

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

The meeting was called to order by Chairman Al Lane at 9:05 a.m. on March 20, 1997 in Room 526-S of the Capitol.

All members were present except: Rep. Dennis Wilson - excused

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

Conferees appearing before the committee: Phil Harness, KDHR
John Ostrowski, Kansas AFL/CIO
Kirk Lowry, KTLA

Others attending: See attached list

The minutes of February 24 and 25 were passed out to the committee. They will be corrected or approved at the next meeting.

Continued hearing on: **SB 346 - Supplemental workers compensation advisory council recommendations.**

Phil Harness, Director of the Division of Workers Compensation, Kansas Department of Human Resources (KDHR), returned to answer questions from the committee. He is the Chairman and a non-voting member of the Workers Compensation Advisory Council.

John Ostrowski, Kansas AFL/CIO, answered a question from Chairman Lane about whether Section 5 of the bill was brought up and voted on by the Council. It lost on a vote of 8-2 because the subject did not have the required four votes from each side of the council. The subject was quickly dropped and did not come up again at the meeting. The argument against the amendment was that it could be a hidden cost driver.

Kirk Lowry, Kansas Trial Lawyers Association (KTLA), appeared as a supporter of the bill as amended by the Senate Commerce Committee. He is an attorney in Topeka and about one-third of his cases are workers comp. He addressed the cost driver argument, that is, if attorneys get involved, it will cost the system more. He did not think this was true because the attorney fee is paid directly by the client, not the employer or insurance company, and for the most part it is money that should have been offered in the first place.

The bill largely includes technical and administrative changes in the Workers Compensation Act which were recommended by the Workers Compensation Advisory Council. In addition, the bill contains a Senate Commerce Committee amendment which revises the statutes governing fee agreements between injured workers and lawyers they hire to secure disability and/or medical benefits due to them under the Workers Compensation Act. The association feel that it is unfair to regulate attorney fees on only one side of the workers compensation system. Also specific restrictions on attorney fees paid by injured workers which were imposed in 1993 have resulted in a very serious unintended consequence: injured workers are going unrepresented in an extremely complex system. (see Attachment 1) He ended his testimony by answering questions from the committee.

The hearing on **SB 346** will be continued tomorrow.

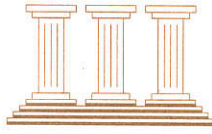
Chairman Lane adjourned the meeting at 10:00 a.m.

The next meeting is scheduled for March 21, 1997.

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE GUEST LIST

DATE: March 20, 1997

NAME	REPRESENTING
TERRY LEATHERMAN	KCCI
Charley Young	Via Christi Hosp. Med. Center
Susan Baker	Heim + Weir
Judy Moler	Ks. Assoc of Counties
MARK BECK	KDOR
JASON PITENBERGER	KGC
Harry Bossu	DGA / DPS
Betty Rose	Bd. of Tech. Professions
Deane Krauel	KTCA
Patricia Nichols	TOPICA / KS
John Ostrowski	KS AFL-CIO
Ron Smith	KS Bar Assoc
Jinda DeCourcy	KS Insurance Dept
Alan Steppat	Pete McLean & Associates



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TESTIMONY OF KIRK LOWRY

SENATE BILL 346

March 19, 1997

Good morning. I am Kirk Lowry, a partner in the Topeka law firm of Palmer, Lowry & Leatherman. A large part of our practice is the provision of legal services to workers who have received injuries under the Workers Compensation Act. I also serve as a member of the Executive Committee of the Kansas Trial Lawyers Association and testify today as a representative of KTLA. KTLA strongly urges passage of Senate Bill 346 without amendment.

Senate Bill 346 largely includes technical and administrative changes in the Workers Compensation Act which were recommended by the Workers Compensation Advisory Council. In addition, the bill contains a Senate Commerce Committee amendment which revises the statutes governing fee agreements between injured workers and lawyers they hire to secure disability and/or medical benefits due to them under the Workers Compensation Act. KTLA respectfully requests your support of the bill as amended by the Senate Commerce Committee and passed by the full Senate with an extremely strong final action vote of 33-7.

Curiously, Kansas law closely regulates the fee agreements between injured workers and their lawyers under the Kansas Workers Compensation System while not imposing any regulation whatsoever on the fee agreements between their system counterparts, workers compensation insurance companies and the lawyers they hire to handle claims by injured workers. Not only is it unfair to regulate attorney fees on only one side of the workers compensation system, but specific restrictions on attorney fees paid by injured workers which were imposed in 1993 have resulted in a very serious unintended consequence: injured workers are going unrepresented in an extremely complex system.

While SB 346 does not restore a level playing in the Workers Compensation System, it does move in the right direction. First, Senate Bill 346 removes the burdensome limitations on the percentages that may be charged by attorneys representing injured workers. Second, it eliminates the mandatory obligation of Respondents to pay the Claimants attorney fees when the claimant loses a review and modification hearing. KTLA believes that these changes in KSA 44-534 are needed, and constitute a fair trade.

*Business, Commerce
& Labor Committee
3/20/97*

Terry Humphrey, Executive Director *Attachment 1*

There is a commonly held belief that the 1993 limitations on fees injured workers pay their attorneys were enacted after great deliberation. This is not true. In fact, the 1993 percentage limitations did not come out of any House or Senate Committee hearing process but rather were added as a Senate floor amendment after extensive conference committee negotiations.

There is a second commonly held misconception that an injured citizen's attorney fees are a claim cost driver. **The amount an injured person pays their attorney comes out of the disability payments received by that injured person. In no way does the injured person's attorney fee increase premiums paid by employers for workers compensation coverage.**

There is no category on the claims ledger for the injured citizen's attorney fees (unless it is in a review and modification procedure - which is another part of this bill.)

The insurance company in each disputed case pays for disability benefits, medical benefits, its own litigation costs and attorney fees. Curiously, the 1993 amendments did not place any limits on how much an attorney representing the employer or insurance carrier can charge per hour or for an entire case even though the amount charged by the defense lawyer is very much a claims cost driver. The reason that only claimant's attorney fees are regulated and were further restricted in 1993 is because the insurance industry does not want to operate on a level field. They want to drive claimant attorneys out of the system.

Claimant's attorney fees were already regulated in the early 1990's. Before 1993, attorneys representing injured workers had been allowed to charge up to 25% for their services. This practice had been in place since before World War II. In every case, proposed fees to be charged to the worker has to be approved by the workers compensation judge. If 25% is unreasonable, the judge will not approve it. That determination is made on a case-by-case basis as it should be.

Further, the Kansas Supreme Court regulates the reasonableness of attorney fees through Model Rules of Professional Conduct Rule 1.5(d). This rule requires every attorney to tell his client that, if the proposed fee is thought to be excessive, the worker can take that complaint to Court, and have a hearing on that issues. There were numerous levels of protection already available to protect against an excessive fee request prior to passage of SB 307 in 1993. All of these levels of protections remain in effect today and would continue with the passage of SB 346.

The present environment has created situations where injured citizens cannot obtain representation. In a situation where a worker has been offered \$10,000 and the claim is really worth \$12,000, the Claimant will have a difficult time trying to obtain a lawyer to get the additional \$2,000. Why? Because the present law normally limits that attorney to a fee of \$500.00 or less. Likewise, in

smaller cases, such as with minimum wage employees, it is difficult to get someone to take a case with such a marginal return. The same situation applies when an injured citizen receives an offer that includes a satisfactory amount of disability compensation but also requires him/her to give up all their rights to make claims for future medical expenses resulting from the injury. Consequently, the citizens of our state that need an attorney the most are the ones who are most likely to go without representation. It is indeed in these situations where injured workers can be taken advantage of.

One of the basic tenets of a free society is economic liberty. To impose restrictions of the ability of citizens to contract is an infringement on that liberty, but its effect is much more damaging when it applies only to one side of a legal dispute. At the present time, the defense side of a worker's compensation claim has complete freedom to hire the best and the brightest to represent its interests. The injured worker of this state does not have that right because access to legal counsel has been artificially blocked by restrictions on fees they pay their attorney. This government regulation is creating an oppressive system of justice where only the rich and insured can afford to hire the best specialists available to represent their interests.

The 1993 restrictions have created a system where the size of the wallet determines whether justice is available. You can correct this injustice by passing out Senate Bill 346 without amendments. Thank you. I'll be happy to answer any questions.

Workers Compensation Cases Under Current Law: Level Playing Field?

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Respondent Attorney Represents Insurance Company

When Represented: Company is represented by an attorney whenever they wish.

Payment Guaranteed: Yes

When Paid: Throughout the case at regular billing cycles agreed upon by insurance company and attorney.

Who Pays: Insurance Company using premiums paid by covered employers.

Basis of Payment: Hourly rate for services performed on all issues related to the case.

Who sets terms: Private contract agreement between insurance company and attorney.

Judicial Oversight: None.

Claimant's Attorney Represents the Injured Worker

When Represented: Injured workers seek an attorney to represent them when they feel they have been treated unfairly by a claims adjuster, when their requests for medical care have been ignored, when they receive an unsatisfactory settlement offer from the insurance company, or when the insurance company offers a settlement that cuts off any future medical benefits. Injured workers who need an attorney to fight only for future medical benefits may not be able to find an attorney who can take their case.

Payment Guaranteed: No. Claimant's attorney also advances the expenses of the case. Reimbursement for these advances is not guaranteed.

When Paid: After attorney succeeds in getting additional benefits for injured worker, and only then.

Who Pays: Claimant, out of their disability compensation benefits awarded.

Basis of Payment: Contingency fee based on a percentage of the disability compensation awarded. No attorney fees charged on medical compensation.

Who sets terms: KSA 44-536

- 25% of the first \$10,000 of compensation
- 20% of the next \$10,000 of compensation
- 15% of the amount of compensation over \$20,000

Judicial Oversight: Director or Administrative Law Judge must approve claimant's attorney fees in all cases.

SB 346: A Good Step Toward a More Level Playing Field

KLRD Supplemental Note On SB 346 As Amended by Senate Commerce Committee

Attorney Fees:

- The Senate Committee added a provision whereby attorney fees cannot exceed 25 percent of the total award.
- In the situation that involves a written offer to an injured employee who then hires an attorney, the attorney fees cannot exceed 50 percent of an award above and beyond the written offer but in no case can the attorney fees be over 25 percent of the total award.
- In a review and modification situation, if attorney services result in a denial of additional compensation, the Director can authorize a fee to be paid by the respondent.

Playing Field Changes

When Represented: Changes contained in SB 346 will make it easier for injured workers to find representation, particularly when they already have a settlement offer on the table which is close to fair in the amount of the disability award offered, but which cuts off future medical benefits to the injured worker.

Who sets terms:

- SB 346 eliminates the 25%/20%/15% fee restrictions placed on fees claimants contract to pay their attorneys and replaces these restrictions with a simple 25% maximum allowable.
- SB 346 relaxes the restrictions on attorney fees in the situation where an injured worker has a settlement offer from the insurance company, but then hires an attorney to fight for additional benefits.

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