

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

The meeting was called to order by Chairperson Al Lane at 9:10 a.m. on January 17, 2001 in Room 521-S of the Capitol.

All members were present except: Rep. Peggy Long - excused

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

Conferees appearing before the committee: Bud Grant, Kansas Merchants Security Assn.  
Kathleen Sebelius, Kansas Insurance Commissioner

Others attending: See attached list

The minutes of January 10 and 11 were handed out to the committee. Rep. Grant made a motion that the minutes be approved as written. Rep. Ballou seconded the motion. The motion carried.

**Introduction of Bills**

Bud Grant, Kansas Merchants Security Association, requested a bill which would amend the worthless check statutes. He asked that the enactment clause read "as printed in the Kansas Register." (Attachment 1) Rep. Grant made a motion that the bill be introduced as a committee bill. It was seconded by Rep. Humerickhouse. The motion passed.

**Presentation by Kansas Insurance Department**

Kathleen Sebelius, Kansas Insurance Commissioner, appeared before the committee to give an update on the Insurance Department. She introduced several people from the department: Dick Cook, Fire and Casualty Division; Bill Wempe, Director of Fire and Casualty; Linda DeCoursey, Director, Government Affairs Division; and Jeremy Anderson, Assistant Director, Government Affairs Division.

She explained the Kansas Insurance Department's (KID) part in Workers Compensation insurance. Most Workers Compensation (WC) business is carried out by the Kansas Department of Human Resources, but the KID deals with the companies who sell WC insurance and the rate setting for those companies. They also handle the Workers Compensation Fund which encourages the employment of persons with a preexisting condition and relieves employers wholly or partially of liability resulting from second injuries suffered by these employees. The three basic areas of coverage for the fund are: second injury, insolvent/uninsured employers, and reimbursement to employers on overpayment of benefits. She answered questions from the committee throughout her presentation.

The most recent rate filing for WC insurance, effective January 1, 2001, is estimated to result in an overall 4.3% increase, which equates to an \$11.5 increase to Kansas employers. This was the first overall rate increase in almost seven years. (Attachment 2)

The KID operates on fees and premium taxes paid by insurance companies. They generate revenue in the \$80M range. A portion of this revenue supports their office, but most of it goes into the State General Fund.

Commissioner Sebelius encouraged the committee to inform their constituents that the insurance department offers a lot of information about insurance available by telephone, e-mail or from their web page. This information is free. She also encouraged the committee to make use of all the materials they have available. The web site is located at: <http://www.ksinsurance.org>

Chairman Lane introduced Andrew Sabolic from the audience. He is with the National Council on Compensation Insurance which is the rating company that files rates for workers compensation for the insurance department.

Chairman Lane adjourned the meeting at 9:55 a.m. The next meeting is scheduled for January 18, 2001.

# HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE GUEST LIST

DATE: January 17, 2001

NAME	REPRESENTING
BUD GRANT	KS MERCHANTS SECURITY ASSN
Sam Sellers	KS Assoc. Ins. AGENTS
Sandra McCancey	KS Ins. Dept.
Jeremy Anderson	KI Ins. Dept.
Kathleen Scheliot	Ins. Commissioner KS Ins. Dept.
Mary Spinks	Dept. of Admin
Wayne Maubel	7th AFL-CIO
Michael White	Kearney Law Office
Bill Wampler	KS Ins. Dept.
Dick Cook	KS. Ins. Dept.
Andrew Sabolic	N.C.C.I.
Shirley Allen	Bothenberg & Assoc.
Janet Stubbs	KS. Bldg. Ind. Assn.

**Worthless Check Statutes, as amended by 2000 Session Laws of Kansas  
with revisions proposed to be adopted in the 2001 Session Laws**

**LEGEND:**

**Bold Face Type** = Language to be deleted

Underlined Type = New language

Regular Type = Current language

60-2610. Civil liability for worthless check. (a) If a person gives a worthless check, as defined by subsection (g) (f), the person shall be liable to the holder of the check for the amount of the check, the service charge, interest at the statutory rate, the costs of collection including but not limited to reasonable attorney fees and court costs, **the incurred court costs, the costs of restricted mail and the service charge and the costs of collection, including but not limited to reasonable attorney fees,** plus an amount equal to the greater of the following:

- (1) Damages equal to three times the amount of the check but not exceeding the amount of the check by more than \$500; or
- (2) \$100.

The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check. In the event the court waives all or part of the attorney fees, the court shall make written findings of fact as to the specific reasons that the amounts awarded are sufficient to adequately compensate the holder of the check.

(b) The amounts specified by subsection (a) shall be recoverable in a civil action brought by or on behalf of the holder of the check only if: (1) Not less than 14 days before filing the civil action the holder of the check made written demand on the maker or drawer for payment of the amount of the check, and the incurred service charge and accrued interest; **the costs of restricted mail;** and (2) the maker or drawer failed to tender to

*Bud Grant  
Ks Merchants Security Assn.*

House Business, Commerce & Labor Committee

1-17-01

Attachment 1

the holder, prior to the filing of the action, an amount not less than the amount demanded. The written demand shall be sent by first-class mail **restricted mail, as defined by subsection (g)**, to the person to be given notice at such person's address as it appears on such check, draft or order or to the last known address of the maker or drawer and shall include notice that, if the money is not paid within 14 days, triple damages in addition to an amount of money equal to the sum of the amount of the check, the incurred **court costs**, service charge, accrued interest, **costs of restricted mail** and the costs of collection including but not limited to reasonable attorney fees unless the court otherwise orders, may be incurred by the maker or drawer of the check. Notice required by subsection (b)(1) shall state the exact amount and date due, as well as an estimate of the amount that may be incurred if the amount demanded is not paid by the specified date.

(c) Subsequent to the filing of an action under this section but prior to the **commencement of a dispositional hearing by the court**, date for filing a written answer with the court, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the sum of the amount of the check, the incurred **court costs**, service charge, accrued interest, **costs of restricted mail** and the costs of collection <sup>and</sup> including but not limited to reasonable attorney fees and court costs. The plaintiff shall include in the petition a statement alleging that the defendant may tender such amount as satisfaction of the claim as provided in this subsection. If the amount alleged in the petition is tendered to the plaintiff in full satisfaction of the debt prior to the **commencement of the dispositional hearing by the court** date for filing a written answer with the court, the case shall be dismissed by the plaintiff. For purposes of this subsection only, the amount tendered as satisfaction of the claim shall not include triple damages or damages of \$100 as provided in subsections (a)(1) and (2). **For purposes of this subsection, a dispositional hearing**

means a trial or other hearing by the court in which the plaintiff is seeking the entry of judgment against the defendant. The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check. In the event the court waives all or part of the attorney fees, the court shall make written findings of fact as to the specific reasons that the amounts awarded are sufficient to adequately compensate the holder of the check.

(d) If the trier of fact determines that the failure of the defendant to satisfy the dishonored check was due to economic hardship, the court may waive all or part of the damages provided for by this section, but the court shall render judgment against defendant for not less than the amount of the dishonored check, the incurred court costs, service charge, costs of restricted mail and the costs of collection, including but not limited to reasonable attorney fees, unless otherwise provided in this subsection. The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check. In the event the court waives all or part of the attorney fees, the court shall make written findings of fact as to the specific reasons that the amounts awarded are sufficient to adequately compensate the holder of the check.

(e) Any amount previously paid as restitution or reparations to the holder of the check by or on behalf of its maker or drawer shall be credited against the amount for which the maker or drawer is liable under subsection (a).

(f) (e) Conviction of giving a worthless check or habitually giving a worthless check, as defined by K.S.A. 21-3707 and 21-3708 and amendments thereto, shall not be a prerequisite or bar to recovery pursuant to this section.

(g) (f) As used in this section:

(1) "Giving a worthless check" means the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check, order or draft on any bank, credit union, savings and loan association or depository for the payment of money or its equivalent:

(A) **With intent to defraud or in payment for a preexisting debt; and**

(B) which is dishonored by the drawee because the maker or drawer had no deposits in or credits with the drawee or has not sufficient funds in, or credits with, the drawee for the payment of such check, order or draft in full upon its presentation; and

(B) for which the maker or drawer has not tendered to the holder or the holder's agent the amount of money demanded and within the time allowed by the demand required in subsection (b) herein.

(2) "Restricted mail" means mail which carries on its face the endorsements "restricted mail" and "deliver to addressee only."

(3) "Service charge" means \$10, or subject to limitations contained in this subsection, if a larger amount is posted conspicuously, the larger amount. In no event shall the amount of such insufficient check service charge exceed \$30 40.

(3) "Reasonable attorney fees" shall be \$350.00 for a single check with an additional \$50.00 for each additional check.

Note: K.S.A. 60-2611 is proposed to be deleted in it's entirety.

K.S.A. 60-2611. Civil action to collect on check or order; reasonable attorney fees assessed as costs. In any civil action to enforce payment of or to collect upon a check, order or draft on any bank, credit union, savings and loan association or depository for the payment of money or its equivalent, payment upon which such instrument has been refused because of insufficient funds or no

account, the party prevailing on such cause of action shall be awarded reasonable attorney fees. Such fees shall be assessed by the court as costs against the losing party. The fees shall not be allowed unless the plaintiff offers proof during the trial of such action that prior to the filing of the petition in the action demand for payment of the check, order or draft had been made upon the defendant by restricted mail not less than 14 days prior to the filing of such suit.



**Kathleen Sebelius**  
Commissioner of Insurance  
**Kansas Insurance Department**

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- Fraud and Abuse Report for 1999
- Company and Rate Information
- Key Department Staff

**House Business, Commerce & Labor Committee**

**1-17-01**

**Attachment 2**

420 SW 9th Street  
Topeka, Kansas 66612-1678

785 296-3071  
Fax 785 296-2283  
Printed on Recycled Paper

 **Consumer Assistance Hotline**  
1 800 432-2484 (Toll Free)



**Kathleen G. Sebelius**  
Commissioner of Insurance

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

Year End Report  
2000

**Kansas  
Insurance  
Department**



**Paula S. Greathouse**  
Staff Attorney

**Kathleen Sebelius**  
Commissioner

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

Year End Report  
2000

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## I. The Sixth Year

Kathleen G. Sebelius, the 23rd Insurance Commissioner of Kansas, took office January 9, 1995. In her role as the Administrator of the Kansas Workers' Compensation Fund, the Commissioner inherited a bureaucracy that had seen little change since it was transferred to the Department of Insurance in the 1970s. The Kansas Workers' Compensation Fund, which administered approximately \$8.5 million in 1999, had a working staff of one attorney, one half-time attorney, one paralegal, one secretary, two half-time secretaries, and three accountants.

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

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

Brian Moline, former General Counsel, also requested status reports on all open cases, and asked the approximately 100 Fund attorneys to verify our computer records on cases assigned to them. The review of all open files (approximately 9,300) continued until December of 1995. The information was updated in the master computer files and a current status was obtained on each file. Changes were made in over ten percent of the files. This file review continues internally on a daily basis. Each attorney is also required to submit a detailed report at least once a year on all active cases. Copies of these reports are included as exhibit 3. These steps allow the Commissioner to carry out her strong commitment of maintaining a database that reflects the true nature of the Fund's files. In addition, a computer rewrite of the Fund's working system on the AS400 has been completed. The rewrite allows the Fund to access valuable information not previously available. It includes the total amount of money paid to a certain Respondent, such as Boeing or Frito Lay, the total amount paid to a certain medical provider and a break down of payments made to a Claimant. The goal is to treat the Fund as a business and function more in the manner of an insurance carrier in processing these claims.

An audit of the Fund's internal procedures was conducted by Stuart, Maue, Mitchell and James pursuant to an RFP in June 1996. At that time, the firm found approximately seven deficiencies in the general working of the Fund. These included; (1) woefully inadequate working and record maintenance space, (2) unacceptably small staff, which is required to process huge masses of critical legal and financial documentation, (3) inadequate computer and printer resources, (4) limited access to various databases, (5) inadequate "ports" to STARS, (6) unacceptably wide dispersal of employees over three floors, (7) use of both full-time and part-time employees to conduct required fund functions. The Commissioner immediately set about addressing all of the concerns. Computers and printers were ordered for the employees and were

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

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

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

## **II. General Information**

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

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

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

## **B. Coverage**

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

### **1. Second Injury**

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

The statutes and case law broadly construe handicap. Second injury cases are broken down into "but for" and contribution cases.

#### **a) "But For" Cases**

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

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

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

*b) Contribution Cases*

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

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

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

**2. Insolvent/Uninsured Employers**

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

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

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

The Workers' Compensation Fund may be required to pay benefits to injured workers where the employer has no insurance and is financially unable to pay compensation to the injured worker or in situations where the employer cannot be located to pay such compensation. The Fund currently has approximately 407 open insolvent employer cases. There have been 684 cases in this area since 1990.

### **3. Reimbursement**

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

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

### **C. Future Liability**

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

## **III. Financial**

### **A. Financial Overview**

The Workers' Compensation Fund was created and exists pursuant to K.S.A. 44-566a and receives its funding from assessments against insurance carriers and self-insurers pursuant to



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

Receipt Analysis

FY2000

Assessment Receipts	\$9,073,811.89
Gen. Fund Entitlement	0.00
Non-Dependent Death Receipts	0.00
Misc. Reimbursements	<u>\$306,161.96</u>
TOTAL RECEIPTS	\$9,379,979.95
Previous Year Carryover	\$24,340,025.34
Canceled Checks	<u>58,257.47</u>
TOTAL FUNDS AVAILABLE	\$33,778,262.76

FY1999

Assessment Receipts	\$7,561,070.07
Gen. Fund Entitlement	0.00
Non-Dependent Death Receipts	0.00
Misc. Reimbursements	<u>\$15,370.82</u>
TOTAL RECEIPTS	\$7,576,440.89
Previous Year Carryover	\$28,239,375.86
Canceled Checks	<u>30,623.18</u>
TOTAL FUNDS AVAILABLE	\$35,846,439.93

FY1998

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

FY1997

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

FY1996

Assessment Receipts	\$33,010,078.80
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Disbursement of Expenditures

FY 2000

Administrative Costs	.85%
Compensation Costs	50.07%
Vocational Rehabilitation	.36%
Medical Costs	37.86%
Other Operating Expenses	5.33%
Attorney Fee Expenses	<u>5.53%</u>
	<u>100%</u>
Outside Counsel	\$425,528.94

FY1999

Administrative Costs	.78%
Compensation Costs	57.09%
Vocational Rehabilitation	.53%
Medical Costs	31.57%
Other Operating Expenses	3.41%
Attorney Fee Expenses	<u>5.81%</u>
	<u>100%</u>
Outside Counsel	\$722,493.29

FY1998

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

FY1997

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

FY1996

Administrative Costs	.88%
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Gen. Fund Entitlement	0.00
Non-Dependent Death Receipts	\$203,500.00
Misc. Reimbursements	<u>\$170,378.94</u>
TOTAL RECEIPTS	\$33,383,957.74
Previous Year Carryover	\$31,469,560.82
Canceled Checks	<u>246,193.51</u>
TOTAL FUNDS AVAILABLE	\$65,099,712.27

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

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

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

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

FY1991	
Assessment Receipts	\$17,030,545.83
Gen. Fund Entitlement	3,930,000.00
Non-Dependent Death Receipts	129,500.00

Compensation Costs	64.20%
Vocational Rehabilitation	.90%
Medical Costs	24.96%
Other Operating Expenses	1.00%
Attorney Fee Expenses	<u>8.06%</u>
	100%
Outside Counsel	\$3,053,561.45

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

Outside Counsel	\$4,241,869.88
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FY1994	
Administrative Costs	11.01%
Compensation Costs	63.58%
Vocational Rehabilitation	1.28%
Medical Costs	23.51%
Other Operating Expenses	<u>0.62%</u>
	100.00%

Outside Counsel	\$4,343,495.23
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FY1993	
Administrative Costs	12.36%
Compensation Costs and	65.26%
Vocational Rehabilitation	
Medical Costs	21.62%
Other Operating Expenses	0.76%
Refunds	<u>0.00%</u>
	100.00%

Outside Counsel	\$3,837,959.67
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FY1992	
Administrative Costs	10.96%
Compensation Costs	68.36%
Medical Costs	19.98%
Other Operating Expenses	0.70%
Refunds	<u>0.00%</u>
	100.00%

Outside Counsel	\$3,579,980.88
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FY1991	
Administrative Costs	11.45%
Compensation Costs	69.49%
Medical Costs	18.10%

Misc. Reimbursements	94,490.41
TOTAL RECEIPTS	\$21,184,536.24
Previous Year Carryover	3,758,996.78
Canceled Checks	22,563.44
TOTAL FUNDS AVAILABLE	\$24,966,096.46

Other Operating Expenses	0.96%
Refunds	0.00%
	100.00%
Outside Counsel	\$2,645,923.33

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

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

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

#### IV. Tail Liability/Actuarial Report

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

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

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

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

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

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

1. Impled Claims	\$174,808,000
2. Offset for Date Purge	50,787,000

3. Potential Claims	64,304,000
Total Unpaid Liability	<u>\$289,899,000</u>

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

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

## **V. Legislative Issues**

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

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

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

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

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

**VI. Conclusion**

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

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

Re: Workers Compensation Fund Actuarial Report - Summary

Dear Commissioner,

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

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

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

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

CAI also recommends that:

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

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

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

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

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

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

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

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

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

Sincerely,



Robert F. Lowe

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

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

CASUALTY ACTUARIES INC

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

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

CASUALTY ACTUARIES, INC.

CASE REPORT

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

\_\_\_\_\_  
Claimant

\_\_\_\_\_  
Respondent

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

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

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

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

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

If not settled, status of settlement discussions:

\_\_\_\_\_  
\_\_\_\_\_

---Synopsis/Status of Case: ---

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Can file be closed:     Y     N

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

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

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

KANSAS WORKER'S COMPENSATION FUND CASE SUMMARY

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Date of Accident:

\_\_\_\_\_

3. Description of Injury:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Employer's Knowledge:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

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9. Percent of Permanent Partial Disability (Functional):

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10. Work Restrictions:

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11. Percent of Work Disability:

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12. Worker's Compensation Benefits Paid to Date:

- a. TTD: \_\_\_\_\_
- b. Medical: \_\_\_\_\_
- c. PPD: \_\_\_\_\_
- d. Voc. Rehab.: \_\_\_\_\_
- e. Misc.: \_\_\_\_\_
- Total: \_\_\_\_\_

13. Respondent's Settlement Proposal:

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

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15. Chronology of Treatment:

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Casualty Actuarial Inc.

December 29, 1995

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

Re: Kansas State Fund  
Cash Flow Profile

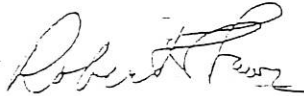
Dear Ms. Greathouse,

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

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

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

Sincerely,



Robert F. Lowe

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KANSAS STATE FUND

Cash Flow Analysis

December 29, 1995

KANSAS STATE FUND

Cash Flow Analysis

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

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

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



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

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

The above numbers are presented without discounting<sup>2</sup> for potential investment income. Any estimate of the effect of investments of funds must assume that the entire amount of the present value of the above anticipated payments is placed in high quality, reliable investments.

# Evaluation of the Workers' Compensation Fund



Kansas State Department of Insurance

under

Proposal No. 31470



final report issued

June 7, 1996

I. EXECUTIVE SUMMARY

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

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

B. Findings

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

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

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

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

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

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

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

C. Guidelines to Regulate Outside Counsel

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

Specific recommendations:

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

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

D. Systems Used to Track Current File Status

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

1. Availability of Data

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

2. Monitoring of Outside Counsel

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

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

3. Staffing of Second Injury Fund --

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

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

E. Recommendations

1. Second Injury Fund

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

2. Financing of the Fund

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



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

3. Fund Expenses

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

4. Fund Personnel

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

5. Fund Equipment

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

II. GENERAL RECOMMENDATIONS

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

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

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

THE KANSAS INSURANCE DEPARTMENT FRAUD AND ABUSE REPORT  
FOR 1999

Workers Compensation Fraud

The Kansas Insurance Department ("KID") is mandated to investigate and pursue administrative action against insurance companies, (and any other legal entities regulated by the KID), for acts of fraud and abuse pursuant to K.S.A. 44-5,120 *et seq.* The definition and scope of "fraud and abuse" is most easily defined as company misconduct in relation to processing and payment of legal obligations relating to workers' compensation claims. The main thrust of the statute is to identify cases of "willful and intentional" failure/refusal to perform legal obligations. Also included in the definition are nonwillful errors in claims processing or conduct that occurs with such frequency as to constitute a business practice.

This statutory obligation necessarily requires acquisition of information necessary to determine whether or not there is a legitimate factual or legal issue justifying company conduct. Regardless of any determination made by the KID, the complainant may also seek relief in the district courts of Kansas.

As cases were investigated and closed, they were examined and sorted by category. The following is a breakdown of the categories and the numbers of cases associated with them:

- 29 Legitimate legal/factual dispute exists justifying company action or litigation, (conduct lawful).
- 18 Unintentional or non-willful reason for delay or failure to pay, including the following non-exclusive list of circumstances:
  - Clerical errors (typos, mispostings, etc.)
  - Attorney errors (failure to send Journal Entry or notify company of decisions)
  - Employer errors (failure to notify carrier or provide information)
  - Ineffective communications
  - Misidentification of carrier
  - Third Party Administrator processing errors.
- 21 Perpetrator was not a person or entity regulated by the KID under K.S.A. 44-5,120. The matter was referred to the appropriate agency.
- 1 Formal regulatory action.
- 4 The complaint was withdrawn by the complainant.

- 3 Complainant failed or refused to cooperate with investigative process and/or provide information necessary to pursue complaint.

**Closed Cases:            76**

**Pending Cases:        39**

One formal action was taken this year against Great Plains Insurance Services of Red Rock, Oklahoma. The company was found to have acted as an insurance company without being authorized or licensed to do so pursuant to K.S.A. 40-2,125. The company was also found to have engaged in an abusive and/or fraudulent practice by refusing to pay benefits as ordered to under the Workers Compensation Act. The company was ordered to cease and desist from conducting the business of insurance in the state of Kansas. The company was also ordered to pay \$7,825.00 in fines and penalties and ordered to reimburse Palleton of Kansas, Inc. and the Kansas Workers Compensation Fund in the amount of \$6,756,17.

#### General Fraud

General Fraud cases are those varied types of reports that the KID receive and then open for investigation. These cases often quickly identified as falling more properly within the jurisdiction of another entity or agency. In light of the legislature's clear intent that the KID should not obtain law enforcement status, we have reformed our role somewhat. Cases are not opened and the real parties at interest are identified, i.e. Kansas Securities Commission, Fire Marshal, insurance carrier, etc. If the case clearly falls within the jurisdiction of another agency, the case information is written up and submitted to that agency. If it appears that the reported activity may be criminal in nature, the appropriate law enforcement agency is contacted and a report is made. The KID offers the assistance of our fraud investigators in whatever subsequent investigation occurs. Thus, we are now more as adjuncts to law enforcement and insurance carriers in the investigation of fraud.

When the alleged offender is an insurance company or a license agent, the KID conducts most of the primary investigation because of our regulatory responsibilities. Thus, the fraud investigators work closely with the Consumer Assistance Division and with the Agents and Brokers Division to identify offending individuals who are employed within the insurance industry.

In 1999, the general fraud cases broke down as follows:

- 6 No action taken (complaint was withdrawn by reporter, and/or reporting party failed or refused to cooperate with the KID's investigation.

- 64 Cases were investigated but no fraud was found (situations where the KID determined that the conduct was lawful and/or there was insufficient evidence to establish probable cause.
- 2 Cases were opened as possible fraud cases, but the KID's investigation failed to establish reason to suspect fraud and the case was referred to another division within KID.
- 11 Cases initially appeared to be within the jurisdiction of the KID but another agency had the exclusive or more appropriate authority to investigate and pursue. Thus, the cases were referred to another entity.
- 15 Cases were investigated and established probable cause to believe criminal or statutory violations were committed, and were referred for charging/administrative action to local prosecutors.
- 2 Requests for assistance were resolved by simply providing general information (telephone numbers for other agencies, sending information pamphlets, etc.)

**Closed cases:            100**

## MEMORANDUM

To: Commissioner Sebelius

From: Dick Cook

Subject: Workers Compensation Information

Date: January 11, 2001

The following information is an update of Kansas workers compensation information that may be useful to share with the Kansas House Business, Commerce and Labor Committee:

- The Department authorized 9 new carriers to write workers compensation insurance in Kansas last year. According to our most recent records there are approximately 250 companies writing Kansas workers compensation insurance.
- There are currently 15 active group-funded workers compensation pools in Kansas. It is estimated that these groups will generate \$37 million in annual premium.
- The National Council on Compensation Insurance (NCCI) estimates that there are approximately 53,600 voluntary and assigned risk market employers paying \$269 million in annual Kansas workers compensation premium.
- The most recent rate filing, effective January 1, 2001, is estimated to result in an overall 4.3% increase, which equates to an \$11.5 million increase to Kansas employers. The approved rates were reduced almost \$550,000 from the rates originally filed by NCCI. This was the first overall rate increase in almost seven years. Prior to the 1/1/01 filing there were sixth straight overall decreases for workers compensation rates that should account for an approximate 39% or \$126 million total savings to Kansas employers.
- We completed the final year of a three-year contract for the NCCI, Travelers Insurance Company and Commercial Union Insurance Company servicing the Kansas Workers Compensation Insurance Plan. In 2000 bids were reviewed for operation of the Plan and a contract was awarded to NCCI, Liberty Insurance Corporation and Continental Western Insurance Company to service the Plan for the next four years. The Plan's annual premium is about \$19 million, and the policy count is around 10,000.
- The Plan peaked during 1993 with approximately \$143 million in annual premium and 21,000 policies.
- NCCI's 1998 Policy Year Underwriting Results Experience valued as of December 31, 1999 shows the Kansas combined ratio, combination of loss ratio, expense ratio and dividend ratio, to be 122.1%. This figure does not include investment income. Anticipating a 10% average return on investment, the carriers would probably still lose \$12 on every dollar of earned premium. The 1997 policy year combined ratio was 104.3%.

I hope the above gives you adequate information for your House Business, Commerce and Labor Committee presentation. Please let me know if you have any questions or need additional information regarding the above.

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