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# MEMORANDUM

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**DATE:** August 18, 1998  
**TO:** Kathleen G. Sebelius, Commissioner of Insurance  
Margaret Gatewood, General Counsel  
**FROM:** Paula Greathouse, Staff Attorney  
**RE:** Workers' Compensation Fund  
Spreadsheet Analysis  
Fiscal Years 1997 & 1998

The annual spreadsheet and analysis were recently completed by Rick Bassett and Charlotte Humberg, our summer intern. The updates were done for fiscal years 1997 and 1998. Of special interest is the total attorney fees paid category since it has continued to decrease dramatically.

## Total Attorney Fees Paid by Fiscal Year

1994	\$4,343,495	Percentage of Decrease
1995	\$4,241,869	2.34%
1996	\$3,053,561	28.01%
1997	\$1,825,810	40.21%
1998	\$1,016,401	44.33%

A portion of this reduction can be attributed to the lessening caseload since the Fund was sunsetted by the Legislature in 1994. The lion's share of the reduction can be attributed to an increase in oversight and the implementation of more intense guidelines. The attorney fees have decreased twice to four times faster than the caseload.

## Caseload Reduction by Fiscal Year

Case reduction	Percentage of Decrease	Total Number of Cases
1994 -95	2.32%	1994 9527
1995-96	16.36%	1995 9306
1996-97	15.16%	1996 7784

*House Business, Commerce  
& Labor Committee  
1-13-99  
Attachment 1*

1997-98	11.08%	1997	6604
		1998	5872

Also of interest is the comparison of total compensation paid to claimants, and total attorneys fees paid to our attorneys. The cost of litigating a claim has gone down dramatically in comparison to the amount of Compensation that the Fund is paying for open cases. As an example the cost was \$455.91 per open case in 1994 and for 1998 it was \$173.09. This is a significant improvement indicating that we are getting a better result.

Percentage of Total Fees Paid as compared to total Compensation paid

1994	15.72%
1995	13.88%
1996	12.56%
1997	10.25%
1998	8.52%

In addition, the amount of compensation paid has also reduced at a much greater rate than the decrease in case numbers. This means that we seem to be settling or litigating the cases with better results.

Total Compensation Paid	% of Reduction
1994 \$27,626,304	
1995 \$30,556,880	+10.61*
1996 \$24,310,723	20.44
1997 \$17,806,845	26.75
1998 \$11,923,612	33.04

\* This is the year KGS took office and caught up six months of payments.

After reviewing the spreadsheets, the average fees per closed case seemed to conform to our expectations. All instances of fees over \$2000 can be explained by previous case reassignment from high billing firms or the firms in question are not currently receiving new cases.

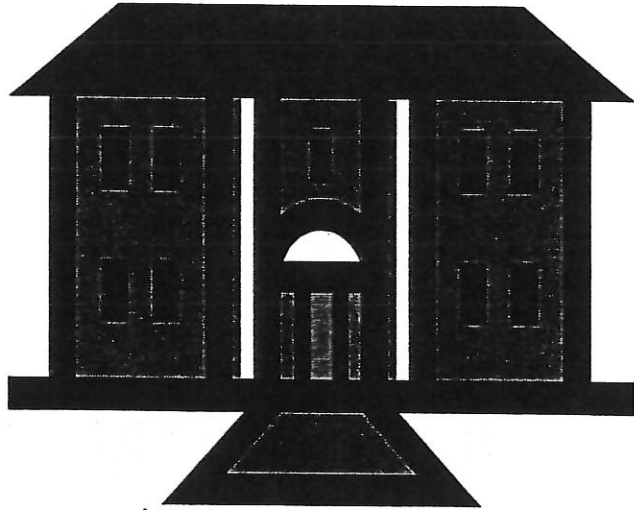
I would welcome any input or questions that you might have concerning these figures.

# Kansas Insurance Department

*One hundred twenty-eighth*

## *Annual Report*

*For the year ending  
December 31, 1997*



Katheen Sebelius  
Insurance Commissioner



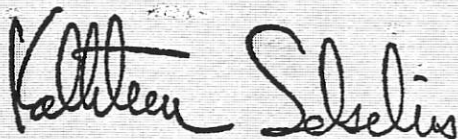
*The Honorable Bill Graves  
Governor of Kansas  
Statehouse  
Topeka, KS 66612*

*Dear Governor Graves:*

*I am very proud to present to you  
the One Hundred and Twenty-eighth  
Annual Report of the Kansas  
Insurance Department.*

*This report is established by the  
provisions of K.S.A. 40-108. The  
report summarizes the activities of the  
Department and of the companies  
operating in Kansas through the  
period ending December 31, 1997.*

*Sincerely yours,*



**KATHLEEN SEBELIUS**  
*Insurance Commissioner*

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The Kansas Insurance Department is accredited by the National Association of Insurance Commissioners (NAIC). To achieve this accreditation, the Department must meet stringent national standards which demonstrate that it effectively monitors insurance company solvency.

The Kansas Insurance Department views accreditation by the NAIC as a commitment to Kansas consumers to institute and maintain the highest standards in financial regulation. The accreditation review is repeated every five years to confirm that the Kansas Insurance Department continues to meet all requirements. The Department was last accredited in December 1996.

## Message from Commissioner Kathleen Sebelius

In September, 1997 I delivered the state of the insurance industry address to a special task force created by the Kansas legislature to examine the business in Kansas. The improvements reported to the task force included:

- ◆ **Premium tax reform:** The new law equalizes the premium tax paid by insurance companies and provides tax incentives to create new jobs in Kansas.
- ◆ **Eliminating Regulatory Bureaucracy:** We have improved the flow of business through the department by twenty percent, eliminating hundreds of outdated statutes, regulations, and advisory bulletins.
- ◆ **Insurance Rating Changes:** Property and casualty companies may now use a "file and use" rating method which gives companies more flexibility to react to changing market conditions in pricing insurance.
- ◆ **Streamline Department Operations:** We have reduced the time it takes to process license applications, forms and rate filings.
- ◆ **Improved Consumer relations:** The department's primary goal is to protect Kansas insurance consumer. The Consumer Assistance Division fields more than 72,000 calls annually, and publishes free shopper's guides for pricing information on insurance.

### Consumer Education

This year we added a shoppers guide for consumers on long-term care insurance. This complements the other guides which we introduced in the past two years, Medicare supplement, auto, and homeowners.

### Legislative Highlights

Kansas health insurance laws were amended to comply with federal legislation (the Health Insurance Portability and Affordability Act of 1996) which protects individuals when they change from one insurance policy to another. Important "Patient Protection" features for consumers enrolled in managed care plans were also implemented, including prohibition of gag clauses in provider

contracts; and use of prudent person standard when seeking emergency room care.

### Workers Compensation

Rates for worker compensation were once again reduced. This was good news for the 50,000 Kansas business owners who purchase this insurance annually.

For the first time, the administrative contract for the Workers Compensation Insurance Plan was sent out for competitive bids. This plan is primarily for employers who are unable to purchase the coverage through the voluntary market. Bidding the program helps ensure that any administrator continues to offer the best services at a fair price. The existing administrator, National Council on Compensation Insurance was awarded the contact after review of all bids.

### Family-Friendly Work Place

Another goal as Insurance Commissioner has been to develop employment practices which give staff members the flexibility to balance work and family. A team of employees met and researched various topics. I'm pleased to report that their most creative program was the "Infants at Work" program. This program allows employees to bring their infant to work for the first 180 days after the baby's birth or adoption. Our pilot program this year was very successful. I am pleased our Department is leading the way in developing programs which allow employees to be productive and good parents at the same time. It has proved to be a win-win situation for all involved.

### Unfinished Business

I will continue to ask the legislature to prohibit political contributions from the insurance industry to the Commissioner. I believe the Commissioner should work for the Kansas consumer, not the industry.

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## Firefighters Relief Fund Tax

The Firefighters Relief Fund is used to assist firefighters and their families when accident or death occur in the line of duty. This fund is generated by a two percent tax imposed on insurance companies writing fire insurance coverage within the state of Kansas. The tax was collected, placed in a special fund and distributed to 563 cities, counties, townships, and fire districts.

The 1997 distribution of the Fund was made as follows:

Insurance Commissioner Administrative Expenses (approved by legislature FY'97)	\$ 67,341
Kansas State Firefighters Associations, Inc. (education and study of fire prevention and extinguishment)	\$ 151,658
Kansas State Firefighters Associations, Inc. (death benefit - to restore balance to \$100,000) Each Association	\$ 86,250
(based on amount of fire insurance written in area served by that assoc.)	\$4,748,894

## Kansas FAIR Plan

The purpose of the Kansas FAIR Plan (Fair Access to Insurance Requirements) is to provide fire, extended coverage, vandalism and malicious mischief insurance for qualified applicants unable to obtain this kind of insurance on the private market. There is a nine member governing committee which oversees the plan.

In 1997 there were 4,491 policies in force with a total premium written of \$2,180,885. The total amount of insurance in force for 1997 was \$117,875,000. There were 407 losses reported in 1997 and \$793,865 losses were paid.

## Kansas Automobile Insurance Plan:

The Kansas Automobile Insurance Plan (KAIP) provides coverage for drivers who are unable to purchase automobile insurance on the private market. In 1996, the KAIP collected premiums totaling \$6,369,260 and paid out \$4,731,005 in losses.

### Group Funded Pools

Employers, including municipalities, may enter into agreements to self-insure certain insurance exposures as a group under the authority of two separate Kansas statutes.

Group Funded Workers' Compensation Pools are authorized under K.S.A. 44-581. This law permits five or more employers in the same or similar business that belong to the same bona fide trade or professional association which has been in existence for at least five years to enter into agreement to pool their liability for Kansas workers' compensation benefits and employers' liability. These pools are required to have a combined members' net worth of at least \$1,000,000; a combined annual workers compensation premium of \$250,000; and specific and aggregate excess workers' compensation insurance. Sixteen of these pools were licensed in 1997.

Five or more employers engaged in *dissimilar* types of business, under K.S.A. 44-581(b), may form a pool. These pools are required to have a combined members net worth of at least \$1,250,000; a combined annual workers compensation premium of \$500,000; and specific and aggregate excess workers' compensation insurance. As of December 31, 1997, certificates of authority had been issued to four pools.

The Kansas Municipal Group-Funded Pool Act was established under K.S.A. 12-2616. This law allows five or more municipalities to enter into agreement to pool their liabilities for all fire and casualty lines including workers' compensation and employers' liability. Property, casualty and workers compensation pools must meet certain requirements, but municipal pools must have \$250,000 premium per line of insurance and may substitute adequate surplus funds in place of excess insurance. Municipalities may also pool their liabilities for accident, sickness and life insurance lines. Accident and sickness pools must have at least \$1,000,000 in gross annual premium and may substitute adequate reserves with excess loss insurance. The oversight of municipal group-funded pools is divided between the Fire and Casualty Division and Accident and Health Division. There were eleven municipal pools who had certificates of authority under K.S.A. 12-2616 as of December 31, 1997. No currently funded municipal pools are involved in the transaction of life insurance.

### Workers' Compensation Assigned Risk Plan

The Kansas Workers' Compensation Insurance Plan operates under authority of K.S.A. 40-2109. The Plan provides workers' compensation and employers' liability insurance for qualified applicants unable to procure coverage in the normal market. Information from the National Council on Compensation Insurance who administers the Workers' Compensation Assigned Risk Plan shows the following statistics for policy year 1997.

Number of risks insured	13,072
New plan applications received	3,449
Earned premium*	\$30,149,000
Incurred losses*	\$21,707,000
Loss ratio*	72%

\*Evaluated as of December 31, 1997.

### Workers' Compensation Fund

The Legal Division of the Insurance Department administers the Workers' Compensation Fund in conjunction with the Kansas Workers' Compensation Act, K.S.A. 44-501, et seq. Representatives of the Legal Division are responsible for controlling the receipts and disbursements from the Fund. Attorneys throughout Kansas are appointed by the Department to represent and conserve the fund. A detailed accounting of the fund is filed annually with the Governor's office. Anyone wanting a copy of the most recent report may contact the Legal Division of the Kansas Insurance Department or the Office of the Governor of the State of Kansas.



**Kansas Insurance Department**  
**Fiscal year 1997 Deposits**  
**July 1, 1996 to June 30, 1997**

**TO STATE GENERAL FUND:****TAXES:**

Privilege Tax	1,001,197.56
Premium Tax—Foreign	69,676,773.44
Fire Marshal Tax	200,609.00
Premium Tax—Domestic	8,815,306.36
Retaliatory Tax	1,640,879.91
Fines and Penalties	766,500.10
Reimburse Imprest Fund Advance	<u>2,000.00</u>
<b>Total Taxes</b>	<u><b>82,103,266.37</b></u>

**TOTAL TAXES TO THE STATE GENERAL FUND** 82,103,266.37

**TO SPECIAL FUNDS:****INSURANCE COMPANIES EXAMINATION FUND:**

Salary Reimbursement	283,710.53
Expense Reimbursement	166,399.99
Annual Leave Assessment	20,555.83
Data Processing Assessment	8,147.90
Sick Leave Assessment	15,021.05
Refunds	<u>370.00</u>

**Total Insurance Company Examination Fund** 494,205.30

**INSURANCE COMPANY ANNUAL STATEMENT EXAM:** 494,205.30

Premium Tax - Foreign	<u>78,370.00</u>
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**Total Insurance Company Annual Statement Fund** 78,370.00

**INSURANCE COMPANY EXAMINER'S TRAINING FUND:**

Premium Tax—Foreign	<u>84,000.00</u>
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**Total Insurance Company Examiner's Training Fund** 84,000.00

HEALTH TASK FORCE GRANT FUND (11,254.62)

INSURANCE DEPARTMENT SERVICE REGULATION FUND:

Premium Tax—Domestic	1,094,569.75
MGA Notification Fee	2,200.00
Risk Purchasing Group—Notification Fee	6,750.00
Risk Retention Group—Notification Fee	750.00
Viatical Settlements	3,000.00
Annual Statement Fee	158,825.61
Certificate of Authority	23,791.00
Charter Fees	23,510.00
Retaliatory Fees	50,962.33
Cert. Fees/Util. Review Orgs.	2,650.00
Permit to Sell Stock	0.00
Form "A" Filing Fee	4,000.00
Registration Fees—Prepaid Services	1,050.00
Filing Fees—Nonadmitted Cos.	15,400.00
Certified Copies	111,499.00
Court Fees	14,979.57
Other Service Charges	70,100.00
Agent License Fees	5,300,516.25
Other Publications	164.00
Fee Fund Assessment	1,336,472.02
Recovery of Expenditures	56,915.24
Photocopies	18,428.85
Prior Fiscal Year—Recovery of Expenditures	27,830.23
Operating Transfers Out	
Other Miscellaneous Revenue	<u>1,467.50</u>

Total Insurance Department Service  
Regulation Fund 8,325,831.35

SENIOR HEALTH INSURANCE COUNSELING FOR KANSANS 120,000.00

INSURANCE EDUCATION AND TRAINING FUND 2,050.00

SALE OF COMMODITIES AND USABLE EQUIPMENT: TOTAL 1,582.50

WORKERS COMPENSATION FUND:

Assessments	26,794,951.56
Reimbursements	<u>200,045.43</u>

Total Workers Compensation Fund 26,994,996.99

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MUNICIPAL GROUP-FUNDED POOLS: TOTAL		33,653.52
GROUP-FUNDED WORKERS COMPENSATION FUND: TOTAL		60,658.49
FIREFIGHTERS RELIEF TAX: TOTAL		5,056,610.51
INSURANCE BUILDING PRINCIPAL AND INTEREST FUND:		
Fund Operating Transfers	178,540.58	
Principal and Interest	<u>721.26</u>	
Total Insurance Building Principal and Interest Fund		179,261.84
INSURANCE BUILDING RESERVE FUND:		
Interest on State Agency Investment	13,308.76	
Operating Transfers out	(12,119.43)	
Bond Reserves	<u>(1,189.33)</u>	
Total Insurance Building Reserve Fund		-
INSURANCE DEPARTMENT REHAB AND REPAIR FUND		86,135.00
SUSPENSE (NET RECEIPTS): TOTAL		429,730.77
TAX AND FEE REVOLVING FUND (GROSS RECEIPTS) TOTAL		12,798,464.04
COMMISSIONER'S TRAVEL REIMBURSEMENT		<u>8,778.00</u>
TOTAL TAXES TO SPECIAL FUNDS		54,743,073.69
TAXES REMITTED TO OTHER AGENCIES:		
* FIRE MARSHAL: TOTAL		2,880,879.09
INSURANCE DEPARTMENT NET DEPOSITS FISCAL YEAR 1996		<u><u>139,727,219.15</u></u>

\*Collected for State Fire Marshall in accordance with 1992 H.B. 2611.

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Summary of Companies Doing Business in Kansas  
(Year Ending December 31, 1997)

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Life Insurance Companies of Kansas				Business Written in Kansas				
			Number of Companies	Life Premiums and Annuity Considerations Received	Life Claims & Benefits	A & H Premiums Received	A H Losses Paid	
Domestic (Companies headquartered in Kansas)				14	\$ 159,193,448	\$ 92,286,353	\$ 608,566,121	\$ 530,170,086
Foreign (Any company not headquartered in Kansas)				648	\$ 2,309,910,656	\$ 1,546,766,821	\$ 741,819,319	\$ 498,499,953
Fraternal Societies				29	\$ 52,013,070	\$ 44,219,310	\$ 10,091,194	\$ 6,215,812
Totals				691	\$ 2,521,117,174	\$ 1,683,272,484	\$ 1,360,476,634	\$ 1,034,885,851
Health Maintenance Organizations				Number operating in Kansas	Kansas Net Earned Subscriptions	Costs of Hospital & Medical Benefits		
				20	\$ 459,413	\$ 394,492		
Fire and Casualty Companies				Number of Companies	Direct Premium Written	Direct Losses Paid		
Domestic				26	\$ 499,908,858	\$ 284,366,514		
Foreign				742	\$ 2,162,294,838	\$ 1,187,993,538		
Totals				768	\$ 2,662,203,696	\$ 1,472,360,052		

Please Note: This information was provided by the National Association of Insurance Commissioners. The information is unaudited and is not a complete financial analysis nor it is it an expression of opinion on any insurer.

**Publications Available  
Free to Consumers**

- Auto Insurance, A Necessity
- Auto Shoppers Guide, A Rate Comparison
- Health Insurance in Kansas
- Homeowners and Renters Insurance Shoppers Guide
- Kansas Homeowners and Renters Insurance
- Kansas Medicare Supplement Insurance Shoppers Guide
- Kansas Life Insurance Basics
- Kansas Long-term Care Insurance and Shoppers Guide
- Kansas Complaint Ratio Report
- 1998 HMO Report

Order your free copy:  
Toll-free hotline: 1-800-432-2484  
email: [ksebelius@ins.wpo.state.ks.us](mailto:ksebelius@ins.wpo.state.ks.us)  
homepage: <http://www.ink.org/public/kid>

**Kansas Insurance  
Department**

**Kathleen Sebelius**  
**Commissioner of Insurance**

**Consumer Assistance Hotline**

1-800-432-2484  
(Main office)

**Wichita Hotline**

1-800-860-5260

**E-mail:**

[ksebelius@ins.wpo.state.ks.us](mailto:ksebelius@ins.wpo.state.ks.us)

**Homepage:** [http://www.ink.org/  
public/kid](http://www.ink.org/public/kid)

**Main Office**

Kansas Insurance Dept.  
420 SW 9th St.  
Topeka, KS 66612-1678  
Phone: 785-296-3071  
Fax: 785-296-2283

**Wichita Office**

130 S. Market St.  
Suite 4030, Box 3850  
Wichita, KS 67201-3850  
Phone: 316-337-6010  
Fax: 316-337-6018

Office hours are 8 a.m. to 5 p.m.,  
Monday through Friday.

# Consumer Information

The Kansas Insurance Department

**Kansas Auto Insurance and Shoppers Guide** explains basic auto insurance coverages required in Kansas and lists the costs for the top 30 companies selling auto coverage in Kansas.

**Health Insurance In Kansas** helps consumers understand their health insurance coverage and how to shop for coverage. It also tells how HMOs work and lists the HMOs operating in Kansas.

**Kansas Medicare Supplement Insurance Shopper's Guide** Medicare is a valuable resource that helps pay for many of today's advanced medical services. In this booklet, we help you identify the "gaps" in Medicare and compare rates for companies marketing Medicare supplement insurance and health maintenance organization.



**Kansas Homeowners Insurance and Shoppers Guide** provides homeowner, renters, and mobile homeowners with the information they need to insure their property. The shoppers guide compares rates for the 30 companies writing 75% of policies in Kansas.

**Life Insurance Basics** describes the basic types of life insurance plans, explains what happens when applying for coverage, and gives easy to understand definitions for policy terms.



**Kansas Long-term Care Insurance** guides consumers through the decision making process of buying a long-term care policy and compares costs for various plans sold in Kansas.

### Other Publications Available

Kansas Compliant Ratio Report  
Kassebaum/Kennedy, A Summary  
for Consumers and Business Owners

For a free copy of the guides, contact  
**Kathleen Sebelius, Commissioner of Insurance**  
Kansas Insurance Department  
Consumer Hotline 1-800-432-2484

420 SW 9th St., Topeka, KS 66612-1678  
(785) 296-3071 Fax (785) 296-2283 E-mail: [ksebelius@ins.wpo.state.ks.us](mailto:ksebelius@ins.wpo.state.ks.us)  
Order on Homepage at <http://www.ink.org/public/kid>

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KANSAS  
INSURANCE  
DEPARTMENT

LEGISLATIVE  
CONTACTS

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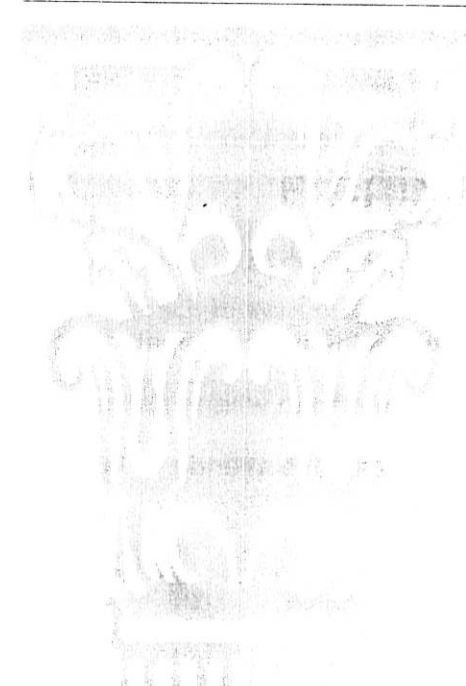
(785) 296-7803  
(785) 291-7805 fax

 **HOMEPAGE**

[Http://www.ink.org/public/kid](http://www.ink.org/public/kid)

Kansas Insurance Department  
420 SW 9th  
Topeka, Kansas 66612

Kathleen Sebelius  
Commissioner



1999  
LEGISLATIVE  
PROPOSALS

*KANSAS*  
*INSURANCE*  
*COMMISSIONER*  
**KATHLEEN**  
**SEBELIUS**

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# Making a Difference

The Kansas Insurance Department is very different than when I presented my first legislative agenda in January 1995.

That's good news for consumers who purchased over \$7.0 billion worth of insurance products



in 1998, and it's good news for the thousands of companies, agents and insurance employees who work in Kansas.

Today, we have solvent, competitive markets, which help to ensure consumer choices.

1999

## LEGISLATIVE PROPOSALS

### EXTERNAL GRIEVANCE

Establishes an objective, independent review organization to determine outcomes in difficult consumer cases.

### PRIVACY OF MEDICAL

**RECORDS** to set standards to protect health information from unauthorized collection, use and disclosure. Requiring carriers to establish procedures for the treatment of all health information. Based on the NAIC Health Information Privacy Model Act.

### VIATICAL SETTLEMENTS

**ACT** sets definitions, license requirements, approval of contracts, reporting requirements, and general rules.

**FRAUD** requires mandatory fraud reporting by an insurance company, gives immunity from civil liability for insurance companies and private citizens, extends the statute of limitations to five years.

**FLOOD INSURANCE** one of the tragedies of last year's floods in Kansas was the repeated story from consumers that too few understand that their homeowners will not cover losses due to flood or surface water. We want to make sure that doesn't happen again. We want agents and brokers to make sure their clients understand the rules about homeowners' coverage, the costs of flood insurance and the risks of refusing the coverage.

### AUTO INSURANCE

**IMPROVEMENT ACT** increases penalty for getting a driver's license reinstated after failure to pay insurance; increase penalties for intentional failure to insure from a class B to a class A misdemeanor.

**ETHICS REFORM** prohibits contributions for the office of insurance commissioner from regulated entities.

## *DEREGULATION EFFORTS*

**AGENTS LICENSING** — Make agent licensing fully reciprocal, streamlines the process companies follow in paying agent certification fees, expands methods for continuing education compliance and requires a limited agent's license for selling auto rental insurance.

**RATE FILINGS** — The second phase of file and use. The bill amends the "prior approval" law for personal lines and small business owners insurance. It eliminates the waiting period for commercial filings. The bill adds exclusion language for policy or contract forms for large risk and sets out that criteria.

Kathleen G. Sebelius  
Commissioner of Insurance

**The Kansas Workers' Compensation Fund**  
**K.S.A. 44-566(a)**

Year End Report  
1998



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

Year End Report  
1998

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## I. The Fourth 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. The Kansas Workers' Compensation Fund, which administered approximately \$21.3 million in 1998, had a working staff of one attorney, one half-time attorney, one paralegal, one secretary, two half-time secretaries, three accountants, and two half-time law clerks.

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 stopgap 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, former 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 of the Fund's working system on the AS400 has been completed. The rewrite allows the Fund to access valuable information not previously available. It 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 in June 1996. 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. Addressing 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".

A copy of the Stuart Maue Mitchell and James Executive Report is included as exhibit 1. 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. Because there was only a two and a half page general guideline in place in the prior administration 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.

## **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).

## **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.

The statutes and case law broadly construe handicap. 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 449 open insolvent employer cases. There have been 544 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. 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 ten 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 assessments against insurance carriers and self-insurers pursuant to



K.S.A. 44-566a(b). Prior to April 1998, the Fund received payments from employers where an employee was killed in an otherwise compensable accident, but in which there were no eligible dependents pursuant to K.S.A. 44-570 (non-dependent death).

Receipt Analysis

FY1998

Assessment Receipts	\$21,386,891.41
Gen. Fund Entitlement	0.00
Non-Dependent Death Receipts	\$166,500.00
Misc. Reimbursements	\$197,222.48
TOTAL RECEIPTS	\$21,750,613.89
Previous Year Carryover	\$25,391,737.96
Canceled Checks	163,709.24
TOTAL FUNDS AVAILABLE	\$47,306,061.09

FY1997

Assessment Receipts	\$26,640,951.56
Gen. Fund Entitlement	0.00
Non-Dependent Death Receipts	\$154,000.00
Misc. Reimbursements	\$200,045.43
TOTAL RECEIPTS	\$29,994,996.99
Previous Year Carryover	\$26,980,038.72
Canceled Checks	224,121.52
TOTAL FUNDS AVAILABLE	\$54,199,187.23

FY1996

Assessment Receipts	\$33,010,078.80
Gen. Fund Entitlement	0.00
Non-Dependent Death Receipts	\$203,500.00
Misc. Reimbursements	\$170,378.94
TOTAL RECEIPTS	\$33,383,957.74
Previous Year Carryover	\$31,469,560.82
Canceled Checks	246,193.51
TOTAL FUNDS AVAILABLE	\$65,099,712.27

FY1995

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

FY1994

Assessment Receipts	\$63,951,643.95
Gen. Fund Entitlement	0.00

Disbursement of Expenditures

FY1998

Administrative Costs	.81%
Compensation Costs	63.15%
Vocational Rehabilitation	.50%
Medical Costs	28.12%
Other Operating Expenses	2.04%
Attorney Fee Expenses	5.38%
	100%
Outside Counsel	\$1,015,579.60

FY1997

Administrative Costs	.89%
Compensation Costs	62.28%
Vocational Rehabilitation	.80%
Medical Costs	28.02%
Other Operating Expenses	1.62%
Attorney Fee Expenses	6.39%
	100%
Outside Counsel	\$1,825,810.17

FY1996

Administrative Costs	.88%
Compensation Costs	64.20%
Vocational Rehabilitation	.90%
Medical Costs	24.96%
Other Operating Expenses	1.00%
Attorney Fee Expenses	8.06%
	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	0.54%
	100.00%
Outside Counsel	\$4,241,869.88

FY1994

Administrative Costs	11.01%
Compensation Costs	63.58%

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

#### FY1993

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

#### FY1992

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

#### FY1991

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

#### FY1990

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

Vocational Rehabilitation	1.28%
Medical Costs	23.51%
Other Operating Expenses	0.62%
	<u>100.00%</u>

Outside Counsel \$4,343,495.23

#### FY1993

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

Outside Counsel \$3,837,959.67

#### FY1992

Administrative Costs	10.96%
Compensation Costs	68.36%
Medical Costs	19.98%
Other Operating Expenses	0.70%
Refunds	0.00%
	<u>100.00%</u>

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	0.00%
	<u>100.00%</u>

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	0.04%
	<u>100.00%</u>

Outside Counsel \$2,402,730.45

Included in Administrative Costs are attorney's 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***

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

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 that 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 1/15/98, the Kansas Workers' Compensation Fund has virtually eliminated all July 1, 1994 cases that had been previously open. This is based on the impleadings that have included a date of accident.

The Workers' Compensation Fund's position has always been that the clear intent of the legislature was to limit second injury 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, former 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.

## **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.



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
<b>Total Fund unpaid liability</b>	<b>\$ 289,899</b>

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.

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.

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**

CASUALTY ACTUARIES INC.

	(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>				Lower Bound	Upper Bound
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

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

1-33

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

CASUALTY ACTUARIES INC.

1-33

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.)

TFD 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:  
\_\_\_\_\_  
\_\_\_\_\_

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 Actuar. Int.

December 29, 1995

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

Re: Kansas State Fund  
Cash Flow Profile

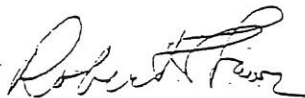
Dear Ms. Greathouse,

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

1-38

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

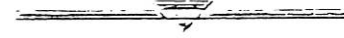
Paid During Fiscal Year Ending June 30:	"Formula" Cash Flow	Anticipated Reimburse- ments	Estimated to Replace Data Purges	Not Yet Implead Claims	Total Cash Flow
1995	35,833,843	(346,652)	10,304,242	0	45,791,433
1996	23,847,853	(252,585)	6,857,597	11,663,758	42,116,624
1997	16,501,193	(165,372)	4,745,020	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

# Evaluation of the Workers' Compensation Fund



Kansas State Department of Insurance

under

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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

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 Sourcing" 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."