

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

The meeting was called to order by Chairperson Al Lane at 9:05 a.m. on February 5, 1999 in Room 521-S of the Capitol.

All members were present except: Rep. Rick Rehorn - excused
Rep. John Toplikar - excused

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

Conferees appearing before the committee: Joe Lawhon, Legislative Post Audit
Roger Aeschliman, KDHR

Others attending: See attached list

Chairman Lane opened the meeting with announcements. There will be no more introductions of bills in committee. The only bills now being introduced from the Business, Commerce and Labor Committee will be those already requested and on which the Revisor is still working. Chairman Lane, Vice-Chair Beggs, and Ranking Minority Member Ruff have discussed **HB 2068** and recommend that the bill and testimony be forwarded to the Employment Security Advisory Council (ESAC) to be discussed and if changes are needed, have ESAC recommend them back to the committee.

Joe Lawhon, Senior Auditor, Legislative Post Audit, appeared before the committee to explain the Performance Audit Report, Reviewing the Implementation of the 1993 Changes to the Worker's Compensation Laws: A K-GOAL Audit of the Department of Human Resources, released this month. He discussed the findings, conclusions and the recommendations that arose from the audit. (See Attachment 1) Also available to answer questions about the audit were Laurel Murdie and Anthony Perez, who helped conduct the audit. Mr. Lawhon concluded his report by answering questions from the committee.

Copies of the report can also be obtained at the Legislative Division of Post Audit, Mercantile Bank Building, 800 SW Jackson, Suite 1200, Topeka, Kansas, or in the office of Rep. Lane, 115-S at the State Capitol.

Roger Aeschliman, Acting Secretary, Kansas Department of Human Resources (KDHR), represented the department in answering the findings of the audit. He recognizes that the Post Audit Division serves a valuable function to the Legislature. He also stated that the Kansas Department of Human Resources was bypassed for an audit this year because the checklist done by the division showed that they were okay.

Since the '93 Reform Act, 93% of the workers comp claims have been settled outside the department with the insurance companies. Only about 7,000 are adjudicated by KDHR, with approximately 2600 of these going into litigation. Does the Legislature want them to keep data on 93,000 cases at a price tag of \$2-\$10M to implement, and would this be useful information? The '93 reform has been a huge success in lowering the premiums of worker compensation insurance. Mr. Aeschliman continued by pointing out that the KDHR has a good workers compensation unit, but there are some areas they could work on to make it even better.

Phil Harness, Director, Division of Workers Compensation, KDHR, was also available to answer questions from the committee.

Chairman Lane adjourned the meeting at 10:30 a.m.

The next meeting is scheduled for February 9, 1999.



PERFORMANCE AUDIT REPORT

Reviewing the Implementation of the 1993
Changes to the Worker's Compensation Laws:
A K-GOAL Audit of the
Department of Human Resources

*House Business, Commerce & Labor Comm.
2-5-99
Attachment 1*

A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
February 1999

Legislative Post Audit Committee

Legislative Division of Post Audit

THE LEGISLATIVE POST Audit Committee and its audit agency, the Legislative Division of Post Audit, are the audit arm of Kansas government. The programs and activities of State government now cost about \$8 billion a year. As legislators and administrators try increasingly to allocate tax dollars effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by Legislative Post Audit helps provide that information.

We conduct our audit work in accordance with applicable government auditing standards set forth by the U.S. General Accounting Office. These standards pertain to the auditor's professional qualifications, the quality of the audit work, and the characteristics of professional and meaningful reports. The standards also have been endorsed by the American Institute of Certified Public Accountants and adopted by the Legislative Post Audit Committee.

The Legislative Post Audit Committee is a bipartisan committee comprising five senators and five representatives. Of the Senate members, three are appointed by the President of the Senate and two are appointed by the Senate Minority Leader. Of the Representatives, three are appointed by the Speaker of the House and two are appointed by the Minority Leader.

Audits are performed at the direction of the Legislative Post Audit Committee. Legislators or committees should make their requests for per-

formance audits through the Chairman or any other member of the Committee. Copies of all completed performance audits are available from the Division's office.

LEGISLATIVE POST AUDIT COMMITTEE

Representative Kenny Wilk, Chair
Representative Richard Aldritt
Representative John Ballou
Representative Lynn Jenkins
Representative Ed McKechnie

Senator Lana Oleen, Vice-Chair
Senator Anthony Hensley
Senator Pat Ranson
Senator Chris Steineger
Senator Ben Vidricksen

LEGISLATIVE DIVISION OF POST AUDIT

800 SW Jackson
Suite 1200
Topeka, Kansas 66612-2212
Telephone (785) 296-3792
FAX (785) 296-4482
E-mail: LPA@mail.ksleg.state.ks.us
Website: <http://skyways.lib.ks.us/ksleg/PAUD/homepage.html>
Barbara J. Hinton, Legislative Post Auditor

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LEGISLATURE OF KANSAS
LEGISLATIVE DIVISION OF POST AUDIT

MERCANTILE BANK TOWER
800 SOUTHWEST JACKSON STREET, SUITE 1200
TOPEKA, KANSAS 66612-2212
TELEPHONE (785) 296-3792
FAX (785) 296-4482
E-MAIL: LPA@postaudit.ksleg.state.ks.us

January 28, 1999

To: Members, Legislative Post Audit Committee

Representative Kenny A. Wilk
Representative Richard Alldritt
Representative Lynn Jenkins
Representative Ed McKechnie
Representative John Ballou

Senator Lana Oleen, Vice-Chair
Senator Anthony Hensley
Senator Pat Ranson
Senator Chris Steineger
Senator Ben Vidricksen

This report contains the findings, conclusions, and recommendations from our completed performance audit, *Reviewing the Implementation of the 1993 Changes to the Workers' Compensation Laws*.

This report includes several recommendations for the Department of Human Resources, the House Business, Commerce, and Labor Committee, and the Senate Commerce Committee. We would be happy to discuss these recommendations or any other items in the report with any legislative committees, individual legislators, or other State officials.

Barbara J. Hinton
Legislative Post Auditor

EXECUTIVE SUMMARY
LEGISLATIVE DIVISION OF POST AUDIT

Question 1: Has the Department Improved Its Workers' Compensation Information System So That It Can Provide Accurate and Meaningful Information to the Legislature and Others for Policy Decisions?

The Division doesn't gather or report cost-related information for workers' compensation cases, which severely limits its ability to provide meaningful information. page 5
Workers' compensation officials need basic data about accident claims, workers' injuries, medical charges, and wage benefits so that they and other policymakers can make good management and policy decisions. Although the Division of Workers' Compensation collects basic identification and accident data for each injury, it doesn't obtain any cost data. As a result, legislators and others can't know such things as how much an average claim costs, what parties are paying in legal fees, and which injuries and health-care-providers are most costly. Information we obtained shows that at least 35 states collect some form of cost data through a process called "subsequent reporting."

Even if the Division gathered cost-related data, it wouldn't be able to analyze and report on it meaningfully, given its current computer limitations. page 8
The Division isn't equipped to handle the additional volume of information that subsequent reporting would entail. Two changes need to occur for the Division to be capable of receiving and processing such data. First, the Division needs to complete the upgrade of its computer system. Second, the Division needs to work toward having more workers' compensation data submitted electronically.

Question 1 Conclusion: page 9

Question 2: Has the Department Effectively Implemented the Amendments to the Workers' Compensation Act Passed by the 1993 Legislature?

The 1993 amendments to the Workers' Compensation Act established 10 major responsibilities for the Division. page 10
Division officials report that they've taken some steps to address each item. We examined three of those new responsibilities and found significant problems with each.

Within the Fraud Unit, we noted a pervasive pattern of inaction and excessive delays in pursuing potentially fraudulent workers' compensation claims. page 12
The major findings from our review of a sample of 25 cases:

- *The Fraud Unit manager hadn't decided what to do with 13 of the 25 cases in our sample, even though the investigations for these cases*

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had been completed for an average of 418 days. The total potential fraud losses to-date for these cases is about \$250,000.

- The Unit manager referred 7 cases to local prosecuting attorneys for possible criminal action, but generally didn't follow-up on those cases even though they sat idle for months.
- It appeared the Unit manager was avoiding prosecuting cases administratively (in-house), even those that originally were considered serious enough for criminal prosecution.
- The Fraud Unit wasn't collecting fines or restitution ordered as a result of administrative judgments.

Overall, we noted that the Unit has prosecuted very few cases. It's received about 1,200 allegations of workers' compensation fraud since it was created in 1994. The Unit has referred about 60 cases to local attorneys for possible criminal prosecution, but has prosecuted only about 37 cases administratively (in-house). People with experience in handling fraud cases told us they'd expect many more cases to have been administratively prosecuted than criminally prosecuted, because the burden of proof for administrative cases is lower.

The Fraud Unit also doesn't have adequate processes for controlling and evaluating its own work. It doesn't have approved procedures for how it should be operated. In addition, the Unit doesn't have the basic information that's needed to effectively manage the Unit or assess what it has accomplished over the years. Such information includes the status of cases it has investigated, the amount of overpayments identified, the number of judgments or convictions, and the amount of fines and restitution ordered and received. Finally, the Fraud Unit only recently started using a computerized system for tracking and managing its cases, even though that system's been available for nearly two years.

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We noted that another investigatory unit within the Department's Division of Employment Security may be able to help the Fraud Unit set up and use better systems for pursuing, tracking, and recording information about potentially fraudulent cases.

The Division's Accident Prevention Program may not be doing enough to enforce State law. The 1993 law requires each insurance company to maintain accident prevention programs and may offer them to their insureds. The law also made the Department responsible for determining the "adequacy of the accident prevention services" each company provided. The Division initially set up an adequate process to make the determinations called for by law. However, insurance company representatives objected to the Division's examination of their records. In response, in January 1995 the Division implemented a new oversight plan that essentially limits its oversight of insurance companies to reviewing annual written information submitted by those companies. The Director of Workers' Compensation told us he wasn't satisfied with the way the Accident Prevention Program was operating.

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The Division hasn't developed a database and completed cost studies as required by law. The 1993 Legislature required the Division to maintain a database of workers' compensation information and to conduct studies of open and closed claims, so that the Division could identify and analyze cost trends and factors that drive costs, and to report the results of

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that analysis to the Legislature. The Division has made two unsuccessful attempts to complete a study of closed-claims. Division staff attribute the aborted attempts to outdated data and computer problems.

Question 2 Conclusion: page 20

Recommendations: page 20

APPENDIX A: 99 Specific Data Elements Recommended by the page 25
*International Association of Industrial Accident Boards and Commissions
For Workers' Compensation Programs*

APPENDIX B: Agency Response page 28

This audit was conducted by Joe Lawhon, Laurel Murdie, and Anthony Perez. Randy Tongier was the audit manager. If you need any additional information about the audit's findings, please contact Mr. Lawhon at the Division's offices. Our address is: Legislative Division of Post Audit, 800 SW Jackson Street, Suite 1200, Topeka, Kansas 66612. You also may call (785) 296-3792, or contact us via the Internet at: LPA@mail.ksleg.state.ks.us.

Reviewing the Implementation of the 1993 Changes to the Workers' Compensation Laws: A K-GOAL Audit

The Kansas Governmental Operations Accountability Law (K-GOAL) requires Legislative Post Audit to conduct a performance audit of the Department of Human Resources in time for the 1999 Legislature's consideration. The purpose of such K-GOAL audits is to periodically review selected agencies, identify areas of inefficiency and ineffectiveness, and provide information for potential legislative action to modify or terminate the agency's operations.

At the direction of the Legislative Post Audit Committee, this audit focused on the Department's Division of Workers' Compensation. Members of the Committee expressed an interest in knowing whether the Division has improved its computerized information system, and whether changes to the State's workers' compensation law enacted by the 1993 Legislature have been effectively implemented.

This performance audit answers the following questions:

1. **Has the Department improved its workers' compensation information system so that it can provide accurate and meaningful information to the Legislature and others for policy decisions?**
2. **Has the Department effectively implemented the amendments to the Workers' Compensation Act passed by the 1993 Legislature?**

To answer these questions, we reviewed Kansas' workers' compensation law, interviewed Division employees, and examined records maintained by the Division's Fraud Unit and Accident Prevention Program. We also examined various records having to do with the Division's use and upgrade of its computer capabilities. We contacted other states to gather information about the activities of their fraud units, and to learn about the types of workers' compensation data they collect and analyze. We also contacted representatives of two national organizations about certain issues, including the types of workers' compensation data that should be collected.

In conducting this audit, we followed all applicable government auditing standards set forth by the U.S. General Accounting Office.

Our findings begin on page five, after a brief overview of the workers' compensation system in Kansas.

Overview of the Workers' Compensation System

Workers' Compensation Insurance Is Designed as "No-Fault" Coverage

The Kansas Legislature enacted the Kansas Workers' Compensation Act in 1911. The Act was designed to provide compensation for workers who were injured or killed on the job. It essentially created a "no-fault" insurance plan for injured workers. Under the Act:

- injured employees give up the right to sue their employers for negligence (and thus the possibility of receiving large damage awards)
- employers surrender the right to use most of the defenses available in a negligence lawsuit

The idea behind the Act was to let an employee get prompt treatment and receive modest compensation for injuries sustained on the job, without having to go through time-consuming and costly litigation to obtain that compensation.

Under current Kansas law, nearly all employers with an annual payroll of \$20,000 or more must provide workers' compensation coverage for their employees. Exceptions are made for agricultural pursuits and some other occupations. Employers can either buy a standard workers' compensation insurance policy from a commercial carrier, or they may be qualified to become self-insured or part of a group-funded pool. (In this report, we use the term insurance companies or carriers to refer to all types of workers' compensation insurance coverage.)

Workers' compensation insurance provides medical and disability benefits to injured employees. If an employee dies on the job, workers' compensation insurance also provides death benefits to his or her dependents.

Workers' Compensation Issues are Overseen By the Department of Human Resources

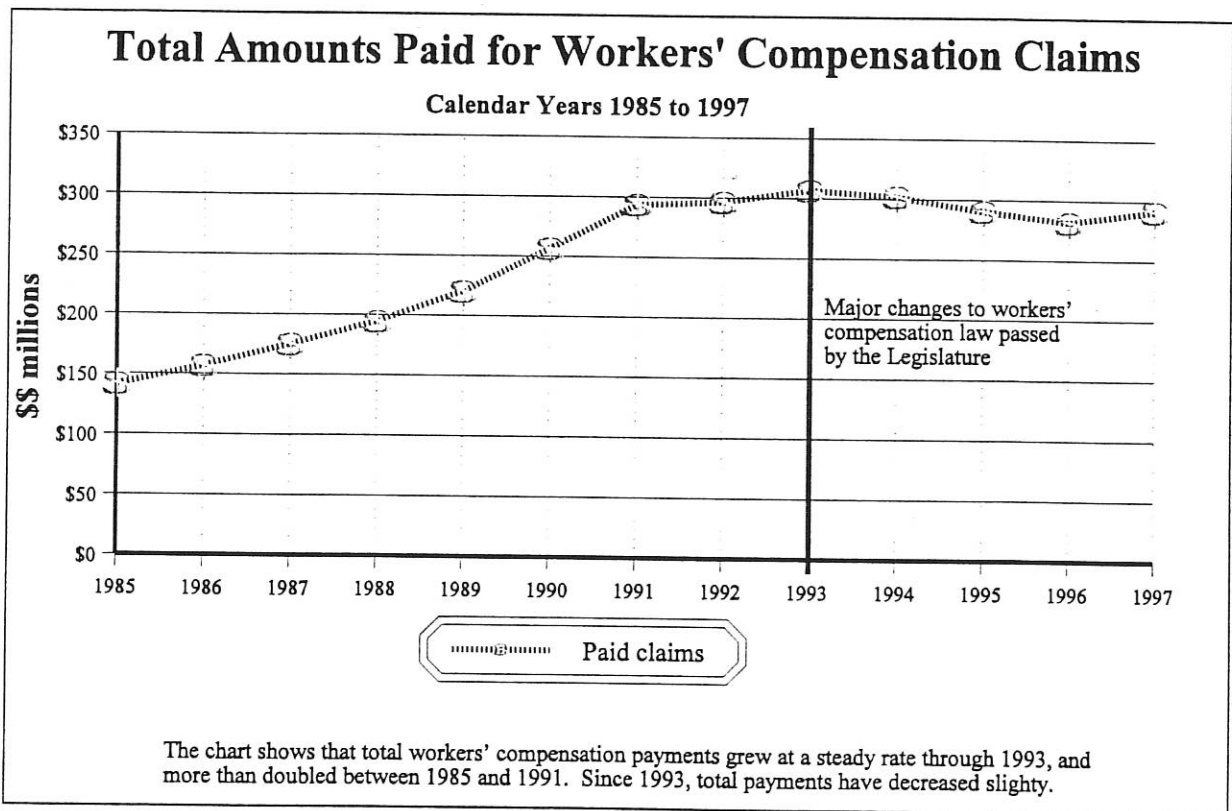
The Department's Division of Workers' Compensation oversees nearly all activities encompassing workers' compensation in Kansas. Those activities include the following:

- reviewing the reports insurance carriers submit about injured workers
- providing ombudsman services
- when an injured employee and his or her employer can't agree on compensation, attempting to resolve differences between the two parties to avoid judicial proceedings
- when judicial proceedings are needed, having an administrative law judge preside over the hearing.

Workers' Compensation Division Is Funded By Assessments Against Insurance Companies

To fund the Division, insurance companies that write workers' compensation policies in Kansas are assessed certain amounts each year. Those assessments vary by company, and are based on each carrier's proportionate share of the workers' compensation benefits paid during the previous year. In other words, a carrier that paid more will be assessed a larger amount.

Although the Division doesn't receive any General Fund appropriations, its funds are appropriated by the Legislature as part of the budgetary process. In fiscal year 1998, the Division's actual expenditures were about \$6.0 million, and it had about 110 authorized positions.



Division Records Indicate that Total Amounts Paid For Workers' Compensation Injuries Have Decreased Slightly in Recent Years

During the 1980s, workers' compensation costs were increasing dramatically. As a result, Kansas—along with many other states—acted to try to control costs. In Kansas, these actions included:

- developing a medical fee schedule
- creating a unit to investigate suspected fraud and abuse
- requiring insurance companies to establish accident prevention programs
- attempting to reduce attorney involvement by altering the hearing process and setting limits on attorney fees

As shown in the graph on the previous page, Division records indicate that total amounts paid for workers' compensation injuries—as reported by insurance companies and self-insured entities—have decreased slightly since 1993.

The premium rates Kansas businesses pay for workers' compensation insurance coverage are among the lowest in the nation. Data provided by the State of Oregon show that, as of January 1, 1996, Kansas ranked 42nd among the 50 states and the District of Columbia in average premiums paid.

In addition, in November 1998, the Kansas Insurance Department approved a reduction in the premiums paid for workers' compensation insurance coverage for the 5th consecutive year. The cumulative effect of these reductions has been a drop in workers' compensation premiums of about 31% since 1993. Officials from the National Council on Compensation Insurance told us that many states have had similar reductions in workers' compensation premiums and total payments for claims.

Has the Department Improved Its Workers' Compensation Information System So That It Can Provide Accurate And Meaningful Information To the Legislature and Others for Policy Decisions?

The Department hasn't improved its workers' compensation information system; it gathers the same kinds of information that it did five years ago. As a result, the Department doesn't have certain information—primarily related to costs—that the Legislature and others need to make good policy decisions. Further, because its computer system is outdated, the Department wouldn't be able to handle additional information effectively, even if it were gathered. These and other findings are described in the sections that follow.

We Previously Identified Several Major Problems With the Division's Management-Information System

An audit we issued in February 1993, "*Reviewing Issues Related to Workers' Compensation*," identified three principal deficiencies in the Division's management information system:

- the Division didn't collect complete claim information, such as data on expenditures for wage benefits, medical care, attorneys, and other costs
- the data the Division did collect sometimes were inaccurate
- the Division's computer system wasn't programmed to analyze the accident information it collected

Without such basic information, we concluded, Division officials and policymakers didn't have the information they needed to make good management and policy decisions. We recommended that the Division develop a plan for improving its computer system.

In this audit, we looked at the progress the Division has made in obtaining and analyzing information about workers' compensation accidents. In general, we found that the same problems continue to exist.

The Division Doesn't Gather or Report Cost-Related Information for Workers' Compensation Cases, Which Severely Limits Its Ability to Provide Meaningful Information

Based on our earlier audit work, and on our discussions with officials from the International Association of Industrial Accident Boards and Commissions and the National Council on Compensation Insurance (NCCI), we identified the following

types of information that are critical for workers' compensation administrators to collect and analyze:

Basic Identification Data	This includes identifying information about injured employees, their employers, and the insurer for each claim
Accident Data	This includes information about the nature, extent, and cause of each injury
Cost Data	This includes information about the cost of benefits paid on each claim (including medical charges, attorney fees, compensation paid, and the like)
Other Management Data	This includes information that should be used for administrative purposes (such as dates, policy numbers, and other information.)

The specific types of information the International Association of Industrial Accident Boards and Commissions recommends that all jurisdictions collect are listed in Appendix A.

Although the Division collects basic identification and accident data for each injury, it doesn't obtain any cost data. When a work-related accident occurs, the employer's insurance company is required to report that accident to the Division. The information reported includes the name and occupation of the injured worker, the cause, nature, and severity of the injury, and the name of the employer. Division staff enter this information into the Division's computer database.

However, the Division doesn't collect any other information about the accident—such as the amount of time the employee was off work—or any information about the costs incurred—such as the medical costs or compensation benefits paid. (The Division ultimately receives the total amount paid by each insurance company for workers' compensation claims, but that information isn't useful in assessing what's happening with individual types of accidents.)

In addition, although the 1993 Legislature required the Division to perform a study of open and closed cases to analyze costs and trends, the Division hasn't completed that study. (More information about this issue is provided in question two.)

In our earlier audit, we listed some key questions policymakers might want answers to regarding workers' compensation. The following table lists those key questions that couldn't be answered with the information available in 1993, and shows whether those questions could be answered today.

Questions that policymakers might want answers to	Could Kansas Answer in 1993?	Could Kansas Answer in 1998?
How many active workers' compensation claims are there?	NO	NO
How much does the average claim cost?	NO	NO
How much are the parties paying in legal costs?	NO	NO
Which injuries are the most costly?	NO	NO
Which health-care providers are the most costly?	NO	NO

As the table shows, without cost data, the Division can't answer any more policy-related questions now than it could five years ago.

Information we obtained from the Association shows that at least 35 states collect some form of cost data through a process called "subsequent reporting." Under "subsequent reporting," insurance companies are required to periodically provide information about the characteristics and costs of all reported accidents. Such data allow these states to perform a wide range of analyses. For example:

- Florida's Workers' Compensation Division was able to perform multiple detailed analyses of costs and trends in that state's workers' compensation system for the past 10 years. This information was reported in its 1997 annual report. Among other things, that report showed settlement awards by disability and by type of injury, and showed the median and average costs of medical benefits by year.

Other states, such as Louisiana and Oregon, also have provided cost data and analyses for their workers' compensation systems. If Kansas collected cost information, it would be possible to make comparisons with other states.

It's not clear whether State law gives the Division Director the authority to administratively require insurance companies to periodically provide this "subsequent" information for each workers' compensation claim. Division staff told us they'd like to collect subsequent information, but they think the change would be opposed by the insurance industry because of the additional time and effort insurance companies would have to spend to get the data to the Division. However, we're not sure how much additional work this would require because according to NCCI officials, insurance companies already provide a sample of such information to their organization.

**Even if the Division Gathered Cost-Related Data,
It Wouldn't Be Able To Analyze and Report on It Meaningfully,
Given Its Current Computer Limitations**

If the Division were able to require insurance companies to provide "subsequent reporting" information about each reported accident, that would substantially increase the amount of data it receives. Currently, the Division isn't equipped to handle that volume of information.

Before the Division is capable of receiving and processing such data, two other changes need to occur. These can be described as follows:

- **The Division needs to complete the upgrade of its computer system.** Division staff enter the accident data they currently receive into the Division's mainframe computer, which has been in use since around 1984. Advances in computer technology have made this system out-of-date. According to Division staff, the mainframe system has several deficiencies, including:
 - The computer has to be reprogrammed, even for simple tasks
 - Data in the computer can't be sorted quickly, or in sophisticated ways
 - It's difficult to identify and correct data entry errors, thus raising significant questions about the accuracy of the data
 - It's difficult to identify and correct duplicate reports
 - It's difficult to place or receive data on the Internet

To address these weaknesses, the Division has begun to upgrade its computer system. In December 1997, it developed a local area network that connects all the Division's personal computers, thus allowing staff to share information and use recently developed computer software. The Division also has earmarked about \$400,000 in its fiscal year 1999 budget to convert the existing database of accident information to the new personal computer-based network. Before that money can be spent, however, the Division will need the approval of the Joint Committee on Information Technology.

- **The Division needs to work toward having more workers' compensation data submitted electronically.** Since 1991, the International Association of Industrial Accident Boards and Commissions has been coordinating efforts to standardize the collection of workers' compensation data, which will facilitate the electronic transfer of those data. One obvious benefit of the electronic submission of data is that states no longer would have to enter data by hand.

In our previous audit, *"Reviewing Selected Issues Related to Workers' Compensation,"* we recommended that the Division participate in the Electronic Data Interchange Project. At the time, the Division was participating on a trial basis

with one insurance company. Since then, however, the Division hasn't added any other insurance companies. The data from this one company account for only 3% of the accident forms the Division receives.

Association officials told us that 25 other states had implemented electronic transfer, and that many of them receive about 30% of their accident data through electronic means. They also told us that the software Kansas is using is out of date and is no longer being supported. New software is available.

Division officials told us they haven't tried to increase the use of electronic data submissions because they don't have enough staff resources to ensure that the data are accurate, and they thought there wasn't complete agreement among other states about what data elements should be collected. However, given the apparent success that other states are experiencing with the electronic transfer of data, it seems likely that these obstacles can be overcome.

Conclusion

The Division hasn't made meaningful progress in the past five years regarding the receipt and analysis of workers' compensation data. For the Division to make the necessary improvements, three things need to happen simultaneously: upgrading the Division's computer system, implementing subsequent reporting to allow the Division to obtain meaningful cost data, and phasing in electronic transfer of workers' compensation data.

The absence of any one item would prevent the Division from being able to sufficiently obtain, process, and analyze worker's compensation data, and therefore prevent it from providing policymakers with competent and reliable information about the status of Kansas' workers' compensation system. These changes can't happen overnight; collecting additional data and arranging for those data to be submitted electronically will need to be gradually phased in. This will result in a vast departure from the way the Division and insurance companies have done business in the past. But current computer technology and the need to have relevant workers' compensation data are sufficient reasons to proceed.

Recommendations addressing the issues identified in this question begin on page 20.

Has the Department Effectively Implemented the Amendments to the Workers' Compensation Act Passed by the 1993 Legislature?

The Department has taken steps to implement each of the amendments to the Workers' Compensation Act passed by the 1993 Legislature. However, in three specific areas we reviewed, the Department hasn't effectively implemented those changes. First, the Department's Fraud Unit isn't actively pursuing the allegations of fraud it receives, and doesn't have the basic information that's needed to effectively manage the Unit or assess what it has accomplished over the years. Second, the Department's Accident Prevention Program isn't actively enforcing the statutory requirement that insurance companies providing workers' compensation coverage maintain accident prevention programs for their clients. And third, the Department hasn't analyzed workers' compensation cost information, as the 1993 Legislature required. These and other findings are discussed in more detail in the sections that follow.

The 1993 Amendments to the Workers' Compensation Act Established 10 Major Responsibilities for the Division

In 1993, the State's workers' compensation law was revised substantially. Several sections of the law were revised again in 1996, 1997, and 1998. We reviewed all the amendments and identified 10 major changes in the law which added to or altered the duties and responsibilities of the Division of Workers' Compensation. We also spoke with Division officials about the actions they had taken to implement the new statutory requirements.

The table on the next page lists each new requirement, briefly describes those requirements, and summarizes Division officials' comments. As the table shows, Division officials report that they've taken some steps to address each item. We examined three of those new responsibilities in greater detail, and found significant problems with each. Our findings regarding each item are presented below.

Findings About the Fraud and Abuse Unit

The Workers' Compensation Fraud and Abuse Investigation Unit was established in 1994. Staffing for the Unit comprises an Assistant Attorney General, who acts as the Unit's manager, three investigators, and one clerical person. From fiscal years 1995 through 1998, the Unit spent about \$1.1 million.

New Statutory Requirement	Actions Division Officials Say They Have Taken
Fraud and Abuse Unit. Required the Division to establish a system for monitoring, investigating, and reporting fraud and abuse.	The Division created a Fraud Unit in January 1994, and it has received about 1,200 complaints. The Unit has forwarded about 60 cases to appropriate authorities for consideration of filing criminal charges, and has filed administrative charges on about 40 cases.
Non-technical guide. Required the Division to develop written non-technical guides about the rights and responsibilities of employers and employees in English and Spanish.	The Division has many of its forms and pamphlets available in both languages. In addition, several of the ombudsman staff are bilingual.
Accident Prevention Program. Required insurance companies to have accident prevention programs, and required the Division to enforce the statutory provisions.	Division staff examined insurance company records until January 1, 1995, but have had little direct contact with insurance companies since then. Currently, Division staff inspect businesses that request safety inspections.
Ombudsman Unit. Required the Division to establish an ombudsman program to assist employees with such things as claiming benefits and communicating with insurance companies or employers.	The Division has nine ombudsman positions. They work with employers, injured workers, and insurance companies to facilitate proper care and payment of benefits. They also investigate complaints and perform other client services as necessary.
Benefit review conference procedures. Required parties to meet to discuss disputed workers' compensation claim(s) before proceeding to judicial hearings.	The Legislature removed this requirement in 1996 because it wasn't working well. A voluntary mediation conference was enacted in its place. The intent remains the same - to assist parties in reaching agreement on disputed issues in a workers' compensation claim.
Workers' Compensation Advisory Council. Established a 10-person board to study various workers' compensation issues. Five specific issues set forth in law were to be studied and the results reported to standing committees of the House and Senate.	The Council has been formed and spends almost all its time studying proposed changes to the Workers' Compensation Act. The Director usually briefs the Legislature on the Council's activities at the start of each session, but the Council has not formally submitted any of the five prescribed studies.
Workers' Compensation Board. Established a five-person board having exclusive jurisdiction to review all decisions made by administrative law judges regarding the Workers' Compensation Act.	The Board was established in 1993 and it hears all appeals of rulings made by administrative law judges. The Board has a heavy caseload.
Workers' Compensation Fund Oversight Committee. Established an 11-person committee which reports to the Legislative Coordinating Council and studies workers' compensation issues as directed by the Council.	The purpose of this committee is to ensure that the workers' compensation fund (formerly known as the second injury fund) remains financially solvent. The Director or his designee is a member of the Committee. The Board doesn't have set meeting times, but meets when the Insurance Department determines there is an issue that may impact the fund.
Medical Administrator. Required the Division to hire a doctor to oversee the provision of health care services to injured workers.	The Division hired a medical administrator in January 1995. The medical administrator oversees service delivery and the amounts that health care providers can charge when providing medical services to people injured on the job.
Database of Cost information. Required the Division to compile and maintain a database of information about characteristics and costs for workers' compensation cases.	The Division has made two separate attempts to collect and analyze payment information for workers' compensation cases. In neither attempt did the Division get the data analyzed, so this requirement hasn't been achieved.

The Unit's responsibilities are as follows:

- identify potential fraud and abuse by investigating allegations of wrongdoing that are referred to the Unit (the Unit doesn't try to identify fraud and abuse situations on its own).
- take legal action when evidence gathered in the investigations indicates possible wrongdoing

In carrying out these responsibilities, the Unit's investigators gather evidence related to the allegations received. When the investigators conclude the evidence they've gathered supports the allegation of wrongdoing, they refer those cases to the Unit manager.

The Unit manager decides whether to pursue the matter or drop the case. If the decision is made to pursue the matter, the Unit manager may refer the case to a district or county attorney for possible criminal action, or may take administrative action in-house against the alleged wrongdoer. In general, filing criminal charges requires a higher standard of evidence than taking administrative action. The box on the next page describes these criminal and administrative proceedings in more detail.

Regardless of which avenue is pursued, if the Unit manager decides to proceed with the case, timeliness is critical. That's because a statute of limitations applies to criminal action; charges must be filed within two years of the time the fraud is discovered. Further, whether criminal or administrative action is taken, people can become more difficult to find, and witnesses' memories can become hazy as time passes.

Our Review of a Sample of Fraud Unit Cases Shows a Pervasive Pattern of Inaction and Excessive Delays in Making Decisions

To determine how well cases have been handled, we reviewed a sample of 25 cases for which investigators had completed their investigations and recommended that further action be taken.

These 25 cases resulted in no criminal prosecutions, seven closed cases, 16 cases in which nothing has been decided, and two administrative actions—neither of which has been vigorously pursued. The box on page 14 summarizes what's happened on these cases. The following paragraphs describe our major findings from this file review.

- **The Fraud Unit manager hadn't decided what to do with 13 of the 25 cases in our sample, even though the investigations for these cases had been completed for an average of 418 days.** Such delays will make it difficult to prosecute these cases, either administratively or criminally. We couldn't assess whether charges should have been filed, but these cases do involve significant

amounts of money. For example, total estimated losses for the 11 cases that had them was \$252,128, or an average of \$22,920 per case. These amounts potentially could be recovered if the cases are successfully prosecuted. The profile box on page 15 summarizes two of these cases.

- **The Unit manager referred seven cases to local prosecuting attorneys for possible criminal action, but generally didn't follow-up on those cases even though they sat idle for months.** In four of these seven cases, the local prosecuting attorneys took an average of seven months before deciding not to prosecute them. The remaining three cases have been at the local prosecuting attorneys' offices for almost a year without a decision. The Unit manager could have requested that these cases be returned so the Fraud Unit could prosecute them, but our file review showed that hasn't happened. An official in the Attorney General's Office told us it would be reasonable to allow several weeks for the local prosecuting attorneys to decide whether to file charges, then politely request that those cases be returned to the Fraud Unit.
- **It appeared to us that the Unit manager may be avoiding prosecuting cases.** As we mentioned above, local prosecutors declined and returned four cases referred to them for criminal prosecution. For two of these cases, the Unit manager dropped them within a few weeks, and waited another 426 days before declaring the third case "too old" to prosecute administratively. We question why the Unit manager wouldn't file administrative charges on these three cases, when they originally were considered to be serious enough for criminal

Administrative or Criminal Proceedings Can Be Used to Enforce the Workers' Compensation Act

State law describes workers' compensation fraud or abuse as including such things as employers not carrying workers' compensation liability insurance, or a person obtaining benefits by making a false or misleading statement. The law allows the Fraud Unit to pursue enforcement in two ways—through administrative proceedings, or by referring cases for criminal prosecution.

Administrative proceedings: If the Fraud Unit manager convinces the Director of Workers' Compensation that a fraudulent or abusive act has occurred, the person or entity believed to have committed the act is served with a statement of the charges. Next, an administrative hearing is held before an independent hearing officer. (This hearing is held in accordance with the Kansas Administrative Procedures Act.) If the hearing officer finds that the person or entity committed fraud or abuse, the Director of Workers' Compensation issues a cease-and-desist order. In addition, the Director can order a number of other things to happen, including fining the person or entity for each abusive or fraudulent act, requiring the employee to repay benefits, requiring the employer to repay moneys withheld from employees, and requiring insurance companies to refund premiums. Any appeals are heard by district court.

Criminal prosecution: The Director or Fraud Unit manager can refer cases to county or district attorneys for criminal prosecution. In order to refer a case, the Director or the Unit manager must have probable cause to believe a fraudulent or abusive act is significant enough to constitute a crime. (Probable cause means a reasonable person would believe that fraud or abuse occurred.)

prosecution. For the fourth case, the Unit manager did file administrative charges—but that action took place almost a year after local prosecutors returned the case. At the time this report was written, this case is still open with no disposition.

During this audit we reviewed a sample of 25 cases for which investigators had completed their investigations and submitted their reports to the Fraud Unit manager. The following tables summarizes what has happened on these cases...

Of the 25 cases:

The initial decision by the Unit manager was:		
Decision	# of cases	Avg. # of days to Decide
Refer to Attorneys for Criminal Prosecution	7	27
File an Administrative Action	1	173
Close the Case	4	219
No Decision	13	418
Total	25	as of Dec. 3, 98

Of the 7 cases referred to prosecuting attorneys:

Prosecuting attorneys have decided:		
Decision	# of cases	Avg. # of days to Decide
Pursue Criminal Prosecution	0	
Decline Criminal Prosecution and Return to Fraud Unit	4	207
No Decision	3	335
		as of Dec. 3, 98

Of the 4 cases returned to the Fraud Unit:

The Unit manager has decided to:		
Decision	# of cases	Avg. # of days to Decide
Proceed with Criminal Prosecution	0	
Proceed with an Administrative Action	1	303
Close the Case	3	167

Source: Developed by Legislative Post Audit from Fraud Unit files

The problem with unprosecuted cases appears to be larger than just the cases in our sample. Since it was created, the Fraud Unit has prosecuted 37 cases administratively out of the approximately 1,200 allegations it has received. Of those 37 cases, about 83% had been initiated by the previous Unit manager, and only 17% have been initiated by the current Unit manager. Both managers had been on the job for about the same length of time.

In addition, several people with experience in handling fraud cases told us they would expect there to be many more cases administratively prosecuted than criminally prosecuted. That's because the burden of proof for administrative cases is lower than for criminal cases. However, Fraud Unit data show that about 60 cases have been referred to local attorneys for possible criminal prosecution, while the Unit itself has prosecuted only about 37 cases administratively.

Examples of the Types of Workers' Compensation Fraud That Have Been Investigated by the Fraud Unit

During our file review, we found a pattern of inaction. Here are two cases that demonstrate that pattern:

Case 1: The Fraud Unit received an allegation that an employee returned to work but continued to receive workers' compensation benefits from the employer's insurance company. This violated the settlement agreement between the employee, the employer, and the employer's insurance company. This case was assigned to an investigator in February 1997.

In December 1997, the investigation was completed and the case was submitted to the Fraud Unit manager. The investigator concluded the employee likely was overpaid \$32,000 in workers' compensation benefits, and recommended that prosecution be pursued. As of December 3, 1998, a year after the investigation was complete, no decision has been made about whether to file administrative charges, forward the case to local prosecutors, or close the case. In addition, documentation in the file shows that, during this time, the employer's insurance company contacted the Fraud Unit manager several times about whether he planned to prosecute the case. A representative of the insurance company told us the manager hasn't responded to their requests for information about this case.

Case 2: The employee in this case allegedly faked a back injury. The case was assigned to a Fraud Unit investigator in February 1997, and the investigation was completed in April 1997. The investigation showed that the employee had filed a series of workers' compensation claims over the last 8 years, and had received \$29,000 worth of medical services and prescription drugs for these claims.

The investigator concluded that the employee misrepresented the injuries in this case in order to receive workers' compensation benefits to pay for the employee's addiction to prescription drugs. The investigator recommended that, at a minimum, the case be administratively prosecuted to recoup the overpaid benefits. As of December 3, 1998, or 584 days after the case investigation was completed, no decision had been made about whether to file administrative charges, forward the case to local prosecutors, or close the case. In addition, Fraud Unit investigators have completed at least one other investigation on this same employee for workers' compensation fraud. No decision has been made in that case, either.

- **The Fraud Unit wasn't collecting fines or restitution ordered as a result of administrative judgments.** While conducting our file review, we saw five other cases where fines or restitutions ranging from \$500 to nearly \$13,000 had been ordered, but the Fraud Unit hadn't tried to collect them. The judgment orders for these cases had been issued between December 1994 and October 1997. During this audit, in December 1998, the Unit began collecting these amounts.

The Fraud Unit Doesn't Have Adequate Processes for Controlling and Evaluating Its Own Work

In this audit, we also evaluated whether the Unit was operating in an effective and efficient manner. We found a number of problems, as described below.

The Fraud Unit doesn't have approved procedures for how it should be operated. To help ensure that it is effectively managed, the Unit should have written procedures clearly describing individual responsibilities, giving guidance on what actions staff should take, articulating management's expectations for the Unit, and the like.

The Fraud Unit manager initially told us the Unit had no written procedures. However, the Unit's investigators provided us with a copy of a procedures manual. The manager, who's been in charge of the Unit for more than two years, indicated he was unaware this manual existed.

Given that the Unit manager wasn't aware of—and hasn't reviewed and endorsed—these written procedures, it's clear the Unit lacks guidance about management's expectations and individual roles and responsibilities.

The Fraud Unit has had a computerized case-management and tracking system available for nearly two years, but it just started using that system a few months ago. The Unit needs a system for tracking the status and progress of individual cases. That way, staff and managers can know what's going on in any particular case.

Department computer staff told us they'd designed a computerized case-tracking system for the Fraud Unit, which became operational in early 1997. However, the Fraud Unit didn't begin using the computer system until sometime in mid-1998.

Unit staff are in the process of entering data from old cases, but it's unclear how accurate and complete the database of case-tracking information will be, because old and even some current cases don't contain all the information needed to make the database complete. For example, investigators told us the Unit hasn't collected case information about whether criminal or non-criminal prosecution action was taken, whether and why a case was closed, any estimated losses, or whether restitution was paid.

The Fraud Unit doesn't have the basic information that's needed to effectively manage the Unit or assess what it has accomplished over the years. A key management function is knowing the status of the work being performed, compiling information about what's been accomplished with the resources available, and using that information to assess whether the program is meeting the expected goals or criteria, or whether adjustments are needed.

The 1993 Legislature created the Fraud Unit to monitor, investigate, and report fraud and abuse in workers' compensation cases. In carrying out these responsibilities, we would have expected the Unit to maintain basic management information about the following:

- *the number, age and type of cases in its inventory*
- *key dates for cases, such as date received, date the investigation was completed, and date referred for possible criminal or administrative charges*
- *the amount of workers' compensation overpayments identified*
- *the number of judgments/convictions*
- *the amount of fines and restitution ordered and received*

Unit staff told us that they didn't track this type of data, and that it would take weeks to develop it. However, fraud units we contacted in other states collect similar types of performance or outcome data. In addition, the federal government has developed certain standards for assessing the performance of Medicaid fraud control units. Those standards include collecting the types of information listed above.

Another Investigatory Unit Within the Department Might Be Able To Provide the Fraud Unit with Assistance on How To Pursue, Track, and Record Potentially Fraudulent Claims

It appeared to us that the Fraud Unit has been operated in relative isolation from the rest of the Department. For example, although another unit with similar responsibilities exists within the Department, there apparently has been no communication or collaboration between these two units on effective ways of setting up and operating an investigative unit.

This other unit has been in operation for more than 13 years within the Department's Division of Employment Security. It investigates the improper payment of unemployment benefits. In carrying out this responsibility, this unit also conducts investigations, takes legal action to prosecute claims that have sufficient supporting evidence, and seeks to recover any fines or judgments awarded. According to staff within that unit, it also tracks the status of cases and maintains appropriate summary statistics.

We didn't review how well this other unit was operating. However, given the extensive nature of the problems we identified during this audit, it would seem prudent for the Workers' Compensation Fraud Unit to draw on the experience of this other unit as it works to correct these problems.

Findings About the Accident Prevention Program

The Division's Accident Prevention Program May Not Be Doing Enough to Enforce State Law

The 1993 law requires each insurance company or group-funded self-insurance plan providing workers' compensation insurance coverage in Kansas to maintain accident prevention programs and may offer them to their insureds. It specifies that the accident prevention services provided by insurance companies shall include "surveys, recommendations, training programs, consultations, analyses of accident causes, and industrial health services."

The law also gave the Department legal access to insurance company records, and made the Department responsible for determining the "adequacy of the accident prevention services" each company provided. In addition, the law required each insurance company to annually provide the Division of Workers' Compensation with certain information about the extent of accident prevention services offered, including the number of sites inspected, the number and qualifications of field safety representatives employed, and the cost of accident prevention services provided.

Although the Division's initial oversight activities were adequate to ensure that insurance companies complied with the law, it's current oversight activities don't provide that assurance. In 1994, Division staff began examining the records of individual insurance companies and visiting a sample of the businesses each insured. Division officials said this work allowed them to assess the quality and thoroughness of the accident prevention services being provided by insurance companies. By visiting insurance companies, staff could verify the accuracy of the annually required information. By visiting insured businesses, Division staff could conduct safety inspections and obtain first-hand knowledge about the extent of accident prevention services actually provided.

Division officials told us, however, that insurance company representatives soon objected to the Division's examination of their records. In response, the Division implemented a new oversight plan in January 1995 that essentially limits its oversight of insurance companies' accident prevention services to reviewing the annual written information those companies submit. Under that plan:

- the Division continues to request annual data from insurance companies. However, if an insurance company doesn't submit the required information, the Division has no authority to make it comply. In such cases, the Division informs the Insurance Department that certain required materials weren't submitted, and has to wait for the Insurance Department to act.
- Division staff still inspect employers that have asked the State to perform a safety inspection. The primary purpose of these inspections is to identify safety hazards at employers. In addition, Division staff find out whether accident prevention services have been provided by the insurers, and disseminate information regarding the availability of these services.
- Division staff no longer audit insurance companies, nor are the results of the safety inspections they conduct shared with or used to evaluate the accident prevention services being provided by those companies.

The Director of Workers' Compensation told us he wasn't satisfied with the way the Accident Prevention Program was operating. He said he thought the Department

needed to re-examine the purpose of the Program, with the key question being what type and how much oversight of insurance companies was necessary to fulfill the Department's statutory mandates.

Findings About the Mandated Database and Cost Studies

The Division Hasn't Developed a Database and Completed Cost Studies As Required by Law

The 1993 Legislature amended the Workers' Compensation Act to require the Division to compile and maintain a database containing claim characteristics and costs for both open and closed claims. That information is to be provided by insurers, and is to be based on statistically significant samples of open and closed claims. Information in the database is to be used to conduct studies showing the distribution of costs for open and closed claims.

This amendment recognized the need to have information about costs in order to evaluate how well the State's workers' compensation system was working. The primary reason for the cost studies was to have the Division identify and analyze cost trends and cost "drivers," and to report the results of that analysis to the Legislature.

In implementing this statutory change, the Division has gathered information on only litigated closed claims. As a result, the Division's information doesn't include any open claims and may not even be representative of all closed claims. Finally, to-date the Division has gathered much of its information from the National Council on Compensation Insurance, rather than from insurance companies, as the law provides. That means that Division hasn't yet implemented the requirements of State law.

The Division has made two attempts to complete a study of closed claims, but both have been unsuccessful. The first attempt occurred in 1995. Division staff told us they collected data from fiscal year 1993, but didn't analyze that information because it was considered to be too old to be of much value.

The Division began its second attempt in December 1996 by collecting more recent data for its sample of cases. Division staff told us these data were entered into a computer file, but when they started to manipulate and analyze the data, the computer file became "corrupted." Division staff said they quit trying to fix the problem in September 1997, but resumed limited efforts in August 1998—which also have been unsuccessful. Division staff added that, because of the present age of that data—it's about three years old now—it's questionable whether any meaningful information could be obtained.

Conclusion

The Department hasn't successfully implemented at least three new responsibilities placed on it by the 1993 Legislature. Studies of open and closed cases to identify and analyze cost trends have never been completed, and the likelihood of them being completed anytime in the near future seems remote. In 1995, the Division of Workers' Compensation backed way off its assessment of insurance companies' compliance with the law regarding accident prevention programs when insurance company representatives complained. There's a big question now—both within the Department and in our own minds—as to whether the Division's current oversight efforts are sufficient.

More significantly, the pervasive problems we identified in the Workers' Compensation Fraud Unit raise serious questions about whether that Unit is meeting its statutory purpose, or is even a cost-effective use of public moneys. Our audit work showed a pattern of inaction—either the Unit isn't pursuing cases that it should, or the best cases the Unit can develop aren't worth pursuing. Either way, there's no benefit to having a Fraud Unit that doesn't accomplish anything. In our opinion, the Fraud Unit's operations need to be improved significantly to justify its continued existence.

In each of these areas, the Department will need to exercise strong leadership and oversight to ensure that the problems we identified are appropriately addressed and corrected.

Recommendations

Recommendations for the Senate Commerce Committee and the House Business, Commerce, and Labor Committee

1. ***Obtaining cost data for workers' compensation claims.*** The Division of Workers' Compensation, the Legislature, and others need this cost information to identify where and why costs are increasing and to make appropriate policy and funding decisions. However, the Division hasn't been able to develop a database of workers' compensation information and conduct its first study of open and closed claims as mandated by the 1993 Legislature to help identify and analyze costs, and current State law regarding "subsequent" reporting is unclear. For these reasons, the Senate Commerce and

House Business, Commerce, and Labor Committees should do the following:

- a. Amend State law (K.S.A. 44-557a) to require insurance carriers to submit subsequent claim information (costs and other relevant data) about all Kansas workers' compensation claims to the Division of Workers' Compensation. (Thirty-five other states require subsequent reporting.) In their deliberations, the Committee(s) may want to obtain information from the International Association of Industrial Accident Boards and Commissions, the National Council on Compensation Insurance, and other states that currently require subsequent reporting. (Insurance companies provide a sample of such information to NCCI.)
- b. Because "subsequent reporting," would be phased in over several years and the information available from claim studies would be useful during that time, the Committee(s) should receive testimony from the Division of Workers' Compensation on why the database and claim studies haven't been completed to-date, what barriers may still be preventing the Division from completing that work, and what will be needed to successfully build a database and complete a study. The Committee(s) should then call for the Division to develop and implement a plan for conducting and successfully completing periodic studies. At a minimum, that plan should require:
 - a description of the analyses to be performed and the information to be developed
 - an allocation of sufficient resources and staff time to the project
 - a realistic timetable and deadline for the first study to be completed and the results to be presented to the Committee(s)

This plan should be shared with both Committees before the end of the 1999 legislative session.

The Committee(s) also should consider making appropriate amendments to State law (K.S.A. 44-557a) regarding the requirements for developing a database and conducting related studies of open and closed claims. That's because once subsequent reporting is in place, those statutory requirements may no longer be needed.

2. ***Reviewing the Accident Prevention Program's implementation of State law.*** To help ensure that this Program is achieving the Legislature's goals, the Committee(s) should receive testimony from Department officials about the statutory requirements for this Program, and the actions staff currently are taking to carry out those requirements. Based on that information, the Committee(s) should decide whether changes to State law are necessary, or whether the Program should be left as is, modified, or eliminated.

3. ***Reviewing the problems identified with the Workers' Compensation Fraud Unit, and assessing the continued need for the Unit.*** To ensure that the Fraud Unit is achieving the Legislature's goals for the Unit and is an effective use of State resources, the Committee(s) should do the following:
 - a. Receive testimony from Department officials about the problems identified in this audit, the concrete steps that will be taken to address those problems, and the timetable for addressing them.
 - b. Based on its review of our audit report, the testimony provided by Department officials, and any other relevant information, the Committee(s) should decide whether the Fraud Unit's continued existence is justified, and should make whatever recommendations it thinks are appropriate to the House Appropriations and Senate Ways and Means Committees

Recommendations for the Department of Human Resources

1. ***Receiving, processing, and using computerized information.*** To ensure that the Division of Workers' Compensation has the computer capabilities to receive, process, and analyze pertinent workers' compensation data, it should do the following:
 - a. Proceed with the conversion of its database of accident information from the current outdated mainframe system to a modern, personal-computer-based system. The Division should ensure that the new system can accept and process cost information when obtained from either a claim study or subsequent reporting.
 - b. Make it a high priority to get more workers' compensation data submitted electronically, with the ultimate goal of receiving all data from insurance carriers electronically. To meet this goal, the Division should do the following:

- allocate sufficient resources and staff time to the project
- replace its outdated software. The Division should consult with the International Association of Industrial Accident Boards and Commissions about the proper software to purchase.
- actively recruit insurance carriers to submit data electronically

2. ***Addressing the pervasive problems identified with the Workers' Compensation Fraud Unit*** The Department of Human Resources and the Division of Workers' Compensation should work to see that all problem areas identified in this audit are addressed and corrected. In addition, Department management should provide the Fraud Unit with much more direction and oversight than it has received in the past. More specifically, the Department Secretary and the Division Director should do the following:

- a. Solicit the help and guidance of personnel from within or outside the Department who are experienced in the prosecution of fraud. At a minimum, the Secretary and Director should ensure that staff in the Division of Employment Security are consulted regarding effective ways of setting up and operating an investigative unit, that good practices from the Employment Security's investigatory unit are modified and adopted as appropriate for the Workers' Compensation Fraud Unit, and that all necessary training is provided. The Department's General Counsel also should be consulted, as needed. In addition, the Secretary and Director should ensure that Fraud Unit staff have access to appropriate personnel at any time to discuss new problems or situations as they arise.
- b. Work with the Fraud Unit manager as needed to review the Unit's current informal procedures, and ensure that those procedures are modified as needed to outline the duties and responsibilities of all staff members and the operations of the Unit. The Unit should then adopt a formal written policy and procedures manual that reflects these procedures.
- c. Arrange for an independent in-house review of all cases received and investigated by the Unit at least since January 1, 1997, where investigative staff recommended further legal action, to determine whether appropriate legal action (referring cases for possible criminal prosecution, and/or filing administrative charges) has occurred. Department staff should consider filing administrative charges on all cases where it appears appropriate to do so.

- d. Direct Fraud Unit staff to compile and collect key information for workers' compensation cases. The Secretary and Director should consider whether it's worthwhile and cost-effective to gather these data for older cases, or whether such information should be gathered for cases started since January 1, 1999. These data should be entered into the Unit's computerized case-management information system, and should be analyzed periodically to help manage the Unit.
- e. Direct Fraud Unit staff to develop performance statistics (perhaps every six months) that show what the Unit has accomplished, and provide that information to the Division Director, the Attorney General, and the Secretary. For the start of the 2000 legislative session, those statistics should be sent to the Legislative Post Audit Committee, the Senate Commerce and House Business, Commerce, and Labor Committees, the House Appropriations and Senate Ways and Means Committees, and any other appropriate committees.
- f. Work with Fraud Unit staff as needed to develop and implement a reliable system for tracking and collecting all outstanding judgments for fines and restitutions owed by people or companies that have violated the State's workers' compensation laws. The Department's General Counsel should be involved, as needed, in collecting the amounts owed.
- g. Work with Fraud Unit staff as needed to develop and implement a good system for sending cases to county prosecutors, following-up on those cases, and requesting cases back after a reasonable time has elapsed and prosecutors have declined to file criminal charges. The Secretary and Division Director should stress the importance of making timely decisions for cases referred to county prosecutors, or for cases in which the filing of administrative charges seems most appropriate. Data to demonstrate that timely decisions are being made should be incorporated into the computerized case-management system.
- h. Ensure that several Department staff are involved in reviewing potentially fraudulent cases and determining whether to pursue administrative prosecution or to refer them for criminal prosecution.

Appendix A

99 Specific Data Elements Recommended by the International Association of Industrial Accident Boards and Commissions For Workers' Compensation Programs

The International Association of Industrial Accident Boards and Commissions is a worldwide organization that works for the effective and efficient administration of workers' compensation issues. One project that the Association has undertaken is the development of a standard format for the electronic transfer of workers' compensation data. Association staff said this task has been a multi-year project and required input from governmental jurisdictions and the workers' compensation insurance industry representatives. Part of the project has been the identification of 99 specific data elements that the Association recommends all jurisdictions collect. The 99 data elements have been categorized and listed on the following two pages.

Basic Identification Information

Employee

Employee Date of Birth	Employee Date Of Death
Employee Date of Hire	Employee Employment Visa
Employee First Name	Employee Gender Code
Employee Green Card	Employee ID Assigned By Jurisdiction
Employee Last Name	Employee Last Name Suffix
Employee Mailing City	Employee Mailing Country Code
Employee Mailing Postal Code	Employee Mailing Primary Address
Employee Mailing Secondary Address	Employee Mailing State Code
Employee Middle Name	Employee Passport Number
Employee Phone Number	Employee SSN
Employment Status Code	Insured Name
Insured FEIN	Occupation Description

Employer

Employer Contact Busn. Phone Number	Employer Contact E-Mail Address
Employer FEIN	Employer Mailing Country Code
Employer Mailing City	Employer Mailing Primary Address
Employer Mailing Postal Code	Employer Mailing State Code
Employer Mailing Secondary Address	Employer Physical City
Employer Name	Employer Physical Postal Code
Employer Physical Country Code	Employer Physical Secondary Address
Employer Physical Primary Address	Employer SIC
Employer Physical State Code	
Employer Type Code	

Insurer/Claim Administrator

Insurer FEIN	Insured Postal Code
Claim Administrator FEIN	Insurer Name
Claim Administrator Mailing Postal Code	Claim Administrator Claim Number
Claim Administrator Mailing Second Address	Claim Administrator Mailing City
Claim Administrator Name	Claim Administrator Primary Address
Self Insurance License/Cert. Number	Claim Administrator State Code

Accident Information

Cause of Injury Code	Nature of Injury Code
Date of Injury	Type of Injury
Death Result Of Injury Indicator	Part of Body Injured Code
Accident Site Postal Code	Accident/Injury Description Narrative

Cost/Benefit Information

Other Benefit Type Amount	Calculated Weekly Compensation Amount
Wage Period Code	Full Wages Paid For Date Of Injury Indicator
Salary Continued in Lieu of Comp. Indicator	Gross Weekly Amount Effective Date
Benefit Type Amount Paid	Benefit Type Claim Days
Benefit Type Claim Weeks	Benefit Type Code

Coverage Effective Date
Date of Max. Medical Improvement
Denial Effective Date
Perm. Impairment Percentage
Estimated Gross Weekly Amount Indicator

Claim Type Code
Coverage Expiration Date
Denial Reason Code
Other Benefit Type Code
Wage Effective Date
Gross Weekly Amount

Other Information/System Maintenance

Average Wage
Date Claim Admin. Had Know. Of Injury
Date Employer Had Know. Of Injury
Initial Date Disability Began
Initial Return to Work Date
Jurisdiction Claim Number
Maintenance Type Code

Reporting Period Code
Initial Date Last Day Worked
Manual Classification Code
Non-Consecutive Period Code
Number of Days Worked Per Week
Perm. Impairment Body Part Code
Policy/Contract Number

APPENDIX B

Agency Response

On January 14th, we provided copies of the draft audit report to the Department of Human Resources. The Department's response is included as this Appendix. After carefully reviewing the response, we made some minor clarifications to the draft audit that didn't affect any of our findings or conclusions.

STATE OF KANSAS
DEPARTMENT OF HUMAN RESOURCES

Bill Graves, Governor



Wayne L. Franklin, Secretary

Director's Office
DIVISION OF WORKERS COMPENSATION
800 S.W. Jackson Street, Suite 600, Topeka, Kansas 66612-1227
Phone ... (785) 296-4000
Fax (785) 296-0025

January 21, 1999

Ms. Barbara Hinton
Legislative Post Auditor
Legislative Division of Post Audit
800 SW Jackson, Suite 1200
Topeka, Kansas 66612-2212



Re: *Reviewing the Implementation of the
1993 Changes to the Workers Compensation Laws:
A K-GOAL Audit*

Dear Ms. Hinton:

Pursuant to your letter of January 13, 1999, regarding the above-referenced matter, you requested any comments, corrections, or clarifications on the draft report by Thursday, January 21, 1999, including responses to each audit recommendation. I will attempt to address all of those, hopefully, in the order in which they appear on the report.

First, I would hasten to point out that the 1993 statutory reforms to the Workers Compensation Act embraced many areas, which you identify as ten major changes (Page 10 of the draft report) and which are further elaborated in a table on Page 11 of the draft report. Some of these success stories were barely mentioned or all but omitted from the text of the draft report. For example, the contacts by the ombudsman section were impressive in its first year, and those contacts have steadily grown, aiding and assisting injured workers, employers, insurance companies, medical providers, and attorneys. The consultation unit of the Industrial Safety and Health Section has increased the number of workplaces visited for hazard assessments and those consultation visits have been well-received. Mediation (actually established in 1996 to take the place of benefit review conferences) as well as the more formal pre-hearing settlement conference before administrative law judges have alleviated the need for a number of formal hearings. The recommendations by the Workers Compensation Advisory Council on legislation and regulations has been generally well-received by the Legislature. The Workers Compensation Board, which you note as busy with a heavy caseload, has also developed a mechanism for "reporting" its decisions so that attorneys may perform legal research.

Another general concern is that your auditing staff assigned to this report, two of whom are attorneys duly admitted to practice in Kansas, requested (and received) permission to look at

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January 21, 1999

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criminal history records investigation files in the fraud and abuse unit, citing authority that they were bound to the same confidentiality standards that the agency would have otherwise been so bound. Nothing was said about public disclosure of the contents of those files. However, the draft report at Page 15, talks in detail (but does omit names) of two investigative files, unique in enough aspects that the reader may be able to identify himself/herself as the employee involved. There is no indication that the investigation is closed and I would request that that portion of the draft report be omitted. Also, that particular section ends in an incomplete sentence and the reader is left unsure exactly how much more the drafter meant to write.

At the bottom of Page 17 of the draft report concerning the accident prevention program, the report states that:

"The 1993 law requires each insurance company or group-funded self-insurance plan providing workers' compensation insurance coverage in Kansas to provide accident prevention programs. . . ."

Actually, a close reading of K.S.A. 44-5,104 (a) provides that:

"Each insurance company or group-funded self-insurance plan providing workers compensation insurance coverage in Kansas **shall maintain and may offer to provide** accident prevention programs as a prerequisite for authority to provide such insurance or coverage. . . ." (Emphasis supplied.)

The criticism of the legislation would be directed towards the literal meaning of the emphasized phrase, that is, each insurer shall maintain an accident prevention program and may offer it to its insureds or it may choose not to offer it.

On Page 18 of the draft, the second bullet point states:

"Division staff still inspect employers that have asked the State to perform a safety inspection. The purpose of these inspections is to identify safety hazards at employers."

Actually, the purpose of these inspections is to assess the quality of the accident prevention services being provided by the insurers and also to disseminate information regarding the availability of these services to the insureds by the insurance companies.

Another observation by division staff, but not contained within the report, is that the larger the workers compensation insurance premium paid by the payor, the greater the number of visits by the accident prevention program of the insurer. As a result, it would seem that the smaller

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employers and the ones who may need accident prevention services the most, receive fewer visits. Larger companies may have a safety professional on staff (and may have less need of those insurer-provided accident prevention services). The result is that those accident prevention services are not being provided to the small business owners to the extent believed necessary by the staff.

As to the recommendations, I am presuming that I am to respond to the section entitled "Recommendations for the Department of Human Resources" beginning on Page 22 of the draft report, and will offer the following:

1. This recommendation deals with receiving, processing, and using computerized information. In interviews with personnel from the Legislative Division of Post Audit, I, as well as other members of my staff, related our efforts to change the computer and software capabilities in the Division of Workers Compensation. More specifically, we had been in contact and secured bids from two software vendors and were making plans to proceed when the provisions of 1998 Senate Bill No. 5 came into effect, which required that we go before the Joint Committee on Information Technology (JCIT). We were scheduled to go before that committee in the fall of 1998 when KDHR personnel required that we continue our application because it was felt that we were not sufficiently prepared. During said preparation, the Information Systems Director for KDHR left to take another position. However, we still plan to proceed with the conversion of the data base from a mainframe system to a client server environment.

As to the recommendation to implement "subsequent reporting" (where self-insured employers, group-funded pools, and insurance carriers report multiple characteristics of every claim), it should be noted that K.S.A. 44-557a (b) would require a statutory amendment to require not only certain characteristics of a statistically significant sample of open and closed claims, but a much greater number of characteristics of all claims.

As to the recommendation to receive more workers compensation data electronically, it was noted on pp. 8-9 of the report that only one insurance company has submitted its data to Kansas electronically. Currently, we are required to dedicate a staff member to work several hours a week to "clean up" the data which we receive electronically from this one insurance company ("trading partner"). Our experience with this one insurance company has been so dismal that the thought of receiving a greater percentage of the accident reports by multiple insurance companies, with an anticipated geometric surge in problems and staff time to require the correction of those problems, leaves a bad taste in one's mouth. Division staff was hoping that the electronic data interchange (EDI) program of the International Association of Industrial Accident Boards and Commissions (IAIABC) would set a national standard, remove some of these problems in other states, and that

Kansas could then more easily get on the band wagon. These errors flowing from the electronic filing of accident reports cannot be taken lightly; it may affect rights to litigating parties to the workers compensation claim. Specifically, K.S.A. 44-520a requires a written claim to be made upon the employer within 200 days of the accident; K.S.A. 44-557 (c) would seek to extend that 200-day limitation to one year if the accident report is not filed. For a claimant who has missed the 200-day requirement, but has filed a written claim within one year, the filing of the accident report is critical as it affects a statute of limitations and may otherwise bar a claim. In that regard, the accident report becomes a piece of evidence in the workers compensation claim and, when dealing with evidence, "hard copies" are always preferable.

2. The second recommendation is split into several subsections concerning a particular theme "Addressing the pervasive problems identified with the Workers' Compensation Fraud Unit." Generally, most of the criticism seems to be directed towards lack of record-keeping. While many of the recommendations will be met (see discussion below), no one had ever asked for raw statistics before. The Director had already noted the need to make improvements in this particular arena before the Legislative Division of Post Audit announced its impending audit, but welcomes additional suggestions that have value, and will attempt to address each subsection individually as they appear on pp. 23-24.
3. a. There is no one but our unit who is experienced in the area of prosecuting workers compensation fraud in this state. We have examined how other states run their units and have taken the most valuable aspects of their operations and have tried to incorporate them into our unit. This is only of limited value however, as the statutes those states operate under have different requirements than Kansas.

We agree that there are some internal systems which can be set up to help operations run smoother and more effectively. We are therefore going to examine how Employment Security and Medicaid fraud operate their units and will determine if any of those procedures can be incorporated into our standard operating procedure. They, of course, operate under different sets of statutes and so there may be procedures that they have that we cannot use.

b. We agree with this recommendation. Using the information we discover under recommendation "a" above, as well as reviewing current policies and procedures being used by the unit, we will create a formal policy and procedures manual that members of the unit can use.

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c. This recommendation will be reviewed by the Director, the Secretary of Human Resources, KDHR general counsel, and the unit supervisor to determine if it is prudent. However, reviewing every case that the unit has investigated but not prosecuted may not be efficient as these cases have already been examined for prosecutorial viability. However, the recommendation that more reviewers examine these cases initially for viability is probably prudent and will be addressed in the policy and procedures manual to be compiled under recommendation "b" above.

d. We agree with this recommendation. There was less information being gathered by the unit before the current director and unit administrator joined the Division of Workers Compensation. Both realized that gathering information of this nature was important to the unit. The following information will be gathered by unit personnel as of January 1, 1999:

- the date case received
- the date case investigation was completed
- the date the unit administrator may have referred the case back to the investigator for additional investigation.
- the date the case was re-referred to the unit administrator.
- the date charges filed administratively or the date a case referred to a county or district attorney for consideration of criminal charges.
- what date the case was finally and officially closed by the unit and the reason it was closed.
- any fines or restitution recovered by the unit as the result of administrative filings.

Overall the unit will develop a more comprehensive case tracking/management system. We will compare our present system with case tracking systems in use with other state law enforcement agencies, as well as outside vendors, to see if our needs can be better met by what systems are available. We do, however, feel that there will be problems in determining what the outcome of a criminal prosecution at the county level may be because of difficulties the unit has in receiving information from county or district attorneys as to the disposition of referred cases.

e. We agree with the recommendation. The Director, Secretary of Human Resources, and unit manager have expressed the need for this kind of information. We will therefore develop a comprehensive performance statistic package that will contain the following information:

- the number of referrals received.
- the number of administrative cases filed and their current status.

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- the number of criminal cases referred and their current status.
- the amount of fines and/or restitution recovered by the unit in the previous year.

This information will be gathered annually, and it is our suggestion that it be presented to the Workers Compensation Advisory Council. (The advisory council was implemented via K.S.A. 44-596 by the legislature to review all areas concerning workers compensation.) The advisory council could then make any appropriate recommendations to the legislature it feels necessary to deal with any perceived problems.

f. We agree with this recommendation. The fraud unit was neither designed nor intended to act as a "collection agency" for outstanding fines and or restitution which defendants cannot pay in a lump sum and we must take in installment payments. The unit therefore does not have the resources necessary to effectively collect these monies owed. Several attempts have been made by the director and the unit manager to create a system of fine collection that would best work within the Division and have recently transferred it to the Division's business office. We agree that the general counsel's office of KDHR be utilized whenever possible for the collection of these outstanding monies.

g. We agree that a computerized system be created for the tracking of criminal cases. Other than that, moving a prosecutor to action is easier said than done.

h. Again, the need for this recommendation will be addressed in the implementing of a policy and procedures manual; see response to "b."

Other points to be made:

Workers compensation fraud cases do not operate in a "vacuum" as the report would lead one to believe. The report examined cases as though these cases operated independent of any outside influence. Workers compensation fraud cases are not like any other law enforcement kinds of cases that exist in the state today.

Workers compensation is a very limited field, with its own specific rules, regulation, laws, and statutes. When a workers compensation fraud case is referred to the unit for investigation, there is almost always a proceeding for benefits pending at the same time. These claims for benefits may have a direct and proportional effect on the fraud unit's ability to prosecute cases. Many cases have lost prosecutorial viability due to decisions by administrative law judges on the issue of fraudulent misrepresentation on the part of the person the unit was investigating, the possible awarding of workers compensation benefits because any misrepresentation made was not "serious" enough to block the ability of the person making those misstatements from recovering

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benefits, or the testimony of a treating physician that can and has ended the prosecutorial viability of fraud unit cases.

Claims of time delays in prosecuting of cases is inaccurate and misleading. The report would lead one to believe that cases in the fraud unit are sitting idle for extended periods of time for no reason. The report fails to take into account time periods in which the unit manager referred cases back to the investigator for additional investigation. These time periods are absolutely necessary to the thorough investigation of these cases. These time periods have unfortunately not been recorded by unit personnel in the past, but will be under the new policy and procedures manual to be implemented by the division.

Some long intervals of time can also be attributed to the fraud unit having to wait and see the outcome of the claim for benefits before being able to take action. It would be imprudent and impractical to ask the unit to begin prosecution of a case if there was a strong possibility that compensability issues would be settled at the claims level.

It also should be noted that this issue of time constraints was addressed by the 1997 Legislature in the statutory reform of K.S.A. 44-5,120 and 44-5,121. At that time a six-month "window" was given to the fraud unit for the investigation of cases. After that time, if no action had been taken by the unit, then a party to the claim procedure can demand the case back from the director and seek a civil remedy to their complaint. To date NOT ONE case has been requested to be returned by the fraud unit to an entity wishing to pursue civil remedies at the claims level.

The statement that the fraud unit has not been using a computerized tracking system for more than a year is inaccurate and misleading. The report failed to take into account the time period of more than six months when the computerized software they refer to was inoperative due to a computer "glitch." The information that the program was designed to receive and catalog was not being saved to the program and all information being entered was lost. It was therefore impossible to use the program effectively until that situation was remedied. Once fixed, the unit began going back through old cases and entering information into the database that would be useful. Unfortunately, in older cases, the amount of information the unit would like to have maintained was not available.

The Division was aware of some of the problems expressed by Legislative Post Audit and requested and received statutory changes in 1998 as a result. In 1998, the Division, through the Workers Compensation Advisory Council, had made recommendations to the legislature that there be statutory changes to the laws that govern how the fraud unit operates, specifically K.S.A. 44-5,120, and K.S.A. 44-5,125. Those changes were implemented and became effective on July 1, 1998. The fraud unit had been operating under those changes less than 90 days when post audit arrived. The 1998 amendments have not yet had time to make an impact on how the

fraud unit operates. The Division and the unit were aware of the statutory problems which impeded their ability to do their jobs. Those changes have been now implemented, and now their effects can be seen.

Kansas still does better than other central states, even larger states, in the number of workers compensation fraud cases being criminally prosecuted. This is DIRECTLY the result of the efforts of this fraud unit and the unit administrator. There is no other agency in this state that is even remotely concerned about the prosecution of these cases. We are doing a better job of seeing criminals charged in district court than states with much larger populations. As examples:

1. At any given time, Kansas has an average of 34 cases referred to county and district attorneys. Some they decide to prosecute, some they decline, and some they render no decision at all. The unit has experienced difficulties receiving information as to the disposition of referred cases in some counties.
2. According to the October 1, 1997, Report on Alleged Worker's Compensation Fraud from the State of Wisconsin, the unit was referred 152 cases in 1997. Of those 152 cases, only eleven cases were then referred to county or district attorneys. Of those eleven referred cases, only seven were accepted by the county or district attorneys for prosecution. Of those seven cases, only one resulted in a conviction.
3. Information from the Minnesota Department of Labor and Industry's Workers Compensation Investigative Services Unit shows similar numbers. Reports from that unit show statistics on how many cases the fraud unit in Minnesota has investigated from January 1993, through June 26, 1998. Minnesota charged 86 cases in that 5½ year period, which averages to roughly 15.6 cases a year. Of those 15.6 cases a year that are being charged, 11.2 are convicted or are "disposed of" (meaning they are dismissed or acquitted).

It is clear that the Kansas is doing a more efficient job of referring cases to prosecutors and having them prosecuted than its larger Midwest cousins.

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If I can provide further information, please advise.

Sincerely,



Philip S. Harness
Workers Compensation Director

PSH:lre