

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 a.m. on February 11, 2004 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department
Norm Furse, Revisor of Statutes
Renaë Jefferies, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: Dick Cook, Kansas Insurance Department
John Boulliet, Division of Workers Compensation
Terri Roberts, Kansas Coalition for Workplace Safety
Bill Curtis, Kansas Association of School Boards
Steve Rothrock, Vice President, Whiteley's, Inc
John Buselt, Via Christi Health System
Tim Rakestraw, Safety Supervisor, Superior Industries, Pittsburg

Others attending:

See Attached List.

The Chairman stated that the meeting today is a continuation of informative sessions on workers compensation. Topic for today is pre-existing conditions.

Dick Cook, Kansas Insurance Department, discussed the workers compensation insurance market and the rating issues in Kansas. In order for an insurance company to write workers compensation insurance in Kansas, the company must be licensed in Kansas and be authorized to write workers compensation insurance. The carrier must file its rules, rates and forms with the Insurance Department in accordance with Kansas law. According to the most current records, there are 240 carriers writing workers compensation insurance in Kansas. Over the past several years, this figure has remained fairly constant. In 1997 there were approximately 235 carriers writing this coverage in Kansas and in 2000 there were approximately 250 carriers writing the coverage.

According to the National Council on Compensation Insurance, Inc. (NCCI), the rating organization used by the carriers, there are approximately 53,500 employers paying over \$400 million in annual Kansas workers compensation premiums.

Workers compensation insurance written by insurance companies in Kansas is either written by an insurance company direct (voluntary market) or through the Kansas Workers Compensation Insurance Plan (the Plan). The Plan is set up for employers who in good faith are entitled to purchase workers compensation insurance but are unable to secure the coverage through the voluntary market. The NCCI is the administrator for the Plan and there are two servicing carriers that service the Plan. We are currently in the fourth year of a contract with the servicing carriers which are Liberty Insurance Corporation and Continental Western Insurance Company.

According to information provided by NCCI, the Plan currently has over 14,000 insured risks accounting for approximately \$60 million in annual premiums.

Kansas law requires five or more employers in the same bona fide professional, merchant, or trade association that has existed for five or more years, in the same, similar, or closely related type of business, with a combined net worth of over \$1 million, and at least \$250,000 in Kansas workers compensation premium for the formation of a pool. In 1993, the Kansas law was amended to allow dissimilar types of employers to pool if an adequate prediction of future losses could be made, if the pool has a combined net

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE at 9:00 a.m. on February 11, 2004 in Room 241-N of the Capitol.

worth of over \$1.25 million, and if the pool has at least \$500,000 in Kansas workers compensation premium.

Premiums paid by the employers should be adequate to cover the claims incurred by their insurance companies. Rates are usually adjusted annually, based on premium and loss information provided by the carriers to the NCCI. The major premium components are: 1. Base Rates, 2. Classifications, 3. Experience Rating and 4. Payroll size.

In the last couple of years the loss cost multipliers have been on the rise. A couple of the reasons have been the downturn in the investment markets and the rise in the cost of reinsurance. Because of this, the voluntary market rates have been increasing even though the loss costs filed by the NCCI have remained fairly constant (Attachment 1).

John Boulliet, Administrator, Self-Insurance Program, presented information concerning the Kansas Self-Insurance Program. All employers in Kansas who meet the following requirements are eligible to apply to the Division of Workers Compensation for self-insurance authority: 1. In continuous operation for at least five years. 2. Provide the last five years of audited financial reports of the company applying for self-insurance, or the parent company's financial reports, if there is a parent company. 3. Have at least 100 employees (not necessarily in Kansas). 4. Have an annual premium of at least \$300,000 to \$350,000. 5. Have a net worth of \$10,000,000; however, will consider a net worth of less than \$10,000,000. (If approved, the smaller company will be required to purchase Aggregate Excess Insurance) (Attachment 2).

Terri Roberts, R. N., Chairperson, Kansas Coalition for Workplace Safety, stated timing of today's discussion is auspicious. Last fall, the Kansas Coalition for Workplace Safety commissioned the Docking Institute of Public Affairs at Fort Hays State University to perform an independent analysis of the issue of workers compensation in Kansas. The Docking Institute reviewed data from the United States Department of Labor, the Kansas Department of Human Resources and various private organizations, including NCCI, in order to document the state of workers compensation in Kansas. The Docking Institute has recently completed its study, and are distributing copies of that report today (Attachment 3).

Dr. Bill Curtis, Associate Executive Director, Kansas Association of School Boards (KASB), provided information on pre-existing conditions. The way in which the workers compensation system is required to compensate employees today for pre-existing conditions is one of the major reasons why costs are escalating at an alarming rate. The existing language in 44-501(c) is not being strictly applied, credits are not uniformly received for previous functional settlements and, as is very evident by the Hanson case, the employer no longer has any recourse to recover the majority of expenses incurred for injuries that were pre-existing. If the Hanson case had occurred prior to 1993, the insurer could have recovered the vast majority of expenses incurred for injuries that were pre-existing. If the Hanson case had occurred prior to 1993, the insurer could have recovered the vast majority of the cost of that claim through the second injury fund and the loss would not have been recorded against USD 326. Under current law, if Mr. Hanson needs another knee replacement, the employer and the insurance company at the time of that procedure will stand the total cost. It seems there needs to be some compromise solution that does not require the employer and the insurer to stand the total cost of the consequences of pre-existing conditions (Attachment 4).

Steve Rothrock, Vice President, Whiteley's Inc., stated they employ from four to eight employees. Workers compensation and overall insurance costs have become a major expense for our company. Seven years ago the over-all insurance expense was \$13,000 per year. In 2004, the insurance expense is now over \$26,000. Seven years ago the pallets were selling for \$5.65 and today they are bringing \$5.15. Pre-existing condition claims have hurt our business. Believe employers should only pay for the injuries that occur at their work places and to the extent of damage that was caused, not damages that are existing (Attachment 5).

Tim Rakestraw, Safety Supervisor and workers compensation coordinator at Superior Industries, Pittsburg, expressed concerns of the current Kansas worker's compensation laws.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE at 9:00 a.m. on February 11, 2004 in Room 241-N of the Capitol.

In 2002 there was an individual that gained legal representation after working for the company for just under four months. The company was named in the suit for repetitive trauma. Upon court hearings, and depositions, information was exposed where the employee had reported to her previous employer of her condition. This had gone on for over four years at her previous employment with some conservative medical treatment provided in the beginning, however, towards the end of her employment with her previous employer she was given no treatment by them. She terminated her employment with that company and came to work for our company without notifying us about her condition. The first time we knew anything about her condition is when we received paperwork on the suit. She informed us at that time that she did not want to bring a suit against the company because she felt that her previous employer was the one responsible for her injury, but her attorney said that she should sue us because we were her current employer and that we would be the ones having to pay. The other company was also named in the suit, however, we lost the case and the Administrative Law Judge (ALJ) ruled that we owed all due compensation and all medical costs. This case cost the company over \$25,000. The other company which did not provide proper medical treatment got off free and clear just because the individual did not work there anymore. The claimant, however, did indeed make proper notification of injury prior to leaving her previous employer. The ALJ ruled that since she was currently employed by us, that we were responsible because it was an aggravation. Our company suffered the consequences for another company not complying with the statutes of Kansas Workers Compensation by providing due medical care. The employee was for sure within her ten day rule of notification of injury (Attachment 6).

Docking Report is filed in the Chairman's Office.

The meeting adjourned at 11:00 a.m. The next meeting will be February 12, 2004.



Kansas Insurance Department

Sandy Praeger COMMISSIONER OF INSURANCE

To: Representative Donald Dahl, Chairperson
And Members
House Committee on Commerce and Labor

From: Dick Cook

Subject: Workers Compensation Insurance Issues
Insurance Companies, Group-Funded Pools and
Rating of the Coverage

Date: February 10, 2004

Chairman Dahl and Committee Members, I appreciate the opportunity to meet with you and discuss workers compensation insurance market and rating issues in Kansas.

Features and Market Conditions Pertaining to Insurance Carriers and Group-Funded Pools Writing Kansas Workers Compensation Coverage

In order for an insurance company to write workers compensation insurance in Kansas, it must be licensed in Kansas and be authorized to write workers compensation insurance. The carrier must file its rules, rates and forms with our office in accordance with Kansas law. According to our most current records, there are 240 carriers writing workers compensation insurance in Kansas. Over the past several years, this figure has remained fairly constant. For example, in 1997 there were approximately 235 carriers writing this coverage in Kansas, and in 2000 there were approximately 250 carriers writing the coverage.

According to recent information provided by the National Council on Compensation Insurance, Inc. (NCCI), the rating organization used by the carriers, there are approximately 53,500 employers paying over \$400 million in annual Kansas workers compensation premium. Please see attached Exhibit 1, which shows a breakdown of the above mentioned figures by Premium Range for the employers operating in Kansas.

Workers compensation insurance written by insurance companies in Kansas is either written by an insurance company direct (voluntary market) or through the Kansas Workers Compensation Insurance Plan (the Plan). The Plan is set up for employers who in good faith are entitled to purchase workers compensation insurance but are unable to secure the coverage through the voluntary market. The NCCI is the administrator for the Plan and there are two servicing carriers that service the Plan. The servicing carriers are Liberty Insurance Corporation and Continental Western Insurance Company. We are currently in the fourth year of a four-year contract for the aforementioned entities to service the Plan.

According to information provided by NCCI, the Plan currently has over 14,000 insured risks accounting for approximately \$60 million in annual premium. Please see Exhibit 2, which shows a breakdown by Premium Range. For comparison purposes, the Plan peaked during 1993 with approximately \$143 million in annual premium and 21,000 policies.

K.S.A. 44-581 in the Workers Compensation Act defines group-funded pools in Kansas as "group-funded workers compensation pools". These pools are licensed by the Kansas Insurance Department under the Act. The 1983 Kansas Legislature enacted the pool portion of the Act.

Kansas law requires five or more employers in the same bona fide professional, merchant, or trade association that has existed for five or more years, in the same, similar, or closely related type of business, with a combined net worth of over \$1 million, and at least \$250,000 in Kansas workers compensation premium for the formation of a pool. In 1993, the Kansas law was amended to allow dissimilar types of employers to pool if an adequate prediction of future losses can be made, if the pool has a combined net worth of over \$1.25 million, and if the pool has at least \$500,000 in Kansas workers compensation premium.

There are several types of employers that have formed pools under the Chapter 44 workers compensation law. The different categories of these pools are listed as below:

1. Construction Contractors (2 pools)
2. Nursing Homes (2 pools)
3. Restaurants and Motels (1 pool)
4. Hospitals (1 Pool)
5. Automobile Dealers (2 pools)
6. Feedlots (1 pool)
7. Truckers (1 pool)
8. Dissimilar Employers (1 pool)

In addition to the above information regarding pools, there are four workers compensation pools for municipalities, which exist under a separate law under Chapter 12. One of these pools consists of school districts and the other three consist of counties and cities. There are some of the same requirements for these pools as those requirements for Chapter 44 pools; however, overall the requirements are less stringent for Chapter 12 workers compensation pools.

There are currently 15 Chapter 44 and 12 pools offering workers compensation in Kansas. According to our most recent information, these 15 pools provide coverage to over 2,600 member employers and account for approximately \$60 million in annual premium.

The following are some pros to pooling:

1. Availability of coverage.
 - a. Voluntary market may not write even good risks if we are in a hard market cycle or if the employer is in a type of business believed to be extra hazardous or subject to a frequency of claims.

2. Coverage is provided without the Plan "penalties".
 - a. No premium discount.
 - b. 17.5% surcharge.
 - c. Assigned Risk Adjustment Plan surcharge.
 - d. No possibility of return of surplus (dividends).
3. Increased loss control and safety programs.
 - a. Loss control is specific to the industry since employers are generally in the same type of work.
 - b. Adequate safety is required in most pools or members are expelled for noncompliance.
4. Control of claims costs.
 - a. The pool handles its own claims or hires a service agent. The employers' needs are paramount.
5. Investment income accrues to pool members.
6. Possibility of lower costs or premium.
 - a. Pools can apply up to a 15% or 25% advanced discount to manual premiums for Chapter 44 and Chapter 12 workers compensation pools respectively.
7. Possibility of return of surplus (dividends).

The following are cons to pooling:

1. Pools are not insurance companies.
 - a. There is no Guaranty Association if the pool becomes insolvent.
 - b. Pools are not subject to most insurance laws.
2. Members of pools are jointly and severally liable.
 - a. All members are responsible for each member.
 - b. Each member is responsible for all members.
 - c. Assessments may be required to meet the pool's obligations under the Act and to maintain the solvency of the pool. Pools have been required to make assessments.
3. Risk is not transferred.
 - a. Purchasing insurance transfers risk to the insurance company.
 - b. Pooling requires sharing risk with the other pool members.
4. Excess insurance is required.
 - a. Favorable attachment points for aggregate coverage can be difficult to obtain. Dissimilar pools must have at least \$2 million aggregate limits that attach at no more than 125% of standard premium.
 - b. Unfunded liability gaps could exist between the pool's loss fund and the attachment of the excess policy creating the possibility for the need of an assessment.
 - c. Excess insurance has increased in cost and is harder to obtain in recent years.
5. Pressure from membership association regarding pool membership.
 - a. Successful pool operations require underwriting to keep the best risks in the pool. This may require exclusion of some association members from participation of the pool. The result could cause tension between association members.
 - b. Association executives and/or the trustees may feel pressure to permit poor risks into the pool.

Rating Issues Effecting Workers Compensation Insurance

Premiums paid by the employers should be adequate to cover the claims incurred by their insurance companies. Rates are usually adjusted annually, based on premium and loss information provided by the carriers to the NCCI. The major premium components are:

1. Base Rates
2. Classifications
3. Experience Rating
4. Payroll Size

Prior to Kansas workers compensation reform legislation, which was enacted in 1993, insurance rates were on the rise. The insurance carriers were facing loss ratios over 90%, which is shown on the attached Exhibit 3, Workers Compensation Insurance Experience, which is compiled from insurers' annual statement information. This also shows a history of Kansas premium and loss information in Kansas from 1982 through 2002. There were a number of reasons that losses were growing faster than premium, one of which was medical cost inflation were high and there was a lack of medical fee schedules and utilization review.

Because the insurers were losing money on writing workers compensation insurance, the market tightened which drove a lot of employers into the Plan. In 1993, which was the peak year for the Plan, the Plan premium accounted for 39% of the total market premium. For comparison, in 1999, six years after the reform, the Plan premium was about 7% of the total market premium, and today NCCI estimates the Plan premium to be around 18% of the total market premium. Additionally, since the Plan's premium was not funding the losses, the insurers had to make up the losses by assessments. The goal is for the Plan to be self-funding to make it more desirable for insurers to write business in the voluntary market, and since insureds normally pay higher premium in the Plan, it is important to have the voluntary market carriers writing the insureds whenever possible.

Attached Exhibit 4, entitled History of Kansas Workers Compensation Rate Filings, fairly well summarizes what has happened with rates in Kansas before and after the reform of 1993. As you can see, from 1990 through 1993 the rate increases totaled 55.2% while after the reform, overall rates and loss costs have decreased 35%, which accounts for a savings of \$114 million to Kansas employers. For illustration of difference in 1993 rates and 2004 rates, the following compares a few of the common classes used in Kansas:

<u>Class Code No.</u>	<u>Description</u>	<u>Rates Effective 6-1-1993</u>	<u>Rates Effective 1-1-2004</u>
5551	Roofing	\$36.80	\$20.70
5645	Carpentry	\$14.34	\$10.35
8742	Outside Salespersons	\$00.78	\$00.45
8810	Clerical	\$00.42	\$00.32

One additional item that came out of the 1993 reform was that Loss Costs were required to be filed by the NCCI instead of final rates for the voluntary market carriers. This meant the NCCI was to file the factor to pay for Loss and Loss Adjustment Expense while the insurers were to file the factor to account for their Administrative Expenses and Profit Loading. This factor is known as the Loss Cost Multiplier. Going to a loss cost system allowed the insurers more flexibility in developing their final rates and allowed for greater competition. As a result of this change, the loss cost system was originally filed by NCCI and made effective June 1, 1995. Exhibit 5, Calculation of Company Loss Cost Multiplier, is one of the forms that may be used by a workers compensation insurer for determining the insurer's loss cost multiplier.

A major change occurred in the rating of commercial insurance, including workers compensation, during the 1997 and 1999 legislative sessions. In 1997 the rating laws were changed from a prior approval system to a modified file and use system for the insurers filing their loss cost multipliers, and in 1999 the rating laws were amended to a true file and use system. The NCCI still has to file the loss costs for the department's prior approval, but once an insurer files its loss cost multiplier, it may be used. By law, there are situations where the department can disapprove the loss cost multiplier.

In the last couple of years the loss cost multipliers have been on the rise. A couple of the reasons have been the downturn in the investment markets and the rise in the cost of reinsurance. Because of this, the voluntary market rates have been increasing even though the loss costs filed by the NCCI have remained fairly constant.

I hope you have gained a better understanding of workers compensation insurance from some of the workers compensation issues that I have presented to you today.

Kansas

Premium Distribution by Size

Market Type is Voluntary + A/R.

Cancellations (Prorated) were Kept.

Premium is based on Any Exposure.

Policy Period 07/01/2002 through 06/30/2003.

Data Mart last updated on 11/02/2003.

State	Premium Range	Risk Count	% of Total Risks	Total Premium	% of Total Premium	Average Premium
KS	\$0 - 2249	35297	65.9	24674943	6.1	699
KS	\$2250 - 4999	7294	13.6	24634797	6.1	3377
KS	\$5000 - 9999	4355	8.1	30719420	7.6	7054
KS	\$10000 - 49999	5132	9.6	111739266	27.6	21773
KS	\$50000 - 99999	837	1.6	57670537	14.2	68901
KS	\$100000 - 499999	603	1.1	111634599	27.6	185132
KS	\$500000 and greater	36	0.1	44069642	10.9	1224157
Total		53554	100.00%	\$405,143,204	100.00%	\$7,565

Kansas

Premium Distribution by Size

Market Type is A/R.

Cancellations (Prorated) were Kept.

Premium is based on Any Exposure.

Policy Period 07/01/2002 through 06/30/2003.

Data Mart last updated on 11/02/2003.

State	Premium Range	Risk Count	% of Total Risks	Total Premium	% of Total Premium	Average Premium
KS	\$0 - 2249	10813	75.2	7982027	13.5	738
KS	\$2250 - 4999	1634	11.4	5389056	9.1	3298
KS	\$5000 - 9999	880	6.1	6172464	10.4	7014
KS	\$10000 - 49999	859	6	18220189	30.7	21211
KS	\$50000 - 99999	128	0.9	9091088	15.3	71024
KS	\$100000 - 499999	70	0.5	12451196	21	177874
KS	\$500000 and greater	0	0	0	0	0
Total		14384	100.00%	\$59,306,020	100.00%	\$4,123

WORKERS' COMPENSATION INSURANCE EXPERIENCE

YEAR	DIRECT PREMIUMS WRITTEN	DIRECT PREMIUMS EARNED	DIRECT LOSSES PAID	DIRECT LOSSES INCURRED	LOSSES PD. TO PREMIUM WRITTEN	LOSSES INCUR. TO PREMIUM EARNED
1982	154,944,245.00	152,315,135.00	88,345,714.00	107,979,341.00	57	70.9
1983	147,137,981.00	148,669,330.00	96,289,968.00	115,282,150.00	65.4	77.5
1984	141,097,428.00	140,223,325.00	106,701,375.00	125,520,390.00	75.6	89.5
1985	172,985,620.00	170,955,138.00	120,755,675.00	147,438,366.00	69.8	86.2
1986	208,167,277.00	202,033,619.00	134,554,116.00	170,153,475.00	64.6	84.2
1987	223,674,161.00	222,846,661.00	147,885,631.00	195,885,084.00	66.1	87.9
1988	257,039,527.00	259,548,305.00	164,553,813.00	208,332,654.00	64	80.3
1989	264,102,264.00	263,386,009.00	184,857,801.00	239,142,874.00	70	90.8
1990	291,804,714.00	293,048,038.00	222,309,953.00	265,726,660.00	76.2	90.7
1991	341,012,872.00	337,125,586.00	243,751,957.00	321,497,577.00	71.5	95.4
1992	366,672,022.00	363,578,560.00	236,878,948.00	293,894,584.00	64.6	80.8
1993	367,030,245.00	365,646,558.00	220,091,021.00	231,228,324.00	60	63.2
1994	338,173,750.00	312,116,539.00	185,502,395.00	192,914,048.00	54.9	61.8
1995	312,745,351.00	322,205,785.00	159,776,412.00	139,528,898.00	51.1	43.3
1996	274,014,862.00	282,897,458.00	149,616,189.00	130,595,593.00	54.6	46.2
1997	261,121,536.00	261,895,503.00	145,248,549.00	134,603,154.00	55.6	51.6
1998	250,588,819.00	261,594,835.00	156,594,835.00	126,164,370.00	62.6	48.2
1999	251,341,523.00	252,545,287.00	170,144,109.00	179,376,781.00	67.7	71
2000	271,480,320.00	247,235,161.00	170,366,708.00	159,226,348.00	62.8	64.4
2001	291,575,463.00	269,386,691.00	190,426,537.00	237,335,832.00	65.31	88.1
2002	328,963,003.00	307,451,748.00	180,253,738.00	177,083,631.00	54.79	57.6

History of Kansas Workers' Compensation Rate Filings

Effective Date of Change	National Council on Compensation Insurance			Overall Approved	Overall Requested		
	Manufacturing	Contracting	All Other				
11/21/1989 (Disapproved)	0	0	0	0	22.6%		
5/1/1990	7.3%	0.7%	7.3%	5.6%	22.6%		
6/1/1991	23.4%	31.4%	21.5%	24.0%	30.9%		
6/1/1992	26.9%	26.6%	17.2%	21.7%	31.4%		
6/1/1993	5.4%	6.7%	2.0%	3.9%	21.3%		
		In voluntary market		0%			
		In assigned risk plan		12.9%			
		Law change		-11.0%			
Effective Date of Change	Manufacturing	Contracting	Office and Clerical	Goods and Service	Misc.	Overall Approved	Overall Requested
6/1/1994	-1.7%	-3.4%	-2.4%	-3.9%	4.5%	-2.0%	-0.3%
6/1/1995 Voluntary Loss Costs	-5.7%	-4.3%	-9.3%	-8.3%	-8.7%	-6.9%	-5.0%
6/1/1995 Assigned Risk Plan Rates	-7.3%	-5.9%	-10.9%	-9.9%	-10.2%	-8.5%	-8.5%
6/1/1996 Voluntary Loss Costs	-13.1%	-11.1%	-9.8%	-6.4%	-12.3%	-10.4%	5.6%
6/1/1996 Assigned Risk Plan Rates	-18.5%	-16.7%	-15.4%	-12.2%	-17.8%	-16.0%	-1.1%
1/1/1998 Voluntary Loss Costs	-14.7%	-8.8%	-12.6%	-13.8%	-12.3%	-12.7%	-12.7%
1/1/1998 Assigned Risk Plan Rates	-19.1%	-13.5%	-17.1%	-18.3%	-16.8%	-17.2%	-17.2%
1/1/1999 Voluntary Loss Costs	-6.0%	-1.4%	-2.7%	-5.2%	-3.2%	-4.0%	-4.0%
1/1/1999 Assigned Risk Plan Rates	-9.1%	-4.7%	-5.9%	-8.3%	-6.5%	-7.2%	-7.2%

History of Kansas Workers' Compensation Rate Filings
National Council on Compensation Insurance

Effective Date of Change	Manufacturing	Contracting	Office and Clerical	Goods and Service	Misc.	Overall Approved	Overall Requested
1/1/2000	-7.6%	2.3%	-1.8%	3.8%	0.6%	-0.5%	-0.5%
Voluntary Loss Costs					Combined	-0.7%	
1/1/2000	-11.0%	-1.5%	-5.4%	-0.1%	-3.1%	-4.2%	-4.2%
Assigned Risk Plan Rates							
1/1/2001	10.70%	-3.80%	0.20%	2.20%	8.50%	3.30%	3.50%
Voluntary Loss Costs					Combined	4.30%	
1/1/2001	25.30%	8.90%	13.40%	15.70%	22.80%	17%	17.20%
Assigned Risk Plan Rates							
1/1/2002	-2.90%	-7.10%	0.00%	-4.90%	-4.60%	-4.40%	-4.40%
Voluntary Loss Costs					Combined	-4.00%	
1/1/2002	0.30%	-4.10%	3.20%	-1.80%	-1.50%	-1.30%	-1.30%
Assigned Risk Plan Rates							
							(-1.3% is a combination of 5.2% rate decrease and 4.1% changes in AR pricing programs)
1/1/2003	4.10%	-3.10%	12.00%	5.00%	-5.70%	1.80%	3.90%
Voluntary Loss Costs					Combined	1.90%	
1/1/2003	5.30%	-2.00%	13.30%	6.20%	-4.60%	3.00%	5.20%
Assigned Risk Plan Rates							
1/1/2004	4.80%	-1.30%	5.60%	1.40%	-5.60%	1.00%	4.80%
Voluntary Loss Costs					Combined	1.90%	
1/1/2004	9.90%	3.50%	10.80%	6.30%	-1.00%	5.90%	9.10%
Assigned Risk Plan Rates							

INSURER NAME _____ DATE _____

NAIC NUMBER _____

INSURER RATE FILING
ADOPTION OF RATING ORGANIZATION PROSPECTIVE LOSS COSTS
SUMMARY OF SUPPORTING INFORMATION FORM

CALCULATION OF COMPANY LOSS COST MULTIPLIER

1. Line, Subline, Coverage, Territory, Class, etc., combination to which this page applies _____

2. Loss Cost Modification:

A. The insurer hereby files to adopt the prospective loss costs in the captioned Reference Filing:
(CHECK ONE)

Without modification (factor = 1.000)

With the following modification(s). (Cite the nature and percent modification, and attach supporting data and/or rationale for the modification.) _____

B. Loss Cost Modification expressed as a Factor (see example below): _____

NOTE: IF EXPENSE CONSTANTS ARE UTILIZED, ATTACH "EXPENSE CONSTANT SUPPLEMENT" OR OTHER SUPPORTING INFORMATION. DO NOT COMPLETE ITEMS 3-7 BELOW.

3. Development of Expected Loss Ratio. (Attach exhibit detailing insurer expense data and/or other supporting information.)

	Selected Provisions
A. Total Production Expense	_____ %
B. General Expense	_____ %
C. Taxes, Licenses and Fees	_____ %
D. Underwriting Profit and Contingencies	_____ %
E. Other (explain)	_____ %
F. TOTAL	_____ %

4. A. Expected Loss Ratio: $ELR = 100\% - 3F =$ _____ %
 B. ELR in decimal form = _____

5. Company Formula Loss Cost Multiplier: $(2B \div 4B) =$ _____

6. Company Selected Loss Cost Multiplier = _____
 Explain any differences between 5 and 6 _____

7. Rate level change for the coverages to which this page applies _____ %

Example 1: Loss cost modification factor: If your company's loss cost modification is -10%, a factor of .90 (1.000 - .100) should be used.
 Example 2: Loss cost modification factor: If your company's loss cost modification is +15%, a factor of 1.15 (1.000 + .150) should be used.

**Testimony before the
House Commerce and Labor Committee
Kansas Self-Insurance Program
John Bouillet, Administrator, Self-Insurance Program
February 10, 2004**

Chairman Dahl and Members of the Committee

I am John Bouillet, Administrator of the Workers Compensation Self-Insurance program. Thank you for the opportunity to appear today and present information concerning the Kansas Self-Insurance program.

Mr. Cook has just described two of the three methods available to Kansas employers to insure their workers compensation liability. Self-Insurance is the third method. KSA 44-532 and KAR 51-14-4 are the statute and regulation which identify the basic requirements of the program.

All employers in Kansas, who meet the following requirements, are eligible to apply to the Division of Workers Compensation for self-insurance authority:

1. In continuous operation for at least five years.
2. Provide the last five years of audited financial reports of the company applying for self-insurance, or the parent company's financial reports, if there is a parent company.
3. Have at least 100 employees, not necessarily in Kansas.
4. Have a manual premium of at least \$300,000 to \$350,000.
5. Have a Net Worth of \$10,000,000; however will consider a net worth less than \$10,000,000. (If approved, the smaller company will be required to purchase Aggregate Excess Insurance.)

or meet the special exceptions of KSA 44-532: .. Purchasing an existing self-insured Kansas firm, plant, or facility and the operation of the purchased firm, plant or facility (1) has been in continuous operation in Kansas for at least ten (10) years (2) has generated an after tax profit of at least \$1,000,000 annually for the preceding three (3) consecutive years and (3) has a debt to equity ratio of not greater than 3.5 to 1.

Comme Labor
2-11-04
Atch # 2

or a corporation whose current identity is attributable to a merger or other transformation which the whole or a substantial part of the previous identity's assets and income have been transferred to it, and its liabilities have not increased beyond the financial review requirements of the director which qualified it under its previous identity as a self-insurer, may apply for renewal as a self-insurer under its new name.

In order to begin the self-insurance approval process, either as a new applicant or a renewal applicant, a completed K-WC 120, Application Form, and the necessary audited financial reports must be received. A thorough review of the information submitted on the application form and the financial reports is made. The financial information received from the employer for the purpose of applying for self-insurance is exempt from the Open Records Law requirements (KSA 44-550b)

If the company meets the minimum requirements for the program, the amount of security required to be on deposit with the state, either as a Surety Bond or a Letter of Credit, is determined. The security instrument, in the approved amount, must be received prior to issuance of the self-insurance permit. A security deposit is required from all self-insured employers, except for Cities, Counties, and School Districts.

All self-insured companies must purchase Specific Excess Insurance with approved policy limits. Smaller companies must also purchase Aggregate Excess Insurance. Proof of coverage, K-WC 129 Certificate of Excess Insurance, must be received prior to issuance of a self-insurance permit.

Self-Insurance reporting requirements are the annual filing of the application form and audited financial report. Also, each self-insured employer must complete the K-WC 92, Annual Loss Payment Reporting Form. The data received on the K-WC 92 form is used to determine the annual assessment amount the company owes to the Division and to the Kansas Insurance Department. The assessment program is based on the amount of reported paid losses for the previous calendar year. Current assessment reporting requirements (KSA 74-712) do not break out paid losses, only total amounts are reported.

Costs to self-insured employers due to the program are:

1. (KAR 51-14-4) Security Instrument (Cost of Surety Bond or Letter of Credit)
2. (KAR 51-14-4) Excess Insurance (Cost of Purchase at Required Limits)

KAR - Kansas Administrative Regulation

This is an overview of the Kansas self-insurance program. I will be happy to stand for any questions.

DIRECTOR'S REGULATION 51-14-4, EFFECTIVE MAY 1, 1984

51-14-4. Self-Insurance. An employer operating under the act shall only become qualified as a self-insurer through the process of applying to the division of workers compensation for a self-insurance permit. An employer making an application shall, upon the request of the director, submit information that the director may require to effectively evaluate the financial status of the employer. An application for a self-insurance permit or a self-insured employer seeking a renewal permit, shall, if the director requests, pay the fees of a consultant approved by the division of workers compensation to determine if the employer has the financial ability to become self-insured or to have his self-insurance permit renewed.

The applicant for a new permit or an employer seeking a renewal permit shall furnish to the division of workers compensation a bond written by a surety company admitted to the state, and authorized by the Kansas insurance department to write surety bonds as required by the division. The bond shall be in an amount to adequately insure that if the employer should become insolvent, payments on all claims will be guaranteed to the injured workers.

The applicant for a new permit or an employer seeking a renewal permit shall furnish a certificate of excess insurance in an amount that may be required by the division of workers compensation, and the division shall be notified by the self-insured and insurance carrier at least 20 days prior to the cancellation or non-renewal of any excess insurance policy. The excess workers compensation insurance shall be in conformity with Kansas insurance statutes and regulations of the Kansas insurance commissioner.

An applicant for a new permit or an employer seeking a renewal permit shall set up financial reserves, furnish letters of credit or provide other security in amounts and in a manner directed by the division of workers compensation to insure the payment of all workers compensation claims as may be required by the Kansas workers compensation act.

An employer shall furnish to the division of workers compensation any other information the division may request which will aid in fairly and adequately evaluating an application for a new or a renewal permit for self-insurance.

The self-insurance permit of any employer shall expire on the anniversary date thereafter, except when it has been renewed by the division prior to that date. The employer shall furnish any information that the division of workers compensation may require to effectively evaluate an application to renew a self-insurance permit at least 45 days prior to the anniversary date of the original permit.

An employer whose original or renewal application for self-insurance has been denied, or who takes exception to insurance or reserve requirements may request a reconsideration by the division of workers compensation. The request shall be made within 20 days of the receipt by the employer of the information which the applicant wishes reconsidered. If the employer desires to have a record of the hearing, the reporter's costs shall be assessed to the employer. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-505b, 44-505e, 44-505f, 44-532; effective February 15, 1977; amended May 1, 1978; amended May 1, 1983; amended May 1, 1984.)

COMMONLY ASKED QUESTIONS AND ANSWERS RELATING TO INDIVIDUAL SELF-INSURANCE IN THE STATE OF KANSAS

Q. What do I do if my company wants to become self-insured?

- A. If self-insurance is determined to be feasible by you and/or your insurance representative, write or telephone for a self-insured packet of information as indicated below:

Department of Human Resources
Division of Workers Compensation
Business and Accounting Section
800 S.W. Jackson Street, Suite 600
Topeka, Kansas 66612-1227
Telephone: (785) 296-3606

Upon receipt of the packet, either you or your Third Party Administrator should complete the following forms and file at the above address:

1. Form 105, Application Oath to Become A Self-Insured
2. Form 120, Application for Self-Insurance

Also send the following:

1. Five years of the most recent audited financial reports of either the parent company, or if none, the applicant company. In addition, file the most recent 10 Q or quarterly reports.
2. A copy of the safety manual and/or safety program.
3. Proposed excess insurance limits.

After a review is completed of the material submitted, we will contact you or your representative.

Q. My business has been in existence for four years. Is the business eligible for self-insurance?

- A. A private firm must be in existence, doing business under its present corporate identity (continuous operation), for at least five years to make application; or is purchasing an existing self-insured Kansas firm, plant or facility and the operation of the purchased firm, plant or facility:

1. has been in continuous operation in Kansas for at least 10 years;
2. has generated an after-tax profit of at least \$1,000,000 annually for the preceding three consecutive years; and,
3. has a ratio of debt to equity of not greater than 3.5 to 1. As used in this subsection, "debt" means the sum of long-term borrowing maturing in excess of one year plus the current portion of long-term borrowing plus short-term financial institution borrowing plus commercial paper borrowing, and "equity" means the sum of the book value of stock plus paid-in capital plus retained earnings. The method for calculating the amount of security required of self-insureds shall be reviewed by an actuary every five years, beginning in fiscal year 1997. The costs for these actuarial studies shall be paid from the workers compensation fee fund.

A corporation or other entity whose current identity is attributable to a merger or other transformation whereby the whole or a substantial part of a previous entity's assets and income have been transferred to it, and its liabilities have not increased beyond the financial review requirements of the director, which qualified under its previous identity as

a self-insurer under other provisions of the statute, and amendments thereto, may apply for renewal as a self-insurer under its new name. The director may grant the application for renewal if satisfied that the new entity meets all necessary financial criteria for renewal that would have been applied to the previous self-insured entity. An application under these provisions shall be limited to an entity seeking renewal based upon the prior self-insured status of another entity or entities.

A subsidiary corporation in business less than five years may be considered if its liability is guaranteed by a parent corporation. New applicants must submit five years of the ultimate parent's audited financial reports and the most recent quarterly statement or 10 Q.

Q. Are there state of Kansas statutes and regulations that pertain to individual self-insureds?

A. Yes. Refer to K.S.A. 44-532 and K.A.R. 51-14-4.

Q. How do I know if being self-insured is best for my company?

A. A self-insured employer is assuming the responsibilities provided by an insurance carrier; therefore, there must be a commitment on the part of top management to be self-insured, especially in the area of safety and loss control, claims review and payment to injured workers, and especially the setting and periodic review of reserves for future payment on known and existing claims. Also, an initial feasibility study should be made to determine if it is more cost efficient to be self-insured or to continue with an insurance policy.

For information purposes, the self-insured packet includes an exhibit showing the liability buildup of ten cases over a ten-year period.

Q. What are the financial requirements to be self-insured?

A. The self-insured employer or parent company should demonstrate financial strength and liquidity to assure all obligations will be properly met.

Our office performs a detailed review of the company's financial statements by reviewing the cash flow of the company. Other key ratios reviewed are liquidity, profitability and debt-to-equity. We then compare these ratios with other employers in the same type of business on a countrywide basis. Upon determining the applicable Standard Industrial Classification Code, a Dun & Bradstreet peer review is completed. The long-term debt of the employer is monitored by us, too.

During our financial review, trending is performed to ascertain in what direction the employer is financially headed. The self-insured applicant is provided a copy of our financial worksheet printout.

Q. If a company has one or more subsidiaries they wish to be self-insured, are they combined on the same application?

A. If the subsidiary is **separately incorporated**, then each must have its own application. An Indemnity & Guaranty Agreement must be signed by the ultimate parent of the subsidiary guaranteeing payment of all workers compensation liability.

If the entity is a division not separately incorporated, then the two companies can be included on the same application.

Q. As a self-insured employer, are we required to have a Third Party Administrator assist us?

A. No. This is not a requirement, but an option. Many self-insureds have their own in-house staff of employees that do loss prevention services, handle their own claims, establish their own reserves and do other duties. If this is the

situation, the employer must furnish us with the plan developed for adjusting claims. Item 6 of the Form 120, Application for Self-Insurance, addresses this issue, and Item 25 C requires the names, qualifications and experience of the person(s) evaluating loss reserves.

Q. If we retain a Third Party Administrator or an adjusting company, are they required to be licensed in the state of Kansas or domiciled in the state?

- A. No. At the present time, the Kansas Insurance Department only licenses insurance agents. Third Party Administrators and insurance adjusters are not licensed. For self-insurance, we do not require Third Party Administrators to have an office within the state.

Q. What state of Kansas costs can I expect if our company becomes self-insured?

- A. There are no premium taxes or administrative costs and, generally, no qualifying fees. There are two assessments to be paid annually: one to our office and one to the Kansas Insurance Department, Workers' Compensation Fund.

The Division of Workers Compensation is a fee-funded agency, and assessment fees are assessed annually to finance the costs associated with the operation of the Division. No general fund monies are received. An information form describing the assessment procedure is included in the basic self-insurance packet.

The Kansas Insurance Department, Workers' Compensation Fund, annually assesses all self-insured employers an assessment to finance the second injury fund, and other responsibilities of the Fund.

Q. What are the assessments based on; who is assessed; and, what is the time table for making payments?

- A. Each year during January, the Division sends a form to each self-insured, group self-insured (pool) and insurance carrier authorized to write workers' compensation insurance in the state, asking the amount of losses paid under law for the preceding calendar year. Based on that information, on approximately May 1 an assessment is levied against the losses paid and shall not exceed 3%. The assessment shall be paid prior to July 1 of each year.

The Kansas Insurance Department, Workers' Compensation Fund, uses the same claims paid-base during the preceding calendar year. Their assessment is due July 1st. Inquiries regarding the Kansas Workers' Compensation Fund should be addressed to:

Workers' Compensation Fund
Kansas Insurance Department
420 S.W. 9th Street
Topeka, KS 66612-1678
Telephone (785) 296-7810

Q. Is there an employee number or premium size requirement to be eligible to apply for self-insurance?

- A. Yes. The self-insured applicant should have a minimum of 100 employees either entirely in the state of Kansas or on an interstate basis, i.e. 25 employees in the state of Kansas and 75 employees in the state of Missouri. This requirement is used to ascertain the size of the employer's operation.

Also, the self-insured applicant shall have a minimum manual workers' compensation premium of at least \$250,000 - \$300,000. A manual premium is the basic premium determined by multiplying the manual rate times each \$100 of payroll per classification code. The referral to "standard premium" is the manual premium times the experience modification.

Q. How much equity should a self-insured applicant have to be self-insured?

- A. Historically, self-insurance was an option generally for only the large and very large employers who could afford the exposure and expense of being self-insured. Otherwise, successive large losses might jeopardize the financial being of the company and cause it to declare bankruptcy. This would be especially true if the employer is highly leveraged, self-insured in numerous states and even self-insured in other lines of insurance such as general liability. Today, because of workers' compensation market conditions and other factors, smaller employers are viewing self-insurance as a viable option to insuring their workers' compensation exposure.

There is currently a \$10,000,000 equity threshold and if an applicant has less equity, excess insurance, both specific and aggregate limits, are required. For applicants with \$10,000,000-plus equity, specific limits are required but aggregate limits are optional.

Q. What is excess insurance?

- A. Excess insurance is obtained from insurance companies in the same manner as obtaining primary insurance. A "self-insurance retention" amount is like a deductible amount on automobile or homeowners insurance, and for every accident or occurrence, the self-insurance retention must be paid by the self-insured. Once the self-insurance retention is paid, the insurance carrier is responsible. Generally, the larger and financially stronger self-insured employers have a higher retention and the smaller companies have a lower retention. Aggregate insurance is more costly to a self-insured employer, but is protected by placing a "cap" on the cumulative payments of claims. Once this aggregate annual cap, or "Minimum Loss Fund" is met, the self-insured pays no more and the insurance carrier pays up to the annual policy limit.

Q. What happens in the state of Kansas if the self-insured employer becomes bankrupt during the policy period and the bankruptcy freezes the funds of the employer? Are not typical excess policies written as reinsurance contracts and if the retention is met, the self-insured shall pay first and the excess insurance reimburse the self-insured employer?

- A. Yes, you are correct. The standard excess insurance policy is similar to a reinsurance contract, but state of Kansas insurance laws protect the claimant. The state of Kansas excess insurance is viewed as "liability insurance" and if the self-insured employer cannot pay the claim, the insurance carrier must do so.

Q. Is an excess insurance policy required for all self-insureds?

- A. Yes. Excess insurance is required for all self-insureds including public entities such as cities and counties. Excess insurance is often referred to as "catastrophic coverage" to provide protection for the large losses.

Q. Is excess insurance regulated by the Kansas Insurance Department?

- A. Yes, because excess insurance policies are viewed as a "liability type" policy, each authorized insurance carrier with the authority to write workers compensation coverage must obtain prior approval of the excess policy form from the Kansas Insurance Department. However, the rates charged for excess workers compensation insurance are not approved by the Kansas Insurance Department, and there is no standard rate.

Q. How do I find an insurance carrier to provide an excess insurance policy?

- A. The self-insured packet has a list of approved, admitted insurance carriers the Kansas Insurance Department has provided. The list indicates all admitted carriers who have had their excess insurance policies approved. The list also shows the companies authorized to write aggregate coverage. A commercial lines insurance agent will be able to provide assistance in locating an insurance carrier.

Q. I know of a non-admitted, surplus lines insurance carrier domiciled in Bermuda that can provide excess workers compensation coverage at less cost than a company on the list. Is this surplus lines coverage a viable option?

A. No. The state of Kansas insurance laws require insurance coverage to be placed with an admitted carrier even though the rates may be higher. However, the Kansas Insurance Department has a "white list" of surplus lines (not admitted) carriers that excess coverage can be placed with if insurance coverage is unavailable in the admitted market. If coverage is written by a company on the "white list," we require the policy to be filed with our office and amended to meet the requirements of what is required from an admitted company. Also, Form 133, Non-Admitted Insurance Carrier (Statement of Insured), must be completed and filed with us, and a written statement made by the self-insured administrator for forwarding to the Kansas Insurance Department by us reflecting the unavailability of excess workers compensation coverage in the admitted market. The filing of the Form 133 and written statement made must be done at the time of each annual renewal of the excess policy.

Q. What happens procedurally after my self-insured company ceases to be self-insured?

A. After the termination date is determined and our office issues a letter of termination, we must be provided the name and policy number of the primary insurance carrier providing insurance coverage. The security posted will be required until such time there is no further claim activity, no open reserves and no known occupational disease exposure.

The security amount continues at the amount retained at the time of termination and is reduced by one-third until the end of the third year. If open reserves are present at the end of the third year, a factor of .25 is applied for Loss Adjustment Expense and future assessments if a Letter of Credit is used to post security, or a factor of .10 is applied if a surety bond is filed with us to the reserve amount, and an additional factor of .15 is applied for the cost of deficiencies in case loss reserves. These factors are applied annually.

Q. After the self-insured permit is terminated, how long will my company be assessed by the Department of Human Resources, Division of Workers Compensation and Kansas Insurance Department, Workers' Compensation Fund.

A. Your company will be assessed by our office and the Kansas Insurance Department, Workers' Compensation Fund, until a zero balance of paid claims during a calendar year period is reported.

Q. If my business is approved for self-insurance, how much security will I be required to post?

A. The amount of security that is required to be posted via a Letter of Credit or Surety Bond is determined after a thorough review of the financial stability and capability of the prospective company, and varies from one company to another.

Q. How is the security amount to be posted determined for new self-insured applicants and renewals?

A. The basic method used is our Security Determination Form developed in 1982, and updated during fiscal year 1997, by a consulting actuary. By statute, the form is updated now every five (5) years. The form has been very satisfactory in determining the amount to be posted. However, for large employers initially seeking self-insurance, it has appeared that the standard Security Determination Form would require too much security for the initial period. The consulting actuary provided an alternative method of determining the amount to be posted. The method used is to apply a .90 factor to the standard premium. The "standard premium" is the basic manual premium with the experience modification applied. The minimum amount of security is \$350,000.

The .90 factor excludes insurance company profits, commissions, etc., but includes the pure premium, loss adjustment factor and related items pertaining to claims. At the time of renewal, we would then use our standard Security

Determination Form as the self-insured's own reserves are determined. The pure premium of 60% (\$.60 on the premium dollar) is that portion of the premium amount designated to pay losses. The Loss Adjustment Expense/Assessment Factor is 25% and is used to adjust and pay the claims, and to make allowance for future assessments.

For the small to medium size new applicants, we generally use the pure premium .60 factor as a reserve amount, and this appears to work well; therefore, the standard Security Determination Form can be used. For extremely small employers with a net worth of less than \$10,000,000, aggregate insurance is required and the self-insured posts an amount equal to the Minimum Loss Fund, which is the point at which the insurance carrier begins paying all claims and the self-insured employer's liability ceases.

Q. What form must the security take?

A. The security amount may be posted by use of either a bank Letter of Credit or a Surety Bond.

Q. If I choose a Letter of Credit, may I use any bank?

A. You may select a bank of your choice; however, prior to the issuance of the Letter of Credit, the bank must complete a Bank Fact Sheet and submit a copy of the parent bank's, or if none, its most recent audited financial statement. After a thorough review of the bank, the Division will either accept or reject the bank as a Letter of Credit insurer. If rejected, another bank must be selected.

Q. What other requirements must be met for Letters of Credit?

A. Because the Division of Workers Compensation has no legislative authority to administer payment of claims, a Trust Operational Agreement must be established with a bank's trust department. The format for this agreement is available from the Division.

Q. Am I required to have the same bank issue both the Letter of Credit and the Trust Operational Agreement?

A. No, any bank willing to accept the state of Kansas wording for the Trust Operational Agreement is acceptable. The Letter of Credit must identify the bank where the Trust Operational Agreement is issued and located.

Q. Are there requirements the bank must meet to handle Letters of Credit?

A. The bank must complete a Bank Fact Sheet reflecting its financial condition as well as to provide a copy of their latest financial report for our review and acceptance. This review must be accomplished and approval granted prior to the Letter of Credit being issued. The Bank Fact Sheet and financial statement must be filed on the bank's ultimate parent bank, if applicable.

Q. What procedure is followed when a Letter of Credit or Surety Bond is called by the Director of Workers Compensation?

A. If it becomes evident that the self-insured is unable to pay the workers compensation claims as they become due, then the Director of the Division of Workers Compensation will call either all or part of the Letter of Credit or the Surety Bond. The funds are placed in the previously agreed to Trust Fund for the Letter of Credit, and the surety company pays in accordance with the terms of the surety bond. The funds are utilized to pay the claims as they become due.

Q. How long does it take to become self-insured?

A. After receipt of the completed application and the previous five years of audited financial records on the prospective self-insured company, permits have been issued in two weeks, but more realistically 30 to 45 days is normal.

Q. How long is the permit period in effect, and how often will I be required to renew the permit?

A. The permit normally is approved for one year or less initially depending on when the fiscal year ends for the self-insured, and renewals are on an annual basis.

Q. What other options are there to cover workers compensation requirements if self-insurance is unavailable or not feasible?

A. Continue to purchase an insurance policy to cover the liability or join a pool of similar employers. Pool coverage (group self-insurance) is administered by the Kansas Insurance Department. Also, large deductibles are available now, and your insurance agent can assist you in this area.

Q. Are the self-insured records maintained by the Division and therefore the data provided by a self-insured company available to the public?

A. KSA 44-550b provides the following, quoted in part: "Records open to public inspection, exceptions. (a) All records provided to be maintained under K.S.A. 44-550 and amendments thereto shall be open to public inspection, except that records relating to financial information submitted by an employer to qualify as a self-insurer pursuant to K.S.A. 44-532 and amendments thereto."

Q. If the company wishing to become self-insured is a subsidiary of another corporation, whose financial statement is analyzed?

A. If there is a parent company, then the financial data and review is completed on the ultimate parent's financial reports, not the subsidiary. This is done due to the fact that the parent has the ability to remove assets from the subsidiary at will.

Q. Does the state of Kansas require a meeting with the prospective self-insured company representatives prior to approval?

A. In order to hold down costs, there is no requirement for a meeting. Mailing of the two application (Form 105 and 120) forms and five years of audited financial reports will begin the process. Problems will be addressed as they arise with the appropriate representative.

Q. Assuming a qualified individual self-insured employer becomes bankrupt, cannot pay claims and the security is insufficient, do claims cease being paid?

A. No, the individual self-insured program has a "guaranty fund" to protect the injured workers. The law provides that the Workers' Compensation Fund (second injury), administered by the Kansas Insurance Department, pay claims of insolvent employers if other security is unavailable. The amount paid out is then assessed (post assessment) to all other self-insureds, group self-insureds and insurance carriers indicating paid workers compensation claims.

Q. Has a qualified individual self-insured ever declared bankruptcy, could not pay its own claims and the Workers' Compensation Fund have to make payments, and make an assessment for these payments?

A. No, not at this time.

Q. Is it a state requirement that the Self-insured Permit Certificate be posted or displayed?

A. No, this is optional and no permit certificate posting requirement exists. Regulation 51-13-1 does require all employers operating under the Workers Compensation Act to post a Form 40, Posting Notice, advising employees what to do in case of injury. The Posting Notice can be obtained by contacting the Topeka Workers Compensation office.

Q. If I have additional questions or need further explanation, who should I contact?

A. Contact:

Individual Self-Insureds

Department of Human Resources
Division of Workers Compensation
Business Office & Self-Insurance
800 S.W. Jackson Street, Suite 600
Topeka, KS 66612-1227
Phone: (785) 296-3606

Group Self-Insureds (Pools)

Kansas Insurance Department
Commercial Multi-Perils Section
420 S.W. 9th Street
Topeka, KS 66612-1678
Phone: (785) 296-3071

Kansas Coalition for Workplace Safety

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

Coalition Members:

- AARP Kansas
- Construction and General Laborers Local 1290 & 142
- Greater KC Building and Construction Trades Council
- Int Assoc of Fire Fighters, Local 64 and Local 83
- International Association of Machinist and Aerospace Workers, Dist. Lodge No. 70
- Kansas AFL-CIO
- Kansas Fire Service Alliance -- KS State Fire Fighters Assoc, KS State Fire Chiefs Assoc, KS State Prof Fire Chiefs Assoc
- Kansas Association of Public Employees
- Kansas National Education Association
- Kansas Staff Organization
- Kansas State Building and Construction Trades Council
- Kansas State Council of Fire Fighters
- KS State Nurses Assoc
- KS Trial Lawyers Assoc
- Roofers Local #20
- Southeast Building and Construction Trades Council
- Teamsters Local No. 696, Local No. 795 & Joint Council 56 KS, MO & NE
- Topeka - Lawrence Building and Construction Trades Council
- Tri-County Labor Council
- United Auto Workers Local No. 31
- United Steelworkers of America, District 11
- United Steelworkers Local 307
- Wichita Building and Construction Trades Council
- Wichita-Hutchinson Labor Federation of Central Kansas
- Thomas Outdoor Advertising, INC

Testimony Before House Commerce & Labor Committee

Workers Compensation Insurance

Terri Roberts, R.N., chairperson
Kansas Coalition for Workplace Safety
February 10, 2004

Chairman Dahl and members of the committee, I am Terri Roberts, executive director of the KANSAS STATE NURSES ASSOCIATION and chairperson of the KANSAS COALITION FOR WORKPLACE SAFETY. On behalf of the Coalition, I want to thank Chairman Dahl and the committee for this opportunity to discuss workers compensation insurance in Kansas.

The timing of today's hearing is auspicious. Last fall, the KANSAS COALITION FOR WORKPLACE SAFETY commissioned the Docking Institute of Public Affairs at Fort Hays State University to perform an independent analysis of the issue of workers compensation in Kansas. The Docking Institute reviewed data from the United States Department of Labor, the Kansas Department of Human Resources and various private organizations, including NCCI, in order to document the state of workers compensation in Kansas. The Docking Institute has recently completed its study, and we are very pleased to provide the committee with copies of their report today.

As you will see, the Docking Institute report contains a great deal of good news for Kansas employers and work comp insurance carriers. It's so favorable, in fact, that the chamber may wish to use it in pitches to attract new businesses to the state. The Docking Institute concludes:

"...[B]y any measure, Kansas employers pay some of the lowest workers compensation costs in the nation." (*Docking Institute Report, Page 9*)

Let's look at some of the factors the Docking Institute weighed in arriving at this conclusion. Researchers first looked at how much Kansas employers were actually paying for work comp insurance premiums. They found that employers pay relatively low costs for work comp insurance and that, despite a slight rise since 2001, premiums are still "substantially less than those charged in 1993 and 1994." When they compared premiums in Kansas with premiums in other states, the Docking Institute found that Kansas had *the fourth lowest premium rate in the nation*. Only Virginia, Indiana and North Dakota had lower premiums.

Comm labor
2-11-04
Atch # 3

Coalition Members:

- AARP - Kansas
- Construction and General Laborers Local 1290 & 142
- Greater KC Building and Construction Trades Council
- Int Assoc of Fire Fighters, Local 64 and Local 83
- International Association of Machinist and Aerospace Workers, Dist. Lodge No. 70
- Kansas AFL-CIO
- Kansas Fire Service Alliance – KS State Fire Fighters Assoc, KS State Fire Chiefs Assoc, KS State Prof Fire Chiefs Assoc
- Kansas Association of Public Employees
- Kansas National Education Association
- Kansas Staff Organization
- Kansas State Building and Construction Trades Council
- Kansas State Council of Fire Fighters
- KS State Nurses Assoc
- KS Trial Lawyers Assoc
- Roofers Local #20
- Southeast Building and Construction Trades Council
- Teamsters Local No. 696, Local No. 795 & Joint Council 56 KS, MO & NE
- Topeka - Lawrence Building and Construction Trades Council
- Tri-County Labor Council
- United Auto Workers Local No. 31
- United Steelworkers of America, District 11
- United Steelworkers Local 307
- Wichita Building and Construction Trades Council
- Wichita-Hutchinson Labor Federation of Central Kansas
- Thomas Outdoor Advertising, INC

The Docking Institute also looked at employers' premiums as a percentage of total wages. Here, too, Kansas employers are doing well. The study finds that premiums as a percentage of total wages "have been steadily falling for the last decade" to about half the percentage they were in 1992.

To take this comparison a little deeper, the Docking Institute looked at employers' costs in one of the most dangerous industries: Manufacturing. Even here, Kansas ranked 21st among all states for the lowest workers compensation costs in the manufacturing sector, and Kansas was the second lowest among our neighbors Nebraska, Oklahoma, Colorado and Missouri. This is all the more remarkable when you consider that the injury rate in Kansas for manufacturing is *significantly* higher than the national average.

Again, by every measure, Kansas employers enjoy some of the lowest workers compensation costs in the nation. The only ones who might benefit from a premium increase would be the already-profitable insurance carriers. Data obtained from NCCI ranks Kansas *third in the nation* as one of the most favorable environments for workers compensation profitability. The Docking Institute gives us some insight as to why Kansas is ranked in the top three. The study found that for 2002, workers compensation carriers in Kansas earned more than \$307 million in premiums and incurred direct losses of \$177 million. In other words, for every dollar earned in premiums in 2002, the carriers in Kansas paid out approximately 58 cents in benefits. Not too shabby.

The study also examined the average cost per workers compensation case in Kansas. It found that the average cost per case in Kansas, excluding medical costs, is the 11th lowest in the nation. When you factor in medical costs, Kansas' overall costs per case (meaning medical plus indemnity costs) are 72% of the national average. In other words, the average case in Kansas costs employers and insurance carriers 28% less than the national average. Again, by every measure Kansas employers and insurers pay some of the lowest workers compensation costs in the nation. But it's not because workers and workplaces in Kansas are safer than other states. In fact, injury rates in Kansas are significantly higher than the national average in virtually every industry. Kansas employees get hurt more frequently and often more severely than the national average. When you compare our injury rates from 1997 to 2001 to those of surrounding states, Kansas has had the highest injury rate, or tied for highest, three years out of five. In other words, Kansas employers and insurers are thriving *despite* unacceptable levels of injury. How do they do it? By keeping the benefits to injured workers so pitifully low.

Coalition Members:

- AAF, Kansas
- Construction and General Laborers Local 1290 & 142
- Greater KC Building and Construction Trades Council
- Int Assoc of Fire Fighters, Local 64 and Local 83
- International Association of Machinist and Aerospace Workers, Dist. Lodge No. 70
- Kansas AFL-CIO
- Kansas Fire Service Alliance -- KS State Fire Fighters Assoc, KS State Fire Chiefs Assoc, KS State Prof Fire Chiefs Assoc
- Kansas Association of Public Employees
- Kansas National Education Association
- Kansas Staff Organization
- Kansas State Building and Construction Trades Council
- Kansas State Council of Fire Fighters
- KS State Nurses Assoc
- KS Trial Lawyers Assoc
- Roofers Local #20
- Southeast Building and Construction Trades Council
- Teamsters Local No. 696, Local No. 795 & Joint Council 56 KS, MO & NE
- Topeka - Lawrence Building and Construction Trades Council
- Tri-County Labor Council
- United Auto Workers Local No. 31
- United Steelworkers of America, District 11
- United Steelworkers Local 307
- Wichita Building and Construction Trades Council
- Wichita-Hutchinson Labor Federation of Central Kansas
- Thomas Outdoor Advertising, INC

Testimony Before House Commerce & Labor Committee
Workers Compensation Insurance
Terri Roberts, R.N., chairperson
Kansas Coalition for Workplace Safety
February 10, 2004

Page 3

According to the Docking Institute, the maximum weekly benefits for injured workers in Kansas are the 7th lowest in the country. Moreover, Kansas offers the lowest weekly benefits in the five-state region including our neighbors Missouri, Nebraska, Colorado and Oklahoma. As you know, Kansas also is one of only four states that caps permanent total disability rather than provide lifetime benefits, and of the four, Kansas' cap is by far the lowest. Kansas also caps permanent partial disability, and we are a low-benefit state in terms of both scheduled and unscheduled injuries.

All of this adds up to costs savings to employers and insurance companies. But I doubt these statistics on injuries and paltry benefits to injured workers will appear in any brochures promoting economic development in Kansas. Instead, the chamber and others will entice business prospects with the simple fact that Kansas employers can get great work comp rates without spending a lot on safety.

I want to close by pointing out that the Docking Institute's study presented today stands in sharp contrast to assertions made, particularly those employers who self-insure. Unlike the figures compiled by the Docking Institute, the figures asserted by *self-insureds* have not been independently verified. That's because *self-insureds*' financial records are not open to public scrutiny. What we do know about self-insuring in Kansas is that it is optional. Employers who choose this option do so hoping to lower their premiums through special discounts or by reaping dividends. As Dick Cook with the Kansas Insurance Department noted in testimony last fall, employers who self-insure must be prepared to take on all of the risks and responsibilities associated with such an endeavor, and must implement sound underwriting practices to be successful. Given what we know about the favorable insurance environment in Kansas, the unverified complaints of the *self-insureds* beg the question: Why aren't you buying work comp insurance on the open market, where Kansas employers enjoy some of the lowest rates in the nation?

Thank you.



**TESTIMONY BEFORE THE
HOUSE COMMITTEE ON COMMERCE AND LABOR
ON
WORKERS COMPENSATION ISSUES – PRE-EXISTING CONDITIONS
BY
BILL CURTIS
FEBRUARY 11, 2004**

Mr. Chairman and members of the Committee, thank you for the opportunity to testify today on an important issue. My name is Bill Curtis and I am the Associate Executive Director of the Kansas Association of School Boards (KASB). My primary responsibility is to serve as the administrator of the workers compensation pool sponsored by KASB formed under the Kansas Municipal Group-Funded Pool Act. The pool has operated since 1987 and currently has a membership of 212 with an annual premium volume of \$10, 221,484. Only members of KASB are eligible for membership in the pool and, therefore, membership is limited to unified school districts, community colleges, vocational schools and intermediate service units such as special education cooperatives and regional service centers.

The topic I wish to address today is pre-existing conditions. The way in which the workers compensation system is required to compensate employees today for pre-existing conditions, I believe, is one of the major reasons why costs are escalating at an alarming rate. The existing language in 44-501(c) is not being strictly applied, credits are not uniformly received for previous functional settlements and, as is very evident by the Hanson case, the employer no longer has any recourse to recover the majority of expenses incurred for injuries that were pre-existing. If the Hanson case had occurred prior to 1993, the insurer could have recovered the vast majority of the cost of that claim through the second injury fund and the loss would not have been recorded against USD 326. Under current law if Mr. Hanson needs another knee replacement, the employer and the insurance company at the time of that procedure will stand the total cost. It seems to me that we must search for some compromise solution that does not require the employer and the insurer to stand the total cost of the consequences of pre-existing conditions.

Comme Labor
2-11-04
Atch # 4

February 18, 2004

Testimony before the House Commerce and Labor Committee

By Steve Rothrock
Vice President
Whiteley's Inc.
211 NW Norris
Topeka, KS 66608

I am Steve Rothrock of Whiteley's Pallet and Industrial Supply. Whiteley's Pallet and Blocking is a small pallet company located in North Topeka. Whiteley's employs anywhere from four to eight people, depending on the work load.

Worker's Comp and overall insurance costs have become a major expense for our company. Seven years ago when I purchased the business, the over-all insurance expense was \$13,000 per year. In 2004, our insurance expense is now over \$26,000 a year. Seven years ago, we were charging \$5.65 each for a 48X40 #1 pallet. Today, that exact same pallet is bringing \$5.15 each to the same company. With the rise in insurance costs, it was becoming very difficult to maintain profitability.

My company has two experiences in dealing with pre-existing conditions with Worker's Comp. Number one was an employee who came to work for us after being laid off from a concrete contractor. While working for the concrete contractor, this employee had medical treatment, paid by the contractor, on both of his wrists. The damage to his wrists was caused by tying steel together. After two to three months of employment for us, he complained of the same problem with his wrists. We sent him to the doctor, and he was told that he had carpal tunnel syndrome. Since we were the last employer, we were responsible to pay to have both wrists repaired. Then, he was rated and our insurance company had to pay for his disability rating. In two months, there in no way we were the sole cause of his wrist damage.

Employee number two last year stepped on a pallet and twisted his knee. After the x-ray, it was determined there was a partial tear and the scope-type surgery would repair the damage. After the scope was done, it was determined that the patient had extreme arthritis in his knee. He was told that he would probably need a total knee replacement in the future. The employee didn't work very hard on rehab, and his attorney fought and won through the courts to make our company pay for a total knee replacement. The arthritis was caused from a car accident he was in years prior to employment with our company. This was an extreme case of a pre-existing condition that my company in no way caused to happen. We are now responsible to pay for two surgeries and a disability rating for arthritis that we didn't cause.

These two claims go against our experience and drive up the cost of our insurance very quickly. With such a small company and limited payroll, claims like these affect our Worker's Comp insurance premiums in a very negative manner.

I would ask this committee to please consider changing the pre-existing conditions part in the Worker's Comp laws to help small and large businesses survive. I also feel we should only pay for the injuries that occur at our work places and to the extent of damage that we cause, not damages that are already existing.

Thank you for your time and consideration in this matter.

Commerce & Labor
2-11-04
Atch # 5

Legislative Testimony

February 11, 2004

Testimony before the House Committee

By Tim Rakestraw, Safety Supervisor-Superior Industries

Sir or Madam Chairperson and members of the committee:

My name is Tim Rakestraw, I am the Safety Supervisor and workers compensation coordinator at Superior Industries in Pittsburg, Kansas. Thank you for this opportunity to express some concerns of the current Kansas Workers' Compensation laws.

I would like to make note of a horror story regarding pre-existing conditions.

First, in 2002 there was an individual that gained legal representation after working for our company for just under four months. Our company was named in the suit for repetitive trauma. Upon court hearings and depositions, information was exposed where the employee had reported to her previous employer of her condition. This had gone on for over four years at her previous employment with some conservative medical treatment provided in the beginning, however, towards the end of her employment with her previous employer she was given no treatment by them. She terminated her employment with that company and came to work for us without notifying us about her condition. The first time we knew anything about her condition is when we received paperwork on the suit. She informed us at that time that she did not want to bring suit against our company because she felt that her previous employer was the ones responsible for her injury, but her attorney said that she should sue us because we were her current employer and that we would be the ones having to pay. The other company was also named in the suit, however, we lost the case and the ALJ ruled that we owed all due compensation and all medical costs. This case cost our company over \$25,000. The other company, which did not provide proper medical treatment got off free and clear just because the individual did not work there anymore. The claimant, however, did indeed make proper notification of injury prior to leaving her previous employer. The ALJ ruled that since she was currently employed by us, that we were responsible because it was an aggravation. We suffered the consequences for another company not complying with the statutes of Kansas Workers Compensation by providing due medical care. The employee was for sure within her ten day rule of notification of injury.

Again, thank you for the opportunity to express some concerns that we as Kansans have concerning Kansas Workers' Compensation. If anyone has any questions, I would be happy to answer any and all.

Tim Rakestraw

Safety Supervisor/Work Comp Coordinator

Superior Industries

Pittsburg, Kansas

620-232-3344 ext.610

trakestr@supind.com

Comm + Labor
2-11-04
Atch # 6