

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Karin Brownlee at 8:30 a.m. on March 18, 2003 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: April Holman, Legislative Research
Deb Hollon, Legislative Research
Mitch Rice, Revisor of Statutes
Jodie Anspaugh, Secretary

Conferees appearing before the committee: Dale Slape, Kansas Trial Lawyers Association
Terri Roberts, Kansas Coalition for Workplace Safety,
Kansas State Nurses Association
Dr. Ernie, Pogge, AARP
Terry Leatherman, KCCI

Others attending: See attached list.

Chairperson Brownlee continued the hearing on Sub SB 181. Dale Slape, resident of Wichita and member of Kansas Trial Lawyers association, testified in opposition to the bill. (Attachment 1) Mr. Slape has practiced workers' compensation law in Wichita for more than 25 years. The subcommittee eliminated provisions for "supplemental functional disability," when they should have eliminated provisions for "supplemental functional disability compensation." It was noted by members of the committee that this correction had already been made. Attached to Mr. Slape's testimony is a letter from Victor Rizo, a 15-year Boeing Wichita employee.

Terri Roberts of the Kansas Coalition for Workplace Safety and the Kansas State Nurses Association testified in opposition to Sub SB 181. (Attachment 2) According to her testimony, there were more than 20,000 injured Kansas employees in 2002, and they received some of the lowest benefits in the nation. She is concerned that nothing in the bill addresses the need for improved workplace safety and that nothing in the bill requires insurance companies to pass along profits to Kansas employers in the form of lower premiums.

Dr. Ernie Pogge of AARP Kansas testified in opposition to Sub SB 181. (Attachment 3) Workers compensation benefits should not be reduced or terminated when recipients become eligible for retired workers benefits under Social Security or reach retirement age. Many workers may reach retirement age having been unable to work for long periods of time due to occupational injury or illness, which would have an adverse impact in other retirement income. Workers who suffer an occupational injury or illness should be eligible for unreduced workers compensation regardless of age or eligibility for retired worker benefits under Social Security or other pensions. Committee members indicated to Dr. Pogge that this portion of the original SB 181 is not in the Substitute SB 181 and is no longer being considered.

Terry Leatherman, KCCI, testified in support of the bill. Sub SB 181 is very different from SB 181. Many elements of the original bill are gone. The new bill deals with preexisting conditions and economic dismissals. The bill requires that medical evidence be used to determine to what degree an injury was caused by work. If an employer can demonstrate that an employee is unemployed because of the bad economy, then that employee cannot collect work disability. Mr. Leatherman attached a summary of SB 181. (Attachment 4)

Mitch Rice, Revisor, distributed copies of the Substitute bill. (Attachment 5)

Senator Kerr moved to clean up the language on page 6 according to the new page 6 distributed by Mitch

CONTINUATION SHEET

MINUTES OF THE SENATE COMMERCE COMMITTEE at 8:30 a.m. on March 18, 2003 in Room 123-S of the Capitol.

Rice. (Attachment 6) Senator Emler seconded. The motion carried.

Senator Kerr moved to pass Sub SB 181 favorably for passage. Senator Jordan seconded. The motion carried. Senators Barone and Steineger requested that their votes be recorded as no.

Senator Wagle made a motion to put the elements of the bill that were removed from SB 181 in order to make Sub SB 181 and make a separate bill to be introduced in Ways and Means and considered next year. Senator Emler seconded. The motion carried. Senator Wagle requested that this new bill be considered by the Workers Compensation Advisory Council.

Written testimony was provided by the following:
Steve Kueffer, Penny's Concrete Inc. (Attachments 7 and 8)
Brian J. Powers, Creative Care (Attachment 9)

The meeting was adjourned at 9:30 a.m.

The next meeting is scheduled for March 19, 2003 at 8:30 a.m. in Room 123-S.

SENATE COMMERCE COMMITTEE

GUEST LIST

DATE: Tuesday, March 18, 2003

NAME	REPRESENTING
Terri Roberts	Kansas State Nurses Assn.
Wayne Marich	75 AFL-CIO
Stuart Little	Overland Park Chamber
Henry Boren	Ks. Dept of Admin
Kevin Borene	Hein law firm
Bernie Koch	Wichita Area Chamber of Commerce
John Frederick	Boeing
Mance Carpenter	Kansas Chamber
John Peterson	Raytheon Aircraft
Don Seifert	City of Olathe
Steve Johnson	Kansas Gas Service
Ron Seiber	How Law Firm
Ed Redmon	Ks & F F C
Bob Vancrum	Greater KC Chamber
Ashley Sherard	Lenexa Chamber
LARRY MAGILL	KS. ASSN OF INS. AGENTS
KENNETH DANIEL	MIDWAY WHOLESALE & NFIB
HAL HUDSON	NFIB/KS
Natalie Bright	WIBA
Julie Clark	Hallmark Cards
Andy Shaw	Goodyear Tire & Rubber Co.
Tom Slattery	AGC/KS

J.P. SMALL

KOCH INDUSTRIES, LEARJET



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the Senate Commerce Committee

FROM: Dale Slape
Kansas Trial Lawyers Association

RE: 2003 SB 181/Workers Compensation

DATE: March 18, 2003

Madame Chairperson and Members of the Committee:

I appreciate the opportunity to testify in opposition to Senate Bill 181. I am Dale Slape, and I have been practicing workers' compensation law in Wichita for more than 25 years.

With the deletion of the section involving "supplemental functional disability compensation" from SB 181, there is some language in Sec. 2. K.S.A. 44-510e (a) that appears to be out of place. It's the second sentence of the amendment to this section.

"If due to the work-related injury the employee is not engaging in any work for wages equal to 90 percent or more of the average gross weekly wage that the employee was earning at the time of the injury, the employee shall be entitled to *supplemental functional disability compensation*."

The Subcommittee previously eliminated the other provisions in SB 181 with "*supplemental functional disability*". The 1993 Act has the formula for work disability involving task loss and wage loss when wages are less than 90 percent. This provision should have been eliminated with the other section involving *supplemental functional disability compensation*..

It is my impression that this Committee through SB 181 does not intend to require employers to pay employees' work disability when the employees are not earning 90 percent of their previous wage and that work disability is not a result of their on-the-job injury. It is my further impression that the legislative intent of SB 181 is that an injured worker, to establish work disability, must show a good faith effort to obtain employment. In fairness to the injured worker and employer, there should be a connection between the injury and resulting work disability.

In examining the newest substitute Senate Bill 181, these good intentions are not accomplished. This is especially striking in examining the language in Sec. 2. K.S.A. 44-510e (a). One first encounters language that limits injured workers to their functional

Terry Humphrey, Executive Director

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Senate Commerce Committee

3-18-03
Attachment 1-1

impairment (doctor's rating) when the employee is not under work restriction at the time of his termination. This is problematic in at least two instances.

The first involves a worker who is injured and required to wait weeks or months to visit a specialist and complete his MRIs or testing before being given work restrictions. If that employee is terminated for any reason before work restrictions are imposed, this bill prohibits collection of work disability. In any career-ending injury, this leaves the injured worker unemployed and without the work disability that would otherwise allow him to pay for retraining. In fact, this provision offers incentive to those employers who would want to escape liability; they simply need to terminate the employee before work restrictions are imposed.

The second circumstance is demonstrated by my client, Victor Rizo. Mr. Rizo was injured and given work restrictions in 1997. In December of 2001, his employer was facing an economic slowdown. He was given the choice of a medical leave or a medical evaluation conducted by the employer's medical representative. Since those placed on medical leave are not terminated, they may not receive unemployment. Victor underwent the evaluation, and his work restrictions were removed. He was taken out of the light work he could perform and placed in heavy labor. Others with his same job code were treated similarly. As expected, his symptoms reoccurred. Many of you have already been presented with his testimony, and we are handing out additional copies this morning. The point is that Senate Bill 181 allows the employer to terminate the employee when he has no work restrictions and thereby escape payment of work disability.

When the worker is injured and given work restrictions, he has a task loss and a work disability. The employer, however, is given a break and not required to pay that work disability as long as the injured worker is kept employed at a job he is capable of performing with his work restrictions. That is fair to the employer and employee. It is an incentive to the employer to keep and employ the injured. That was the agreement achieved in the 1993 Act. Senate Bill 181 seeks to change that compromise and renege on that prior agreement.

When terminated, the employee is placed in a competitive disadvantage in the job market, whether that termination occurs promptly after the injury or several years later. Work disability is the parachute that allows the injured worker to pay for retraining and again become a productive member of our society. At the point of termination, work disability is not a hand out, it's a hand up.

Thank you again for allowing me the opportunity to speak offer this testimony in opposition to the latest version of SB 181. I would be happy to try to answer any questions.

Legislative Testimony - SB 181

March 17, 2003

Madame Chairperson and Members of the Committee:

I appreciate the opportunity to testify in opposition to Senate Bill 181. My name Victor Rizo, and I have been employed at Boeing Co. in Wichita, Kansas over 15 years. I am married with four children, and eight grandchildren. In addition to supporting my family, a large portion of my time is devoted to working with youth in my community. I am a founder of the Latino Dreams Car Club. We work to turn young men and women away from gangs and drugs to Christ. By helping them to use their hands and skills in customizing cars, we demonstrate Christian values and a work ethic. For its work, our club has been nationally recognized in the magazine "Lowrider".

My particular concern is the provision in Senate Bill 181 that prohibits work disability when an employee is not under work restrictions at the time of separation from employment. In 1997 I suffered spinal injuries working at Boeing and was placed upon work restrictions by my treating doctors. Those restrictions, included avoiding bending, stooping or crouching, and lifting restrictions only in the "light work" OSHA category not to exceed occasionally 20 pounds and frequently 10 pounds.

With those work restrictions, Boeing placed me in a job code labeled "20406 write up", and moved me to "light assembly". I was able to perform my job well, without interruption, until December of 2001. After September 11, 2001, with work beginning to slow, all the individuals with the job code of "20406 write up" were told by Boeing to report for a medical evaluation with a medical evaluator hired by Boeing. After my evaluation, I was told that I did not need any work restrictions, and Boeing then lifted all my work restrictions. I was transferred to heavy manual labor in major assembly. Others with the same job code were given the same treatment. Their restrictions were removed, and they were placed in jobs with heavy lifting, constant bending, and other work beyond their original restrictions.

Symptoms that I had controlled soon became worse with the heavy work. Pain increased, and I soon could not turn my head. I was threatened with write-ups, but I continued to do my job as best I could. I was told by my supervisors again and again that I should quit. While I held on, I saw others, many others, just like me, with the same job code whose restrictions had been removed, lose their job. They either quit or were terminated after being written up. With persistence and luck, I eventually had my restrictions reinstated. It required additional medical exams, even at my own expense. Dozens of other workers were not so fortunate.

Under current law, if I am terminated, I can collect some work disability benefits that will allow me to retrain myself continue to support my family. Senate Bill 181 eliminates work disability for persons without work restrictions. Large employers may easily hire a Doctor to remove work restrictions, the same as mine were removed in December of

2001. After the work restrictions are removed, we, the working disabled, are easily discarded. Without work disability to retrain, Senate Bill 181 creates a new class of non-working disabled forced to seek state assistance. I cannot believe that is good for my community or this State.

My disability is permanent. I will have it the rest of my life. Under current law, employers have a reason to retain disabled workers. With Senate Bill 181, employers only have incentive to remove work restrictions and terminate disabled workers. Please, for the sake of the working disabled, I respectfully request that you oppose Senate Bill 181.

Victor Rizo

Kansas Coalition for Workplace Safety

Promoting Economic Security Through Workplace Safety for Kansas Workers and their Families.

Coalition Members:

International Association of Fire Fighters Local 64

International Association of Fire Fighters Local 83

International Association of Machinists District Lodge No. 70

Kansas AFL-CIO

Kansas State Firefighters Association

Kansas State Nurses Association

Kansas State Fire Fighters Association

Kansas Trial Lawyers Association

Teamsters Local No. 696

Tri-County Labor Council

United Auto Workers Local No. 31

United Steelworkers

United Steelworkers Local #307

Wichita-Hutchinson Labor Federation of Central Kansas

Senate Commerce Committee Testimony on Substitute for S.B. 181

March 18, 2003

Chairwomen Brownlee and members of the Senate Commerce Committee, my name is Terri Roberts and I am here today to testify on behalf of the Kansas Coalition for Workplace Safety and the Kansas State Nurses Association, a member of the Coalition.

BROKEN PROMISES

In 1911, the Kansas Legislature enacted the state's first law governing workers compensation, in which business promised, without regard to fault, to furnish timely medical care and pay for the lost wages and permanent losses of injured workers. In exchange, employees gave up their ability to sue for damages to be determined by a jury. Now, more than 90 years later, SB 181 seeks to renege on this essential promise of compensation to injured workers and their families.

This proposal could not come at a worse time for Kansas workers. Each year, tens of thousands of Kansas workers are injured on the job. In FY 2002 alone, 72,825 job-related injuries and illnesses were reported to the Kansas Division of Workers Compensation. *That amounts to 200 injuries and illnesses each day.* More disturbing, the number of work-related fatalities in Kansas jumped to 53 employees in FY 2002, up from 44 in FY 2001. Since 1994, Kansas has consistently exceeded the national rate for workplace illnesses and injuries, according to the Bureau of Labor Statistics. In FY 2002, Kansas' over all injury and illness rate for private industry was 7.8 per 100 full-time workers, compared with 6.1 for the U.S. as a whole.

Adding insult to injury, for the more than 20,000 Kansas employees whose injuries resulted in lost time from work, hospitalization or death in FY 2002, the Kansas workers compensation system offered some of *the lowest benefits in the nation.* Benefits rates in Kansas are set at two-thirds of the employee's gross average weekly wage. The maximum weekly benefit an injured worker can receive is now \$432, or \$22,464 a year—only a few thousand dollars above the U.S. poverty threshold of \$18,556 for a family of four.

For workers with the most serious injuries, those that result in total permanent disability, Kansas offers little compensation. Just ask Leland Glaser, a former HVAC technician, who testified before members of the Senate Commerce Committee on SB 181. Mr. Glaser was totally disabled when he fell from a ladder while at work and now relies heavily on a wheelchair.

"After my injury, I had to completely wipe out my savings," Mr. Glaser testified. "I sold all of my tools...I sold savings bonds worth about \$2,000. When I had exhausted all of my financial resources, I had to move to cheaper housing. Even after

Senate Commerce Committee

3-18-03 #2-1

that, my family was not able to adjust to the dramatic drop in income that resulted from my disability. My wife and I had to file bankruptcy.”

While Mr. Glaser and other injured Kansas workers try to make ends meet on substandard workers compensation benefits, workers compensation *insurance carriers in Kansas enjoyed years of above-average profits*. According to statistics from the National Association of Insurance Commissioner, from 1993 to 2000, Kansas carrier earned 13.8% in after-tax profits—higher than the nationwide average of 11.7%. Similarly, Kansas employers have also benefited, paying some of the lowest rates for workers compensation insurance in the nation.

Despite these facts, SB 181 proposes a series of “modifications” to the Kansas Workers Compensation Act that will slash Kansas’ inadequate benefits to injured workers. This bill tramples on the benefits of every worker in Kansas, from the boardroom to the boiler room, making Kansas one of the most undesirable work environments in the nation.

Nothing in SB 181 addresses the need for improved workplace safety. Nothing in SB 181 mandates that insurance companies pass along their profits to Kansas employers in the form of lower insurance premiums. SB 181 “succeeds” only in further devaluing the Kansas worker, further enriching Kansas workers compensation insurance carriers, and further undermining the promise employers made to Kansas workers in 1911.

Choose Kansas families and workers over insurance companies. Reject SB 181.



Kansas

March 18, 2003

Senator Brownlee: Chairperson Senate Commerce Committee

Good morning Senator Brownlee and Members of the Senate Commerce Committee. My name is Dr. Ernie Pogge and I am the Chair of the AARP Kansas Capitol Advocacy Group. AARP Kansas represents the views of our more than 345,000 members in the state of Kansas. Thank you for this opportunity to express our *opposition* to Substitute for SB181.

Nearly 32 million men and women age 50 and older are in the labor force, a number that will rise sharply as the baby boomers continue to age. Just under 40 percent of the 35,000,000 AARP members work full or part time. More than 80 percent of AARP's youngest members (age 50 to 54) are employed. Although this figure drops steadily with age, some members continue to work well into their seventies and eighties.

AARP opposes legislation that would maintain or create retirement or disability offsets for workers. Workers' compensation benefits should not be reduced or terminated when recipients become eligible for retired workers benefits under Social Security or reach retirement age. People with other forms of retirement and investment income, regardless of amount, receive unreduced workers' compensation benefits. The number of older workers affected by these offset or termination provisions is likely to increase as the workforce ages. In addition, many workers may reach retirement age having been unable to work for long periods of time due to occupational injury or illness, which would have an adverse impact on other retirement income.

AARP believes that:

- Workers should be protected from discrimination in hiring, wages, benefits and all other privileges and condition of employment.
- All workers should have access to employer and governmental benefit systems and programs that facilitate economic security.

Therefore, AARP opposes Substitute for SB 181. Workers who suffer an occupational injury or illness should be eligible for unreduced workers' compensation regardless of age or eligibility for retired worker benefits under Social Security or other pensions. Legislatures should repeal those portions of state workers' compensation laws that prevent this.

We respectfully ask you to oppose this bill. Thank you for your consideration in this matter and the opportunity to express our *opposition* to Substitute for SB 181. I stand for questions.

SUMMARY FOR SB 181

SB 181 had produced a great deal of testimony from both sides. This testimony has been confusing, and at times has been contradictory. At the last subcommittee meeting, Senator Wagle said, "I need to see some hard numbers on the cost of workers compensation to Kansas businesses." This memo provides that information simply and clearly.

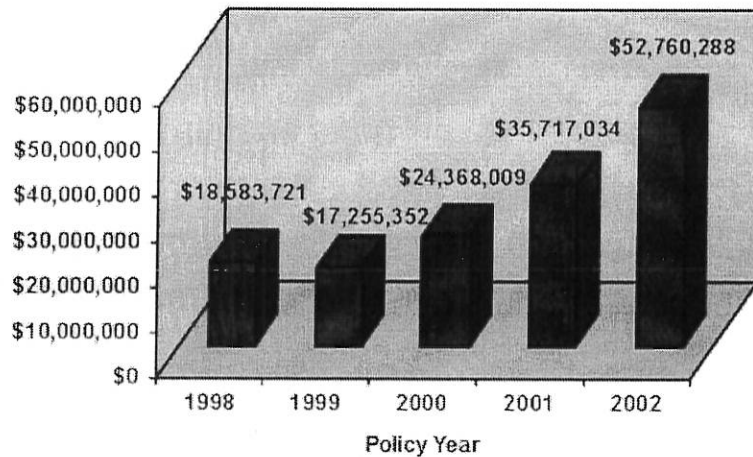
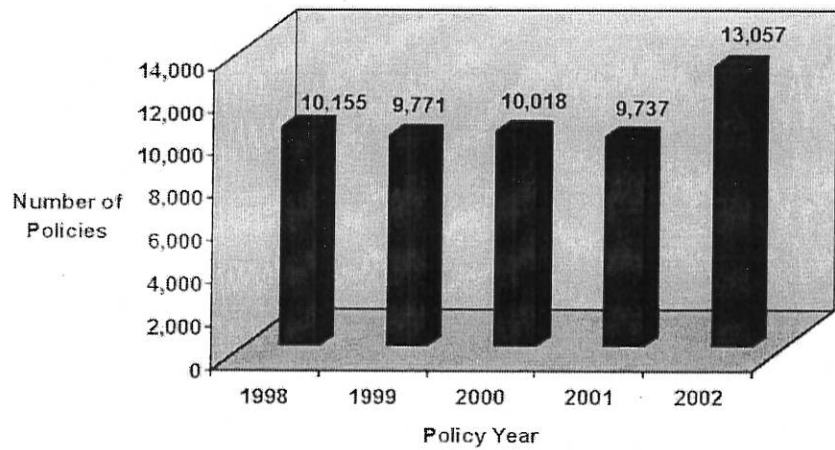
PART 1

The total cost of workers compensation cannot be determined, nor can trends be detected, by looking only at the workers compensation insurance rates set by the Kansas Insurance Department. The rates went up this year by 1.9%. That may sound reasonable (although it figures out to a cost of almost six million dollars), but it only scratches the surface of the change in actual cost to insured entities in Kansas.

Other factors play an enormous role in the cost of workers compensation coverage, including premiums paid to the Kansas Assigned Risk Plan, loss cost multipliers, and losses by self-insured entities.

(A) KANSAS ASSIGNED RISK PLAN

Kansas law mandates that all employers provide work comp insurance coverage. The Assigned Risk Plan is "the insurer of last resort." It is where businesses go when no one else will insure them. These tables show that there are more and more businesses who cannot even obtain workers compensation insurance in the open market and are forced into the Kansas Assigned Risk Plan. The premiums have increased by a staggering 200% in three years.



Source: National Council on Compensation Insurance

(B) LOSS COST MULTIPLIERS

Insurance companies use a "loss cost multiplier" in their rates to recoup administrative costs. While this is supposed to be for administration costs, insurance companies raise the multipliers during difficult times. This multiplier hits businesses just as hard as a rate increase. This cost is on the rise. Since January 1, 2002, 138 insurance companies have changed their loss cost multipliers, as well as 12 group funded insurance pools. This chart contains these results.

INSURANCE COMPANIES "LCM" SINCE 1/1/02

- Of the 138 changes, the loss cost multiplier went up 131 times (95%) and went down 7 times (5%)
- The average "old" loss cost multiplier for these 138 companies was 1.289. The average "new" loss cost multiplier for these 138 companies is 1.445. That is an increase of 12% in the last 15 months.
- Of the 12 changes in loss cost multipliers by group funded pools, 10 were increases and 2 were decreases.
- The average "old" loss cost multiplier for these 12 pools was 1.361. The average "new" loss cost multiplier for these 12 pools is 1.459. That is an increase of 7% in the last 15 months.
- For an employer with a \$10,000 annual "loss cost" insurance premium, the change in loss cost multiple is significant. Under the old loss cost multiple, their premium would be approximately \$12,890. Under the new average loss cost multiple the premium increases 12% to \$14,450

Source: Kansas Insurance Department

(C) RATIO OF PREMIUMS TO LOSSES

Insurance companies, like any business, have to maintain a profit. When their profit margins fall, their costs go up. The first table shows the change in the amount of insurance premiums and direct losses, and the corresponding percentage. The second table shows the change in gross losses paid in Kansas, including self insuring employees.

YEAR	DIRECT PREMIUMS WRITTEN	DIRECT LOSSES INCURRED	% OF LOSSES INCURRED TO PREMIUMS
1997	\$261,121,536	\$134,603,154	51.5%
1998	\$250,588,819	\$126,164,370	50.3%
1999	\$251,341,523	\$179,376,781	71.4%
2000	\$271,480,320	\$159,226,348	64.4%
2001	\$291,575,463	\$237,335,832	88.1%

YEAR	LOSSES PAID	% CHANGE
1997	\$291,315,198	---
1998	\$304,024,771	+ 4.4%
1999	\$317,136,633	+ 4.3%
2000	\$335,381,052	+ 5.8%
2001	\$371,093,424	+10.6%

*Source: Kansas Division of Workers Compensation
Kansas Insurance Department*

(D) INDIVIDUAL BUSINESS COSTS

Nothing paints a more pure picture of trends in the cost of workers compensation than what has been paid by Kansas businesses. We called on several self-insured entities in Kansas who shared this cost with us. The table shows these costs. They are increasing dramatically. In addition, many of these entities are employing fewer people and having fewer claims each year. This means that costs per claim and per employee are rising even more dramatically. The tables in this section each come from a Kansas self-insuring entity.

Employer 1

2000 - \$214.65 per employee
 2001 - \$419.48 per employee
 2002 - \$440.78 per employee

Employer 2

Year	Annual Payments	Loss	# of Employees	Excess Insurance Premium
2000	\$22,037		1210	\$48,308
2001	\$443,747		1154	\$51,515
2002	\$495,624		1350	\$65,593

Employer 3

	2002	2001	2000
Actual Paid Costs	\$2,068,976.16	\$1,629,212.91	\$999,756.26
No of Employees	7,885	10,063	11,228
Avg. Cost/Employee	\$262.39	\$161.90	\$89.04
# of Claims	136	169	197
Cost/Claim	\$15,213.06	\$9,640.31	\$5,074.90

Employer 4

Year	# of employees	Excess Insurance Premium	Total Loss
2001	3046	\$26,037	\$182,128
2002	3080	\$29,796	\$207,770

Employer 5

Year	Total Losses	# of Employees	Excess Insurance Cost
2000	\$670,530	2,475	\$53,324
2001	\$665,562	2,383	\$112,289
2002	\$824,953	1,864	\$140,316

Employer 6

Year	Indemnity	Medical	Excess Insurance	Total	# Claims
2001	781,734	900,035	37,995	1,719,764	512
2002	994,548	896,775	85,014	1,976,337	428
2003	???	???	158,665	???	???

Employer 7

Year	No of Claims	Medical	TTD/TPD	Settlement Awards	Total
97/98	469	\$ 561,788.97	\$156,763.40	\$ 257,836.64	\$ 976,389.01
98/99	485	\$ 751,675.40	\$169,543.06	\$ 245,191.20	\$1,166,409.66
99/00	422	\$ 878,692.56	\$192,383.61	\$ 189,831.03	\$1,260,907.20
2000/01	497	\$ 929,881.31	\$190,184.20	\$ 443,436.90	\$1,563,502.41
2001/02	476	\$1,110,980.48	\$255,634.16	\$ 432,440.26	\$1,799,054.90
*7 Mo. 2002/03	175	\$ 809,857.77	\$186,813.70	\$ 236,155.83	\$1,232,827.30

(E) CONCLUSION

The bottom line is that costs for workers compensation insurance in Kansas are rising, and rising significantly. These are tough times for Kansas businesses. Senate Bill 181 contains changes that would bring workers compensation law back into line with the intent of the laws as they were passed in 1993. In so doing, they would help Kansas businesses remain competitive without unfairly impacting Kansas workers.

Substitute for SENATE BILL NO. 181

By Committee on Commerce

AN ACT concerning workers compensation; relating to work disability; amending K.S.A. 44-501 and 44-510e and repealing the existing sections; also repealing K.S.A. 44-510a.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 44-501 is hereby amended to read as follows: 44-501. (a) If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act. In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

(b) Except as provided in the workers compensation act, no employer, or other employee of such employer, shall be liable for any injury for which compensation is recoverable under the workers compensation act nor shall an employer be liable to any third party for any injury or death of an employee which was caused under circumstances creating a legal liability against a third party and for which workers compensation is payable by such employer.

(c) The employee shall not be entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased functional impairment or disability. A prior impairment rating or permanent restrictions are not necessary to prove preexisting functional impairment or disability. The trier of fact shall consider all medical testimony on the issue of preexisting impairment or disability. Any award of compensation shall be ~~reduced~~ determined by showing, through medical evidence, the amount of functional impairment ~~determined--to--be--preexisting~~ or disability caused by work

activity for the employer from whom the employee is seeking compensation.

(d) (1) If the injury to the employee results from the employee's deliberate intention to cause such injury; or from the employee's willful failure to use a guard or protection against accident required pursuant to any statute and provided for the employee, or a reasonable and proper guard and protection voluntarily furnished the employee by the employer, any compensation in respect to that injury shall be disallowed.

(2) The employer shall not be liable under the workers compensation act where the injury, disability or death was contributed to by the employee's use or consumption of alcohol or any drugs, chemicals or any other compounds or substances, including but not limited to, any drugs or medications which are available to the public without a prescription from a health care provider, prescription drugs or medications, any form or type of narcotic drugs, marijuana, stimulants, depressants or hallucinogens. In the case of drugs or medications which are available to the public without a prescription from a health care provider and prescription drugs or medications, compensation shall not be denied if the employee can show that such drugs or medications were being taken or used in therapeutic doses and there have been no prior incidences of the employee's impairment on the job as the result of the use of such drugs or medications within the previous 24 months. It shall be conclusively presumed that the employee was impaired due to alcohol or drugs if it is shown that at the time of the injury that the employee had an alcohol concentration of .04 or more, or a GCMS confirmatory test by quantitative analysis showing a concentration at or above the levels shown on the following chart for the drugs of abuse listed:

Confirmatory test cutoff levels (ng/ml)	
Marijuana metabolite 1.....	15
Cocaine metabolite 2.....	150
Opiates:	
Morphine.....	2000

Codeine.....	2000
6-Acetylmorphine ⁴	10 ng/ml
Phencyclidine.....	25
Amphetamines:	
Amphetamine.....	500
Methamphetamine 3.....	500

1 Delta-9-tetrahydrocannabinol-9-carboxylic acid.

2 Benzoyllecgonine.

3 Specimen must also contain amphetamine at a concentration greater than or equal to 200 ng/ml.

4 Test for 6-AM when morphine concentration exceeds 2,000 ng/ml.

An employee's refusal to submit to a chemical test shall not be admissible evidence to prove impairment unless there was probable cause to believe that the employee used, possessed or was impaired by a drug or alcohol while working. The results of a chemical test shall not be admissible evidence to prove impairment unless the following conditions were met:

(A) There was probable cause to believe that the employee used, had possession of, or was impaired by the drug or alcohol while working;

(B) the test sample was collected at a time contemporaneous with the events establishing probable cause;

(C) the collecting and labeling of the test sample was performed by or under the supervision of a licensed health care professional;

(D) the test was performed by a laboratory approved by the United States department of health and human services or licensed by the department of health and environment, except that a blood sample may be tested for alcohol content by a laboratory commonly used for that purpose by state law enforcement agencies;

(E) the test was confirmed by gas chromatography-mass spectroscopy or other comparably reliable analytical method, except that no such confirmation is required for a blood alcohol sample; and

(F) the foundation evidence must establish, beyond a reasonable doubt, that the test results were from the sample taken from the employee.

(e) Compensation shall not be paid in case of coronary or

coronary artery disease or cerebrovascular injury unless it is shown that the exertion of the work necessary to precipitate the disability was more than the employee's usual work in the course of the employee's regular employment.

(f) Except as provided in the workers compensation act, no construction design professional who is retained to perform professional services on a construction project or any employee of a construction design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project, shall be liable for any injury resulting from the employer's failure to comply with safety standards on the construction project for which compensation is recoverable under the workers compensation act, unless responsibility for safety practices is specifically assumed by contract. The immunity provided by this subsection to any construction design professional shall not apply to the negligent preparation of design plans or specifications.

(g) It is the intent of the legislature that the workers compensation act shall be liberally construed for the purpose of bringing employers and employees within the provisions of the act to provide the protections of the workers compensation act to both. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.

(h) If the employee is receiving retirement benefits under the federal social security act or retirement benefits from any other retirement system, program or plan which is provided by the employer against which the claim is being made, any compensation benefit payments which the employee is eligible to receive under the workers compensation act for such claim shall be reduced by the weekly equivalent amount of the total amount of all such retirement benefits, less any portion of any such retirement benefit, other than retirement benefits under the federal social security act, that is attributable to payments or contributions

made by the employee, but in no event shall the workers compensation benefit be less than the workers compensation benefit payable for the employee's percentage of functional impairment.

Sec. 2. K.S.A. 44-510e is hereby amended to read as follows:
44-510e. (a) If the employer and the employee are unable to agree upon the amount of compensation to be paid in the case of injury not covered by the schedule in K.S.A. 44-510d and amendments thereto, the amount of compensation shall be settled according to the provisions of the workers compensation act as in other cases of disagreement, except that in case of temporary or permanent partial general disability not covered by such schedule, the employee shall receive weekly compensation as determined in this subsection during such period of temporary or permanent partial general disability not exceeding a maximum of 415 weeks. Weekly compensation for temporary partial general disability shall be $66 \frac{2}{3}\%$ of the difference between the average gross weekly wage that the employee was earning prior to such injury as provided in the workers compensation act and the amount the employee is actually earning after such injury in any type of employment, except that in no case shall such weekly compensation exceed the maximum as provided for in K.S.A. 44-510c and amendments thereto. Permanent partial general disability exists when the employee is disabled in a manner which is partial in character and permanent in quality and which is not covered by the schedule in K.S.A. 44-510d and amendments thereto. The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen-year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, The extent of permanent partial general disability shall not be

less than the percentage of functional impairment. Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein. An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury. An employee shall not be entitled to receive general disability compensation in excess of the percentage of functional impairment as long as the employee was not under work restrictions at the time of separation from employment. If due to the work-related injury the employee is not engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury, the employee shall be entitled to supplemental functional disability compensation. If the employer and the employee are unable to agree upon the employee's functional impairment and if at least two medical opinions based on competent medical evidence disagree as to the percentage of functional impairment, such matter may be referred by the administrative law judge to an independent health care provider who shall be selected by the administrative law judge from a list of health care providers maintained by the director. The health care provider selected by the director pursuant to this section shall issue an opinion regarding the employee's functional impairment which shall be considered by the administrative law judge in making the final determination. The amount of weekly compensation for permanent partial general disability shall be determined as follows:

(1) Find the payment rate which shall be the lesser of (A) the amount determined by multiplying the average gross weekly wage of the worker prior to such injury by 66 2/3% or (B) the

maximum provided in K.S.A. 44-510c and amendments thereto;

(2) find the number of disability weeks payable by subtracting from 415 weeks the total number of weeks of temporary total disability compensation was paid, excluding the first 15 weeks of temporary total disability compensation that was paid, and multiplying the remainder by the percentage of permanent partial general disability as determined under this subsection (a); and

(3) multiply the number of disability weeks determined in paragraph (2) of this subsection (a) by the payment rate determined in paragraph (1) of this subsection (a).

The resulting award shall be paid for the number of disability weeks at the full payment rate until fully paid or modified. If there is an award of permanent disability as a result of the compensable injury, there shall be a presumption that disability existed immediately after such injury. In any case of permanent partial disability under this section, the employee shall be paid compensation for not to exceed 415 weeks following the date of such injury, subject to review and modification as provided in K.S.A. 44-528 and amendments thereto.

(b) If an employee has received an injury for which compensation is being paid, and the employee's death is caused by other and independent causes, any payment of compensation already due the employee at the time of death and then unpaid shall be paid to the employee's dependents directly or to the employee's legal representatives if the employee left no dependent, but the liability of the employer for the payments of compensation not yet due at the time of the death of such employee shall cease and be abrogated by the employee's death.

(c) The total amount of compensation that may be allowed or awarded an injured employee for all injuries received in any one accident shall in no event exceed the compensation which would be payable under the workers compensation act for 100% permanent total disability resulting from such accident.

(d) Where a minor employee or a minor employee's dependents

are entitled to compensation under the workers compensation act, such compensation shall be exclusive of all other remedies or causes of action for such injury or death, and no claim or cause of action against the employer shall inure or accrue to or exist in favor of the parent or parents of such minor employee on account of any damage resulting to such parent or parents on account of the loss of earnings or loss of service of such minor employee.

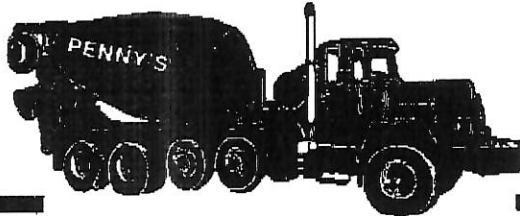
(e) In any case of injury to or death of an employee, where the employee or the employee's dependents are entitled to compensation under the workers compensation act, such compensation shall be exclusive of all other remedies or causes of action for such injury or death, and no claim or action shall inure, accrue to or exist in favor of the surviving spouse or any relative or next of kin of such employee against such employer on account of any damage resulting to such surviving spouse or any relative or next of kin on account of the loss of earnings, services, or society of such employee or on any other account resulting from or growing out of the injury or death of such employee.

Sec. 3. K.S.A. 44-501, 44-510a and 44-510e are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

less than the percentage of functional impairment. Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein. An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury. An employee shall not be entitled to receive general disability compensation in excess of the percentage of functional impairment as long as the employee was not under work restrictions at the time of separation from employment. If due to the work-related injury the employee is not engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury, the employee shall be entitled to ^{Permanent Partial general} ~~supplemental functional~~ disability compensation. ^{in excess of the percentage of functional impairment.} If the employer and the employee are unable to agree upon the employee's functional impairment and if at least two medical opinions based on competent medical evidence disagree as to the percentage of functional impairment, such matter may be referred by the administrative law judge to an independent health care provider who shall be selected by the administrative law judge from a list of health care providers maintained by the director. The health care provider selected by the director pursuant to this section shall issue an opinion regarding the employee's functional impairment which shall be considered by the administrative law judge in making the final determination. The amount of weekly compensation for permanent partial general disability shall be determined as follows:

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PENNY'S

PENNY'S CONCRETE INC.

March 13, 2003

Honorable Senator Karin Brownlee
State of Kansas – 23rd District
State Capital – 136 – N
Topeka, KS 66612

Subject: Workman's Compensation Concerns

Dear Senator Brownlee,

Great concern has developed within our firm resulting from workman's compensation claims.

Most recently we were notified by correspondence on March 6, 2003 to anticipate a settlement of approximately \$100,000.00 on a claim we feel is fraudulent.

We have over three hours of videotape of the claimant while announcing a rodeo. The tape includes an audio statement by the claimant indicating his injuries were the result of rodeo activity. The tape also includes him climbing over gates and clapping over his head. The claimant testified before an appeals judge the statement was made in "jest." Our firm lost the appeal.

Workman's Compensation was originally developed to assist a worker in need. It has become a financial opportunity. The enticing opportunity is starting to spread in epidemic fashion.

One of our ready mix plants employs nine drivers. Five of the nine drivers have received settlements resulting from workman's compensation claims. Three of the five have received benefits from multiple claims.

Employees receiving multiple settlements are learning it is in their best interest to not seek legal assistance. Legal assistance is not as profitable to the employee. The attorney can be court appointed if deemed necessary by the judge.

Two previous claims were dropped by the claimants after private investigators provided videotape of the claimants engaging in work activities such as mowing lawns, loading lawn mowers and working for a relative who owned an appliance store. The claimant was loading and delivering washers and dryers. There is no penalty or punishment for a fraudulent claim, therefore there is nothing to loose in an attempt to obtain illegal

23400 W. 82ND STREET • SHAWNEE MISSION, KANSAS 66227-2705
(913) 441-8781 • FAX (913) 441-1830 • www.pennysconcrete.com

EQUAL OPPORTUNITY EMPLOYER

Senate Commerce Committee

3-18-03
Attachment 7-1

benefits. The company bears the expense of private investigators to monitor potential fraud.

We have good employees being enticed into the workman's compensation opportunity market. Small slips or falls now draw comments of a cash register's "ching, ching" sound from fellow employees. Numerous claims occur off the job and are reported under workman's compensation despite our firm providing health coverage to all full-time employees. We have employees scheduling surgery during the inclement winter months. It is financially beneficial when the construction season is slow.

We have a safety director and a safety incentive program. The rewards of the safety incentive program cannot compete with the huge settlements currently being provided.

The settlement money seems to be perceived as free money at no cost to the company. We both know there is no free lunch. Insurance companies must be profitable. Modifier numbers are in place to establish profit and loss margins. Scheduled wage increases for our employees must now be lowered resulting from the March 6, 2003 notice.

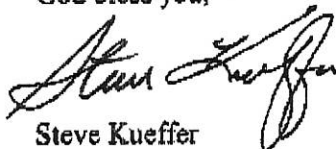
One of our greatest concerns seems to be the judicial system's support of the employee despite the evidence provided. The corporation is the big bad guy.

This letter is written as a plea for assistance to a program gone astray. A good idea has become a runaway.

We would appreciate any assistance in bringing the program under control.

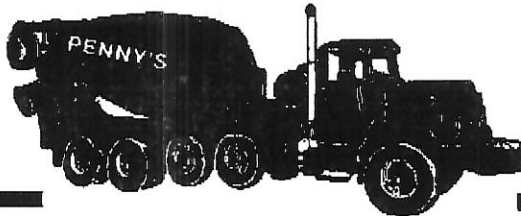
Thank you for all you do!

God bless you,



Steve Kueffer
Personnel

SK/gd



PENNY'S

PENNY'S CONCRETE INC.

March 17, 2003

Honorable Senator Karin Brownlee
State of Kansas - 23rd District
State Capital - 136 - N
Topeka, KS 66612

Subject: Workman's Compensation Concerns

Dear Senator Brownlee,

Please enter today's correspondence and the correspondence dated March 13, 2003 regarding workman's compensation into the official records of Substitute Senate Bill 181 if of value.

We have experienced unfairness that could be rectified by the proposed legislation.

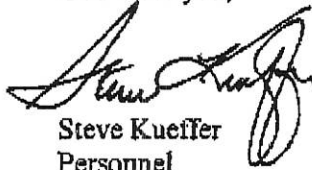
Adverse weather conditions during the winter months are detrimental to the construction industry. Employees are often unable to work during inclement weather. It is not fair an employee receives workman's compensation benefits while healthy workers are unable to work due to the weather. The injured party would not be called to work even if healthy. This unfairness should be rectified.

Enclosed please find an actual Work Injuries Status Report from our company. This is printed weekly for management review.

Please accept my apology for not being available this week for verbal testimony on the issue. If warranted we would be available after March 24, 2003 for verbal testimony. This issue is very important to us.

We sincerely appreciate your attention to the issue.

God bless you,



Steve Kueffer
Personnel

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Senate Commerce Committee

3-18-03
Attachment 8-1

STATUS AS OF 3/14/03

WORK INJURIES

<u>EMPLOYEE</u>	<u>DATE OF INJURY</u>	<u>WORK STATUS</u>
Employee A	3-10-00	KS settlement hearing to be set
Employee B	2-21-01	Pending settlement
Employee C	8-21-01	Open Claim
Employee D	10-8-01	Open Claim
Employee E	4-15-02	next app't 4-3-03 with Dr. Gall. "Off work" status. 3-14 set up with PT for headaches
Employee F	7-16-02	Only test authorized by insurance is MRI for now "Off Work" status
Employee G	10-20-02	3-4 neurologist, 3-10 CT Myelogram. No results received as yet
Employee H	5-10-02	Began physical therapy 2-27
Employee I	1-7-03	March 6 appt given restrictions for it. Duty work. Continue PT, resistive starts in 3 weeks
Employee J	2-6-03	Back injury. Treating with Injections. 3-14 having "blood patch" administered. Continues to work

www.creativecare.net

March 7, 2003

[via facsimile]

Senator Susan Wagle

Senator Karin Brownlee

Per discussions at the last sub-committee meeting regarding whether there exists an insurance crisis for business, following is the information requested in consideration of SB181. Perhaps this will help clarify the precarious position of small businesses.

Our companies provide both temporary medical staff to healthcare facilities and home health care services throughout Kansas. We are Medicare and Medicaid certified in home health, with past accreditation by the Joint Commission on Accreditation of Homecare Organizations [JCAHO]. We employ hundreds of state licensed or certified healthcare personnel, all helping to improve the lives of thousands of Kansas' citizens. However, recent changes of our industry's risk classification by NCCI have drastically increased our insurance costs and threaten to affect this mission. In an industry with typically slim operating margins, this does indeed create a crisis.

As one of the first members of the Kansas Employers Worker's Compensation Fund [KEWCF], this Wichita Area Chamber of Commerce-sponsored program allowed successful management of the risks associated with caring for other's healthcare needs. We were summarily expelled from this group-fund for no longer meeting its criteria, not for reasons typically associated with such actions, e.g., excessive claim activity.¹ We received notification from NCCI informing us that, because of the reclassification of the healthcare industry by the insurance industry, our experience ratings would reflect the increased risk. This is merely an insurance industry perception of risk, one that does not justify a 143% increase in premiums.²

¹ KEWCF, Notice of Cancellation, 10/22/02.

² Comparison of Rates, Steve Saunders, 03/06/03.

Consequently, we are currently enrolled in the Kansas Risk pool, since no carriers seem to want to insure healthcare providers.³ We have also begun the process of forming a group-funded pool with companies similar to our own, and intend to manage this process ourselves, if possible.

There are companies providing similar services that merely disregard these provisions of law, operating without insurances and in our opinion, operating recklessly.

The documents submitted herein demonstrate an increased premium rate, yet fail to indicate that these rates are justified by increased claim activity or other acceptable risk-assessment rationale.


Beginning in 1999, the average discount applied to our insurance premiums was 18%, based on our actual claim experiences. In successive years, double-digit increases have been the norm.⁴

This information should speak volumes if taken as a microcosm of Kansas' healthcare providers.

We have a final option of discontinuing services, which would prove detrimental to those we serve, as well as those we employ. Ours is not an insignificant contribution to the employment situation in Kansas.⁵ However, we cannot operate with budget deficits, and must always attend to the business function involved. With the prospects of exorbitant increases in this area, as well as the prospects of repealed sales taxes on services and removal of the corporate franchise tax cap, a grim outlook for healthcare service providers appears.

I hope this information provides you with a feel for the crisis that we, and most independent healthcare providers, are experiencing. Please advise if I may be of further service to you.

Respectfully submitted,



Brian J. Powers

President

³ NCCI, Worker's Compensation and Employer's Liability Policy Binder, 02/19/03.

⁴ Creative Care Corporation/Home Healthcare Connection, Inc., NCCI MOD summaries.

⁵ Creative care Corporation/Home Healthcare Connection, Inc.. Average Monthly Payroll by Classification summaries.

Kansas Employers Workers Compensation Fund

NCCI Carrier No.32905

Administered by Berkley Administrators

1999 N Amidon, Suite 222 Wichita, KS 67203 (800)364-4609 (316)821-0200

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

Name and Address of Insured:

Creative Care
PO Box 17105
Wichita, KS 67217

Policy Number: WC15-02-000032-06

Risk ID #: 150434653

Policy Period From 01/01/2002

To: 01/01/2003

Date of Mailing: 10/22/02

VIA CERTIFIED MAIL

7002 0860 0007 7473 1194

VIA EXPRESS MAIL

EU062090845US

NOTICE OF CANCELATION OR NONRENEWAL

Cancellation or expiration will take effect at 12:01 a.m. on 01/01/2003.

Applicable item marked with an X:

Cancellation

Your insurance will cease at and from the hour and date stated above for the reason(s) listed below.

If cancellation is due to nonpayment of premium, cancellation can be avoided by paying the premium due in the amount of \$0.00 before the effective date of this cancellation.

Premium adjustment will be made upon final audit.

Nonrenewal

Your policy will expire at and from the hour and date stated above and will NOT be renewed for the reason(s) listed below.

Reason(s) for cancellation or nonrenewal:

No longer meets underwriting criteria

Agency Name & Address:

Worker's Compensation Rate Increases in 2003 as Compared to 2002

I was asked to respond to the statement that worker's comp increases have been only 1 to 5 percent in the state of Kansas. While it is true that the national job risk rating agency (NCCI) has only increased the individual ratings by this amount, separate companies and areas like the state of Kansas will be assigned unique multipliers to give a company a realistic rate increase of considerable amount.

The following example illustrates this increase.

The two companies that we operate (Creative Care and Home Healthcare Connection) had a 1.14 experience modification (mod rate) in 2002. Because we used a high deductible (just like your insurances), we were entitled to discounts of about 10% on our premiums. This resulted in net premiums being very close to the NCCI initial job classifications. To illustrate, office personnel had an NCCI job rating of 27 cents per \$100 dollars of payroll in 2002. Therefore, our net worker's comp premium on \$100 dollars of payroll would be:

$$100 \times 0.0027 = \$0.27 \times 1.14 \times 0.90 = \$0.28.$$

To reiterate, these are 2002 calculations.

In 2003, the NCCI individual job rating increased to 0.28 or 3.7%. However, our mod rate increased to 1.63. In addition, when we entered the assigned risk pool, we were given an additional risk multiplier (ERAP) of 1.49. This affects the premium calculation as illustrated below:

$$100 \times .0028 = \$0.28 \times 1.63 \times 1.49 = \$0.68.$$

The net effect of these changes is a 143 percent increase in our worker's compensation premiums in 2003 as compared to 2002.

I would conclude that the statement that the rates have only increased 1 to 5 percent is an incorrect statement as it might apply to our two companies. I would suspect that our experience with worker's comp increases applies to many other Kansas companies.

Respectfully,

Steve G. Saunders/CFO
Home Healthcare Connection
Creative Care
4747 S. Emporia
Wichita, KS 67216

316-267-4663



National Council on Compensation Insurance, Inc.

SERVICE CENTER
901 Peninsula Corporate Circle
Boca Raton, FL 33487
Tel. 1-800-622-4123

EFFECTIVE DATE: 02/07/2003
BINDER NUMBER: 15-11053-03049-360009
FED ID NUMBER: 48-1035936
APPLICATION ID: 9301480

February 19, 2003

HOME HEALTHCARE CONNECTION INC / CREATIVE CARE CORPORATION/S
CLARICE POWERS 4747 S EMPORIA
WICHITA, KS 67216

RE: WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY BINDER

This is to acknowledge receipt of an initial or deposit premium payment and your application for coverage through the Workers Compensation Insurance Plan for the State of KANSAS.

Coverage is provided under this binder, beginning at 12:01 A.M. on the effective date shown above, and with the insurance company named below, and shall remain in effect until canceled or a policy has been issued. Coverage is provided under the Workers Compensation Law of KANSAS and of such additional jurisdictions as may be requested, in accordance with the Plan rules. Employers liability coverage is also provided, subject to the standard limits prescribed in the Basic Manual, unless higher limits have been requested in accordance with the Plan rules.

Please retain this binder as evidence of the coverage until you receive your policy.

INSURANCE COMPANY:

CONTINENTAL WESTERN INSURANCE COMPANY
PO BOX 939
PIERRE, SD 57501

AGENCY NAME:

DULANEY JOHNSTON & PRIEST
PO BOX 206
WICHITA, KS 67201

15-11053-03049-360009 ASSIGNMENT ADDITIONAL NOTICE

HOME HEALTHCARE CONNECTION INC / CREATIVE CARE CORPORATION/S

NOTICE

COVERAGE FOR THIS EMPLOYER HAS BEEN PLACED THROUGH THE ASSIGNED RISK PLAN. AS THE PLAN IS THE MARKET OF LAST RESORT, COVERAGE SHOULD CONTINUE TO BE SOUGHT THROUGH THE STANDARD/VOLUNTARY MARKET. PLEASE NOTE THAT PREMIUMS IN THE ASSIGNED RISK PLAN MAY BE HIGHER THAN THE STANDARD/VOLUNTARY MARKET.

If a policy issued by an insurance carrier, pursuant to an assignment under the Workers Compensation Insurance Plan, is canceled due to the employer's failure to comply with terms or conditions of the policy, such employer may be ineligible for further coverage under the Plan.

NOTICE

**POLICYHOLDER DISCLOSURE
NOTICE OF TERRORISM
INSURANCE COVERAGE**

Your policy provides coverage for certain losses caused by acts of terrorism. You should know that, effective November 26, 2002, under your existing coverage, any losses caused by certified acts of terrorism would be partially reimbursed by the United States under a formula established by federal law. Under this formula, the United States pays 90% of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage.

The portion of your estimated annual premium that is currently attributable to coverage for certain losses caused by acts of terrorism is: \$1,054.

NOTICE**CERTIFICATES OF INSURANCE**

Effective upon receipt of the enclosed binder, the producer may issue certificates of insurance only under the following conditions: 1) that the certificate is issued only on the standard ACORD form; 2) that the certificate is issued only for operations in the states listed in 3.A. of the Information Page; 3) that the policy terms are unchanged; 4) that the certificate holder is not extended any greater rights than those extended to the insured; and 5) that the servicing carrier is provided with a copy of each certificate.

APPLICATION NOTES:

Please forward a written statement explaining why tax documentation cannot be provided, to the assigned carrier.

Please forward an officer exclusion letter or form to the carrier (as named on the binder) and state.

Please forward an officer exclusion letter or form to the carrier (as named on the binder).

Corporate Officers have elected to be excluded from coverage.

Carrier: Current experience rating worksheet attached.