WY
94-00322	Constitution Ins/Waugh	Closed	JO
94-00325	Cincinnati Ins/Davey	Open	SG
94-00327	Crawford/Luxury Lawn	Open	SN
94-00335	Travelers/Brundige	Open	AL
94-00340	Crawford/Maupin	Open	OFS

FRAUD AND ABUSE

Cross References to Related Sections:

Regulation of certain unfair or deceptive insurance trade practices, see 40-2401 et seq.

(2) a detailed statement of each issue raised but not resolved;

(3) a statement of what, if any, interlocutory orders were entered pursuant to subsections (d) or (e); and

(4) a statement of the procedures required to request a preliminary or full hearing and a complete explanation of the differences in those proceedings and the rights of the parties to subsequent review of the determinations made in those proceedings.

(d) If a benefit review officer recommends that benefits be paid or not paid, the benefit review officer may issue an interlocutory order, as agreed to by the parties, to pay or not pay the benefits.

(e) If there is a dispute as to which of two or more insurance carriers is liable for compensation for one or more compensable injuries, the benefit review officer may issue an interlocutory order directing each insurance carrier to pay a proportionate share of benefits due pending a final decision on liability.

(f) On final determination of liability, any insurance carrier determined not to be liable for the payment of benefits is entitled to reimbursement for the share paid by the insurance carrier from any insurance carrier determined to be liable.

(g) The benefit review officer shall file the signed agreement or settlement and the report of the benefit review conference with the director of workers compensation. The director shall prescribe the time within which the agreement or settlement and report shall be filed and shall furnish a copy of the report to the claimant, the employer and the insurance carrier.

History: L. 1993, ch. 286, § 15; July 1.

44-5,115. Same; telephone conferences. Benefit review conferences may be held in person or by telephone conference call, but, if feasible, shall be held with the parties personally present.

History: L. 1993, ch. 286, § 16; July 1.

44-5,116. Same; representation by ombudsman. An unrepresented claimant may be assisted at a benefit review conference by an ombudsman.

History: L. 1993, ch. 286, § 17; July 1.

44-5,117 to 44-5,119. Reserved.

44-5,120. Fraudulent or abusive acts or practices; defined; powers, duties and functions of director of workers compensation and commissioner of insurance; application of section; administrative investigation and enforcement; hearings; costs; cease and desist orders; civil penalties; repayments; interest; review. (a) The director of workers compensation is hereby authorized and directed to establish a system for monitoring, reporting and investigating suspected fraud or abuse by any persons who are not licensed or regulated by the commissioner of insurance in connection with securing the liability of an employer under the workers compensation act or in connection with claims or benefits thereunder. The commissioner of insurance is hereby authorized and directed to establish a system for monitoring, reporting and investigating suspected fraud or abuse by any persons who are licensed or regulated by the commissioner of insurance in connection with securing the liability of an employer under the workers compensation act or in connection with claims thereunder.

(b) This section applies to:

(1) Persons claiming benefits under the workers compensation act;

(2) employers subject to the requirements of the workers compensation act;

(3) insurance companies including group-funded self-insurance plans covering Kansas employers and employees;

(4) any person, corporation, business, health care facility that is organized either for profit or not-for-profit and that renders medical care, treatment or services in accordance with the provisions of the workers compensation act to an injured employee who is covered thereunder; and

(5) attorneys and other representatives of employers, employees, insurers or other entities that are subject to the workers compensation act.

(c) The commissioner of insurance may examine the workers compensation records of insurance companies or self-insurers as necessary to ensure compliance with the workers compensation act. Each insurance company providing workers compensation insurance in Kansas, the company's agents, and those entities that the company has contracted to provide review services or to monitor services and

practices under the workers compensation act shall cooperate with the commissioner of insurance, and shall make available to the commissioner any records or other necessary information requested by the commissioner. The commissioner of insurance shall conduct an examination authorized by this subsection in accordance with the provisions of K.S.A. 40-222 and 40-223 and amendments thereto.

(d) Fraudulent or abusive acts or practices for purposes of the workers compensation act include, but are not limited to, willfully or intentionally:

(1) Collecting from an employee, through a deduction from wages or a subsequent fee, any premium or other fee paid by the employer to obtain workers compensation insurance coverage;

(2) misrepresenting to an insurance company or the insurance department, the classification of employees of an employer, or the location, number of employees, or true identity of the employer with the intent to lessen or reduce the premium otherwise chargeable for workers compensation insurance coverage;

(3) lending money to the claimant during the pendency of the workers compensation claim by an attorney representing the claimant, but this provision shall not prohibit the attorney from assisting the claimant in obtaining financial assistance from another source, except that (A) the attorney shall not have a financial interest, directly or indirectly, in the source from which the loan or other financial assistance is secured and (B) the attorney shall not be personally liable in any way for the credit extended to the claimant;

(4) obtaining, denying or attempting to obtain or deny payments of workers compensation benefits for any person by:

(A) Making a false or misleading statement;

(B) misrepresenting or concealing a material fact;

(C) fabricating, altering, concealing or destroying a document; or

(D) conspiring to commit an act specified by clauses (A), (B) or (C) of this subsection (d)(4);

(5) bringing, prosecuting or defending an action for compensation under the workers compensation act or requesting initiation of an administrative violation proceeding that, in either case, has no basis in fact or is not warranted by existing law or a good faith argument for the extension, modification or reversal of existing law;

(6) breaching a provision of an agreement approved by the director;

(7) withholding amounts not authorized by the director from the employee's or legal beneficiary's weekly compensation payment or from advances from any such payment;

(8) entering into a settlement or agreement without the knowledge and consent of the employee or legal beneficiary;

(9) taking a fee or withholding expenses in excess of the amounts authorized by the director;

(10) refusing or failing to make prompt delivery to the employee or legal beneficiary of funds belonging to the employee or legal beneficiary as a result of a settlement, agreement, order or award;

(11) misrepresenting the provisions of the workers compensation act to an employee, an employer, a health care provider or a legal beneficiary;

(12) instructing employers not to file required documents with the director;

(13) instructing or encouraging employers to violate the employee's right to medical benefits under the workers compensation act;

(14) failing to tender promptly full death benefits if a clear and legitimate dispute does not exist as to the liability of the insurance company, self-insured employer or group-funded self-insurance plan;

(15) failing to confirm medical compensation benefits coverage to any person or facility providing medical treatment to a claimant if a clear and legitimate dispute does not exist as to the liability of the insurance carrier, self-insured employer or group-funded self-insurance plan;

(16) failing to initiate or reinstate compensation when due if a clear and legitimate dispute does not exist as to the liability of the insurance company, self-insured employer or group-funded self-insurance plan;

(17) misrepresenting the reason for not paying compensation or terminating or reducing the payment of compensation;

(18) refusing to pay compensation as and when the compensation is due;

(19) refusing to pay any order awarding compensation; and

(20) refusing to timely file required reports or records under the workers compensation act.

(e) Whenever the director or the commissioner of insurance has reason to believe that any person has engaged or is engaging in any

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fraudulent or abusive act or practice in connection with the conduct of Kansas workers compensation insurance, claims, benefits or services in this state, that such fraudulent or abusive act or practice is not subject to possible proceedings under K.S.A. 40-2401 through 40-2421 and amendments thereto by the commissioner of insurance, and that a proceeding by the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, with respect thereto would be in the interest of the public, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, shall issue and serve upon such person a statement of the charges with respect thereto and shall conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act.

(f) If, after such hearing, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, determines that the person charged has engaged in any fraudulent or abusive act or practice, any costs incurred as a result of conducting any administrative hearing authorized under the provisions of this section may be assessed against the person or persons found to have engaged in such acts. In an appropriate case to reimburse costs incurred, such costs may be awarded to a complainant. As used in this subsection, "costs" include witness fees, mileage allowances, any costs associated with reproduction of documents which become a part of the hearing record and the expense of making a record of the hearing.

(g) If, after such hearing, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, determines that the person or persons charged have engaged in a fraudulent or abusive act or practice the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, shall issue an order requiring such person to cease and desist from engaging in such act or practice and, in the exercise of discretion, may order any one or more of the following:

(1) Payment of a monetary penalty of not more than \$1,000 for each and every act constituting the fraudulent or abusive act or practice, but not exceeding an aggregate penalty of \$2,500 for any six-month period;

(2) redress of the injury by requiring the refund of any premiums paid by and requiring the payment of any moneys withheld from, any

employee, employer, insurance company or other person or entity adversely affected by the act constituting a fraudulent or abusive act or practice;

(3) repayment of an amount equal to the total amount that the person received as benefits or any other payment under the workers compensation act and any amount that the person otherwise benefited as a result of an act constituting a fraudulent or abusive act or practice, with interest thereon determined so that such total amount, plus any accrued interest thereon, bears interest, from the date of the payment of benefits or other such payment or the date the person was benefited, at the current rate of interest prescribed by law for judgments under subsection (e)(1) of K.S.A. 16-204 and amendments thereto per month or fraction of a month until repayment.

(h) After the expiration of the time allowed for filing a petition for review of an order issued under this section, if no such petition has been duly filed within such time, the director at any time, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, may reopen and alter, modify or set aside, in whole or in part, any order issued under this section, whenever in the director's opinion conditions of fact or of law have so changed as to require such action or if the public interest so requires.

(i) Upon the order of the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, after notice and hearing in accordance with the provisions of the Kansas administrative procedure act, any person who violates a cease and desist order of the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, issued under this section may be subject, at the discretion of the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, to a monetary penalty of not more than \$10,000 for each and every act or violation, but not exceeding an aggregate penalty of \$50,000 for any six-month period in addition to any penalty imposed pursuant to subsection (g).

(j) Any civil fine imposed under this section shall be subject to review in accordance with the act for judicial review and civil enforcement of agency actions in the district court in Shawnee county.

(k) All moneys received under this section for costs assessed, which are not awarded to a complainant, or monetary penalties imposed shall be deposited in the state treasury and credited to the workmen's compensation fee fund.

History: L. 1993, ch. 286, § 1; July 1.

44-5,121. Same; cause of action to recover economic losses. (a) Any person who has suffered economic loss by a fraudulent or abusive act or practice shall have a cause of action against any other person to recover such loss which was paid as benefits or other amounts of money which were paid under the workers compensation act and to seek relief for other monetary damages from such other person based on a fraudulent or abusive act or practice, except that such other monetary damages shall not include damages for nonpecuniary loss.

(b) Nothing in this section or K.S.A. 44-5,120 and amendments thereto shall prohibit an employer from exercising a right to reimbursement under K.S.A. 44-534a, 44-556 or 44-569a and amendments thereto.

History: L. 1993, ch. 286, § 2; July 1.

44-5,122. Same; acts or practices constituting crimes, procedure; reporting alleged violations; review and investigation. (a) If the director or the assistant attorney general assigned to the division of workers compensation has probable cause to believe a fraudulent or abusive act or practice or any other violation of the workers compensation act is of such significance as to constitute a crime, a copy of any order, all investigative reports and any evidence in the possession of the division of workers compensation which relates to such act, practice or violation shall be forwarded to the prosecuting attorney of the county in which the act or any of the acts were performed which constitute the fraudulent or abusive act or practice or other violation.

(b) Any person who believes a violation of the workers compensation act has been or is being committed may notify the division of workers compensation of the department of human resources immediately after discovery of the alleged violation. The person shall send to the division of workers compensation, in a manner prescribed by the director, the information describing the facts of the alleged violation and such additional information relating to the alleged violation as the director may require. The director shall cause an evaluation

of the facts surrounding the alleged violation to be made to determine the extent, if any, to which violations of the workers compensation act exist, which shall include a review and investigation by the assistant attorney general assigned to the division to the extent as may be deemed necessary to determine whether there has been a violation of the workers compensation act.

History: L. 1993, ch. 286, § 3; July 1.

44-5,123. Same; immunity from civil liability for reporting information in good faith. No person shall be subject to civil liability by virtue of (a) the filing of reports or furnishing of other information, in good faith and without malice, required by K.S.A. 44-5,120 through 44-5,122 and amendments thereto or required by the director as a result of the authority conferred upon the director by law or (b) notifying the division of workers compensation of any alleged violation of the workers compensation act or providing information in the course of an investigation of an alleged violation of the workers compensation act where such person's actions were in good faith and without malice.

History: L. 1993, ch. 286, § 4; July 1.

44-5,124. Assistant attorney general; appointment within division of workers compensation; duties. The attorney general shall appoint, with the approval of the secretary of human resources, an assistant attorney general who shall be within the division of workers compensation of the department of human resources and who shall receive an annual salary fixed by the attorney general with the approval of the secretary of human resources and the governor. The operating expenditures for the assistant attorney general shall be financed by funds available for the administration of the workers compensation act. The duties of the assistant attorney general shall include directing or assisting in the investigation and administrative prosecution of alleged fraudulent or abusive acts or practices or other violations of K.S.A. 44-5,120 through 44-5,122 and amendments thereto, or of any other provisions of the workers compensation act, and in the investigation and criminal prosecution of any such acts, practices or violations which constitute crimes.

History: L. 1993, ch. 286, § 5; July 1.

44-5,125. Workers compensation fraud and other acts or practices constituting crimes;

penalties; repayment of certain amounts, interest; cause of action, certain monetary damages. (a) (1) Any person who obtains or attempts to obtain any payment of compensation under the workers compensation act for such person or who denies or attempts to deny the obligation to make any payment of workers compensation benefits; who obtains or attempts to obtain a more favorable workers compensation benefit rate or insurance premium rate than that to which such person is otherwise entitled; who prevents, reduces, avoids or attempts to prevent, reduce or avoid the payment of any compensation under the workers compensation act; or who fails to communicate a settlement offer or similar information to a claimant under the workers compensation act, by, in any such case, knowingly or intentionally: (A) Making a false or misleading statement, (B) misrepresenting or concealing a material fact, or (C) fabricating, altering, concealing or destroying a document; and (2) any person who conspires with another person to commit any act described by clause (1) of this subsection (a), shall be guilty of a class C non-person misdemeanor, if the amount received as a benefit or other payment under the workers compensation act as a result of such act or the amount that the person otherwise benefited monetarily as a result of a violation of this subsection (a) is \$500 or less, and shall be guilty of a severity level nine, nonperson felony, if such amount is more than \$500.

(b) Any person who has received any amount of money as a benefit or other payment under the workers compensation act as a result of a violation of subsection (a) and any person who has otherwise benefited monetarily as a result of a violation of subsection (a) shall be liable to repay an amount equal to the amount so received by such person or the amount by which such person has benefited monetarily, with interest thereon. Any such amount, plus any accrued interest thereon, shall bear interest at the current rate of interest prescribed by law for judgments under subsection (e)(1) of K.S.A. 16-204 and amendments thereto per month or fraction of a month until repayment of such amount, plus any accrued interest thereon. The interest shall accrue from the date of overpayment or erroneous payment of any such amount or the date such person benefited monetarily.

(c) Any person aggrieved by a violation of subsection (a) shall have a cause of action against any other person to recover any amounts of

money erroneously paid as benefits or any other amounts of money paid under the workers compensation act, and to seek relief for other monetary damages, for which liability has accrued under this section against such other person.

(d) Nothing in this section shall prohibit an employer from exercising a right to reimbursement under K.S.A. 44-534a, 44-556 or 44-569a and amendments thereto.

History: L. 1993, ch. 286, § 6; July 1.

Article 5a.—OCCUPATIONAL DISEASES

Law Review and Bar Journal References:

"Survey of Kansas Law: Workers' Compensation," William A. Kelly, 27 K.L.R. 377, 380 (1979).

"Determining Compensation Due Under the Kansas Workmen's Compensation Act," Bryce B. Moore, 52 J.K.B.A. 214, 223 (1983).

44-5a01. Occupational diseases; treated as injuries by accident under workmen's compensation act; defined; limitations of liability; aggravations. (a) Where the employer and employee or workman are subject by law or election to the provisions of the workmen's compensation act, the disablement or death of an employee or workman resulting from an occupational disease as defined in this section shall be treated as the happening of an injury by accident, and the employee or workman or, in case of death, his dependents shall be entitled to compensation for such disablement or death resulting from an occupational disease, in accordance with the provisions of the workmen's compensation act as in cases of injuries by accident which are compensable thereunder, except as specifically provided otherwise for occupational diseases.

(b) "Occupational disease" shall mean only a disease arising out of and in the course of the employment resulting from the nature of the employment in which the employee was engaged under such employer, and which was actually contracted while so engaged. "Nature of the employment" shall mean, for purposes of this section, that to the occupation, trade or employment in which the employee was engaged, there is attached a particular and peculiar hazard of such disease which distinguishes the employment from other occupations and employments, and which creates a hazard of such disease which is in excess of the hazard of such disease in general. The disease must appear to have had its origin in a special risk of such disease connected with the particular type of employment and to have resulted from that source as a reasonable consequence of the risk. Ordinary dis-

INVESTIGATIONS OPENED
(FOR PERIOD JANUARY 17, 1994 THRU DECEMBER 31, 1994)

156 REPORTS OF SUSPECTED CLAIMANT FRAUD

97 REPORTS OF EMPLOYER ABUSIVE PRACTICE

52 COMPLAINTS AGAINST INSURANCE COMPANIES

41 COMPLAINTS AGAINST ASSORTED OTHER BUSINESSES
PARTICULARLY IN THE MEDICAL RECORDS FIELD

4 COMPLAINTS AGAINST ATTORNEYS

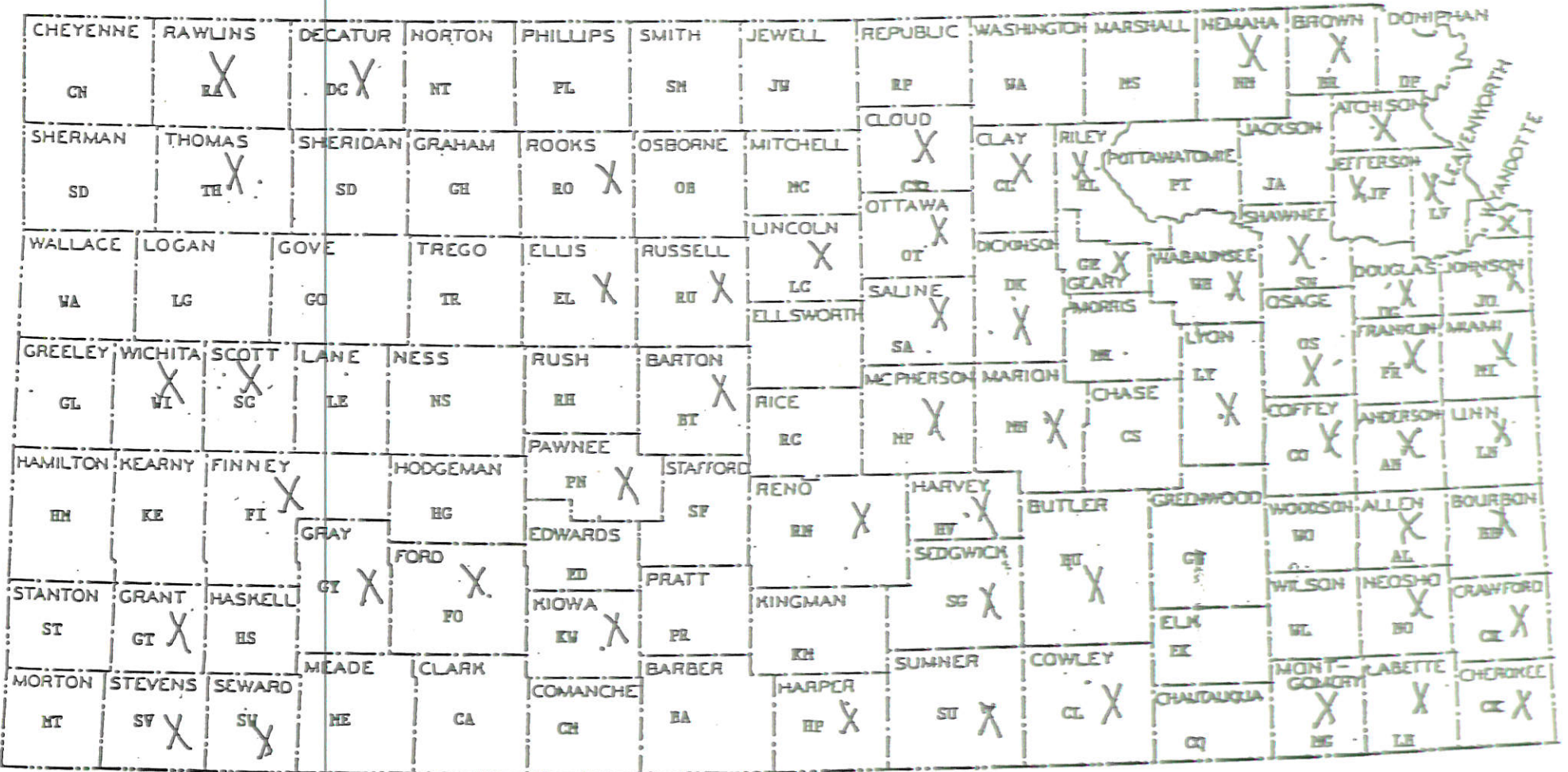
2 COMPLAINTS AGAINST WORKERS COMPENSATION FUND

CASES REPORTED FOR PERIOD JANUARY 17, 1994 THRU DECEMBER 31, 1994

TOTAL CASES = 346

X REPRESENTS AT LEAST ONE CASE REPORTED

COUNTIES REPRESENTED = 57



NUMBER OF CASES BY COUNTIES
 JANUARY 17, 1994 THRU DECEMBER 31, 1994

<u>COUNTY</u>	<u>NO. CASES</u>
Wyandotte	25
Johnson	45
Rawlins	1
Barton	5
Geary	3
Sedgwick	75
Ford	13
Reno	7
Saline	4
Sumner	1
Decatur	1
Douglas	8
Shawnee	33
Wabaunsee	1
Stevens	2
Cloud	4
Scott	2
Butler	4
Miami	6
Leavenworth	4
Brown	1
Harvey	2
Atchison	1
Labette	3
Crawford	13
Wichita	1
Montgomery	6
Thomas	1
Coffey	2
Lyon	8
Bourbon	1
Marion	1
Allen	3
Nemaha	2
Russell	2
Finney	4
Riley	3
McPherson	5
Harper	3
Cherokee	2
Clay	1
Franklin	2
Jefferson	2
Anderson	2
Seward	5
Grant	1
Ellis	1

NUMBER OF CASES BY COUNTIES
JANUARY 17, 1994 THRU DECEMBER 31, 1994

<u>COUNTY</u>	<u>NO. CASES</u>
Dickinson	1
Rooks	1
Pawnee	1
Kiowa	1
Cowley	3
Ottawa	1
Neosho	2
Gray	1
Osage	1
Linn	1
Out-of-State	8

NUMBER OF CASES BY COUNTIES
JANUARY 1, 1995 THRU DECEMBER 31, 1995

<u>COUNTY</u>	<u>NO. CASES</u>
Sedgwick	2
Shawnee	2
Bourbon	1
Lincoln	1
Barton	1
Johnson	1
Ford	1

SUMMARY OF THE STATISTICAL REPORT

July 1, 1993 to June 30, 1994

In the Fall of 1993, the Division began to implement the changes mandated by Senate Bill 307, passed during the 1993 legislative session. The changes had a great impact on the Division and some of them are listed below:

- Established the Ombudsman Section
- Established the Appeals Board
- Established the Fraud & Abuse Investigation Section
- Established the Benefit Review Program
- Developed & distributed educational information brochures in English and Spanish explaining the basic purpose and responsibilities to employees and employers.
- Changed the method of computing permanent partial benefits

Due to the various programs being implemented, the number of full time employee grew from 60 full time positions to slightly more than 90 full time employees.

The assessment, which funds the administrative expenses of operating the Division, was 0.02019 of the premiums collected by insurance companies and self-insured employers.

Fifty-one employers were issued permits to be self-insured during Fiscal Year 1994, bringing the total to 293 self-insured employers.

The Claims Advisory Section responded to 30,843 telephone calls from claimants and insurance carrier concerning workers compensation issues.

The Director and Assistant Directors reviewed 187 cases. This was from July 1, 1993 to October 1993. At that time, the Workers Compensation Board of Appeals was in place and the review process continued with the Appeals Board.

The Administrative Law Judges held 2,041 preliminary hearings, 570 regular hearings, and 303 motion hearings during Fiscal Year 1994.

There were 138 Petitions for Judicial Review during the year. (Awards appealed to the District Court).

There were 7,898 applications for regular hearing filed with the Division and 4,074 applications for preliminary hearing filed during Fiscal Year 1994.

There were 8,593 settlements, 3,226 were undocketed settlements and 5,367 were docketed settlements.

The Director approved 683 Final Receipt and Release of Liabilities during Fiscal Year 1994.

There were 17,052 written requests for a search of Division records on individuals for their workers compensation history.

The Division received 5,064 Election filings.

The Rehabilitation Section monitored 578 active cases and had 1,121 closures.

*Business, Commerce
& Labor
1/24/95
Attachment 2*

JUDICIAL ACTIVITY

APPLICATIONS FOR HEARING

Regular Hearing (E-1)	7,988
Preliminary Hearing (E-3)	4,074

BENEFIT REVIEW CONFERENCE

Benefit Review Notices Sent	3,359
No Reply From Notices	503
Resolved Prior to BRC	532
Resolved at BRC	540
Not Resolved at BRC	2,282
(Sent to Administrative Law Judge)	

ADMINISTRATIVE LAW JUDGE (PENDING CASE ACTIVITY)

ORDERS

Preliminary Granted	1,927
Preliminary Denied	236
Dismissal w/o prejudice	22
Dismissal with prejudice	74
To Inactive Docket	4,373
Miscellaneous	719
Referring Vocational Assessment	164
Denying Referring Assessment	114
Dismissing A Party	235
Change of Physician	30
Denying Change of Physician	32
Appointing Neutral Physician	260
Production & Inspection of Records	4,023
Denying Production & Inspection of Records	5
Granting Motion to Quash	2
Denying Motion to Quash	6
Addition Medical	17
Denying Additional Medical	7
Reimburse Workers' Compensation Fund	7
Reinstate	874

AWARDS

Contested Cases	786
Reviewed & Modified	20
Compensation Denied	60
Joint Petition & Stipulation	503

DIRECTOR'S REVIEW (Old Law)

Application Review of Award	
(July 1, 1993 to October 1994)	82
Application for Review of Order	9

Directors Orders

Affirming Admin. Law Judge	144
Modifying Admin. Law Judge	43
Automatic Order Without Review	156

WORKERS COMPENSATION APPEALS BOARD (New Law)

Applications for Board Review of Award	403
Decisions of Review of Awards	
Affirming Administrative Law Judge	47
Modifying Administrative Law Judge	68
Reversed Administrative Law Judge	4
Applications for Board Review of Order	221
Decisions of Review of Orders	
Affirming Administrative Law Judge	44
Modifying Administrative Law Judge	4
Reversed Administrative Law Judge	9
DISTRICT COURT AND SUPREME COURT	
Petitions for Judicial Review	138
Decision Rendered by District Court	
Affirmed	47
Modified	46
Remanded	5
Court of Appeals	
Appeals to Court of Appeals	25
Decision Rendered by Court of Appeals or Supreme Court	
Court of Appeals	46
Supreme Court	1

The Accident Severity Tables

Table I - Severity by Industry Pages 19 - 23

From the **Industry** table the following industries reported the most injuries and the ten industries reported over half of all accidents reported.

- 1) Government includes all governmental departments
- 2) Health services
- 3) Food and kindred products
- 4) Eating & drinking establishments
- 5) Education services
- 6) Motor freight, transporting & warehouse
- 7) Construction
- 8) Transportation equipment
- 9) Wholesale trade - non durable goods
- 10) Machinery

**Industries With the Highest Number of Accident Reports
Fiscal Year 1994**

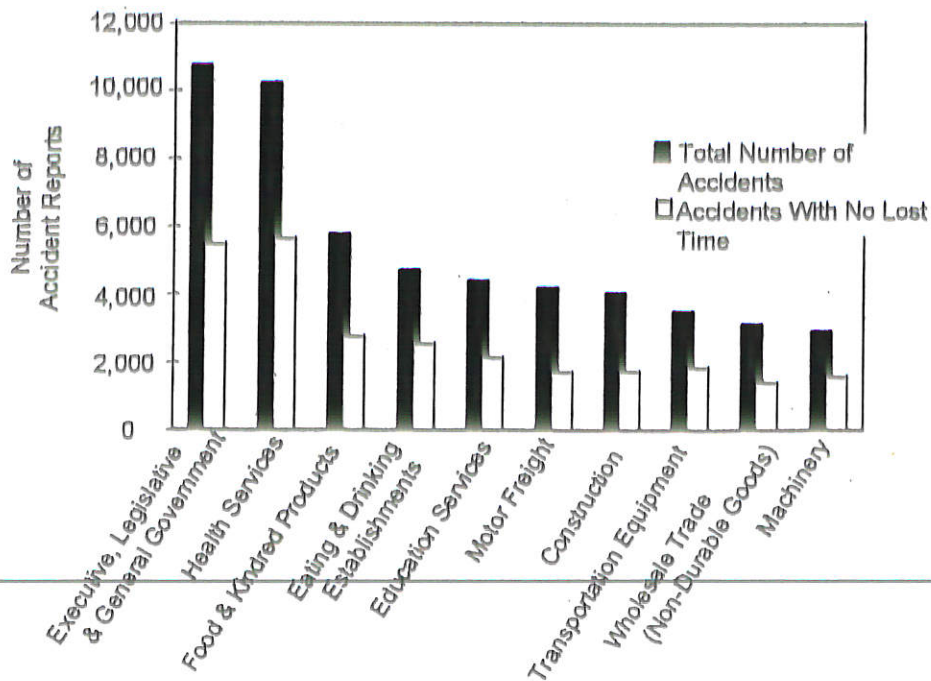
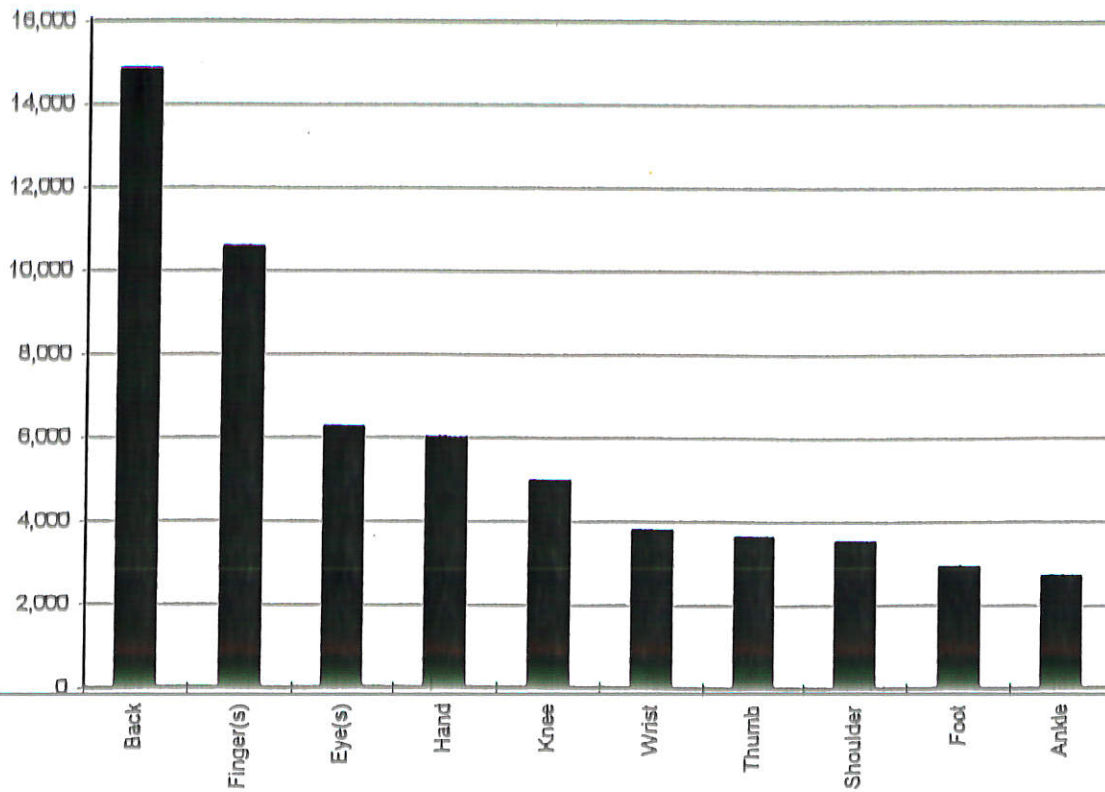


Table III - Member Injuries - Pages 25 & 26

Back injuries reflect fifteen per cent of all of the injuries reported. The following body parts listed represent the body parts most frequently injured in indescending order.

- 1) Back
- 2) Fingers
- 3) Eyes
- 4) Hand
- 5) Knees
- 6) Wrist
- 7) Thumb

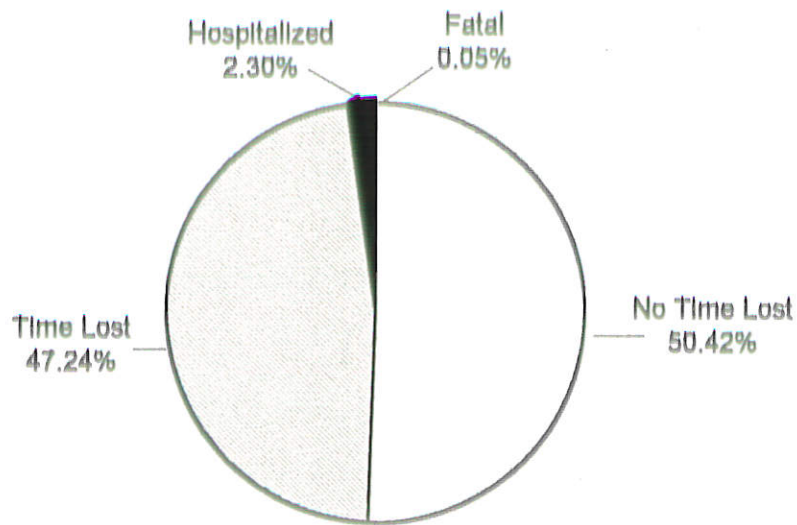
**The 10 Most Frequent Injuries
FY 1994**



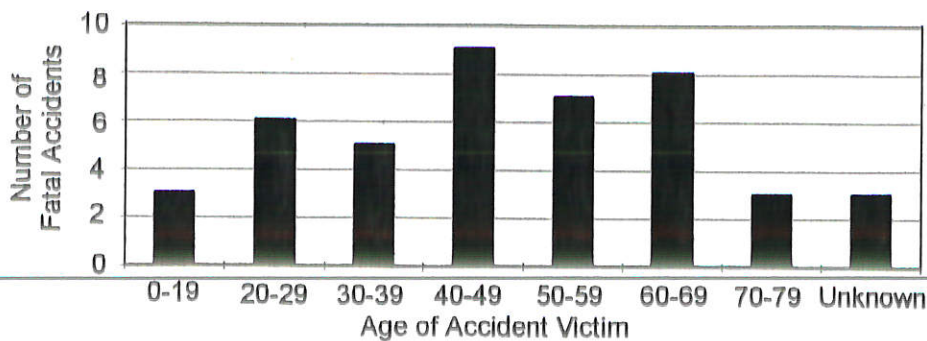
SEVERITY OF INJURIES

There were a total of 95,565 accident reports filed with the Division in Fiscal Year 1994. Of those, there were 48,181 or 50.42 percent **no lost time reports**, 45,141 or 47.23 percent **time lost reports**, 2,198 accidents that required the worker to be admitted to the **hospital**, and 45 reported **fatalities**.

Severity of Accidents



Fatalities By Age Group



WORKERS COMPENSATION - FIRST REPORT OF INJURY OR ILLNESS

G E N E R A L	EMPLOYER (NAME & ADDRESS INCL ZIP) BURGER MASTER STORE 230 200 MAIN STREET MADISON, WI 00000 - 0				CARRIER/ADMINISTRATOR CLAIM NUMBER 33333				REPORT PURPOSE CODE 00															
					JURISDICTION AH				JURISDICTION CLAIM NUMBER 00000000															
					INSURED REPORT NUMBER 00000																			
	SIC CODE 001993				EMPLOYER FEIN 772992111				EMPLOYER'S LOCATION ADDRESS (IF DIFFERENT) BURGER STORE 33 SHOP 22 DAYTONA BEACH, KY 40601 - 0000				LOCATION # 0000 PHONE # 787 878 - 8888											
C L A I M S A D M I N	CARRIER (NAME, ADDRESS & PHONE NO.) GLOBAL INSURANCE CORP 209 WEST PALM AVE TAMPA, FL 33612 - 0981 904 262 - 2918				POLICY PERIOD 07/21/1991 to 07/21/1995				CLAIMS ADMINISTRATOR (NAME, ADDRESS & PHONE NO.) FRED BROWN III 333 DOWNS LANE BLOCK 55 ORLANDO, FL 32114 - 0004 888 867 - 7474															
	CARRIER FEIN 283781881				POLICY/SELF-INSURED NUMBER 484848929838999				ADMINISTRATOR FEIN 00000000															
	AGENT NAME & CODE NUMBER DOUG SNEEZER 88500				CHECK IF APPROPRIATE <input checked="" type="checkbox"/> SELF INSURANCE																			
E M P L O Y E E	NAME (LAST, FIRST, MIDDLE) FLEMMING, ANN,				DATE OF BIRTH 12/08/1955				SOCIAL SECURITY NUMBER 002 - 98 - 2922				DATE HIRED 03/03/1984				STATE OF HIRE FL							
	ADDRESS (INCLUDING ZIP CODE) 44 HEDLANE DRIVE BUILDING C DAYTONA BEACH, FL 32111 - 1111				SEX <input type="checkbox"/> MALE <input checked="" type="checkbox"/> FEMALE <input type="checkbox"/> UNKNOWN				MARITAL STATUS UNMARRIED SINGLE/DIVORCED MARRIED SEPARATED				OCCUPATION/JOB TITLE ACCOUNT CLERK				EMPLOYMENT STATUS PART TIME							
	PHONE 887 888 - 8888				# OF DEPENDENTS 2				<input checked="" type="checkbox"/> UNKNOWN				NCCI CLASS CODE 8888											
W A G E	RATE \$ 5.00				PER <input type="checkbox"/> DAY <input checked="" type="checkbox"/> WEEK <input type="checkbox"/> MONTH <input type="checkbox"/> OTHER				# OF DAYS WORKED/WEEK 4				FULL PAY FOR DAY OF INJURY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO				DID SALARY CONTINUE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO							
	TIME EMPLOYEE BEGAN WORK 8:00				DATE OF INJURY/ILLNESS 03/23/1994				TIME OF OCCURRENCE 8:00				LAST WORK DATE 03/24/1994				DATE EMPLOYER NOTIFIED 03/24/1994				DATE DISABILITY BEGAN 03/25/1994			
	CONTACT NAME/PHONE NUMBER FRED BLOODS 990 454 - 8877				TYPE OF INJURY/ILLNESS CONCUSSION				PART OF BODY AFFECTED SKULL															
	DID INJURY/ILLNESS EXPOSURE OCCUR ON EMPLOYER'S PREMISES? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO				TYPE OF INJURY/ILLNESS CODE 07				PART OF BODY AFFECTED 11															
O C C U R R E N C E	DEPARTMENT OR LOCATION WHERE ACCIDENT OR ILLNESS EXPOSURE OCCURRED COMPUTER MANAGEMENT & AND COST ACCOUNTING DEPT				ALL EQUIPMENT, MATERIALS, OR CHEMICALS EMPLOYEE WAS USING WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED COMPUTER TERMINAL																			
	SPECIFIC ACTIVITY THE EMPLOYEE WAS ENGAGED IN WHEN THE ACCIDENT OR ILLNESS EXPOSURE OCCURRED LIFTING EQUIPMENT				WORK PROCESS THE EMPLOYEE WAS ENGAGED IN WHEN ACCIDENT OR ILLNESS EXPOSURE OCCURRED COMPUTER DATA ENTRY																			
	NO INJURY OR ILLNESS/ABNORMAL HEALTH CONDITION OCCURRED. DESCRIBE THE SEQUENCE OF EVENTS AND INCLUDE ANY OBJECTS OR SUBSTANCES THAT DIRECTLY HARMED THE EMPLOYEE OR MADE THE EMPLOYEE ILL I WAS LIFT THE COMPUTER WHEN I SLIPPED ON THE WET FLOOR WHICH RELATED TO KNOCKING MY COFFEE CUP ON THE FLOOR. THIS CAUSED ME TO BANG MY HIP												CAUSE OF INJURY CODE 13											
	DATE RETURNED TO WORK				IF FATAL, GIVE DATE OF DEATH 04/01/1994				WERE SAFEGUARDS OR SAFETY EQUIPMENT PROVIDED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO				WERE THEY USED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO											
T R E A T M E N T	PHYSICIAN/HEALTH CARE PROVIDER (NAME & ADDRESS) DOCTOR DEATH 222 SAINTS ROAD SUITE 44 DAYTONA BEACH, FL 32114 - 0001				HOSPITAL (NAME & ADDRESS) HALIFAX GENERAL 444 FLOOR STREET DAYTONA BEACH, FL 32114 - 0005				INITIAL TREATMENT <input type="checkbox"/> NO MEDICAL TREATMENT <input type="checkbox"/> MINOR: BY EMPLOYER <input type="checkbox"/> MINOR CLINIC/HOSPITAL <input checked="" type="checkbox"/> EMERGENCY CARE <input type="checkbox"/> HOSPITALIZED > 24 HRS <input type="checkbox"/> FUTURE MAJOR MEDICAL/LOST / ANTICIPATED															
	WITNESS (NAME & PHONE #) FRED SMITH JR. 676 674 - 7744																							
O T H E R	DATE ADMINISTRATOR NOTIFIED 03/29/1994				DATE PREPARED 06/02/1994				PREPARER'S NAME & TITLE MARY ELSMORE TAYLOR ADMINISTRATOR				PHONE NUMBER 676 767 - 6777											

2-7

STATE OF KANSAS - DEPARTMENT OF HUMAN RESOURCES
 DIVISION OF WORKERS COMPENSATION
 800 S.W. Jackson St., Suite 600, Topeka, Kansas 66612-1227

EMPLOYER'S REPORT OF ACCIDENT

Submit original
copies only

OSHA Case or File No. _____

There is a \$250 penalty for failure to file Accident Reports within 28 days of the employer's receipt of knowledge of the accident. This form contains all items requested on OSHA Form No. 101, "Supplementary Record of Occupational Injuries and Illness."

* READ INSTRUCTIONS ON REVERSE SIDE OF THIS FORM BEFORE FILLING IT OUT.

1. Name of Employer _____ Telephone # (_____) _____	DO NOT WRITE IN THIS SPACE
2. Mail Address _____ Zip Code _____	
3. Location, if different from mail address _____ S.I.C. # _____	
4. Nature of Business _____ S.I.C. Code _____ Dept. or Division _____	AGE
5. Name of Employee _____ Age _____ Sex _____ <small>First Middle Last</small>	
6. Home Address _____ Zip Code _____	OB
7. Soc. Sec. # _____ Birth Date _____ Employee's Occupation _____ Home Phone # _____	
8. Date of Injury or Occupational Disease _____ Time of Injury _____ A.M. P.M. Date Disability Began _____ Gross Average Weekly Wage \$ _____	Y N
9. Place of Accident or last exposure _____ <small>City County State</small>	CAUSE
10. Was accident or last exposure on employer's premises? _____	SEVERITY 0 NO TIME LOST 1 TIME LOST 2 MEDICAL 3 FATAL
11. How did accident occur? _____	
12. What was employee doing when injured? _____	
13. Name substance or object that directly caused injury _____	MEMBER
14. Describe in detail nature and extent of injury, indicate part of body involved _____	
15. Was worker admitted to hospital? _____ Date _____ Hospital & Address _____ Emergency Room Only? _____	DO NOT WRITE IN THIS SPACE
16. Name and address of attending physician _____	
17. Has employee returned to Regular duty? _____ Light duty? _____ Date _____	
18. Is compensation now being paid? _____ Date first/initial payment _____	DO NOT WRITE IN THIS SPACE
19. Weekly compensation rate \$ _____ Is further medical aid needed? _____	
20. Did employee die? _____ If so, give date of death _____ File amended report within 28 days if death subsequently occurs.	
21. Name and address of dependents (death cases only) _____	DO NOT WRITE IN THIS SPACE

22. Insurance Carrier _____ Address _____ Policy Number _____ Name of Agent _____ Claim No. _____ Name of Claim Rep. _____	DO NOT WRITE IN THIS SPACE
23. Date of Report _____ Completed by _____ Title _____	

SUBMISSION DOES NOT CONSTITUTE ADMISSION OF LIABILITY

2-8

HOW TO TAKE THE STING OUT OF THE ADA

I. Why the ADA is necessary

Public Law 101-336, known to most of us as The Americans With Disabilities Act of 1990 states in Section 2

★(a) FINDINGS.--The Congress finds that--

✓(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

✓(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

✓(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

✓(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

*Business, Commerce
+ Labor*

1/24/95

Attachment 3

3-1

✓(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

✓(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

✓(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitation, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

✓(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

✓(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those

opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

★(b) PURPOSE.--It is the purpose of this Act--

✓(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

✓(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

✓(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

✓(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

II. Brief overview of the ADA and the KAAD

A. Three prong definition of individual with a disability

✓1. A physical or mental impairment that substantially limits one or more major life activities such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

a. substantially limits: unable to perform major life activity, or significantly restricted as to the condition, manner, or duration under which major life activity can be performed, in comparison to the average person/most people.

b. must be assessed without regard to mitigating measures (prosthetics, assistive devices, medications, etc.)

✓2. A person with a record of a disability

✓3. A person who is regarded as having a disability

a. impairment doesn't substantially limit major life activities but person is treated as if the impairment does constitute a limitation.

b. impairment only limits major life activities as a result of the attitudes of others toward such an impairment.

c. person has no impairment but is treated as if they have a substantially limiting impairment.

B. Employment (Title I)

✓1. Who's covered

a. **under the ADA: all private employers who have 25 or more employees (for each working day in each of 20 or more calendar weeks in the current or preceding calendar year) beginning July 26, 1994 all private employers who have 15 or more employees.**

b. **under the Kansas Act Against Discrimination as amended July 1, 1991 all private employers who have 4 or more employees.**

c. ~~employment agencies, labor organizations, and joint labor management committees are included.~~

✓2. **Qualified individual with a disability**

- a. the ADA prohibits discrimination against any qualified individual with a disability in regard to all terms, conditions, and privileges of employment.
- b. qualified individual with a disability means an individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires, and who:
 - 1. with or without reasonable accommodation, can perform
 - 2. the essential functions of such position

✓3. **Essential Functions**

- a. essential functions means job tasks that are fundamental and not marginal
- b. what makes a job task essential? Reasons include but are not limited to:
 - 1. If the position exists to perform the function
 - 2. If there are a limited number of employees among whom the function can be distributed
 - 3. If the function is highly specialized
- c. Evidence of whether function is essential may include:
 - 1. Employer's judgment as to which functions are essential
 - 2. Written job descriptions prepared before advertising or interviewing applicants

3. Amount of time spent performing the function
4. Consequences of not performing the function
5. The terms of a collective bargaining agreement
6. Work experience of past incumbents in the job
7. Current work experience of incumbents in similar jobs

✓4. **Reasonable Accommodation**

a. Employers must make reasonable accommodations to the known physical or mental limitations of a qualified applicant or employee with a disability, unless the employer can demonstrate that the accommodation would be an undue hardship.

Reasonable accommodation means:

1. Modification or adjustment to job application process
2. Modification to the work environment or the manner in which the job is customarily performed
3. Modification or adjustment to allow the equal enjoyment of benefits and privileges of employment

b. Forms of reasonable accommodation include but are not limited to: job restructuring, modifying work schedules, making facilities accessible, acquiring or modifying equipment or devices, readers, interpreters and assistants or reassignment to a vacant position.

✓5. Undue Hardship

a. Undue hardship means an action requiring significant difficulty or expense; one that is unduly costly, extensive, substantial, disruptive, or that will fundamentally alter the nature of the employment

b. Tax credits and deduction

1. Targeted Jobs Tax Credit
2. Tax Credit for Small Business
3. Tax Deduction for business of any size

✓6. Qualification Standards and Tests

a. Qualification standards must be job related and consistent with business necessity

b. Tests must be administered to eligible applicants or employees with disabilities that impair sensory, manual, or speaking skills in formats that do not require use of the impaired skill. This does not apply to tests that are intended to measure sensory, manual, or speaking skills

✓7. Medical examinations and other inquiries

a. Applications: employer may not make inquiries about disability on job application forms, but may ask questions to determine if an applicant can perform specific job functions

b. Interviews: employer may not make inquiries about disability in job interviews, but may ask questions to determine if an applicant can perform specific job functions

c. Background and Reference Checks: before making a job offer, employer may not request any information about a job applicant that it may not itself request of the job applicant (this includes making inquiries about a person's workers compensation history)

d. Medical Examinations (Pre-employment)

1. Medical examinations may be conducted only after a job has been offered to the applicant and only if medical examinations are given to all employees entering into a particular job classification

2. Information from medical examinations must be kept on separate forms and in separate files from general personnel information. May only be shared with: supervisors and managers regarding necessary accommodations; first aid and safety personnel for emergency purposes; government officials investigating compliance

with non-discrimination laws; state workers' compensation or "second injury" funds, in accordance with state laws; and insurance companies, where the company requires a medical examination to provide insurance to workers

- e. Drug tests are allowed
- f. Medical examinations (post-employment) must be job-related and consistent with business necessity

✓ 8. Relationship with other laws

a. General:

The ADA does not invalidate or limit any other law (federal, state, and local) that provides greater or equal protection from discrimination to people with disabilities.

The ADA does take precedence over other laws (state and local) that provide less protection from discrimination.

b. Insurance (see EEOC Interim Guidance issued June 8, 1993)

1. Employers may not deny health insurance coverage to selected members of their workforce based on diagnosis or disability

2. Increased health insurance premiums or

workers compensation costs (whether actual or

feared) due to disability of worker or worker's dependents may not be basis for discrimination

3. Underwriting decisions based on actuarial data or reasonably anticipated experience are legal under the ADA

4. Pre-existing condition clauses are legal under the ADA

5. Limits on insurance coverage for certain procedures, treatments, or medications are not discriminatory if they are applied equally to people with and without disabilities

c. Workers Compensation

1. Employers may not base employment decision on speculation that an applicant may cause increased workers compensation costs in the future (whether actual or feared)

2. Employer may not inquire into applicant's workers compensation history as part of a medical examination

3. Employer may inquire into applicant's workers compensation history as part of a medical examination

4. Employer may not require applicant to have a medical examination because a response to a medical inquiry (as opposed to the results from a medical examination) discloses a previous on-the-job injury, unless all applicants in the same

job category are required to have the examination

5. Employer may submit medical information and records obtained after a conditional job offer to state workers' compensation offices and second injury funds

6. Employer cannot refuse to let an individual with a disability return to work because the worker is not fully recovered from the injury, unless the worker:

a. cannot perform the essential functions of the job with or without reasonable accommodation, or

b. would pose a significant risk of substantial harm that cannot be reduced to an acceptable level with reasonable accommodation (i.e. direct threat)

7. Reassignment and light-duty jobs

9. Enforcement

A. ADA complaints filed with EEOC, KAAD complaints filed with Kansas Human Rights Commission

B. Lawsuits may be filed only after EEOC has issued a "Right to Sue" letter

C. Remedies available (based on Title VII of the Civil Rights Act of 1964 as amended by the Civil Rights Act of 1991):

1. Injunctive and equitable relief, including hiring, reinstatement in a job, promotion, back pay, front pay, restored benefits, reasonable accommodation, attorney's fees, expert witness fees, and court costs
2. Compensatory damages and jury trials available for intentional discrimination
3. Punitive damages available for wanton, willful, or reckless intentional discrimination
4. Cap on sum of future compensatory and punitive damages depends on number of employees:

15-100	\$50,000 cap
101-200	\$100,000 cap
200-500	\$200,000 cap
500+	\$300,000 cap

ADA Information Center B.B.S.

(913) 296-6529



Information & Fact Sheet

This electronic bulletin board service was established to provide everyone access to **AMERICANS WITH DISABILITIES ACT (ADA)** information via the use of a personal computer and computer modem device.

- * We are offering the latest ADA information from many sources throughout the United States. A one stop shop to receive any needed information of this type.
- * ADA-Net International Net-Mail Service On-Line with over 100 different message conference areas of information for and/or about disability and medical information from all over the U.S.
- * JOB-Net National Net-Mail Service. 30 Conference Areas allowing business owners to place their available jobs on-line, and job seekers find jobs nationwide. Also areas for help with resume writing and more.
- * Misc. files also available about Rehab Act, Social Security Information, with U.S. Codes related to all the above listed.

On-Line 24 hours a day using Mustang Bulletin Board Software, Hayes 28,800 modem for the fastest file transfers possible. In-house ADA specialist to answer your ADA questions and concerns.

George Wolf/System Operator

(913) 296-6528 - Voice

Alan Schlobohm/Co-Sysop

(913) 296-1984 - Fax

(913) 296-5044 - TTY

Kansas Commission on Disability Concerns

(913) 296-1722 (office)

(800) 295-5232 Outside Topeka