

Approved: 2/24/97  
Date

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

The meeting was called to order by Chairman Al Lane at 9:15 a.m. on February 4, 1997 in the Kansas Insurance Building, 420 SW 9th.

All members were present except: Rep. David Adkins - excused  
Rep. Vaughn Flora - excused  
Rep. Dale Swenson - excused  
Rep. Dennis Wilson - excused

Committee staff present: Bev Adams, Committee Secretary

Conferees appearing before the committee: Kathleen Sebelius, KS Insurance Commissioner  
Paula Greathouse, KS Insurance Department  
JoLynn Copp, KS Insurance Department  
Marlyn Burch, KS Insurance Department

Others attending: See attached list

Insurance Commissioner Kathleen Sebelius welcomed us to the Insurance Building and talked with the committee for a few minutes. She introduced the Workers Comp staff: JaLynn Copp, Paula Greathouse and Linda DeCoursey.

She announced that after the briefing, Marlyn Burch will give us a short tour of the building.

Paula Greathouse, attorney for the Workers Compensation Fund, Kansas Insurance Department, gave the committee a briefing on the fund. The fund has three basic areas of coverage for employers and employees; the second injury coverage, the insolvent/uninsured employers, and reimbursement to employers on an overpayment of benefits. The second injury fund was started shortly after World War II to encourage the employment of injured veterans. As a result of the Workers Comp Reform bill of 1993, the second injury fund has no liability for any dates of accident after July 1, 1994, but this area is currently under litigation. Cases before that date will be phased out by the year 2013. (see Attachment 1)

She continued her briefing by giving a short overview of the Workers Comp Fund and their progress since Commissioner Sebelius took over in 1995. The small increase in staff has helped them catch up on the backlog of payments due claimants and respondents. Payments have remained current to the point of paying claimants within two weeks of receiving proper documentation and respondents are paid within thirty days. This is a definite improvement. They have also requested status reports on all open cases so they can be reviewed and the Commissioner could carry out her strong commitment of maintaining a database that reflects the true nature of the Fund's files. They are also doing a computer rewrite that will allow the Fund to access valuable information in ways that are not currently available.

An audit of the Fund's internal procedures was conducted and seven deficiencies were found in the general working of the Fund. The Commissioner has addressed many of these concerns. Other audits were done of the Fund's attorney fees. They have also published two substantive, detailed and restrictive guideline changes since Ms. Sebelius took office that replaces the two and a half page general guideline that was in place with the previous administration.

JoLynn Copp assisted Paula Greathouse with the briefing.

The meeting ended with a short tour conducted by Marlyn Burch, Director of the Life Division, and also the person who has been with the department the longest. He shared with the committee the history of the building and the changes that have been made since the time the Insurance Company acquired the building and other changes that Commissioner Sebelius hopes to carry out at a later date.

The tour ended at approximately 10:15 a.m.

The next meeting is scheduled for February 5, 1997.



Kathleen G. Sebelius  
Commissioner of Insurance

***THE KANSAS WORKERS COMPENSATION FUND***  
***K.S.A. 44-566(a)***

Year End Report  
1996

*Business, Commerce  
& Labor Committee  
2/4/97  
Attachment 1*

***THE KANSAS WORKERS COMPENSATION FUND***  
***K.S.A. 44-566(a)***

Year End Report  
1996

	<u>Page</u>
<b>I. <u>THE SECOND YEAR</u></b> .....	1
<b>II. <u>GENERAL INFORMATION</u></b> .....	3
A. NATURE & PURPOSE .....	3
B. COVERAGE.....	4
1. <i>Second Injury</i> .....	4
a) "But For" Cases .....	4
b) Contribution Cases .....	5
2. <i>Insolvent/Uninsured Employers</i> .....	5
3. <i>Reimbursement</i> .....	6
C. FUTURE LIABILITY .....	6
<b>III. <u>FINANCIAL</u></b> .....	6
A. FINANCIAL OVERVIEW .....	6
<b>IV. <u>TAIL LIABILITY/ACTUARIAL REPORT</u></b> .....	8
A. ESTIMATE OF KANSAS WORKERS' COMPENSATION FUND'S LIABILITY .....	8
B. ACTUARIAL REPORT OF 6/30/94 .....	9
<b>V. <u>LEGISLATIVE ISSUES</u></b> .....	9
A. STATUS OF POST-JULY 1, 1994 CASES .....	9
B. FUND DISMISSAL .....	10
<b>VI. <u>CONCLUSION</u></b> .....	11

- EXHIBIT 1 -- Actuarial Report Summary
- EXHIBIT 2 -- Case Report Request
- EXHIBIT 3 -- Actuarial Report Addendum
- EXHIBIT 4 -- Executive Summary



## I. The Second Year

Kathleen G. Sebelius, the 23rd Insurance Commissioner of Kansas, took office January 9, 1995. In her role as the Administrator of the Kansas Workers' Compensation Fund, the Commissioner inherited a bureaucracy that had seen little change since it was transferred to the Department of Insurance in the 1970s. A small increase in staff was seen in fiscal 1996. The Kansas Workers' Compensation Fund, which administered approximately \$33 million in 1996, had a working staff of one attorney, one half-time attorney, one paralegal, one secretary, two half-time secretaries, three accountants, and one half-time law clerk.

In January 1995, at the time of transfer, the Fund was up to six months behind in payments to claimants and respondents. Much of this was caused by the lack of available personnel during the prior administration. The Fund attorney assigned to oversee the everyday activities of the Fund was on leave without pay from mid-September through mid-November, 1994, prior to her resignation in December 1994. Both the paralegal and the secretary terminated their positions in January, further adding to the difficult transition.

Immediately upon taking office, the Commissioner implemented several stop-gap measures. Brian Moline, the new General Counsel, took on the responsibility of oversight of the Fund while interviewing attorneys and handling his other numerous duties. Two temporary accountants were hired to catch up on the six month backlog of payments due claimants and respondents. The Fund was brought current on payments in April of 1995. Payments have remained current to the point of paying Claimants within two weeks of receiving proper documentation and Respondents within thirty days. This payment schedule is a significant improvement over past practices.

Brian Moline, General Counsel, also requested status reports on all open cases, and asked the approximately 100 Fund attorneys to verify our computer records on cases assigned to them. The review of all open files (approximately 9,300) continued until December of 1995. The information was updated in the master computer files and a current status was obtained on each file. Changes were made in over ten percent of the files. This file review continues internally on a daily basis. Each attorney is also required to submit a detailed report at least once a year on all active cases. Copies of these reports are included as exhibit 3. These steps allow the Commissioner to carry out her strong commitment of maintaining a database that reflects the true nature of the Fund's files. In addition, a computer rewrite is being conducted and will be finished sometime early this summer. This will allow the Fund to access valuable information not currently available. This includes the total amount of money paid to a certain Respondent, such as Boeing or Frito Lay, the total amount paid to a certain medical provider and a break down of payments made to a Claimant. The goal is to treat the Fund as a business and function more in the manner of an insurance carrier in processing these claims.

An audit of the Fund's internal procedures was conducted by Stuart, Maue, Mitchell and James pursuant to an RFP. At that time, the firm found approximately seven deficiencies in the general working of the Fund. These included; (1) woefully inadequate working and record maintenance space, (2) unacceptably small staff, which is required to process huge masses of critical legal and financial documentation, (3) inadequate computer and printer resources, (4) limited access to various databases, (5) inadequate "ports" to STARS, (6) unacceptably wide dispersal of employees over three floors, (7) use of both full-time and part-time employees to conduct required fund functions. The Commissioner immediately set about addressing all of the

concerns. Computers and printers were ordered for the employees and were in place in 1996. Access to the databases and STARS was given to each Fund employee. The space, staff, and wide dispersal concerns would be dependent upon the legislature allocating additional resources. The audit was extremely favorable to the Commissioner's handling of the Fund. In fact, the auditor in his conclusion stated,

While the methods used do not meet insurance industry standards and certainly, did not allow the department to exercise the desirable "control" over existing cases, such direct management control was impossible and improbable under the conditions facing these employees. In conclusion then, "Well done!" to all those involved in ensuring that the fund "worked".

Another complete audit of all of the Fund attorneys fees was conducted and individual internal audits continue at the rate of at least two a month. New and stricter billing guidelines (approximately 64 pages) were placed in effect in September 1996. There have been two substantive, detailed and restrictive guideline changes since the Commissioner took office. There was a two and a half page general guideline in place in the prior administration. A copy of the Executive Report is included as exhibit 1.

## **II. General Information**

### **A. Nature & Purpose**

The purpose of the Workers' Compensation Fund is to encourage the employment of persons handicapped as a result of specific impairments by relieving employers, wholly or partially, of workers' compensation liability resulting from compensable accidents suffered by these employees. K.S.A. 44-567(a). *Morgan v. Inter-Collegiate Press*, 4 Kan. App. 2d 319, 606 P.2d 479 (1980).

Responsibility for payments from and administration of the Fund lies with the Commissioner of Insurance. K.S.A. 44-566a(b).

1-5

## B. Coverage

There are three basic areas of coverage for employers and employees under the Kansas Workers' Compensation Fund. The first is second injury coverage, the second is insolvent/uninsured employers, and the third is reimbursement to employers on an overpayment of benefits.

### 1. Second Injury

In order for an employer to be relieved of liability by the Kansas Workers' Compensation Fund, either in whole or in part, the employer must establish that it hired or retained a handicapped employee after acquiring knowledge of the preexisting handicap or that the employee intentionally misrepresented the existence of the handicap.

Handicap is broadly construed by the statutes and case law. Second injury cases are broken down into "but for" and contribution cases.

#### a) "But For" Cases

K.S.A. 44-567(a)(1) provides:

Whenever a handicapped employee is injured or is disabled or dies as a result of an injury which occurs prior to July 1, 1994, and the administrative law judge awards compensation therefor and finds the injury, disability or the death resulting therefrom probably or most likely would not have occurred but for the preexisting physical or mental impairment of the handicapped employee, all compensation and benefits payable because of the injury, disability or death shall be paid from the workers compensation fund; and

Assuming the employer has the requisite knowledge of the employee's handicap, recovery from the workers' compensation fund is 100% pursuant to this section. This test is whether the injury or resulting disability, not the accident, probably or most likely would not have occurred "but for" the preexisting impairment. *Barke v. Archer Daniels Midland Co.*, 223 Kan. 313, 573 P.2d 1025 (1978). Medical evidence is not required to establish a "but for" case against the fund.

*b) Contribution Cases*

K.S.A. 44-567(a)(2) provides:

subject to the other provisions of the workers compensation act, whenever a handicapped employee is injured or is disabled or dies as a result of an injury and the administrative law judge finds the injury probably or most likely would have been sustained or suffered without regard to the employee's preexisting physical or mental impairment but the resulting disability or death was contributed to by the preexisting impairment, the administrative law judge shall determine in a manner which is equitable and reasonable the amount of disability and proportion of the cost of award which is attributable to the employee's preexisting physical or mental impairment, and the amount so found shall be paid from the workers compensation fund.

If the handicapped employee's impairment contributes causally to the injury or disability, the Workers' Compensation Fund may be liable for a portion of the compensation and benefits awarded to the claimant. The apportionment of the award is based on the amount of disability attributable solely to the second injury and the extent that the preexisting impairment contributed to the second injury.

**2. Insolvent/Uninsured Employers**

K.S.A. 44-532a states:

(a) If an employer has no insurance to secure the payment of compensation as provided in subsection (b)(1) of K.S.A. 44-532 and amendments thereto, and such employer is financially unable to pay compensation to an injured worker as required by the workmen's compensation act, or such employer cannot be located and required to pay such compensation, the injured worker may apply to the director for an award of the compensation benefits including medical compensation, to which such injured worker is entitled, to be paid from the workers' compensation fund. If the director is satisfied as to the existence of the conditions prescribed by this section, the director may make an award, or modify an existing award, and prescribe the payments to be made from the workers' compensation fund as provided in K.S.A. 44-569 and amendments thereto. The award shall be certified to the commissioner of insurance, and upon receipt thereof, the

commissioner of insurance shall cause payments to be made to the employee in accordance therewith.

The Workers' Compensation Fund may be required to pay benefits to injured workers where the employer has no insurance and is financially unable to pay compensation to the injured worker or in situations where the employer cannot be located to pay such compensation. The Fund currently has approximately 327 open insolvent employer cases. There have been 440 cases in this area since 1990.

### **3. Reimbursement**

Reimbursement pursuant to K.S.A. 44-556(d), K.S.A. 44-534a(b), and K.S.A. 44-569(c) all encompass paying a respondent for money expended during a workers' compensation case that should not have been paid for a variety of reasons.

These amounts are certified to the Director of Workers' Compensation and then paid by the Fund with no litigation or involvement by the Workers' Compensation Fund before being ordered to pay.

### **C. Future Liability**

Pursuant to legislation enacted July 1, 1993, the Kansas Workers' Compensation Fund has no liability for any dates of accident after July 1, 1994, in the second injury category of coverage, but this area is currently under litigation. In October of 1996, the Fund received a favorable decision on this issue from the Kansas Court of Appeals. *Shain v. Boeing*, 22 Kan. App. 2d 913 (1996), held that the Fund has no liability for claims arising after July 1, 1994. Please refer to page nine under Legislative Issues, Post-July 1, 1994 cases. The Fund remains liable for uninsured/insolvent employers and reimbursement cases. Please refer to page five.

## **III. Financial**

### **A. Financial Overview**

The Workers' Compensation Fund was created and exists pursuant to K.S.A. 44-566a and receives its funding from essentially two sources: (1) assessments against insurance carriers and

self-insurers, K.S.A. 44-566a(b); and (2) payments by employers where an employee is killed in an otherwise compensable accident, but in which there are no eligible dependents, K.S.A. 44-570 (non-dependent death).

Receipt Analysis

FY1996	
Assessment Receipts	\$33,010,078.80
Gen. Fund Entitlement	0.00
Non-Dependent Death Receipts	\$203,500.00
Misc. Reimbursements	<u>\$170,387.94</u>
TOTAL RECEIPTS	\$33,383,974.74
Previous Year Carryover	\$31,469,560.82
Canceled Checks	<u>239,422.15</u>
TOTAL FUNDS AVAILABLE	\$64,853,518.56

FY1995	
Assessment Receipts	\$42,352,785.43
Gen. Fund Entitlement	0.00
Non-Dependent Death Receipts	0.00
Misc. Reimbursements	<u>154,600.63</u>
TOTAL RECEIPTS	\$42,507,386.06
Previous Year Carryover	37,515,761.63
Canceled Checks	<u>193,152.69</u>
TOTAL FUNDS AVAILABLE	\$80,216,300.38

FY1994	
Assessment Receipts	\$63,951,643.95
Gen. Fund Entitlement	0.00
Non-Dependent Death Receipts	92,500.00
Misc. Reimbursements	<u>207,845.97</u>
TOTAL RECEIPTS	\$64,251,989.92
Previous Year Carryover	16,716,488.98
Canceled Checks	<u>0.00</u>
TOTAL FUNDS AVAILABLE	\$80,968,478.90

FY1993	
Assessment Receipts	\$47,987,400.35
Gen. Fund Entitlement	0.00
Non-Dependent Death Receipts	64,750.00
Misc. Reimbursements	<u>139,334.49</u>
TOTAL RECEIPTS	\$48,191,484.84
Previous Year Carryover	1,587,744.72
Canceled Checks	<u>42,541.31</u>
TOTAL FUNDS AVAILABLE	\$49,821,770.87

Disbursement of Expenditures

FY1996	
Administrative Costs	.88%
Compensation Costs	64.20%
Vocational Rehabilitation	.90%
Medical Costs	24.96%
Other Operating Expenses	1.00%
Attorney Fee Expenses	<u>8.06%</u>
	100%

Outside Counsel \$3,053,561.45

FY1995	
Administrative Costs	9.62%
Compensation Costs	62.93%
Vocational Rehabilitation	1.12%
Medical Costs	25.79%
Other Operating Expenses	<u>0.54%</u>
	100.00%

Outside Counsel \$4,241,869.88

FY1994	
Administrative Costs	11.01%
Compensation Costs	63.58%
Vocational Rehabilitation	1.28%
Medical Costs	23.51%
Other Operating Expenses	<u>0.62%</u>
	100.00%

Outside Counsel \$4,343,495.23

FY1993	
Administrative Costs	12.36%
Compensation Costs and Vocational Rehabilitation	65.26%
Medical Costs	21.62%
Other Operating Expenses	0.76%
Refunds	<u>0.00%</u>
	100.00%

Outside Counsel \$3,837,959.67



FY1992	
Assessment Receipts	\$35,961,471.11
Gen. Fund Entitlement	0.00
Non-Dependent Death Receipts	166,500.00
Misc. Reimbursements	<u>162,906.20</u>
TOTAL RECEIPTS	\$36,290,877.31
Previous Year Carryover	14,390.64
Canceled Checks	<u>20,392.62</u>
TOTAL FUNDS AVAILABLE	\$36,325,660.57

FY1991	
Assessment Receipts	\$17,030,545.83
Gen. Fund Entitlement	3,930,000.00
Non-Dependent Death Receipts	129,500.00
Misc. Reimbursements	<u>94,490.41</u>
TOTAL RECEIPTS	\$21,184,536.24
Previous Year Carryover	3,758,996.78
Canceled Checks	<u>22,563.44</u>
TOTAL FUNDS AVAILABLE	\$24,966,096.46

FY1990	
Assessment Receipts	\$17,137,820.37
Gen. Fund Entitlement	4,000,000.00
Non-Dependent Death Receipts	55,500.00
Misc. Reimbursements	<u>177,766.44</u>
TOTAL RECEIPTS	\$21,371,086.81
Previous Year Carryover	3,767,063.29
Canceled Checks	<u>2,485.56</u>
TOTAL FUNDS AVAILABLE	\$25,140,635.66

FY1992	
Administrative Costs	10.96%
Compensation Costs	68.36%
Medical Costs	19.98%
Other Operating Expenses	0.70%
Refunds	<u>0.00%</u>
	100.00%
Outside Counsel	\$3,579,980.88

FY1991	
Administrative Costs	11.45%
Compensation Costs	69.49%
Medical Costs	18.10%
Other Operating Expenses	0.96%
Refunds	<u>0.00%</u>
	100.00%
Outside Counsel	\$2,645,923.33

FY1990	
Administrative Costs	12.15%
Compensation Costs	66.93%
Medical Costs	19.91%
Other Operating Expenses	0.97%
Refunds	<u>0.04%</u>
	100.00%
Outside Counsel	\$2,402,730.45

Included in Administrative Costs are attorneys fees, deposition costs, court costs, investigation fees, medical reports, funeral costs and Insurance Department administrative costs, including salaries.

#### IV. Tail Liability/Actuarial Report

##### A. *Estimate of Kansas Workers' Compensation Fund's Liability*

Because of the nature of workers' compensation cases, it is impossible to be certain as to the specific dollar amount of tail liability. For litigated cases that have left future medical open, liability on behalf of the Fund will continue until the claimant's death. In addition, liability for insolvent/uninsured employers remains active even after July 1, 1994. The reimbursement statutes also remain in effect.

An estimate of the payout per year produced by Casualty Actuaries is included as exhibit 4.



**B. Actuarial Report of 6/30/94**

Commissioner Ron Todd requested that Casualty Actuaries, Inc., complete an estimate of the Kansas Workers' Compensation Fund unfunded liability. The report was received in December of 1994.

The president of the actuarial company summarized the findings of the report in a May 18, 1995 letter which is attached as exhibit 1. His findings were that over the remaining life of the Fund, the best estimate of liability was:

1. Impled Claims	\$174,808,000
2. Offset for Date Purge	50,787,000
3. Potential Claims	<u>64,304,000</u>
Total Unpaid Liability	\$289,899,000

This figure is a "best estimate" and is on the low end of a medium liability range from \$264,842,000 to \$313,258,000. Our liability for this upcoming year will be over \$40 million. Anticipated payout would be through the year 2014.

There were two problems with the information provided by the Insurance Department which was used by Casualty Actuaries, Inc., to come to these conclusions. The first was that there were several purges of the computer information on Workers' Compensation without a hard copy being kept anywhere. This made it impossible to determine what the liability had been during those years, thus creating a gap in the information used to determine future liability. The second problem was that the company was provided incorrect information from the Insurance Department's database when the computer started adding columns instead of printing separately. This was discovered and was compensated for early in the process. A copy of the summary is included as exhibit 2.

**V. Legislative Issues**

**A. Status of Post-July 1, 1994 Cases**

As of 1/15/97, the Kansas Workers' Compensation Fund has 389 post-July 1, 1994 cases open. This is a rough estimate based on the impleadings which have included a date of accident. The general argument from those respondents still impleading the Fund centers on the language of K.S.A. 44-567.

- a) An employer who operates within the provisions of the workers compensation act and who knowingly employs or retains a handicapped employee, as defined in

K.S.A. 44-566 and amendments thereto shall be relieved of liability for compensation awarded or be entitled to an apportionment of the costs thereof as follows:

(1) Whenever a handicapped employee is injured or is disabled or dies as a result of an injury which occurs prior to July 1, 1994, and the administrative law judge awards compensation therefor and finds the injury, disability, or the death resulting therefrom probably or most likely would not have occurred but for the preexisting physical or mental impairment of the handicapped employee, all compensation and benefits payable because of the injury, disability, or death shall be paid from the workers compensation fund; and

(2) subject to the other provisions of the workers compensation act, whenever a handicapped employee is injured or is disabled or dies as a result of an injury and the administrative law judge finds the injury probably or most likely would have been sustained or suffered without regard to the employee's preexisting physical or mental impairment but the resulting disability or death was contributed to by the preexisting impairment, the administrative law judge shall determine in a manner which is equitable and reasonable the amount of disability and proportion of the cost of award which is attributable to the employee's preexisting physical or mental impairment, and the amount so found shall be paid from the workers compensation fund.

Respondents still impleading the Fund argue that because the date July 1, 1994 was left out of K.S.A. 44-567a(2), contribution cases are still open in terms of Fund liability. The impleadings have virtually stopped since November of 1996.

-- The Workers' Compensation Fund's position has always been that the clear intent of the legislature was to limit Fund liability to accidents occurring prior to July 1, 1994.

#### ***B. Fund Dismissal***

There are four recognized ways to settle Fund liability in a case. The first is an award pursuant to K.S.A. 44-569. Second is a joint petition and stipulation pursuant to K.A.R. 51-3-16. Third is a settlement hearing. Finally is a blanket dismissal by the parties. In addition to these, last year, Senator Mike Harris sponsored a time limit for prosecuting a case against the Fund. If no action has been taken against the Fund by the other parties within a given time period, the

Administrative Law Judge has the authority to dismiss the Fund with prejudice upon motion by the Fund. This was placed into effect last year. The Fund has had one case decided by an Administrative Law Judge in favor of the statute and one against. Both cases are currently in front of the Board of Appeals awaiting hearing.

**VI. Conclusion**

The Commissioner of Insurance has been and will continue to be committed to improving the administration of the Kansas Workers' Compensation Fund in all areas of concern.

1-13



May 18, 1995

Honorable Kathleen Sebelius  
Commissioner of Insurance  
420 SW 9th Street  
Topeka, KS 66612-1678

Re: Workers Compensation Fund Actuarial Report - Summary

Dear Commissioner,

Paula Greathouse requested that I prepare and send to you a summary of the major points covered in the Casualty Actuaries, Inc. report of the unpaid liabilities of the Kansas Worker Compensation Fund, herein referred to as "the Fund."

For actuarial analysis purposes, it is convenient to consider the liabilities of the Fund in three segments, defined by the data available from state files. Together the three segments cover all of the Fund liabilities. The analysis indicates the following unpaid amounts:

Indicated Fund Unpaid Liability (in thousands of dollars)  
as of June 30, 1994

Implead claims	\$ 174,808
Offset of data purges	50,787
Accidents for which the Fund has not yet been implead	64,304
 Total Fund unpaid liability	 \$ 289,899

CAI also recommends that:

- a) the Fund improve upon the data captured on computer files so that date of accident is added, in addition to implead date and dates of transactions, and
- b) the Fund establish procedures so that data purges do not lose valuable historical data. The procedures should specify that purges take place only on the Fund's fiscal anniversary, and that archive copies of the file be made both before and after the purge, and that no other transactions take place between the before and after archive copies are made.

Reserves are intended to cover the cost of future payments for claims that have already occurred, whether the Fund has yet been implead or not. As in all predictions of the future, the estimate of future payments comes with a range of estimate. We have calculated the most likely range of total unpaid liability as falling between \$264,842,000 and \$313,258,000. All figures in the report are given prior to discount to present value. That is, the estimates do not anticipate income from investment of Fund assets.

1-14

The first reserve figure is the estimate of the unpaid portion of "implead claims" currently on record in the Fund's computers. These estimates carry the least amount of uncertainty of any of the three reserve categories. The second reserve figure, "offset of data purges," is CAI's estimate of the amount by which our estimate of implead claims are understated because of the purges from the Fund's computer files. Because of the actuarial assumptions required to bridge the missing data, the estimate for this incremental portion has less statistical reliability than the reserve for cases remaining on the Fund's computers. The third figure is the estimate of the Fund's liability for accidents that have occurred prior to July 1, 1994 and for which the Fund has not yet been implead. This portion of the reserve is based on a 600 claim sample of past Fund cases.

The uncertainties underlying the estimates arise from, but are not limited to:

- ① fortuitous nature of the circumstances leading to impleading the Fund;
- ② statistical uncertainty in extrapolating past trends and emergence patterns;
- ③ incomplete information on Fund data files, such as accident dates; and
- ④ purges of closed claims from Fund data files.

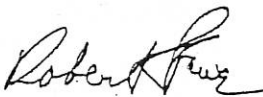
CAI found the data summaries to be consistent between valuation dates within two constraints:

1. the Fund reported that the data files were purged of some closed claims on two occasions. At both occasions, the Fund did not make a backup copy of the file prior to and immediately after the purge, thus making the amount and summaries of purged data impossible to obtain; and
2. the summary report as of June 30, 1994 contained large amounts of expenses paid, which remain unexplained, and which differ from the comparable summaries contained in the detailed claim report. This problem was overcome by using alternative data sources, and has no effect on the conclusions.

In addition, CAI found that date of accident was not recorded on Fund data files. With this data item missing, liabilities can only be determined for those claims for which the Fund has been implead. The liabilities accruing during the period between accident and implead date was derived from the patterns observed from a sample of 500 open and 100 closed claims.

The estimated ultimate costs and corresponding indicated reserves are summarized on Exhibit 1 for the different types of Fund payments: payments to claimants, expenses, and the offsetting reimbursements recovered from claimants or insurance companies.

Sincerely,



Robert F. Lowe

**KANSAS WORKERS COMPENSATION FUND**  
**SUMMARY OF INDICATED RESERVES**  
 Valued as of June 30, 1994

	(1) Paid thru June 1994 <small>(Exh 2, cols 2,3,4)</small>	(2) <u>Estimated Ultimate Cost</u> Fund Pattern <small>(Exh 2, cols 7, 8)</small>	(3) Smoothed <small>(Exh 2, cols 15, 16)</small>	(4) <u>Indicated Reserves</u> Fund Pattern <small>(Exh 2, cols 10, 11)</small>	(5) Smoothed <small>(Exh 2, cols 18, 19)</small>
Compensation	105,517,360	223,441,992	228,344,183	117,924,632	122,826,823
Medical	34,162,831	75,369,965	77,274,203	41,207,134	43,111,372
Other Compensation	21,654	21,654	21,654	0	0
Vocational Rehabilitation Expenses	1,640,154	3,469,322	3,540,679	1,829,168	1,900,525
	19,736,368	28,472,837	28,513,058	8,736,469	8,776,690
Subtotal Gross Reserves	161,078,367	330,775,770	337,693,777	169,697,403	176,615,410
Reimbursements	(1,653,606)	(3,390,099)	(3,460,649)	(1,736,493)	(1,807,043)
A. Net reserves	159,424,761	327,385,671	334,233,128	167,960,910	174,808,367
B. Reserves mis-estimated due to data purges					50,786,849
C. Reserves for accident-implead gap					64,303,733
D. Expected unpaid reserves (A) plus (B) plus (C)					289,898,949
<u>Probable Range</u>				<u>Lower Bound</u>	<u>Upper Bound</u>
A. Net reserves from above				166,680,290	174,808,367
D. Reserves mis-estimated due to data purges				33,857,900	67,715,799
E. Reserves for accident-implead gap ((B) plus 10%)				64,303,733	70,734,106
F. Expected Upper Range (Sum of (A), (D), and (E))				264,841,923	313,258,272

CASUALTY ACTUARIES INC.

1-14

**KANSAS WORKERS COMPENSATION FUND**  
**Recap of Reserves by Case Type and Payment Type**  
**June 30, 1994**

1-1

Payment Type	Case Type (Section of Kansas Statute)							Total All Case Types
	Insolvent Insurance Companies	Non Dependent Death	Insolvent Employer	Regular Second Injury (Monthly)	Reimbmt to Insurance Company	Regular Second Injury Claims	Insolvent Employer (Monthly)	
	A	D	I	M	R	S	Y	
Comp Paid	1,211,875	127,356	1,597,732	25,555,530	2,160,010	168,487,706	4,553,512	203,693,722
Other Comp	0	0	0	0	0	0	0	0
Medical Paid	154,651	35,159	624,788	9,561,523	696,290	56,492,718	3,929,970	71,495,099
Voc'l Rehab	53,087	11,230	2,241	569,092	53,257	2,343,308	119,581	3,151,795
Expense	7,215	20,995	327,492	956,747	3,459	12,889,149	350,043	14,555,100
Subtotal	1,426,828	194,739	2,552,253	36,642,891	2,913,016	240,212,882	8,953,106	292,895,716
Reimbursmt	0	(1,825,025)	(171,380)	(118,840)	(52,249)	(489,815)	(339,457)	(2,996,767)
All Payment Types	1,426,828	(1,630,285)	2,380,873	36,524,051	2,860,767	239,723,067	8,613,648	289,898,949

ZTC CASUALTY ACTUARIES INC.

CASE REPORT

Docket No. \_\_\_\_\_

\_\_\_\_\_  
Claimant

\_\_\_\_\_  
Respondent

Claimant's Attorney: \_\_\_\_\_

Respondent's Attorney: \_\_\_\_\_

Y     N    Settlement between claimant and respondent? (If yes, attach Form 12.)

Y     N    Award? (If yes, attach copy of award.)

TTD paid:	\$ _____
Medical paid:	\$ _____
PPD paid:	\$ _____
Other paid:	\$ _____
TOTAL PAID	\$ _____

If not settled, status of settlement discussions:  
\_\_\_\_\_  
\_\_\_\_\_

Synopsis/Status of Case:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Can file be closed:       Y     N

Estimated time to conclude case: \_\_\_\_\_

Estimated attorney fees to close case: \_\_\_\_\_

Estimate of Fund's Liability (if not already established): \_\_\_\_\_



KANSAS WORKER'S COMPENSATION FUND CASE SUMMARY

1. Name of Case: \_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Date of Accident:  
\_\_\_\_\_

3. Description of Injury:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Description of Pre-Existing Impairment. If Caused by Accident, Date of Accident:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Employer's Knowledge:  
\_\_\_\_\_  
\_\_\_\_\_

6. Is the Pre-Existing Impairment of Such Character the Impairment Constitutes a Handicap in Obtaining or Retaining Employment:  
\_\_\_\_\_  
\_\_\_\_\_

1-19

7. Present Injury or Disability Would not have Occurred but for the Pre-Existing Impairment:

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8. Extent Pre-Existing Impairment Contributed to Resulting Injury:

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9. Percent of Permanent Partial Disability (Functional):

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10. Work Restrictions:

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11. Percent of Work Disability:

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12. Worker's Compensation Benefits Paid to Date:

a.	TTD:	_____
b.	Medical:	_____
c.	PPD:	_____
d.	Voc. Rehab.:	_____
e.	Misc.:	_____
	Total:	_____

13. Respondent's Settlement Proposal:

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14. Worker's Compensation Fund Attorney's Recommendations:

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15. Chronology of Treatment:

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Casualty Actuaries, Inc.

December 29, 1995

Paula Greathouse  
Kansas Insurance Department  
420 S. W. 9th  
Topeka, KS 66612

Re: Kansas State Fund  
Cash Flow Profile

Dear Ms. Greathouse,

The cash flow analysis requested by Chairman Lungwitz accompanies this cover.

If you or Chairman Lungwitz have questions I will be glad to respond. As explained in the accompanying report, the numbers are presented without discount to present value. In order to have a present value meaningful, the money must be provided up front, and placed in an investment that will yield the assumed discount rate.

Since the State has not placed the money in invested escrow as of June 30, 1994, a present value calculation is meaningless.

Sincerely,

Robert F. Lowe

1-22

KANSAS STATE FUND

Cash Flow Analysis

December 29, 1995

KANSAS STATE FUND

Cash Flow Analysis

Casualty Actuaries, Inc. was requested to estimate the cash payments during future fiscal years for the reserves recommended in our report dated December 13, 1994 to the Insurance Commissioner of the Kansas State Fund. The following schedule is based on the claims development patterns contained in the report. The estimates are made as if looking from June 30, 1994, and ignore the fact that as of this writing the entire fiscal year ending June 30, 1995, and part of the next fiscal year have passed.

Estimated Future Cash Payments on Claims Not Closed as of June 30, 1994

Paid During Fiscal Year Ending June 30:	"Formula" Cash Flow	Anticipated Reimburse- ments	Estimated to Replace Data Purges	Not Yet Implead Claims	Total Cash Flow
1995	35,833,843	(346,652)	10,304,242	0	45,791,433
1996	23,847,853	(252,585)	6,857,597	11,663,758	42,116,624
1997	16,501,193	(165,372)	4,745,020	9,145,322	30,226,163
1998	13,310,392	(141,997)	3,827,485	6,291,436	23,287,316
1999	10,914,993	(113,821)	3,138,673	4,969,312	18,909,157
2000	10,100,213	(113,320)	2,904,378	4,066,476	16,957,747
2001	8,969,150	(96,454)	2,579,134	3,708,822	15,160,652
2002	8,786,179	(92,170)	2,526,520	3,309,221	14,529,749
2003	8,426,472	(84,647)	2,423,084	3,206,013	13,970,922
2004	7,924,353	(81,826)	2,278,696	3,081,868	13,203,091
2005	7,260,037	(74,036)	2,087,668	2,904,548	12,178,217
2006	6,738,295	(68,896)	1,937,638	2,668,938	11,275,974
2007	6,188,955	(56,099)	1,779,672	2,473,475	10,386,003
2008	5,067,349	(47,677)	1,457,147	2,274,531	8,751,351
2009	3,716,318	(35,329)	1,068,650	1,888,253	6,637,892
2010	2,173,845	(26,639)	625,102	1,405,211	4,177,520
2011	573,518	(5,568)	164,919	851,002	1,583,872
2012	282,454	(3,955)	81,221	270,574	630,294
2013	-	-	-	114,072	114,072
2014	-	-	-	10,901	10,901
Totals	176,615,410	(1,807,043)	50,786,849	64,303,733	289,898,949

The term "claims not closed" refers to a) those claims in the files of the Kansas State Fund on which future claims are expected, and b) those accidents for which the Fund will be implead in the future, and are therefore not yet in the files of the Fund.

The term "formula cash flow" refers to unpaid amounts calculated from data in the files of the Fund as of June 30, 1994 which, as explained in the December 1994 report, is understated due to data purged from Fund files. The understatement is estimated and added to the total cash flow in the column titled "estimated to replace data purges."

The above numbers are presented without discounting for potential investment income. Any estimate of the effect of investments of funds must assume that the entire amount of the present value of the above anticipated payments is placed in high quality, reliable investments.

# Evaluation of the Workers' Compensation Fund



Kansas State Department of Insurance

- under

Proposal No. 31470



final report issued

June 7, 1996



I. EXECUTIVE SUMMARY

A. Stuart, Maue, Mitchell and James, Ltd.

Stuart, Maue, Mitchell and James, Ltd. (SMMJ) has been providing legal auditing, claims auditing, and litigation consulting services to a wide range of clients, including but not limited to major insurers and corporations as well as state and municipal governments, since 1985. SMMJ is the oldest and largest such firm and is the industry leader in nationwide auditing of legal billings resulting from complex multistate or multinational litigation, national class actions, multidistrict litigation, and major bankruptcies and has, in addition, established a nationwide reputation as being perhaps the nation's premium legal auditing firm. SMMJ's professional staff is comprised of experienced attorneys, including those with significant senior level risk and claims management experience and an accounting staff consisting of a seasoned mix of Certified Professional Accountants and individuals possessing either accounting or advanced business degrees.

B. Findings

The Kansas State Department of Insurance Workers' Compensation Fund operations are severely handicapped by:

- a) Woefully inadequate working and record maintenance spaces;
- b) An unacceptably small staff, which is required to process huge masses of critical legal and financial documentation;
- c) Inadequate computer and printer resources;

- d) Limited and inadequate access to various databases, most specifically, the Workers' Compensation Database maintained by the Department of Human Resources Workers' Compensation Division;
- e) The absence of sufficient "Ports" on the State's "STAR" wide area computer network in order to access the limited information now available to fund employees;
- f) The unacceptably wide dispersion of employees necessarily involved in handling fund documentation; and finally,
- g) The use of both "part time" and "full time on a part time basis" employees in order to conduct required fund functions.

Despite the significant and serious deficiencies described above, the internal administrative practices utilized by the Department of Insurance have enabled the Fund to operate in an acceptable manner. Thus, given the numerous and serious deficiencies specified the administrative procedures utilized are, while far removed from and markedly short of, insurance industry standards outstanding.

In order to overcome these deficiencies SMMJ would recommend hiring seasoned adjusters. It can be stated that major insurers usually assign from two hundred to six hundred (200-600) claims to each adjuster, with the number assigned to each dependent on the peculiarities (Reserve Value, Injury Severity, necessity of ongoing medical treatment, etc.) of the files as well as on the experience level of the adjuster. Each such adjuster should be provided a computer with access to the "Workers' Compensation Database" via the "STAR" LAN. While it would also be preferable that each and every employee handling second injury files have an individual "port" on the net, economic reality prevents this solution. An initial estimate, subject

to subsequent modification, would be one port for each adjuster, with all other Fund employees, required to share such access with another employee.

Any attempt to even roughly estimate the actual requirements of the Kansas Fund, either in required equipment or employees required, is clouded by the current unsettled future of the fund. However, at least one, preferably two, experienced adjuster(s) should be retained to "ride herd" on legal billings received during the "run-down" period in order to better control both legal costs and defense attorneys.

C. Guidelines to Regulate Outside Counsel

These guidelines, while generally acceptable, fail to definitively establish specific requirements for exactness and completeness in attorney fee and expense billings.

Specific recommendations:

1. Each professional fee entry shall include, in the order given below, the following:
  - a) Date of service;
  - b) Initials of the individual attorney providing the service;
  - c) Time required to provide the service, in tenths (0.1) of an hour increment (i.e., 0.4, 0.7, 0.2, etc.)
  - d) The service provided. Each line entry will include only one service (i.e., Prepared answer to complaint.). Block entries describing several services (i.e.: Prepared for, attended and summarized deposition) are not acceptable.
  - e) All billed service provided entries will include a full description of the service provided (i.e., "Telephone conversation with Attorney J. Blow in re: Deposition of witness Dr. W.T. Door." not "Telecon" nor "Telecon with Atty.")

2. The last page of the billing statement shall include (and only include) the following: A listing of all initials used on that billing to identify service providers, the complete name of the service provider identified by those initials, his/her function (i.e., attorney, paralegal) the billing rate at which that service provider's time is billed, and both the total hours and total fee charged by that individual.
3. Each billing for disbursements and costs (i.e., mileage, toll fees, investigators, service of process, etc.) should be fully itemized, listing dates, person incurring the expense, the venter or entity receiving said payment, and sufficient other information to determine the relationship and necessity of the expense to the file billed.

D. Systems Used to Track Current File Status

Files are tracked manually and accurate current status is dependent on timely reporting by outside defense attorneys. This is antiquated, slow, and undependable. The Workers' Compensation Division's database contains current and frequently updated data. The Fund should have complete and ready access to this data.

1. Availability of Data

"In-House" Fund employees do not, except for the accountants, have either the computer resources or the necessary "STAR" network access to the Workers' Compensation Division database. All data is obtained and processed "manually."

2. Monitoring of Outside Counsel

A high case load, combined with an excessive number of outside defense counsel, and an inadequately sized staff that does not have sufficient time to demand and process frequent case reports or even effectively monitor quarterly

attorney billing precludes effective monitoring of outside attorneys. As described above, access to the existing Workers' Compensation database will remedy this situation. Independent periodic audits of outside counsel billings should be conducted, either on a random basis of all counsel or as a targeted investigation of those attorneys whose billings indicate questionable practices.

3. Staffing of Second Injury Fund --

The present staffing of the Fund is inadequate. While present employees are, in general, qualified to perform presently assigned duties, their training and pay scales fall far short of those accorded "Case Handling" staffs in the Insurance Industry, wherein, the management of claims is handled by well-experienced claims representatives. Ideally, experienced adjusters should be employed and used to establish and maintain "Insurance Industry Standards" claims files. It is considered that this standard, initially, be applied only to "New" files as bringing all existing claims files to this standard would be cost prohibitive. At this time, and under the uncertainties concerning ultimate retention of the fund, it is recommended that two (2) experienced claims adjusters be retained to establish and maintain "insurance industry" claims files for new incoming claims. These adjusters should also be tasked with the responsibility of upgrading older files and, as the political fate of the Fund is

1-31

determined, making recommendations concerning system and equipment requirements under the changing circumstances.

E. Recommendations

1. Second Injury Fund

Since an operating and well-designed Workers' Compensation Fund is of prime importance to industries seeking to relocate either within or without their present state, it is highly recommended that Kansas consider re-enacting a Workers' Compensation Statute without the often abused and "impossible to monitor," "But-For" provision. It is considered that fund coverage should be limited to those either Permanently (or nearly) totally disabled. Workers' Psychic injuries without a physical injury should not be covered. It is felt that failure to resurrect Second Injury Coverage will prove highly detrimental to future industrial development within the state. During consideration of any successor statute, great care should be exercised to ensure that the resulting statute does not place an unfair assessment burden on small businesses.

2. Financing of the Fund

Fund should be financed by an assessment on Workers' Compensation policies written, with an additional "over-ride" levy based on claims paid. This will spread the cost of fund operations over all companies benefiting from Fund operation (all workers' compensation insurers writing coverage in Kansas are,

in actuality, "Re-Insured" by the fund) while, at the same time, penalizing those companies whose insured have created situations resulting in Fund payouts.

3. Fund Expenses

All operating expenses of the Fund should be considered unallocated expenses and charged to the fund in order to minimize charges against the state budget.

4. Fund Personnel

Experienced Claims Representatives should either be employed directly by the state or obtained contractually from a Third Party Administrator. Additional personnel will also be required. The exact number of employees required can best be determined by conducting a statistical analysis of the data presently available in the Workers' Compensation Database. It is noted that some programming will be required in order to obtain this information in an acceptable report format

5. Fund Equipment

State of the art computer resources and local or wide area network equipment permitting ready access to the Workers' Compensation Division database should be obtained. The amount and cost of such equipment can not be determined until the statistical analysis described in the "Fund Personnel" section, immediately above is conducted.

## II. GENERAL RECOMMENDATIONS

Decrease the number of outside defense attorneys to permit more efficient monitoring by Fund employees and to decrease unnecessary expenses caused by duplication of fees and expense, particularly those associated with travel to hearings. Statute should provide that all claims against the fund be initiated by, and limited to, the injured workers, not impleadings by insurers and/or employers. A provision of state statute should require impleading the Fund not later than the "Initial Hearing." Legal Billings should be submitted in electronic format in order to increase processing speed and to permit electronic monitoring and auditing thereof. It is suggested that SMMJ has the computer equipment, the specialty software and the experience necessary to accomplish this screening at minimum expense, should the department chose to utilize "Out Sourceing" for this function.

Despite the many and varied problems encountered and described herein, auditor must comment on the excellent, if not outstanding, effort being made by present Fund staff. It is only their devotion to duty and dogged efforts that have permitted the fund to continue operations. Despite the numerous and serious deficiencies noted during this audit, these employees were able to "keep the paperwork" flowing, to timely assign cases to outside counsel, and to make all payments required. While the methods used do not meet insurance industry standards and, certainly, did not allow the department to exercise the desirable level of "control" over existing cases, such direct management control was impossible and



improbable under the conditions facing these employees. In conclusion then, "Well done!" to all those involved in ensuring that the fund "worked."

# WORKERS' COMPENSATION REPORT FOR DECEMBER 1996

WORK COMP FUND BALANCE (11-30-96)	\$25,016,946.84
DEPOSITS	6,616.29
COMPENSATION	(999,336.36)
MEDICAL	(273,132.32)
COURT REPORTING & DEPOSITION FEES	(15,185.29)
ATTORNEY FEES	(101,898.68)
OTHER OPERATING	(30,147.61)
VOCATIONAL REHAB. WORK ASSESSMENT	(8,131.41)
97 ENCUMBRANCE - SALARIES/WAGES (CM)	1,858.43
<b>FUND BALANCE AS OF DECEMBER 31, 1996</b>	<b>\$23,597,589.89</b>
TOTAL DECEMBER EXPENDITURES	(\$1,427,831.67)
97 YTD COMP EXPENDITURES	(\$9,105,507.57)
97 YTD MEDICAL EXPENDITURES	(4,163,939.30)
97 YTD COURT REPORTING & DEPOSITION FEES	(124,748.32)
97 YTD ATTORNEY FEE EXP	(961,072.70)
97 YTD OTHER OPERATING	(177,012.58)
97 YTD VOC REHAB WORK ASSESSMENT	(124,059.52)
<b>TOTAL YTD EXPENDITURES</b>	<b>(\$14,656,339.99)</b>
97 BEGINNING BALANCE	\$26,980,038.72
97 YTD DEPOSITS	11,268,236.84
97 YTD EXPENDITURES	(14,656,339.99)
96 ENCUMBRANCE (YTD)	5,654.32
<b>FUND BALANCE AS OF DECEMBER 31, 1996</b>	<b>\$23,597,589.89</b>

NEW CASES FOR DECEMBER		NEW CASES YTD	
NON DEPENDENT DEATH	0	NON DEPENDENT DEATH	7
INSOLVENT EMPLOYER	10	INSOLVENT EMPLOYER	48
REIMBURSEMENT	2	REIMBURSEMENT	10
SECOND INJURY	10	SECOND INJURY	143
<b>TOTAL</b>	<b>22</b>	<b>TOTAL</b>	<b>208</b>
REOPENED CASES	2	REOPENED CASES	18
DELETED CASES	2	DELETED CASES	7
CLOSED CASES FOR DECEMBER		CLOSED CASES YTD	
NON DEPENDENT DEATH	0	NON DEPENDENT DEATH	4
INSOLVENT EMPLOYER	6	INSOLVENT EMPLOYER	21
REIMBURSEMENT	1	REIMBURSEMENT	10
SECOND INJURY	108	SECOND INJURY	777
<b>TOTAL</b>	<b>115</b>	<b>TOTAL</b>	<b>812</b>
<b>OPEN CASES AS OF DECEMBER 31, 1996</b>	<b>7,228</b>		