

Approved: 4/30/97  
Date

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

The meeting was called to order by Chairman Al Lane at 9:07 a.m. on March 24, 1997 in Room 526-S of the Capitol.

All members were present except: Rep. David Adkins - excused  
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: Terry Leatherman, KCCI  
Brad Smoot, AIA

Others attending: See attached list

Chairman Lane made an announcement that Sub SB 321 will be heard tomorrow, March 25, 1997.

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

Terry Leatherman, Kansas Chamber of Commerce and Industry (KCCI), appeared as an opponent of the bill. With his testimony is a 1995 analysis of workers compensation law as developed by the U. S. Chamber of Commerce, and a thumb nail sketch of what other states do in the area of claimant attorney fee limits. There are 19 states that use the phrase reasonable fee or subject to approval type language; another nine who say they have fixed workers comp rates; plus 22 others, including Kansas, who have set statutory limitation in their law. (see Attachment 1)

He testified that as originally introduced, the bill contained a series of recommendations from the Workers Compensation Advisory Council. KCCI supports passage of these measures. They oppose the changes beginning on page 10 of the bill through page 14 that were added by a Senate Commerce Committee amendment concerning claimant attorney fees. They feel the proposed changes in attorney fee collection is the wrong direction for the Kansas workers compensation system today. Attorney fee limits were an element of the 1993 reform compromise. They were intended to reduce litigation and encourage reasonable settlement offers.

He pointed out that a trial attorney is not the employee's only recourse. The '93 reform bill also provided ombudsman to assist the worker. This also reduced litigation and increased case resolution, but would be reversed by the provision in SB 346. He finished his testimony by answering questions from the committee.

Brad Smoot, Legislative Counsel for the American Insurance Association (AIA), appeared before the committee to oppose the proposed changes in section 5 of the bill which would alter the attorney's fees rules adopted as part of the 1993 workers compensation reform bill. AIA supports the rest of the bill which reflects the work of the Workers Compensation Advisory Council and the amendments it has recommended. They feel that the proponents of Section 5 have not demonstrated that a real problem exists in finding competent counsel or that this solution will indeed alleviate the perceived shortage of counsel. They recommend the deletion of Section 5 and the passage of the remainder of SB 346. (see Attachment 2)

Written testimony from John M. Russell, Attorney at Law, Great Bend, Kansas, was passed out to the committee. (see Attachment 3)

A questions and answer sheet on SB 346 from the Kansas Trial Lawyers Association was passed out to committee members. (see Attachment 4)

A letter from Paula S. Greathouse, Staff Attorney for the Workers' Compensation Fund, Kansas Insurance Department, stating their support for requested changes made by their department was also passed out. (see Attachment 5).

The hearing on SB 346 will be continued tomorrow.

Chairman Lane adjourned the committee meeting at 10:01 a.m.

The next meeting is scheduled for March 25, 1997.

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE  
GUEST LIST

DATE: March 24, 1997

NAME	REPRESENTING
TERRY LEATHERMAN	KCCI
Nancy Lindberg	Atty Gen
STEVE RARRICK	A.G.
Gail Bright	A.G.
Susan Salt	AG
Phil Harless	KDHR - Div. of Work. Comp.
Greg Winkler	KCUA
FRED LUCKY	KANSAS HOSPITAL ASSN
Jd Lynn Copp	Kansas Insurance Department
David A. Sunfelt	KDHR - Div of Work Comp
RICHARD LITHEWAS	KDHR - DIV WORKERS COMP
Ray T. Detman	Dept. of Admin. DPS
Pat Morris	K.A.I.A.
Susan Baker	Hein + Weir
Steve Montgomery	MC I
Steve Swenson	State Farm
Janet Stubbs	KBIA
John M. Ostrowski	KS AFL-CIO
Elaine Hornery	KCA + KCAA

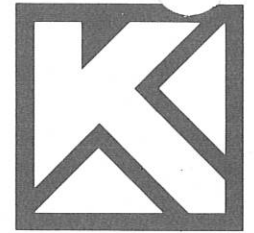
# HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE GUEST LIST

DATE: 3/24/97

NAME	REPRESENTING
Jim Wotoff	ICS AFK-CIO
Brod Stuart	AIA
Bob Storey	DMA
JEFF ROSELL	SPRINT
James M. Seabell	KTLA
Steve Knapka	KTLA
Art Bran	mid m. humleson

# LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry



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SB 346

March 19, 1997

## KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

House Committee on Business, Commerce and Labor

by

Terry Leatherman  
Executive Director  
Kansas Industrial Council

Mr. Chairman and members of the Committee:

I am Terry Leatherman, with the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to express our concerns regarding SB 346.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 46% of KCCI's members having less than 25 employees, and 77% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

As originally introduced, SB 346 contained a series of recommendations from the Workers Compensation Advisory Council. As a participant in the Council process, KCCI would support passage of these measures. Beginning on page 10 of the bill through page 14 is a Senate Commerce Committee amendment concerning claimant attorney fees. KCCI opposes this proposed change. Specifically, we would recommend the following changes to this section of SB 346.

*Business, Commerce & Labor Comm.  
3/24/97  
Attachment 1*



- 1) On page 12, line 39, strike 50% and replace it with 25%.

The result of this change would be a claimant's attorney would be limited to 25% of the amount of an award in excess of a written settlement offer, rather than the 50% currently proposed in SB 346.

- 2) On page 13, line 19, strike the phrase "an application for penalties."

The current inclusion of "an application for penalties" opens a new avenue for attorneys to collect fees when they request a hearing to be held to review and modify a case. No justification for this new opportunity to collect employer paid attorney fees in the review and modification arena has been presented.

Mr. Chairman, permit me to now review why the Kansas Chamber feels the proposed change in attorney fee collection, in general, is the wrong direction for the Kansas workers compensation system today.

**The change encourages litigation, rather than case settlement.**

When workers compensation was reformed in 1993, amendments to attorney fee limits were intended to reduce litigation and encourage reasonable settlement offers. The theory was if attorney fees are capped at 25% above a settlement offer, employers will give reasonable settlement offers to discourage workers compensation cases entering lengthy and expensive litigation.

The call for the amendment to SB 346 is evidence that this theory of litigation reduction has worked. Reasonable settlement offers are being given, prompting claimants attorneys to not take a case because they cannot make the fees they feel they need to make representation viable. Rather than being criticized for this result, the Legislature should be applauded for their action to encourage cooperation and reduce litigation.

**Attorney fee limits were an element of the 1993 reform compromise.**

Limits on claimants attorney fees were an element in the legislative compromise developed in 1993 which has produced an astounding reversal in workers compensation insurance rates. Overall

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ii      nce rates decreases of 2%, 7.5% and 11.5% over the past three years are directly due to  
Legislature's action in 1993.

**The SB 346 proposal is about dollars, not about an injured worker's rights.**

The change contained in SB 346 only changes current law relating to the fees an attorney may charge. No changes are being proposed to alter an attorney's fee potential to pursue a claimant's desire for additional medical compensation, or to be compensated for abandoning their right to future medical benefits. This issue is not about the rights of an injured worker, it is about the dollars an attorney can charge to represent that injured worker.

**A trial attorney is not the employee's only recourse.**

The SB 346 proposal suggests current fee limits lock an employee from receiving legal services, resulting in the worker's loss of the rights they could receive from workers compensation. As an element of the '93 reform bill, several provisions were established to assist the worker by the system. Most notably, an ombudsman program is in place to assist the injured worker. The number of ombudsman contacts are shown below.

**Ombudsman Contacts**

1991	22,694
1992	24,864
1993	26,840
1994	30,843
1995	47,331
1996	40,641

**Who Makes Ombudsman Contacts**

Employee	50%
Employer	19%
Attorneys	9%
Miscellaneous	7%
Insurance Co.	7%
Health Care	5%

The ombudsman program, which was expanded from two claims advisors to an army of ten ombudsmen as a result of the 1993 reform legislation, is totally funded by Kansas employers. It is a key example of the Legislature's vision in 1993 to reduce litigation and increase case resolution, which is being reversed by the provision in SB 346.

**There is an element of logic missing from the proposal.**

As amended by SB 346, a trial attorney's work is worth 25% of an award at the beginning of a case. However, when a settlement offer has been made, the attorney's billing ability increases to 50%. Why is their work suddenly more valuable when there has been some resolution to the claim.

Issue is not about the general subject of fee limitations.

Prior to 1993, Kansas law limited claimant's attorney fees. The 1993 reform changed the limits, but did not alter the fact that claims are being limited, and the proposal in 1997 will not alter the fact that claims are being limited. Since "whether to limit" is not in dispute, the real issue is "what level should that limit be." As a result, the real issue is should attorneys get 50% or 25% of an award above a written settlement offer. It is KCCI's strong contention that current law should be maintained.

Claimants do not go without legal representation.

Attorneys are available to assist an injured worker who desires one for their workers compensation claim. In Topeka alone, our 324 page Yellow Pages include 20 pages of attorney listings, and also has 25 law firms advertising their expertise in workers compensation/work injury law. On the inside cover, for instance, Borel and Associates, a Kansas City, MO law firm promises Topekans "free consultation and aggressive representation." Topeka has more law firms listed as specializing in workers compensation (13) than it has McDonald's restaurants (10).

Setting the Yellow Pages aside, today's issue boils down to this. If a worker is hurt and an employer is denying the claim or their insurance company is undervaluing the claim's worth, there are plenty of attorneys who will represent that worker. Today's issue involves cases where a settlement offer is on the table, and that settlement reflects the value of the claim. Passing SB 346 will encourage that claim into litigation. Sticking with current law will promote case resolution.

Thank you for the opportunity to express KCCI's concern regarding SB 346. I would be happy to answer any questions.

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## ADMINISTRATION OF LAWS

Because workers' compensation grew out of a public dissatisfaction with the manner in which job-related disabilities were handled, it is not surprising that the system was designed with an eye toward prompt and effective disposition of disability cases. Without an effective delivery system, many of the problems associated with the common law and employer liability statutes would remain.

This requirement for an effective delivery system remains valid today. Indeed the National Commission on State Workmen's Compensation Laws, in listing this as a major objective for a modern workers' compensation system, made special note that the achievement of the system's objectives for protecting against workplace disabilities was dependent upon an effective system for delivery of the benefits and services. This observation was reaffirmed by a second federal report on workers' compensation delivery in 1977 which emphasized the importance of efficient program administration.

As originally envisioned, the system would be self-administering. Over time, the complexities of the system proved too much for a laissez-faire approach, and states moved to take a more affirmative role in the administration of their laws.

Generally, the states moved either to administer their laws through their court system, a special commission or board, or a combination of both. In Canada, administrative activities are carried out by a board. The principal areas of administration include:

- Supervision of compliance with statutory requirements for employers, employees, carriers, and medical and legal personnel.
- Investigation and decision on disputed claims and the supervision of medical and vocational rehabilitation.
- Management of second-injury funds, special assessment requirements.
- Collection of data and evaluation of program performance.

### ADMINISTRATION — NOTICE TO EMPLOYERS AND CLAIMS (CHART XI)

Workers' compensation laws generally are administered by commissions or boards created by law. A few states provide for court administration.

Chart XI shows statutory provisions relating to administration. These include:

- Time limits in which employers must be advised of injury;
- Time in which claims must be filed;
- Claims settlement conditions; and
- Regulation of attorney's fees.

### EMPLOYER'S REPORT OF ACCIDENTS (CHART XII)

All employers are interested in requirements legally imposed on them to report injuries and the penalty, if any, imposed for failure to report. In many jurisdictions, except for preliminary reports, the insured's company relieves an employer of this burden. Provisions for employer's reports of accidents are summarized in Chart XII.

### SECOND-INJURY FUNDS (CHART XIII)

Second-injury funds (or like arrangements) were developed to meet problems arising when a preexisting injury combines with a second to produce a disability greater than that caused by the latter alone. The funds encourage hiring of the physically handicapped and more equitably allocate costs of providing benefits to such employees.

Second-injury employers pay compensation related to the disability caused by the second injury alone — even though the employee receives a benefit relating to the combined disability; the difference is made up from a second-injury fund.

Where no special second-injury fund is provided by law, an employer in whose employ a second injury is sustained usually is liable for compensation due for the total resulting disability. Because of the potential increased cost of compensation benefits, an employer thus may be influenced to refuse employment to handicapped persons. It is for this reason that second-injury funds are advocated.

Most compensation laws now limit employer liability in second-injury cases to payment for the disability resulting from the second injury considered by itself — as shown in Chart XIII. The chart indicates the nature of the injury covered, portion payable by the employer and by the fund, and the sources of the fund.

### ADMINISTRATION EXPENSES (CHART XIV)

Chart XIV refers to:

- How costs of administration are met;
- Nature of assessments, if any; and
- Type of insurance provided for — whether private or state or both.

### APPEAL PROVISIONS (CHART XV)

Appeal provisions, including designation of the court of appeal and nature of the procedures, are summarized in Chart XV. Most Canadian jurisdictions use the inquiry system and do not provide for judicial appeals.

### DIRECTORY OF ADMINISTRATORS (CHART XVI)

The names and addresses of the administrators, boards and commissioners for all jurisdictions reported upon by the *Analysis* are furnished.

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# CHART XI — ADMINISTRATION: NOTICE TO EMPLOYER AND CLAIMS

JURISDICTION	ADMINISTRATION	NOTICE TO EMPLOYER	CLAIM FILING	HOW CLAIMS ARE SETTLED	AWARD EFFECT	REVIEW BY AGENCY	MODIFICATIONS	ATTORNEY FEES
Alabama	Courts	In writing within 5 days; excusable up to 90 days.	Within 2 years after accident, last payment or removal of incapacity.	By agreement, which must conform substantially to terms of act unless court approves lesser sum. Disputed cases settled by courts.	Lien when registered with probate judge.		Award for more than 6 months at any time by agreement of parties with court approval.	Fixed by Circuit Court judge up to 15% award. All litigation expenses and attorney's fees must be reported to the Director.
Alaska	Workers' Compensation Board	In writing to Board and employer within 30 days; excusable. <sup>1</sup>	Within 2 years after knowledge of disability. Within 1 year after death of 2 years after last payment.	By agreement, on approval of Board.	Lien; recording required in 1 year. Interest and penalties accrue.	By Board	Within 1 year after last payment of compensation or after rejection of claim.	Fixed by Board.
American Samoa	Workers' Compensation Commission	In writing within 30 days; excusable.	Disability—within 1 year after injury or last payment. Death—within 1 year after death or claimant should know relation to employment.	Compensation without award except in disputed cases. Disputed cases settled by Commission.	Award is effective upon filing, enforceable by High Court.		By Commissioner on application or own motion within 1 year after last payment or rejection of claim. At any time in case of fraud.	Subject to approval of commissioner or High Court. Court may assess costs against party that proceeds without reasonable grounds.
Arizona	Industrial Commission	Forthwith; excusable.	Within 1 year after injury or accrual of right; excusable. <sup>2</sup> Claim not barred if compensation has commenced.	By Commission	Lien upon filing.	By ALJ within 30 days.	By ALJ on application.	Commission may regulate; maximum 25% of award.
Arkansas	Workers' Compensation Commission	Forthwith; excusable.	Within 2 years after injury or death.	Compensation without award except if contested claim. Disputed claims heard by Commission member, or ALJ upon application. Settlements may be approved by joint petition. <sup>3</sup>	Preference rights of unpaid wage claims.	By Commission from decision of ALJ within 30 days.	By Commission within 6 months of end of compensation period except in "joint settlements." <sup>4</sup>	Sliding scale subject to approval by Commission. Maximum \$250 on appeal to full Commission; \$500 on appeal to Court.
California	Division of Workers' Compensation handles administration. Appeals Board handles judicial functions	In writing within 30 days; excusable. Within 1 day of receiving notice or having knowledge of injury, employer must provide injured worker with claim form.	Disability—within 1 year from date of injury of last payment. Death—within 1 year after death to 240 weeks after injury.	By agreement on approval of Appeals Board which may order hearing. Disputed cases settled by Appeals Board on application.	Judgement on filing in Superior Court.	By Appeals Board from workers' compensation judge's finding.	Reconsideration within 20 days; no modification after 5 years.	Reasonable fee fixed by Appeals Board. If Court finds no reasonable basis for appeal, Appeals Board may award fees a supplementary award. <sup>5</sup>
Colorado	Director, Division of Workers' Compensation	Within 4 days; excusable (claimant may lose up to 1 day's compensation for each day's delay).	Within 2 years after injury or death. <sup>6</sup> Does not apply if compensation paid or if reasonable excuse in 3 years.	By agreement approved by Director or ALJ. Disputes may be resolved through mediation, prehearing conference and formal hearings.	Judgement on filing copy of award against uninsured employer in District Court.	By Director or ALJ within 20 days, then by Industrial Claims Appeals Office within 20 days.	By division within 6 years from date of accident or 2 years after last payment, whichever is later. <sup>7</sup>	On contested cases, a contingent attorney fee not exceeding 20% of the amount of the contested benefit shall be presumed to be reasonable. Director determines reasonableness of fee on request of claimant or attorney.
Connecticut	Workers' Compensation Commissioners. 1 chair and 15 members.	Forthwith; excusable. <sup>8</sup>	Within 1 year after accident. <sup>9</sup> If death results, within 2 years after accident or disease—within 2 years from accident or disease, or within 1 year from death, whichever is later.	By agreement, on approval of Commission. Disputed cases settled by Commission.	Judgement on filing in Superior Court. Award has preference rights of unpaid wages.	By Compensation Review Division <sup>10</sup> within 10 days.	By Commissioner during compensation period.	Subject to approval of Commissioner.
Delaware	Industrial Accident Board	If notice not given in 90 days, no compensation due until notice or knowledge of injury.	Within 2 years after injury, death or 5 years from last payment.	By agreement, on approval of Board. Disputed cases settled by Board after hearing.	Preference rights of unpaid claims.		By Board at any time but no more than once each 6 months.	30% of award or \$2,250, whichever is less. Reasonable fee on appeals.

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# CHART XI — ADMINISTRATION: NOTICE TO EMPLOYER AND CLAIMS

LOCATION	ADMINISTRATION	NOTICE TO EMPLOYER	CLAIM FILING	HOW CLAIMS ARE SETTLED	AWARD EFFECT	REVIEW BY AGENCY	MODIFICATIONS	EMPLOYEE'S FEES
District of Columbia	D.C. Office of Workers' Compensation	In writing within 30 days; excusable.	Within 1 year after accident or last payment.	By mayor	Award is effective upon filing.	By mayor on application or own motion.	By mayor within 1 year after last payment or denial of claim.	Approval by Mayor.
District of Columbia Government Workers	D.C. Division of Disability and Crime Victims Compensation	48 hours; extended for cause.	Within 60 days after injury or 1 year after death; extended for cause.	By D.C. Division of Disability and Crime Victims Compensation.	Fund pays award.	By administrator upon own motion or application at any time.	By administrator	Subject to approval by administrator.
Florida	Division of Workers' Compensation	Within 2 years after injury, death or employee first knowledge of injury/illness.	Within 2 years after injury, death or last payment, or authorized medical treatment.	Allows total washout of claim at any time after employee has attained MMI. Allows total washout of claim in which carrier filed a denial within 120 days after date of injury and judge finds a justifiable controversy of legal or medical compensability.	May be filed in proper court; execution or other process in Circuit Court.		Joint Petitions or Stipulations so ordered by Judges are not subject to modification.	Sliding scale subject to approval of judge of compensation claims or court; claimant pays - own fee if he does not prevail.
Georgia	Board of Workers' Compensation	Within 30 days; excusable.	Within 1 year after injury, death or medical care; or within 2 years after last payment.	Compensation without award except in contested claims. Disputed claims settled by Board, Director or ALJ. <sup>11</sup>	Judgement in Superior Court on certified copy of award. <sup>12</sup>	By Board on application within 20 days.	By Board on application or own motion within 2 years after final payment (4 years for PP). Final settlement may not be modified.	Fees in excess of \$100 subject to Board approval. Board may assess attorney's fees against any party who proceeds without reasonable grounds or fails to provide income benefits as required. Maximum recovery fee is 25% of income benefit received.
Guam	Workers' Compensation Commission	In writing 30 days; excusable.	Within 1 year after injury, death, last payment or awareness of relationship between the injury or death and the employment.	Compensation without award within 14 days after knowledge of injury or death. Controverted claims are settled by the Commission.	Lien against assets of carrier or employer. Enforcement of final order by Superior Court.		By Commissioner within 1 year after last payment or rejection of claim on own motion or application.	Subject to approval of Commission or Court on review. Legal fees shall be a lien on compensation.
Hawaii	Director of Labor and Industrial Relations	Forthwith; excusable.	2 years after date on which effects of injury become manifest, but within 5 years after date of accident causing injury.	By agreement or else by decision which agreements must be prepared by Director within 60 days after conclusion of hearing, <sup>13</sup> in accord with law. If not agreed, Director makes award.	Judgement on filing in Circuit Court.	By Appellate Board within 20 days.	By Director on own motion or own application of any party within 20 days but no later than 8 years after decision.	Subject to approval of Director.
Idaho	Industrial Commission	In writing 60 days after accident; excusable.	Within 1 year after accident or death. <sup>14</sup>	By agreement, subject to approval of Commission. Disputes settled by Commission or Member after hearing.	Judgement in District Court on filing certified copy of award.	By Commission within 20 days.	By Commission within 5 years of accident, but not more than once in 6 months.	Subject to approval of Commission.
Illinois	Industrial Commission	Within 45 days. <sup>15</sup> For radiological injury, within 90 days after employee knows or suspects that he has received an excessive dose of radiation.	Barred after 3 years from injury or death, or 2 years after last payment, whichever is later. Radiation and asbestosis—within 25 years after last exposure for injury; within 3 years after death.	By agreement, subject to approval of Commission, after 7 days from injury. Disputed cases settled by arbitrator.	Judgment in Circuit Court on filing certified copy of award.	By Commission from decision of arbitrator within 30 days.	By Commission within 30 months of agreement or award.	Maximum 20% of compensation paid, up to 364 weeks of PT disability. Unreasonable or vexatious delay by employer or carrier in payment of compensation may be penalized by cost of attorney's fees.
Indiana	Workers' Compensation Board	In writing as soon as practicable; excusable. Compensation accrues from date of notice if given after 30 days.	Within 2 years after injury or death. Radiation—2 years after worker knows/should know relation to employment.	By agreement, after 7 days from injury or at any time after death, subject to approval of Board. Disputed cases settled by Board or member on application.	Judgement in Superior Court or Circuit on certified copy of agreement or award. Preference rights of unpaid wages.	By full Board within 20 days after award.	By Board on application or own motion, within 2 years after last day for which compensation is paid.	Subject to approval of Board. Paid out of award unless bad faith by employer or lack of diligence, in which case minimum fee is \$150.

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# CHART XI — ADMINISTRATION: NOTICE TO EMPLOYER AND CLAIMS

JURISDICTION	ADMINISTRATION	NOTICE TO EMPLOYER	CLAIM FILING	HOW CLAIMS ARE SETTLED	AWARD EFFECT	REVIEW BY AGENCY	MODIFICATIONS	ATTORNEY'S FEES
Iowa	Industrial Commission	Within 90 days after injury unless employer has actual knowledge.	Within 2 years after injury or 3 years after weekly last payment.	Compensation without award except in contested cases, but claim may be settled by agreement, subject to approval of Industrial Commissioner.	Judgement in District Court on filing certified copy of agreement or decision.	By Commissioner from decision of Deputy Commissioner within 20 days.	By Commissioner within 3 years from last payment, award or noncommuted settlement.	Subject to Commissioner's approval.
Kansas	Division of Workers' Compensation	Within 10 days and up to 75 days with "just cause."	Claim must be served on employer within 200 days after accident or last payment, or within 1 year after death for death within 5 years after accident. Application for hearing must be filed with Division within 3 years after accident or within 2 years after last payment, whichever is later. <sup>16</sup>	By agreement, subject to review by Worker's Compensation Appeals Board. Disputed cases settled by ALJ after hearing, subject to appeal to Workers' Compensation Appeals Board.		Appeal to Workers' Compensation Appeals Board must be filed within 10 days of decision by ALJ.	By ALJ, before final payment and within 1 year of prior approval on application.	Reasonable amount of 25% of total compensation recovered which is less than \$10,001; 20% of portion greater than \$10,000 and less than \$20,001; 15% of portion in excess of \$20,000, whichever is less. Subject to approval of ALJ.
Kentucky	Department of Workers' Claims	In writing as soon as practicable; excusable.	Within 2 years after accident, death, or last voluntary income benefit payment. Limits toll during minority or incapacity.	By agreement, subject to approval by ALJ. Disputed cases settled by ALJ.	Judgement in Circuit Court on filing certified copy of award or approved agreement.	Appeal to Workers' Compensation Board must be filed within 30 days of decision by ALJ.	By ALJ at any time, on application or own motion.	Subject to ALJ's approval. Maximum of 20% of first \$25,000, 15% of next \$10,000 and 5% of remainder of amount recovered, total fee not to exceed \$15,000. Maximum fee of \$750 in unresisted claim. Court costs may be assessed against party who proceeds without reasonable grounds.
Louisiana	Office of Workers' Compensation Administration	Within 30 days (12 months if employer fails to post requirements); excusable.	Within 1 year after accident, death or last payment; if injury has a delayed development, then 1 year from time injury develops, but in no cases more than 2 years from date of accident.	By agreement, subject to approval of Workers' Compensation Judges. <sup>17</sup>	Approved settlement entered as judgement.		By Workers' Compensation Judge or any time by agreement.	Subject to Director's approval; maximum 20% of award on first \$10,000 and 10% of any additional amount.
Maine	Workers' Compensation Board	Within 90 days after injury; within 3 months after death; excusable for mistake of fact.	Within 2 years after accident or last payment, <sup>18</sup> or within 1 year after death. If mistake of fact or fraud, within a reasonable time; but no more than 10 years after last payment in any case.	Compensation without award except in contested cases. Disputed cases settled by Board.	Decision enforceable in Superior Court by suitable process.	By single hearing officer.	On application, approved lump sum is final except employer is not released from liability for future medical expenses unless lump sum agreement is contingent on release from such liability.	Injuries after 1/1/93, each party responsible for payment of own cost and attorney's fees. Fees subject to Board approval. Non-lawyers authorized to represent any party unless such representation "prevents the efficient processing of any proceeding."
Maryland	Workers' Compensation Commission	Within 10 days after injury (30 days for hernia); within 30 days after death; excusable.	Within 60 days after disability begins; excusable to 2 years. Within 18 months after death. Not barred for 3 years if treated by physician acting for employer. <sup>19</sup>	By agreement, subject to approval of Commission. Disputed cases settled by Commission or arbitration committee; hearing required on application.		By Commission from arbitration committee on application.	From final award on application or own motion within 5 years.	Subject to approval of Commission.
Massachusetts	Department of Industrial Accidents	In writing as soon as practicable; excusable.	Within 4 years after injury or death; within 1 year after discovery for medical benefits; excusable.	By agreement, subject to approval of Department. Disputed cases settled by a member of the Industrial Accidents Board after preliminary conference prior to hearing.	Decree in Superior Court on certified copy of agreement or decision.	By 14-member reviewing board from decision of member.	On application at any time; limited in death cases.	Subject to Board approval; amount fixed, subject to cost of living adjustments, according to stage of proceedings. <sup>20</sup>

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# CHART XI — ADMINISTRATION: NOTICE TO EMPLOYER AND CLAIMS

JURISDICTION	ADMINISTRATION	NOTICE TO EMPLOYER	CLAIM FILING	HOW CLAIMS ARE SETTLED	AWARD EFFECT	REVIEW BY AGENCY	MODIFICATIONS	NEY'S FEES
Michigan	Bureau of Workers' Disability Compensation	Within 90 days after injury; excusable.	Within 2 years after injury, death, recovery from incapacity, or after worker knows/should know relation of disease to employment. <sup>21</sup>	Compensation without award except in contested cases. Disputed cases settled by magistrate (by Bureau if "small dispute").	Judgement in Circuit Court on filing certified copy of award.	By Appellate Commission within 30 days from decision of magistrate.		Subject to approval of Bureau based on administrative rules and contingency fee schedules.
Minnesota	Commissioner, Department of Labor and Industry as head of Workers' Compensation Division and Administration <sup>22</sup>	Within 30 days unless employer has actual knowledge; excusable up to 180 days unless prejudice shown.	Within 3 years after employer's report; no more than 6 years from date of injury. Occupational disease—within 3 years after employee knows cause of disability. <sup>23</sup>	Claims settled by agreement subject to judicial approval unless both sides represented by attorney and medical and rehabilitation left open. Hearing determination subject to appeal.	Award is binding and may be enforced by penalty or entering judgement in District Court.	Appeals must be filed with Workers' Compensation Court of Appeals within 30 days from decision of compensation judge.	By petition to Court of Appeals to vacate.	Approval by Division or compensation judge of 25% of first \$4,000 compensation and 20% of the next \$60,000 with a maximum of \$13,000.
Mississippi	Workers' Compensation Commission	Within 30 days; excusable.	Within 2 years after injury or death.	Compensation paid without award except in contested claims. Disputed claims heard by Commission member or referee on application. Claims are settled on compromise basis by agreement, subject to Commission approval.	Lien against assets and has preference rights of unpaid wages.	By Commission within 20 days from decision of ALJ.	By Commission on application or own motion within 1 year from last payment or claim rejection.	Subject to approval of Commission or court. Maximum is 25% of award in matters before the Commission.
Missouri	Division of Workers' Compensation	In writing within 30 days unless employer has actual knowledge. Division notifies worker of rights.	Within 2 years after injury or death, or last payment (3 years if no report filed).	By agreement, after 7 days from injury or death, subject to approval of ALJ, legal advisor or Commission. Disputed cases settled by ALJ.	Judgement in Circuit Court on certified copy of memorandum of agreement, order, decision or award of Division or Commission.	By Industrial Commission within 20 days.	By Commission on application or own motion, after notice and hearing.	Commission or Division may allow reasonable fees.
Montana	Department of Labor and Industry	For injuries not resulting in death, within 30 days unless employer has actual knowledge.	Verified claim within 12 months after accident; Department may grant additional 24 months.	By agreement and subject to approval of Department. Any dispute over conversion of benefits to a lump sum or dispute over the amount of benefits is submitted to a mediator and then to the Workers' Compensation Court, if necessary.	Insurer will pay award after order received.	By Department of Labor and Industry. 30 days to approve or disapprove settlement. If date of injury is prior to 7/1/87, order is reviewed by Workers' Compensation Court Judge, who has 10 days to disapprove settlement.	May not be reopened by Department.	May be fixed by Department or Worker Compensation judge. Added to successful claimant's award on appeals. Not awardable by the court unless the insurer's actions in denying liability or terminating benefits was unreasonable.
Nebraska	Workers' Compensation Court	In writing as soon as practicable; excusable.	Within 2 years after injury, death, removal of incapacity or last payment.	By agreement, in accordance with Act. Disputed claims submitted to Compensation Court for hearing. Lump sums approved by Compensation Court.	Award is final unless timely appealed.	By Compensation Court.	By agreement, subject to approval of Compensation Court; or on application after 6 months by Compensation Court.	Subject to approval of Judge of Compensation Court (for lien purposes).
Nevada	Division of Industrial Relations	Forthwith <sup>24</sup>	Within 90 days after accident, 1 year after death.	By agreement, in conformity with Act, subject to approval of insurer.		Department of Administration holds hearing and appeals.	Medical investigation may be conducted at any time based on changed circumstance.	District Court may assess costs and fees if appeal is frivolous. At appeals level and above, claimant may have Nevada Attorney for Injured Workers represent them.
New Hampshire	Division of Workers' Compensation	As soon as practicable but no later than 2 years after date of injury.	Within 2 years after injury or death and claimant knows/should know of injury and relation to employment.	If compensability of claim is contested, the aggrieved party may request a hearing at the Division. Disputes may also be settled by lump sum with Division approval.	Payment within 5 working days. Employer's failure to comply with an award may result in a penalty of no more than \$100 per day.	By Commissioner	Commissioner of Labor may modify no later than 4 years after last indemnity payment, except lump sums.	Subject to approval of Labor Commissioner or court. Attorney's fees and interest to successful claimant on appeal.

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# CHART XI — ADMINISTRATION: NOTICE TO EMPLOYER AND CLAIMS

JURISDICTION	ADMINISTRATION	NOTICE TO EMPLOYER	CLAIM FILING	HOW CLAIMS ARE SETTLED	AWARD EFFECT	REVIEW BY AGENCY	MODIFICATIONS	ATTORNEYS FEES
New Jersey	Division of Workers' Compensation	Within 14 days; excusable up to 90 days. Separate provisions for occupational diseases.	Within 2 years after accident, death, last payment or default. Separate provisions for occupational diseases.	By agreement, subject to approval of Judge of Compensation. Disputed cases litigated before Judge of Compensation.	Final unless appealed to Superior Court.		Application to review or modify prior award to Judge of Compensation within 2 years of last payment of compensation.	Not over 20 percent before Division. Court may fix reasonable fee on appeal. <sup>25</sup>
New Mexico	Workers' Compensation Administration	In writing within 15 days; excusable up to 60 days.	Within 1 year after notice, death or failure to pay. Time limit tolled while in same employment.	By agreement, through a mandatory mediation conducted by a representative of the Director. Disputed cases settled by Judge pursuant to hearing held by the Workers' Compensation Administration. Lump sum settlements, allowable under previous versions of the law, must be approved by a Workers' Compensation Judge.	Award is judgement.	By Department of Workers' Compensation Administration.	By Workers' Compensation Judge, hearings for modifications may be held at not less than 6 month intervals.	Determined by Workers' Compensation Judge, maximum amount of \$12,500 for both parties' attorneys including all levels of appeal. Cost of attorney is split 50/50 by employer and employee.
New York	Workers' Compensation Board	In writing within 30 days; excusable.	In certain occupational disease cases a claim may be filed after 2 years of disablement if within 2 years of date employee knew or should have known accident was due to nature of employment.	Compensation without award within 18 days after disability or within 10 days after employer had knowledge, except in contested claims. Disputed claims settled by referee or Board. Hearing is mandatory upon application.	Payment within 10 days after decision except in event of appeal.	Review of Workers' Compensation Law Judge decisions is by 3 member panel of the Board. A split decision is reviewable by full Board; review of other decisions is discretionary.	By Board at any time. Subject to special conditions.	As lien on award if approved by Board.
North Carolina	Industrial Commission	In writing within 30 days; excusable.	Within 2 years of final determination of disability or within 6 years after death from occupational disease or accident.	By agreement, after 7 days from injury or at any time in case of death, subject to approval of Commission. Disputed cases settled by Commission or member or through mediation.	Judgement in Superior Court of filing certified copy of agreement or decision.	By Commission upon application within 15 days after award.	By Commission on application or own motion, with 2 years.	Subject to approval of Commission, which may court costs and fees against party who proceeds without reasonable ground.
North Dakota	Workers' Compensation Bureau	None required.	Within 1 year after injury or 2 years after death.	By Bureau	Fund pays award and has liquidated claim against defaulting uninsured employers.		By Bureau at any time on application or own motion.	Hourly rate determined by Bureau; trial judge fixes on appeal but must give consideration to amount allowed by Bureau.
Ohio	Bureau of Workers' Compensation and Industrial Commission	None required except to self-insurers.	Within 2 years after accident, injury or occupational disease or death. <sup>26</sup>	By agreement, subject to 30 day waiting period and review by Bureau; Industrial Commission may reject settlement which is a gross miscarriage of justice or clearly unfair.	Fund or self-insurer pays award after judgement.	By district hearing officer, then staff hearing officer, then Commission, within 14 days of decision.	By Commission or Bureau within 6 years after injury (no lost time) or 10 years from last payment or death (lost time).	Attorney's fees are fixed by judge based on effort expended, but shall not exceed \$2,500.
Oklahoma	Workers' Compensation Court and an Administrator	In writing within 60 days; excusable.	Within 2 years after injury or last payment. Death claims—within 2 years after death or last payment.	By agreement, after 3-day disability, subject to approval of Workers' Compensation Court. Disputed cases settled by Court.	Payment within 20 days except in event of appeal. Judgement in District Court upon motion to certify.	By Workers' Compensation Court en banc on appeal within 10 days or by Supreme Court on appeal within 20 days.	By Workers' Compensation Court on application or own motion at any time. May reopen case within maximum number of weeks for which award is possible.	Workers' Compensation Court must approve and direct payment; 10% maximum for temporary disability; 20% maximum for PT or death.
Oregon	Department of Consumer and Business; Workers' Compensation Division	In writing with 30 days; excusable.	Injury: within one year after accident unless employer or insurer was aware of the injury. Occupational disease: within one year of the later of workers' discovery, diagnosis by physician, disability, or beneficiaries discovery death was due to occupational disease.	Accepted claims: closed by insurer, Department, or by agreement. Disputes: settled by agreement, Hearings Officer, Board, Court of Appeals, or Supreme Court.	Payment by insurer within 30 days after order except where appeal stays payment.	Reconsideration by department appellate unit within 18 days of request. By referee on application within 60 days for denials or 180 days for disability rating; further appeal to Board within 30 days.	By Board on own motion or claim for aggravation within 5 years of first determination.	Subject to approval of hearing officer, Board or Court. Board established fee schedule. Attorney fees of 10% of increased disability awarded if attorney involved with reconsideration process.

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# PART XI — ADMINISTRATION: NOTICE TO EMPLOYER AND CLAIMS

STATE	ADMINISTRATION	NOTICE TO EMPLOYER	CLAIM FILING	HOW CLAIMS ARE SETTLED	AWARD EFFECT	REVIEW BY AGENCY	MODIFICATIONS	ATTORNEY'S FEES
Pennsylvania	Bureau of Workers' Compensation <sup>27</sup>	Within 21 days; excusable to 120 days. No compensation due until notice is given.	Within 3 years after injury, death or last payment. <sup>28</sup>	By agreement, after 7 days from injury, subject to Department approval. Disputed cases heard by Workers' Compensation Judge; appeals to Board.	Judgement in court on filing award on agreement.	By Appeal Board from Workers' Compensation Judge's decision within 20 days.	By Department on application within statutory limits.	Subject to approval of Workers' Compensation Judge, Appeal Board or Court.
Puerto Rico	Board of Directors of Corporation of State Insurance Fund of Puerto Rico which operates under manager so designated	None required.	As soon as possible within 5 days from accident.	There is no settlement procedure. The manager issues the funds decision. If employee is not satisfied, may appeal to Industrial Commission.	Fund pays award.		By Commission, within 30 days after copy of Manager's decision is served on the employee. Reconsideration on own motion or upon petition of interested party within 10 days.	No attorneys required in hearings, but if requested by employee, fees are fixed by Industrial Commission as percentage of award. Fees are fully paid by fund.
Rhode Island	Department of Labor Division Workers' Compensation	In writing within 30 days; excusable.	Injuries prior to 5/18/92 within 3 years; 5/18/92 and after, within 2 years after injury, manifestation, knowledge of injury, death or removal of incapacity.	By voluntary agreement of both parties; or by Judge by decree.	Award enforceable by Court or Director.	By Court within 7 days.	By Court during compensation period or within 10 years after compensation period has ceased, on own motion or on petition of either party.	Subject to approval of Court. Maximum 15% of lump sum or structured settlements.
South Carolina	Workers' Compensation Commission Claims Department	In writing as soon as practicable or within 90 days; excusable.	Within 2 years after accident or 2 years after death.	By agreement, after 7 days from date of injury or any time in case of death, subject to approval of Commission or member, after hearing, upon application.	Judgement in Common Pleas Court on certified copy of agreement or award. <sup>29</sup>	By 3- or 6-member panel within 14 days after award.	To Commission on application or own motion within 12 months from last payment.	Subject to approval of Commission.
South Dakota	Division of Labor and Management	In writing as soon as practicable within 3 working days; excusable.	Within 2 years after notice of intention to deny coverage.	By agreement, if not disapproved by Director, within 20 days. Disputed cases settled by Commissioner after hearing, upon application.	Judgement in Circuit Court on certified copy of agreement or decision.	By Labor Secretary within 10 days.	By Labor Secretary by application.	Subject to approval of Director of Division of Labor and Management.
Tennessee	Courts and Workers' Compensation Division <sup>30</sup>	Notice must be within 30 days; must be written if employer does not have actual knowledge. Excusable up to 1 year.	Within 1 year after accident. Dependents—within 1 year after employer's notice accepting liability.	By agreement, subject to approval by County Court. Disputed cases determined by Circuit Court.	Judgement in Circuit Court on approved agreement.		By court, on application after 6 months. Award payable for more than 6 months may be modified by agreement approved by court.	Subject to approval of court; maximum 20% of recovery or award.
Texas	Workers' Compensation Commission	Within 30 days; excusable.	Within 1 year after injury, death or removal of incapacity; excusable. <sup>31</sup>	By award of the Commission, by judgement of a District Court or by agreement approved by Commission or District Court. Contested cases settled by hearing officers or through arbitration.	Collectible by suit for full amount of unpaid compensation; 12% penalty and attorney's fees. Failure or refusal to comply with a Commission order/decision within 20 days may result in a fine up to \$10,000.	By 3-member appeals panel within 60 days after award.	By Board or Commission at any time during compensation period, on application or own motion.	In actions before the Board or Commission, fees are limited to 15% of the recovery unless special circumstances prevail. Subject to approval by Board, Commission or Court but not to exceed 25% of recovery.
Utah	Industrial Commission	Within 180 days.	Within 1 year after death; within 6 years after date of injury. Medical expenses—within 3 years of last treatment. <sup>32</sup>	By Industrial Commission.	Lien from time of docketing in District Court. Payments must begin within 30 days of determination of award.	By Commission within 30 days.	By agency upon application.	Subject to approval by the Commission or the court. Maximum of 20% of 312 weeks of award with a \$7,500 cap.
Vermont	Commissioner of Labor and Industry	In writing as soon as practicable; excusable.	Within 6 months after injury, death, loss of damage suit or removal of incapacity; excusable.	By agreement, in conformity to Act, subject to approval of Commissioner (compromise agreements may be approved). Disputed cases settled by Commissioner.	Judgement in County Court on certified copy of agreement or award.	By Commissioner on application within 6 months.	By Commissioner on own motion or application at any time.	Commissioner may award to successful claimant, and on appeal, 12% interest on contested part of award.
Virgin Islands	Workers' Compensation Division	In writing within 48 hours; extendable up to 30 days. Occupational disease—within 30 days from first manifestation; extendable to 90 days.	Within 60 days after injury.	By Workers' Compensation Division using the Direct Payment System of amount due as provided by statute. No lump sum payments under any circumstances are allowed by law. By Commissioner of Labor upon review of disputed cases after decision following formal hearing.	First priority lien on employers' assets.	By Director.	By Director.	Subject to approval of Commissioner.



**CHART XI — ADMINISTRATION — NOTICE TO EMPLOYER AND CLAIMS**

JURISDICTION	ADMINISTRATION	NOTICE TO EMPLOYER	CLAIM FILING	HOW CLAIMS ARE SETTLED	AWARD EFFECT	REVIEW BY AGENCY	MODIFICATIONS	Awards
Virginia	Workers' Compensation Commission	In writing within 30 days.	Within 2 years after accident or 2 years after death. Failure to file First Report of Accident may toll time for claim filing. Payment of benefits does not toll.	By agreement, after 10 days from injury, or at any time after death, subject to approval of Commission. Disputed cases settled by Commission or member after hearing upon application.	Judgement in Circuit Court on certified copy of agreement or award.	By full Commission within 20 days after opinion.	By Commission on own motion or application within 2 years of last payment, or 3 years for scheduled injuries. <sup>33</sup>	Fixed by Commission.
Washington	Department of Labor and Industries	Immediately	Within 1 year from date of injury.	By Department of Labor and Industries. <sup>34</sup>		By Board of Industrial Insurance; appeals within 60 days on application.	By Department within 7 years, on application or own motion, 10 years for loss of vision claims.	By Appeals Board upon application, reviewable by Superior Court.
West Virginia	Bureau of Employment Programs, Workers' Compensation Division	Immediately	Within 2 years after injury or death; disease claims—within 3 years after exposure or knowledge, whichever is later, or within 2 years after death.	By Workers' Compensation Division; hearing upon application.	Fund begins payment 30 days following the granting of an award.	By ALJ within 30 days, or 60 days without notice.	By Commissioner within set time limits, on written application; subject to review by Appeal Board. <sup>35</sup>	Maximum fees established; limited to 20% of award up to 208 weeks of benefits.
Wisconsin	Workers' Compensation Division	Within 30 days; excusable.	Within 2 years after injury or death. Excusable if employer knew of disability. All rights barred after 12 years from injury, death or last payment.	By payment of amount due. Compromise subject to review by Department within 1 year. Disputed cases settled by Department.	Judgement in Circuit Court on certified copy of award.	By Commission within 21 days of decision.	By Commission on its own motion within 21 days; compromises may be modified within 1 year. If occupational disease, subject to review within 12 years.	Limited to 20% of amount in dispute. If admitted liability, not to exceed 10% or \$100.
Wyoming	Courts and Division of Workers' Compensation	Within 72 hours (also within 10 days to the court); excusable.	Within 1 year after injury or discovery of injury not readily apparent.	By Division of Workers' Compensation, hearing examiners or Medical Commission and appeal to District Court.	Fund pays award.		Within 4 years or during time payments are made on application.	Reasonable fees as allowed by court.
F.E.C.A.	Division of Federal Employees' Compensation, O.W.C.P., U.S. Dept. of Labor	30 days; extended for cause.	Within 3 years after injury or death; extended for cause.	By Division	Fund pays award.	By Secretary of Labor on own motion or application at anytime, within 1 year.	By Secretary of Labor or Employees' Compensation Appeals Board on review.	Subject to approval by Division or Appeals Board.
Longshore Act	Division of Longshore and Harbor Workers' Compensation, O.W.C.P., U.S. Dept. of Labor	Within 30 days	Within 1 year after injury or death, or date of last payment. Within 2 years after aware of occupational disease.	By District Director (by agreement) or ALJ (formal hearing).	Award is effective on filing.	By District Director upon own motion or application or by Benefits Review Board on Appeal.	By District Director or Court on review.	Approval by District Director, Court or Review Board where service given.
Alberta	Workers' Compensation Board	As soon as practicable.	Within 1 year after injury or death; excusable.	By Case Manager	Fund pays award.	By review committee on request, then by Appeals Commission at any time.	By Appeals Commission at any time on application or own motion.	
British Columbia	Workers' Compensation Board	As soon as practicable.	Within 1 year after injury, death or disablement by disease; excusable within 3 years. <sup>36</sup>	By Board	Fund pays award.	By Review Board if appealed within 90 days. From Review Board to Appeal Division if appealed within 30 days.	By Board at any time.	Board may award expenses of proceeding to successful party. <sup>37</sup>
Manitoba	Workers' Compensation Board	In writing as soon as practicable but no later than 30 days; excusable.	Within 12 months after accident or death; excusable.	By Claims Adjudicator	Fund pays award.	At any time.	By Board	<sup>38</sup>
New Brunswick	Workplace Health, Safety and Compensation	As soon as practicable.	Within 1 year after injury or 6 months after death; excusable.	By Claims Adjudicator	Fund pays award.	At any time.	Appeals Tribunal	
Newfoundland	Commission Workers' Compensation	As soon as practicable.	Within 6 months after injury or death.	By Case Manager	Fund pays award.	At any time.	Appeal of Commission's final decision goes to the Workers' Compensation Review Division, <sup>39</sup> the last level of review.	

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**Statement of Brad Smoot, Legislative Counsel**  
**The American Insurance Association**  
**House Business, Commerce and Labor Committee**  
**Regarding 1997 Senate Bill 346**  
**March 19, 1997**

The American Insurance Association (AIA) is a trade group of more than 270 property and casualty insurers whose members provide various lines of insurance including workers compensation, homeowners, auto and general liability in Kansas and across the nation. Our member companies directly employ more than 4,000 Kansans. We are pleased to have an opportunity to comment on 1997 Senate Bill 346.

SB 346 would make several amendments to our workers compensation laws recommended by the workers compensation advisory council. AIA supports the work of the advisory council and the amendments it has recommended. We do not, however, endorse the changes proposed in Section 5, which would alter the attorney's fees rules adopted as part of the 1993 workers compensation reform bill. Section 5 was not recommended by the advisory council. The '93 reforms were achieved through hundreds of hours of hearings and intense negotiations. The final bill passed with unanimous support in both houses of the Legislature. One of the principal objectives of the bill was the reduction of litigation and the inherent transaction costs associated therewith. The elimination of the second injury fund, the scheduling of shoulder injuries, creation of an ombudsman program and replacement of district courts by an appeals panel were all part of the effort to reduce a very litigious system. Changes in the attorneys fees law were also part of that legislative "mix."

Section 5 of SB 346 would change four aspects of current attorneys fees law. First, it would eliminate the three tiered system which reduces claimant's counsel fees from 25% to 15% after the first \$20,000 of an award or settlement. The bill would return to the pre-1993 rule of a flat 25% ceiling on fees. We believe the current law is preferable since it returns more to injured workers without reducing claimant's access to counsel.

Second, the bill would change the fees permitted when counsel is retained after an offer has been made to the claimant. Currently, attorneys are limited to 25% of amounts recovered in excess of the offer.

*Business, Commerce  
& Labor Committee  
3/24/97  
Attachment 2*

SB 346 would double that to 50%. Despite assertions that claimants cannot find counsel to represent them after an offer has been made, there is little evidence that this is a widespread or insurmountable problem. No data was reported by the proponents of this provision and the Director of Workers Compensation has received no complaints that a single claimant has been unable to obtain representation. The rare instance in which a claimant is turned down by an attorney does not suggest a denial of claimant's rights or remedies. Rather, it suggests that the offer was fair (close to the value of the case) or that claimant might be better served by seeking the assistance of the ombudsman and mediation services currently provided by the state at employer expense.

Third, the expansion of the opportunities for attorneys fees to situations where penalties are awarded on review and modification is also of some concern. Where substantial benefits are awarded on review and modification, we support the granting of claimant's attorneys fees. However, in the rare situation where no other benefits are awarded other than a nominal penalty, the situation is ripe for abuse.

Fourth, SB 346 would permit the director to award attorney's fees against respondent in review and modification cases where no additional compensation is granted. While we appreciate the obvious fairness of this provision and the effort to protect our interests, the provision is of little benefit. As written, the provision is not likely to be used, is completely discretionary with the Director and we think it doubtful that respondents could ever collect from the claimant. Proponents of Section 5 apparently believed this change would balance the three other modifications being made to increase attorneys fees. We do not view this as a fair trade among the competing interests in the workers compensation system.

In summary, those sections of the bill which reflect the workers compensation advisory committee's agreement (all but Section 5) should be passed by the Legislature. Changes in the attorneys fees rules are not warranted and inure only to the benefit of claimant's attorneys. Proponents of Section 5 have not demonstrated that a real problem exists in finding competent counsel or that this solution will indeed alleviate the perceived shortage of counsel. The workers compensation law is a complex relationship of competing interests and provisions, the balance of which should not be disturbed except for substantial and documented reasons. In other words, the problem to be "fixed" by Section 5 represents a very small tail wagging a very big dog. We urge the committee to delete Section 5 and advance the remainder of SB 346.

**JOHN M. RUSSELL**  
ATTORNEY AT LAW  
12TH & WASHINGTON  
P.O. BOX 582  
GREAT BEND, KANSAS 67530

March 20, 1997

Representative Jan Pauls  
300 SW 10th Ave., Room 272-W  
Kansas State Capitol  
Topeka, KS 66612-1504

Re: Senate Bill 346 - Claimant Attorney Fee Changes

Dear Representative Pauls:

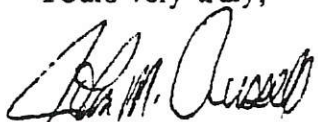
I've been contacted concerning presenting certain testimony to the committee regarding the claimant-attorney fee changes and Senate Bill 346. Because of some physical problems, I am not able to appear personally in Topeka to testify before the committee. However, I would like very much to include the letter that I have enclosed and ask that it be made part of the record before the committee.

As indicated in my letter, I spent a number of years both as an Administrative Law Judge and as a Special Administrative Law Judge and feel that the enclosed letter may be of some help to the committee.

If there is anything further that I can do, short of appearing in person, please feel free to contact me.

Your help in this matter would be deeply appreciated.

Yours very truly,

  
JOHN M. RUSSELL

JMR/bis

enclosure

*Business, Commerce  
& Labor Committee  
3/24/97  
Attachment 3*



**JOHN M. RUSSELL**  
ATTORNEY AT LAW  
12TH & WASHINGTON  
P.O. BOX 582  
GREAT BEND, KANSAS 67530

March 19, 1997

To Whom it May Concern:


The undersigned, John M. Russell, is a practicing attorney, and is also appointed as a Special Administrative Law Judge by the Division of Workers Compensation for the State of Kansas. In addition, I served as the Administrative Law Judge for the western portion of Kansas from 1976 through 1983.

As part of my duties as a Special Administrative Law Judge, or ALJ, I approve settlements in workers compensation cases. Part of that responsibility includes reviewing the Statement regarding Attorney Fees, which is required to be filed by the Division of Workers Compensation, and by K.S.A. 44-536(b) as well as the Attorney's Contract. I review the Statement Regarding Attorney Fees in each hearing, to see if it meets the 8 criteria set out by K.S.A. 44-536(b). I also inquire of each claimant at each settlement hearing whether they feel the attorney contract is fair and if they understand the fee arrangement. If the claimant does not feel the settlement is fair or the contract fair, the settlement is not approved.

While serving as ALJ, I was known to refuse to approve settlements as well as attorney fees, on occasion, if I felt they were not fair. In the case of Lackey vs. D&M Trucking, 9 KanApp2d 679, 687 P2d 23 (1984), I refused an attorneys request for fees in a death case. The attorney was not only the attorney for the parties, he had been appointed Conservator for the children. On appeal that was upheld. While the case says the attorney did not request fees, he did and no fees were allowed by me.

In each case I hear, the allowance of fees is scrutinized. A change to return to the previous allowance of fees would not lessen that scrutiny.

Respectfully,

  
John M. Russell



## **Questions and Answers: SB 346 (Attorney Fees for Injured Workers)**

**Q: What prompted the introduction of a bill to make changes in the statutory regulation of attorney fees paid by injured workers?**

A: Former Senator Harris introduced the legislation to address a very serious unintended consequence of the 1993 work comp changes: injured workers are going unrepresented in an extremely complex system.

**Q: Are the changes in Senate Bill 346 consistent with a belief in the free enterprise system?**

A: Yes, the bill moves the workers compensation system one step closer to an ideal free enterprise system in which no government regulation or intervention is proposed on private contracts.

**Q: Specifically, what does SB 346 change regarding attorney fees?**

A: First, Senate Bill 346 restores a straight 25% cap on the amount of fees injured workers can pay the attorney who represent injured workers. This cap replaces the percentage limits of 25% of the first \$10,000 of the disability award, 20% of the second \$10,000 of the disability award, and 15% of the remaining amount of the disability award which were imposed in 191993. The straight 25% cap was state law since WWII until the 1993 change.

Second, in the situation that involves a written offer to an injured worker who then hires an attorney, SB 346 allows injured workers to pay their attorneys no more than 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. This change is particularly important to injured workers who are not given fair settlement offers from the insurance company.

Third, SB 346 eliminates the mandatory obligation of insurance companies to pay the claimants attorney fees when the claimant loses a review and modification hearing. This is a change from current law which requires the respondent (insurance company) to pay the claimants attorney fee in all cases. This change benefits the insurance side of a workers compensation case.

*Business, Commerce  
& Labor Committee  
3/24/97*

For More Information Contact: Kansas Trial Lawyers Association  
700 SW Jackson #706 Topeka, Kansas 66603 (913) 232-7756

*Attachment 4*

**Q: Are attorney fees paid by injured workers a cost driver in the Workers Compensation System?**

**A:** No. Claimants are entitled to a disability benefit and a medical benefit under the Workers Compensation Act. They sign a contract with their attorney to pay part of their weekly disability payments to the attorney as the fee. Typically, one weekly payment out of five might go to the attorney as payment for their services under the contract agreement signed.

**Q: Does regulation of the attorney fees paid by injured workers guarantee a cost savings in the Workers Compensation system?**

**A:** No. Injured workers should get fair disability and medical compensation for their injuries. The only sure-fire way to save costs on their side of the system is to either prevent injuries in the first place or to make sure injured workers don't get full disability and medical benefits they are due under the law. The later strategy would seriously undermine the entire philosophical basis for the Workers Compensation system.

**Q: Are attorney fees paid by insurance companies a cost-driver in the Workers Compensation System?**

**A:** Yes, the attorney fees that insurance companies pay for their representation are built into workers compensation premiums. Holding down these costs through statutory regulation would be a guaranteed cost saver to the system.

**Q: Does the Workers Compensation System as a whole need repair?**

**A:** No. SB 346 addresses the issue of injured workers who are unable to find representation due to the statutory restrictions placed on the fee contracts they can make with their attorney. This was an unintended consequence of the 1993 changes and must be rectified.

**Q: Should the state regulate private contracts between injured workers and their lawyers, but not regulate contracts between insurance companies and their lawyers in the same cases?**

**A:** The state should not regulate either side of the workers compensation system.





**Kathleen Sebelius**  
Commissioner of Insurance  
**Kansas Insurance Department**  
March 21, 1997

Representative Al Lane  
Chairman  
House Committee on Business,  
Commerce, and Labor  
Room 115-S  
State Capitol  
Topeka, Kansas 66612

Re: Senate Bill 346

Dear Chairman Lane:

The Kansas Department of Insurance would like to voice its support for the amendments to Senate Bill 346. These changes were requested by the Department on behalf of the Kansas Workers' Compensation Fund. They were approved by the Workers' Compensation Advisory Council.

The changes to K.S.A. 44-534 would allow the Fund to bring a party into a case. This is important because the Fund still has liability for insolvent/uninsured employer cases. Most of these cases involve situations with construction firms where liability for the claim may belong to several parties. The Fund needs to be able to bring the responsible parties into the case and this change would allow that to happen.

The changes to K.S.A. 44-567 gives the Fund ten days to prepare for a hearing. The statute currently has no advance notice requirement.

The changes to K.S.A. 44-551 merely place a one year time limit on the Respondent from date of the final award to request reimbursement. This will allow the Fund to better estimate its future liability from year to year.

Finally, the proposed changes to K.S.A. 44-566a will allow the Fund to be dismissed in old cases that have seen no prosecution by the Respondent. The changes from last year were retroactive and therefore unconstitutional.

Thank you for your time and consideration of these important issues. If the Department can be of any assistance, please feel free to contact me.

Sincerely,

Paula S. Greathouse  
Staff Attorney  
Workers' Compensation Fund

*Business, Commerce  
& Labor Committee  
3/24/97*

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*Attachment 5*