Approved: March 3, 2005
Date

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 7, 2005 in Room 241-N of the Capitol.

All members were present except:
Broderick Henderson- excused
Patricia Kilpatrick- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research Department
Norm Furse, Office of Revisor of Statutes
Renae Jefferies, Office of Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee:
The Honorable Bruce E. Moore, Administrative Law Judge
Wil Leiker, Kansas AFL/CIO
Toni Wellshear, AARP
Jerry Wisdom, private citizen
Mark Desetti, Kansas National Education Association (KNEA), Kansas Coalition for Workplace Safety
Johnnie Rodriquez, private citizen
Jeff Cooper, Kansas Trial Lawyers Association
Jack Cook, private citizen
Mary Clark, private citizen
Patricia Griffith, private citizen
Ed Redmon, firefighter

Others attending:
See attached list.

The Chairman opened the hearing on **HB 2142 - Workers compensation; date of accident, employer's maximum liability for disability compensation, attorney fees**.

The Honorable Bruce E. Moore, Administrative Law Judge, neutral to the bill addressed the committee regarding establishing the date of accident on contemplated workers compensation legislation.

HB 2142 would make the following changes as to the date of accident in a repetitive trauma claim:

1) **K.S.A.** 44-508(d), defining "accident," is amended to change date of accident for a repetitive use injury to the earliest of:

a. The date the employee gives written notice of the injury to his employer.

b. The date the condition is diagnosed as work-related, providing such notice is communicated to the worker in writing.

c. The first day the worker is taken off work, or is restricted from the work activities that caused the injury.

Judge Moore stated the language needed to be more definitive to establish date of accident. A doctor rarely gives a patient a statement in writing. There is not a problem with c. above.

The determination of an appropriate date of accident in a repetitive mini-trauma claim is crucial to computation of benefits to which the employee may be entitled. From the perspective of the courts, no one approach is "better" than the others. The law is applied and the courts don't offer judgements on what the law ought to be. Any approach would be somewhat arbitrary where the precise date of injury is unknown. However, the date of accident is not something that should be susceptible to manipulation by either party,

either to increase or decrease the benefits due, or to shift liability between carriers (Attachment 1).

Wil Leiker, Executive Vice President, Kansas AFL-CIO testified as an opponent to **HB 2142**, stating there were three sections to the bill. The $50,000 cap was removed. This cap was never needed. Mr. Leiker stated the date of accident provision was a complex issue and the intent was to prevent those workers with admitted on-the-job injuries from falling between the cracks. The section dealing with attorney fees is clear that the intent is to remove attorneys from the system, thus leaving the injured worker to fend for themselves. Attorneys can not afford to take these jobs.

A subcommittee of the Advisory Council, consisting of 60% of the membership, worked out an agreement regarding date of accident which accomplished a solution to the problem. (Attachment 2).

The Chairman requested a copy of the Advisory Council agreement and Mr. Leiker said he would get it for the committee.

Toni Wellshear, member of the AARP Kansas Topeka Advocacy Team, testified as an opponent to **HB 2142**. AARP believes that all workers who suffer an occupational injury or illness should be eligible for unreduced workers compensation regardless of age. All workers deserve to be protected from arbitrary discrimination in hiring terminations, compensation and access to training, promotion opportunities and inclusion in mass layoffs and downsizing. AARP opposes reforms that would restrict access to the courts for all legitimate claims. AARP opposes any action that would impair the right of any worker to full and just compensation for injuries resulting from on the job injuries (Attachment 3).

Jerry Wisdom, private citizen, was unable to be here due to his work schedule. Terry Humphrey read his testimony opposing **HB 2142,** stating the attorney fee provisions in **HB 2142** was the law in Kansas from 1994 to 1997, and because of that, he almost did not receive the workers compensation benefits that he was entitled to. Mr. Wisdom stated in his written testimony that he did not feel this issue should be considered again (Attachment 4).

Mark Desetti, Director of Governmental Relations, Kansas National Education Association, Kansas Coalition for Workplace Safety, testified as an opponent to **HB 2142**. Last year Judge Bruce Moore stated in his testimony "from the very beginning, there has been the attempt to *balance* a worker's right to some measure of compensation with a limitation on the employer's liability."

How to best achieve balance between the needs of employees injured on the job and employers who are liable for their injuries is what is needed. This is a difficult and complex balancing act affected by factors *outside* the workplace such as the hard insurance market and skyrocketing medical costs and factors *inside* the workplace such as lax safety standards. Unfortunately, those intent on changing the workers compensation system do not address any of these complex issues. Instead, they propose to "recoup" their costs by cutting benefits to their injured workers. Two areas addressed in **HB 2142** that unfairly tip the scales in favor of employers and insurance companies are limits on attorney's fees and date of accident. Kansas workers are among the most vital assets to the state's economy. For the health of the economy and the health of the workers who keep it going, it is urged all Kansas businesses to keep their workplace safe. Preventing workplace injuries, not punishing injured workers, is the best solution (Attachment 5).

Johnnie Neal Rodriquez, private citizen, testified in opposition to **HB 2142**, stating that she had problems with both hands and shoulders. She turned this complaint into her employer and eventually was treated for her hand problem but has not received treatment for her shoulders. The insurance company offered her a settlement, but she didn't want money, she wanted her shoulders treated. She had no choice but to hire an attorney. The Judge ordered the insurance company to pay for medical treatment on her shoulders. Without an attorney she felt she would never have received the medical care she needed (Attachment 6).

Jeff Cooper, Attorney at Law, appeared as an opponent to **HB 2142** on behalf of the Kansas Trial Lawyers Association. In Kansas workers compensation, as in all other states, a "series of events, repetitive use, cumulative traumas, or micro traumas" which culminates in disability impairment is compensable. A legitimate issue is where to fix the date of accident. There are three separate time limits relative to any given

workers compensation claim, i.e., 10 day oral notice, 200 days written claim and usually 2 years for Application for Hearing. No other state has three statutes of limitation for workers compensation. If the injured worker stumbles on any one of the three, the claim is totally denied. Primarily, the 200 day written claim statute of limitation creates the problem when coupled with the proposed change to date of accident contained in **HB 2142**.

In conclusion, **HB 2142** sets the date of injury which would harm injured workers and families by setting a "time limit trap" which would exclude otherwise valid claims. The proposed changes in attorney fees would limit workers' access to representation. Injured workers and their families would be disadvantaged because they would not be able to enforce their rights to future medical treatment and review and modification. The bill in its present form is unfair to injured workers and their families. Kansas workers need to be treated with the respect they deserve (Attachment 7).

Mary Counts Clark, private citizen, testified as an opponent to **HB 2142**, because it appears to be an attempt to stop injured workers from obtaining legal representation. Ms. Clark stated she had to hire an attorney to receive future medical (Attachment 8).

Patricia Griffith, private citizen, an opponent to **HB 2142,** stated she had been an employee of Wolf Creek Nuclear Operation Corporation when she began experiencing problems with her wrists. Wolf Creek did not give her any written information about filing a workers compensation claim. Ms. Griffith did have surgery on her wrists but was told it was not work related and to submit her bills to Blue Cross-Blue Shield. Her personal physician wrote a letter to Wolf Creek telling them that her wrist condition was being aggravated by her work. Wolf Creek never reported her condition as an accident to the Division of Workers Compensation. She then went to an attorney and he filed a claim for workers compensation. If **HB 2142** had been the law it would have been too late for her to file a claim for workers compensation benefits (Attachment 9).

Ed Redman gave testimony for Dennis J. Phillips, Lobbyist, Kansas State Council of Fire Fighters, opposing **HB 2142**. Under this bill, firefighters in the state of Kansas stand to lose many of the protections they currently have under existing workmen's compensation laws. Injuries sustained while battling a blazing fire or rescuing someone can go unnoticed and not present themselves till a later date which could be out of the limitations (Attachment 10).

The following written testimony was distributed opposing **HB 2142** Terri Roberts, J.D., R.N. Executive Director, Kansas State Nurses Association (Attachment 11) and James Clark, Kansas Bar Association (Attachment 12).

The meeting adjourned at 10:45. The next meeting will be February 8, 2005.

COMMERCE AND LABOR COMMITTEE

Date Feb 7, 2005

NAME	AGENCY
W.L. Lieka	Ks. AFL-CIO
Callie Denton	KTLA
Nancy Pierce	LKNCA
Doug Holdswich	DofA
John McHaffy	KSAFL-CIO
Jim Maag	Foulston Siefkin LLP
Lucas Bell	Kearney and Associates
Duane Simpson	KGFA - KARA
Scott Heidner	KSIA
~~Kathy Kirk~~	KTLA

Testimony before the
House Commerce and Labor Committee
Hon. Bruce E. Moore, Administrative Law Judge

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Division of Workers Compensation
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February 7, 2005

Chairman Dahl and Members of the Committee:

Thank you for inviting me to appear today, and to address this committee regarding contemplated workers compensation legislation. As you may recall, I am an administrative law judge, one of ten in the State of Kansas, charged with the responsibility of applying whatever changes you enact. I am here, as I understand it, to discuss proposed changes establishing a date of accident in a repetitive mini-trauma claim. I am also here to answer any questions that you may have, to the extent I am capable, regarding other current workers compensation issues.

"Date of Accident" and House Bill 2142

The date on which an accident occurs is one of the three primary variables in determining the amount of benefits that are or may be payable. The others are the claimant's pre-injury gross average weekly wage, and the number of weeks for which benefits are payable. Generally speaking, the right to monetary benefits accrues on the date of accident, and the wage in effect on that date determines the benefit rate at which workers compensation benefits are paid. The Workers Compensation Act, **K.S.A. 44-501, et seq.**, provides a schedule or formula for determining the number of weeks of benefits available for a given injury or condition.

Where there is a specific, identifiable traumatic event, such as a fall, a motor vehicle collision, a laceration, or a crush injury, the date of accident is readily identifiable. Where the injury is suffered as a result of a series of repetitive mini-traumas, however, a specific "date of accident" may be difficult or impossible to discern. Without a specific traumatic event, an employee may also be unaware that the discomfort being experienced is work-related, as opposed to "just getting old" or some other non-work-related disease process. Whether a treating physician relates a patient's physical complaints of pain to the performance of work duties may depend on the quality and quantity of information shared with, or perceived by, the medical provider. The causal connection between physical complaints and work duties may not even be made until a diagnosis is reached, which may be several months after onset of symptoms. Typically, people don't go to a doctor the first time they have sore muscles. They may think that the soreness will pass or is too minor to warrant either the cost of

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the office visit or time away from work. Because the onset of symptoms is generally gradual, the employee may not realize that work duties are causing or contributing to that discomfort.

As far back as **Winkelman v. Boeing Airplane Co., 166 Kan. 503. 203 P.2d 171 (1949)** (hearing loss due to exposure to repeated gunfire), Kansas courts have recognized that some injuries can result from repetitive traumatic events, no one of which causes discrete and identifiable injury, but which in the aggregate satisfy the statutory definition of "personal injury by accident." "If injury occurring as the result of a single accident is compensable, surely we will not declare that injury resulting from a dozen or more of the same or similar accidents, all occurring in the course of the employment, is noncompensable." ***Winkelman, @ p. 508***. In **Downes v. IBP, Inc., 10 Kan.App.2d 39, 691 P.2d 42 (1984)**, tenosynovitis and thoracic outlet syndrome were recognized as the product of repetitive mini-traumas, and were compensable as a "personal injury" rather than as an occupational disease. In **Demars v. Rickel Mfg. Corp., 223 Kan. 374, 573 P.2d 1036 (1978)**, the repetitive mini-trauma analysis was extended to a back injury suffered as a result of repeated lifting in the course of work duties.

If a series of repetitive traumas is the mechanism of injury, the inquiry must then turn to establishing a date of accident. Without a "date of accident", there is no date from which benefits are payable, and there is no date that determines the appropriate wage or benefit rate.

In **Berry v. Boeing Military Airplanes, 20 Kan.App.2d 220, 885 P.2d 1261 (1994)**, the Kansas Court of Appeals adopted a "bright line rule" for establishing the date of accident in a repetitive mini-trauma case: "The date of accident or date of occurrence in a workers compensation accident involving carpal tunnel syndrome is the last day on which a claimant performs services for his or her employer and is required to stop working as a direct result of the claimant's pain and disability resulting from carpal tunnel syndrome." **Syl.¶ 3.** ***Berry*** worked as a mechanism for establishing the date of accident in a repetitive mini-trauma claim, but only where the employee actually had to stop working "as a direct result" of pain and disability. **K.S.A. 44-510c(b)** does not permit payment of Temporary Total Disability (TTD) benefits if the employer accommodates temporary work restrictions offered by an authorized treating physician. Thus, under the ***Berry*** analysis, if an employee has symptoms of a repetitive use or repetitive mini-trauma injury, there is no "date of accident" if the employee is not taken off work, even if the employee is being treated for that condition or injury, and even if the employer is aware of and is accommodating the restrictions of the treating physician.

In **Condon v. Boeing Company-Wichita, 21 Kan.App.2d 580, 903 P.2d 775 (1995)**, the claimant stopped working after being diagnosed with carpal tunnel and elbow problems, although she stopped working as a result of a general layoff, and not due to her injuries. The Workers Compensation Appeals Board (WCAB) acknowledged

that Berry did not control determination of Condon's date of accident, because she did not leave work because of her injury. The date of accident was determined by the WCAB to be the date the claimant reported her complaints to her doctor. The Court in ***Condon*** discussed the different approaches to establishing the date of accident in a repetitive trauma case: (1) the last day worked; (2) the date the complaints first rise to the level that medical treatment is sought; and (3) the date on which the injury manifested itself. The injury was deemed manifested when both the fact of the injury and the causal relationship to the claimant's employment became apparent to a reasonable person. The ***Condon*** court adhered to Berry, in principle, but noted that it did not control all circumstances.

The Court of Appeals next decided **Durham v. Cessna Aircraft Co., 24 Kan.App.2d 334, 945 P.2d 8 (1997),** which followed ***Berry*** and held the date of the accident from which compensation flows was the last day worked by the claimant where the cessation of work was due to a repetitive use type of injury.

In **Anderson v. Boeing Co., 25 Kan.App.2d 220, 960 P.2d 768 (1998)**, the ***Berry*** rule was applied in a contest between two insurance companies who had provided coverage to Boeing over different periods. ***Anderson*** held the date of the accident or occurrence is the last day the claimant performs services for his or her employer and is required to stop working as a direct result of his or her pain and disability resulting from carpal tunnel syndrome.

In **Alberty v. Excel Corp., 24 Kan.App.2d 678, 951 P.2d 967 (Kan.App. 1998)**, the injured worker continued to work after being diagnosed with carpal tunnel syndrome. The employer accommodated temporary work restrictions designed to minimize additional injury from repetitive activities. Because the employee continued to work, there was no "date of accident" under the analyses of either ***Berry*** or ***Condon***. The Kansas Court of Appeals then determined that the date of accident in such a circumstance, where the employee continued to work in an accommodated position after diagnosis had been made and treatment undertaken, was the last day of work before work restrictions were implemented.

In **Treaster v. Dillon Companies, Inc., 987 P.2d 325, 267 Kan. 610 (Kan. 1999)**, the employee had a number of health problems, and medical restrictions, not all of which were work related. Time off work and/or restrictions and accommodated work for one condition tended to overlap time off work and/or restrictions and accommodated work for another condition. I reasoned that it made sense, in construing the previous decisions on date of accident, that the date of accident should be the date of last injurious exposure to whatever activity was causing the injury. If the employee is accommodated and moved into a position that does not cause additional injury, the date of accident will be the last day the previous work activity was performed. If the accommodated work continues to cause injury, the date of accident will be the last date on which work activities contribute to the injury and resulting disability. This decision went all the way to the Kansas Supreme Court and represents the most recent

pronouncement of the state's highest court on this issue. **Highly summarized, the present rule is that the date of accident in a repetitive trauma claim will be the last day that the claimant is exposed to the work activity that is causing injury, regardless of accommodation or the reason the claimant may ultimately leave his or her employment.**

In **Lott-Edwards v. Americold Corp., 27 Kan.App.2d 689, Syl. Para. 4, 6 P.3d 947 (2000),** the Court of Appeals held, following ***Treaster***, that "the last-day-worked rule is applicable if the work done in an accommodated position offered to and accepted by an injured worker continues to aggravate a repetitive use injury."

Even with the present ***Treaster/Lott-Edwards*** rule, scenarios occasionally crop up where there is no accommodated work provided, and the claimant continues to perform the same injurious work activity that gave rise to the claim, right up to the date of trial (Regular Hearing). The WCAB (Workers Compensation Appeals Board) has occasionally determined the date of accident in such circumstances to be the date of Regular Hearing, where no other "trigger" exists to establish a date of accident under the present line of appellate decisions. This position was adopted by the Kansas Court of Appeals in **Kimbrough v. University of Kansas Medical Center, (S.Ct. Dkt. # 89,214) Syl. Para. 2 (2003)**. Now, the date of accident may be determined by something as fortuitous (or manipulated) as the date of hearing on the claim. A carrier otherwise liable for the claim (because it occurred during its coverage), could defer the regular hearing until the next carrier is on the risk. The next carrier would assume liability for accidents "occurring" during its coverage. See **Helms v. Tollie Freightways, Inc., 20 Kan.App.2d 548, 889 P.2d 1151 (1995),** "the 'last injurious exposure' rule assigns liability to the carrier covering the risk at the time of the most recent injury that bears a causal relation to the original disability."

House Bill 2142, as I read it, would make the following changes as to the date of accident in a repetitive trauma claim::

1) **44-508(d)**, defining "accident," is amended to change date of accident for a repetitive use injury to the earliest of:
    a) the date the employee gives written notice of the injury to his employer
    b) the date the condition is diagnosed as work-related, providing such notice is communicated to the worker in writing
    c) the first day the worker is taken off work, or is restricted from the work activities that caused the injury

Please note that the date of accident is subject to manipulation in the first two alternatives, while the third alternative stops short of the ***Treaster/Lott-Edwards*** rule. In the first alternative, the claimant may delay giving notice of the injury until after a layoff or separation from employment. **K.S.A. 44-520** currently requires that aninjured worker give notice of an accident within ten days of its occurrence, although "just cause"

can extend that notice period to 75 days. If the accident doesn't happen until the claimant gives notice that it has happened, **K.S.A. 44-520** will cease to apply in repetitive use claims. Alternatively, the claimant may defer giving notice of injury until either earnings or the statutory benefit levels increase.

In the second alternative, it must be recognized that doctors infrequently, if ever, give written causation opinions to their patients. Those causation opinions may be expressed in the doctor's notes, but those notes are generally not shared with the patient. As a practical matter, under the second alternative, the date of accident will necessarily follow the worker's retention of an attorney, and the attorney's request that the doctor offer a causation opinion.

In the third alternative, cessation of the injurious work activity appears to determine the "date of accident," but note that the language seems to require that the cessation of the injurious work activity follow a doctor's off-work slip or temporary work restrictions. If a worker is simply unable to continue the work activity due to pain (e.g., ***Berry v. Boeing***), no date of accident will have occurred until one of the other two alternatives is met. It is unclear what effect these amendments would have on the ***Kimbrough*** doctrine, where the injurious work activity continues even after notice to the employer.

The following illustration is offered to demonstrate different definitions of "date of accident" can affect compensation:

Illustration #1

Mary earns $700 per week. Since **January 1, 2001**, she has worked for XYZ Battery Company, constantly picking up automobile batteries from the floor, and stacking them on shelves. She has no specific traumatic event. In **June, 2001,** she starts noticing some occasional low back stiffness. She works for several months with minor but ever-increasing low back pain, until she starts having right knee pain. She puts off going to a doctor for two more months, until the right knee pain finally demands attention. She sees the doctor on **May 3, 2002**, and tells him her knee hurts but she doesn't know why. He performs some testing, including a referral for an MRI. He issues temporary work restrictions of no lifting over 15 pounds and no stair or ladder climbing, pending the completion of testing. Mary takes those restrictions to her employer, but the employer has no information that the complaints are work-related. On **June 11, 2002**, the doctor tells Mary that her knee pain is radicular pain from a herniated disk in her low back. He asks her what she does for a living, and she tells him she stacks automobile batteries. He suggests (verbally) that her back injury (herniated disk) and knee pain are probably the result of her work duties. He recommends additional or revised temporary work restrictions of no bending or stooping, and no lifting over 10 pounds. She takes her work restrictions to her employer on

June 12, 2002, and tells her employer her restrictions are due to a work-related back injury. She then sees a lawyer, and submits a written claim for compensation for her back injury, attributable to the repetitive work duties, on **June 26, 2002.** The lawyer requests a written causation opinion from the doctor, which is received **July 10**, and delivered to the employer on **July 14, 2002.**

Mary has been suffering from a sore back since June, 2001, and right knee pain since March, 2002. She has been treated for these complaints since May 3, 2002, yet her date of accident could be: (1) June 26, 2002, the date she first gave written notice of her injury and claim for compensation; (2) July 10, 2002, the date the doctor's written causation opinion is received; or (3) June 12, 2002, the first day her doctor either took her off work or issued temporary work restrictions.

If Mary's date of accident is either the date she gave written notice of injury (June 26, 2002) or the date temporary work restrictions were issued (June 12, 2002), Mary's compensation rate would be $417.00 per week. If her date of accident was July 10, 2002, the date she first received a written diagnosis and causation opinion, her compensation rate would be $432.00 per week.

If Mary's date of accident was the date she first started having back pain, in June, 2001, her compensation rate would be $401.00 per week.

Assuming a 10% whole body functional impairment, from DRE (Diagnosis Related Estimate) Category III of the AMA ***Guides to the Evaluation of Permanent Impairment***, 4th Edition, Mary's claim for functional impairment would be worth **$16,641.50** if her date of accident was in June, 2001; **$17,305.50** if her date of accident was in June, 2002; **$17,928** if her date of accident was after July 1, 2002. Temporary Total Disability (TTD) weekly benefits would be payable at $417 per week for a date of accident prior to July 1, 2002 and $432 for a date of accident on or after July 1, 2002

The date of accident thus determines the weekly TTD benefit amount payable during convalescence from a work-related injury, and the weekly PPD (permanent partial disability) benefit payable upon determination of permanent partial impairment of function or disability in the ultimate Award of compensation. It also determines the date from which compensation is payable. **K.S.A. 44-510e(a)(3)** provides that, "[i]f 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." Ultimately, it affects the amount of compensation due for permanent partial impairment or disability.

Conclusion

The determination of an appropriate date of accident in a repetitive mini-trauma claim is crucial to computation of benefits to which the employee may be entitled. From

the perspective of the courts, no one approach is "better" than the others. We apply the law, we don't offer judgements on what the law ought to be. Any approach will be somewhat arbitrary, where the precise date of injury is unknown. However, the date of accident is not something that should be susceptible to manipulation by either party, either to increase or decrease the benefits due, or to shift liability between carriers.

Thank you for the opportunity to address this committee.

Kansas AFL-CIO

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TESTIMONY on HB 2142
to the House Commerce & Labor Committee

by Wil Leiker, Executive Vice President
Kansas AFL-CIO
February 7, 2005

Thank you Mr. Chairman and committee members, my name is Wil Leiker.

There are three sections to HB 2142. The section on page 6 removes the $50,000 cap. This is the so-called "Fletcher Bell amendment." I will not spend any time discussing this provision. Due to other changes passed in 1993, this "cap" was never necessary and should have been deleted years ago. It only hurts those with the most serious injuries to a single body part, or those with severe injuries who go back to work. For example, a worker who completely loses his arm, even under our meager benefit scheme, should receive $94,290 (210 weeks x the state maximum of $449). Instead, they receive approximately half, or $50,000. Similarly, I am aware of a man who suffered severe and incapacitating burns over 75% of his body. The employer did the right thing in that case by bringing this individual back to work in an accommodated position and yet our law punished him by again awarding $50,000–half of what his functional/medical impairment would have paid.

Another part of the bill deals with the "date of accident" provisions (page 3). I am not an attorney, but I have served in on the Advisory Council where this provision was discussed. I understand that this is a complex issue. I also understand that a majority of those who worked on this problem in the Advisory Council tried to write a law that would give a more certain date in repetitive use injuries **WITHOUT KICKING INJURED WORKERS OUT OF THE SYSTEM.** In other words, the intent was to prevent those workers with admitted on-the-job injuries from falling "between the cracks."

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A subcommittee of the Advisory Council, consisting of 60% of the membership, worked out an agreement regarding date of accident. Their side of the table had their attorney and two representatives from business, all of whom were intimately involved with the workers compensation system, and very knowledgeable. Our side of the table had three representatives, including an attorney and myself. The subcommittee worked out a bill which, in our opinion, accomplished a solution to the problem. In other words, it made the date of accident more certain, and prevented those with legitimate injuries from being denied benefits due to time limit problems.

When this proposal was presented to the full committee, two members from the business side of the table would not agree to the language. Terry Leatherman, and the KCCI, voted against the proposal without stating any reasons. Because the bill fails to protect injured workers, in its present form, the Kansas AFL-CIO is forced to oppose the changes on page 3. This is unfortunate, and we would urge a compromise because it could be a "win/win situation". It could be good for workers and good for business.

As regards the changes in attorney's fees, that is something I do understand, and is something I am familiar with. I was with Goodyear Tire & Rubber for 36 years and served 23 years as a full-time representative. In my years of service at Goodyear, I often had to tell people to "get an attorney." I had many of my brothers and sisters from the workplace complain about having to get an attorney, but I never had a single person complain about the fees charged by the attorney. This included many members of management, who really got messed over worse than those in the bargaining unit.

The intent of this section is clear. It is to remove attorneys from the system, thus leaving the injured worker to fend for themselves. It is interesting how ready we are to do this for the state as a whole, but would we be so willing to have people unrepresented if it were us who were injured, or our spouse, sons or daughters, or close friends? This can be a complicated system, especially when trying to navigate the obtaining of medical care.

I have attached several examples of settlement letters sent to injured workers. These letters are the norm. They try to settle with people in a lump sum for a certain amount of "quick cash." Usually, these people are behind in their bills, and the settlement money looks like a solution. You will note that the settlement letters do not advise the person that they have a right, as a matter of law, to future medical. You will also note that they do not inform people that their private health insurance will never pay for medical treatment that "could have or should have" been covered under workers compensation. You will also note that the insurance carriers have their attorneys involved, but want the unsophisticated claimant to appear on their own behalf, i.e. pro se.

Other states have faced this problem of insurance company overreaching. They require that the insurance carrier pay the claimant's attorney's fees. This would certainly decrease litigation if the insurance carrier was simply trying to delay payments, or starve out the claimant.

If insurance carriers truly want to get injured workers away from claimants' attorneys, I have a suggestion for them. They can deal with people in a prompt, friendly, professional, and honest manner. If they did so, there would be no reason for people to have to hire attorneys to merely get what our law allows. Claimants' attorneys would dry up faster than an August shower in western Kansas.

I would suggest that if an insurance carrier offers $6,000 in a lump sum to settle the claim, and the claimant gets an attorney and ultimately receives $12,000 *with future medical open*, the injured worker only received what the law entitled him to in the first place. Kansas law has multiple, multiple caps on benefits and a worker can never get MORE than the caps, they can only get UP TO the caps. Any injured worker would rather have 75% of $20,000 with medical open than 100% of $5,000 in a lump sum.

Claimant's attorney's fees, incidentally, are already heavily regulated. They are, first of all, under their code of ethics regarding fees. They are also controlled by the Supreme Court, the Director of Workers Compensation, and the Judge at the time of any settlement must specifically approve the fees. Furthermore, any of their clients at any time can file a complaint if they feel that based on the services performed they were overcharged. Clearly, that type of regulation does not exist in any other industry doing business in our state such as the service contract on your refrigerator from Sears, auto mechanics, or the photocopier repairman. Or better yet, compare it to the restraints on the former CEO of Westar Energy who sold energy!

It is also inappropriate to restrict a worker's right to enter into an employment contract. We depend on a free market society. If claimants' attorneys were selling snake oil at an excessive price, they would be long out of business. Finally, I would note that the insurance carriers, on their side, have the right to hire any law firm they want, at any price, to come in and do battle against the claimant.

I will stand for questions.

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KANSAS CITY, KANSAS OFFICE
616 N. 9TH STREET
KANSAS CITY, KANSAS 66101
(913) 573-2067

FT. SCOTT, KANSAS OFFICE
120 S. NATIONAL, #207
FT. SCOTT, KANSAS 66701
(620) 223-9770

February 4, 2004

Ex 6 #1

Re: Employee:
Employer:
Date/Loss: 1/30/02
Claim No.:

Please be advised that has asked me to assist with the resolution of your above-referenced Kansas worker's compensation claim. In that light, I enclose for your review and information Dr. report wherein he rates your permanent impairment at 16% of the shoulder.

Under Kansas law, Dr. s rating would be calculated as follows: the shoulder is equal to 225 weeks minus 61.43 weeks of TTD, which equals 163.57 weeks times 16%, which equals 26.17 weeks times $220.00, equaling $5,757.40.

has given me authority to offer this amount as full and final settlement of all issues in regard to your above-referenced claim. If that is satisfactory with you, please contact me and I will coordinate a Settlement Hearing as soon as possible.

Very truly yours,

Kevin J. Kruse
KJK/bj
Encl.
cc:

Helmsman Management Services, Inc.

PO BOX 967900
SCHAUMBURG IL 60196

Telephone: (800) 835-6279
Fax: (847) 413-9255

Helmsman Management Services, Inc.

Exh #2

May 1, 2002

RE: Employee:
Employer: THE GOODYEAR TIRE AND RUBBER
Contract #:
Claim #:
Injury: Shoulder - Contusion
Date of Injury: 08/22/2000
Date of Report: 08/22/2000

Dear

We are in receipt of a rating from Dr. regarding your above mentioned injury. If you agree with this rating and contact our office we will be able to get the settlement set up for this month.

The rating give by Dr. is 44% of the right upper extremity = 36,045.89. Please contact our office at your earliest convenience so that we can forward required info over to the attorney's to begin the settlement process.

Sincerely,

SR CLAIMS CASE MANAGER II, CM

Correspondence Copy

Member of Liberty Mutual Group

Travelers

The Travelers
P.O. Box 2928
Overland Park, KS 66201-1328

Claim Department
Kansas City Office

01/28/2004

Exh. #3

Employer: Harrah's Prairie Band Casino
Employee:
Date of Loss:
File Number:
State Case Num: Not Assigned

Travelers Indemnity Company

Dear Ms. Johnson:

, M.D. provided medical care for your right knee injury of , 2001, which occurred at Harrah's Prairie Band Casino.

Dr. has provided the attached medical report indicating you sustained an impairment of 37 percent to your right knee. It is his opinion, 10 percent of the impairment is related to the injury. Therefore, the impairment related to the injury is 3.7 percent.

Under Kansas Worker's Compensation Law, you are entitled to receive permanent partial disability benefits for the impairment. The value of the impairment is $1,938.12, which represents 7.05 weeks of benefits paid at $274.91 per week. I have attached a copy of the computation worksheet for your review.

I am offering you, $1,939.00 for the impairment related to the work injury.

After you have had the opportunity to review this offer, please call me at (800) 348-6944, extension 4514. My usual office hours are 8:00 a.m. to 4:30 p.m.

I look forward to your response in regard to this matter.

Sincerely,

Claim Representative
(913)469-4514
(800)348-6944 x4514
email:
Workers' Compensation Unit

CC: Harrah's Prairie Band Casino
C22528WGFF

EMC Insurance Companies

Claims Department

P.O. Box 1739
Wichita, KS 67201-1739
Phone 316.263.3629
Claims FAX 316.263.1285
FAX — First Report of Loss 316.263.6975
www.emcinsurance.com

Exh. # 4

March 19, 2004

RE: Claim No:
Insured: Barton County
DOL: 4-29-03
Our Ins Co:

Dear

We have received a permanent partial impairment rating from Dr. and also Dr. With the combined ratings your impairment rating is 6% which works out to be a lump sum settlement of $2,648.62.

Please give me a call at your earliest convenience so that we may set up a friendly settlement hearing for you to receive you settlement. This would be a full and final settlement to close your claim. In the event you where to re-injure or re-aggravate your injury at work you would file a new work comp claim.

Our toll free number is 1-800-223-0562 at ext 248.

Thank you,
Sincerely,

WC Office Adjuster

AARP Kansas

February 7, 2005

Representative Dahl, Chair
House Commerce and Labor Committee
House Bill 2142

Good morning Chairman Dahl and Members of the House Commerce and Labor Committee. My name is Toni Wellshear and I am a member of the AARP Kansas Topeka Advocacy Team. AARP Kansas represents the views of our more than 350,000 members in the state of Kansas. Thank you for this opportunity to express our comments and opposition to the proposed changes that would reduce workers compensation benefits in Kansas. My father, Tony Schartz, served as a State Representative from Barton County from 1957 until his death in 1969, so I am aware of the endless problems you address each day.

Of AARP's 35 million members nationwide more that 44 percent work full or part time. Dennis Kelly, Kansas Department of Labor, reported that there are now 383,000 workers age 55 to 70years of age in the Kansas Labor pool. This number will rise sharply as the workforce grows older and as employers face labor and skill shortages resulting from slowing workforce growth.

AARP supports laws that protect older workers from all forms of employment discrimination. As part of our national employment policy, AARP is committed to expanding employment opportunities, promoting job security and protecting benefits for workers of all ages.

The U.S. labor force is aging. Historically, older workers who are dependable and dedicated have often found themselves at a disadvantage when looking for work or in the workplace. Older workers, under the proposed changes in HB 2142, who are injured on the job and/or who may have suffered from a gradual onset of a degenerative disorder, and continue working, will become severely disadvantaged. Not only may they find that their access to the courts has been restricted but also that they may have missed reporting their injury in a timely manner and are themselves now ineligible for any compensation because of the proposed changes to the statue of limitations. As we age these changes could affect any of us in this room and not just the meat packer, truck driver, factory or assembly line worker.

ARRP believes that:

- All workers who suffer an occupational injury or illness should be eligible for unreduced workers' compensation regardless of age.

- All workers deserve to be protected from arbitrary discrimination in hiring, terminations, compensation and access to training, promotion opportunities and inclusion in mass layoffs and downsizings

555 S. Kansas Avenue, Suite 201 | Topeka, KS 66603 | 785-232-4070 | 785-232-8259 fax
Jim Parkel, President | William D. Novelli, Executive Director and CEO | www.aarp.org

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AARP opposes:

- Reforms that would restrict access to the courts for all legitimate claims.
- Any action that would impair the right of any worker to full and just compensation for injuries resulting from on the job injuries

Therefore, AARP opposes these proposed changes to work disability rules. Such changes would have a seriously harmful impact on not only older workers, but workers of any age who could find themselves injured without compensation benefits and their financial remedies eliminated under the proposed changes. We believe that inadequate workers compensation benefits have a direct impact on Medicaid. Workers who are impoverished due to workplace injuries, their last resort is Medicaid. Thus, the expense of an on-the-job injury is transferred from insurance companies and employers to state and federal government.

Unfortunately job related injuries happen daily. I am sure many of you know a worker who has suffered injuries on the job. During 1931 an uncle of mine was severely injured while working as a laborer in the Kansas oil fields. A derrick collapsed while he was beneath it and landed on him crushing his spine. He was paralyzed from the waist down. After 4 years of tremendous pain, he decided to have surgery to sever the nerve attributed to the pain. He died on the operating table at the age of 29. Let's not regress with a step backwards by changing deadlines in place and limiting the injured workers' access to legal council that protects our hardworking Kansans.

Older workers will be the workforce of tomorrow. With the rising cost of housing, utilities, prescription drugs, health care, the possible rise of the Social Security retirement age older workers will need to continue to be a productive part of the workforce and the Kansas economy and not a burden on the state.

Thank you for your consideration in this matter. We respectfully request you oppose HB 2142.

Respectfully
Toni Wellshear

3-

Testimony of Jerry Wisdom

Testimony before the House Commerce and Labor Committee
Chairman Don Dahl
HB 2142
February 7, 2005

Mr. Chairman and Members of the Committee: Thank you for the opportunity to testify on HB 2142. I am very concerned about HB 2142. I respectfully request that you oppose this bill.

This is the second time I've testified before the Legislature on this issue (my testimony from February 19, 1997 is attached). My experience in the workers compensation system is an example of what will happen if this law is passed. The attorney fee provisions in HB 2142 were the law in Kansas from 1994 to 1997 and because of that, I almost did not receive the workers compensation benefits that I was entitled to. Because I could not find an attorney to take my case I testified in favor of SB 347 and was happy that it ultimately passed the Legislature. I am shocked to learn that this committee is considering legislation that will reverse the protections that would have helped me and are today helping other Kansans.

I am an 18 year firefighter with District Two in Mission, Kansas. I was injured on duty fighting a house fire in Overland Park. Dangerous conditions caused me to leave the house quickly and as I exited the front of the home I missed the first step and overextended my leg. As a result, I tore my Achilles tendon.

I was treated by workers compensation and soon felt ready to return to work. However, my employer and workers compensation would not allow me back. A settlement was presented to me with no assurances of future medical coverage. I had been told by my doctor that I would have continued problems as a result of my injury and I could be injured again so the offer didn't seem like a good offer to me.

I sought legal advice to help me make the best decision. However, I had trouble finding an attorney that could take my case. At that time the law was similar to what is being considered in HB 2142 and the lawyers I talked to couldn't afford to take my case for free.

It is eight years later and I am in need of medical care again. I am fortunate to have an attorney and with his help I will be receiving the care I need. If I had tried to handle this problem myself I would have had no chance at medical care or protection for my job, since most employers don't want injured workers on their job site.

I'm not sure why this issue is being considered again. If it is to reduce workers compensation premiums, it is at the cost of someone's pain and suffering.

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A few years ago I stated that there must be people in the Legislature that have businesses and want to keep good employees and would make sure that there is appropriate treatment available if their employees are injured on the job. I hope there are still those people here that care about others and can see that most people are not gifted with managing a complicated system like workers compensation. Last time I was here I closed with a little joke about if grasshoppers (or workers) had machine guns (lawyers) then birds (insurance companies) would never mess with them. That is why we need to keep the law the way it is.

I know others that have needed the help of a lawyer to get the benefits they are entitled to. I have a friend that was injured during a training by being dropped from the second floor on his shoulder and neck. He was in very bad shape and is still having problems today. He has lived a life of misery. Today's law has allowed him to get an attorney whose assistance has allowed him to continue to fight for medical care three years after his injury. Without access to medical care under the workers compensation system, my friend and others risk losing everything they've worked for.

Thank you for allowing me to speak with you today. Please oppose HB 2142.

913-238-2485
Jerry Wisdom
20220 Stockman Road
Belton, Missouri 64012

SB 347

STATEMENT OF JERRY D. WISDOM
February 19, 1997

I am a firefighter with Consolidated Fire District #2 of Northeast Johnson County and have been for 11 years. Veteran firefighter for 16 years.

My firefighting duties include driving apparatus and functioning under emergency conditions fire suppression and hazardous material mitigation, emergency medical intervention in life threatening environments. In carrying out the above duties, I am required to:

1) Carry or drag extremely heavy hose, equipment and victims, if necessary

2) Have the agility to work on unstable ground, work on ladders, below grades, and often on aerial apparatus.

3) Though it is not a requirement that one must be able to run, in fact, it is specifically stated that one should not run on fire ground, it is imperative that one must have the ability in the event emergency dictates same.

4) Must be in reasonably fit physical condition to perform the above tasks.

On May 1, 1996 I sustained personal injury during the course of my employment. While quickly exiting the door of a burning building, I ruptured my achilles tendon which, in turn, has caused injury to my back due to my altered gait. I missed in excess of 5 months work due to this injury.

I have been told that I have reached maximum medical improvement and have received a permanent disability rating. I still have pain in my ankle. Standing or walking for an extended period of time fatigues the ankle. Pursuant to doctor's orders, I can no longer run as she has said unequivocally that the ankle will be reinjured if I do so. I have now been fitted for a permanent leg brace.

For a time I considered retirement. There is a distinct possibility that I may be terminated.

The insurance company has offered me a settlement offer of less than $4,000.00 I feel this is totally inadequate. For this reason I tried to hire an attorney to help me obtain a fair settlement. I have spoken with four attorneys to date, three of whom are workers' compensation specialists. Due to the fact that a settlement offer has been made, no one is willing to take my case since there is simply not enough to pay their fee.

I would like to see the law changed so that injured employees would be able to find attorneys to represent them in their workers' compensation claims.

Jerry D Wisdom

Jerry D. Wisdom
Telephone (816) 322-0687
Pager (816) 818-7083

KANSAS NATIONAL EDUCATION ASSOCIATION / 715 SW 10TH AVENUE / TOPEKA, KANSAS 66612-1686

Testimony Before House Commerce & Labor Committee

February 7, 2005

Mark Desetti, Director of Governmental Relations

Kansas National Education Association

Kansas Coalition for Workplace Safety

Chairman Dahl and members of the committee, I am Mark Desetti, Director of Governmental Relations for the Kansas National Education Association and a representative of the Kansas Coalition for Workplace Safety. Thank you for this opportunity to discuss the proposed amendments to the Workers Compensation Act in **House Bill 2142.**

I'd like to begin by repeating something Judge Bruce Moore said in his testimony last year:

> "From the very beginning, there has been the attempt to ***balance*** a worker's right to some measure of compensation with a limitation on the employer's liability." (emphasis added)

Indeed, in the broadest sense, these hearings are about how best to achieve balance between the needs of employees injured on the job and employers who are liable for their injuries. This is a difficult and complex balancing act affected by factors *outside* the workplace—such as the hard insurance market and skyrocketing medical costs—and factors *inside* the workplace, such as lax safety standards. Unfortunately, those intent on changing the work comp system do not address any of these complex issues. Instead, they propose to "recoup" their costs by cutting benefits to their injured workers. I want to briefly speak to two areas addressed in House Bill 2142 that unfairly tip the scales in favor of employers and insurance companies: (1) limits on attorney's fees and (2) date of accident.

Telephone: (785) 232-8271 FAX: (785) 232-6012 Web Page: www.knea.org

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Attorney's Fees

Not surprisingly, proponents have also devised a way to limit an injured employee's access to legal counsel. They propose to amend the current law by further reducing the fees charged by attorneys who represent claimants, fees that are already capped under current law. It's important to note, however, that the amendment *does not* limit the fees of the lawyers who work for the employer or the insurance company, just those for the injured worker.

As I stated at the outset, workers compensation law is very complex, certainly complex enough that employers and insurance companies keep lawyers on their payroll. Its complexity is compounded when you are an injured worker whose very livelihood is at risk. Given the injured worker's vulnerable financial situation, it is not difficult to imagine a situation in which the worker jumps at any low-ball settlement offer made by insurance company lawyers. Under current law, the employee can seek out an attorney to review the insurance company's settlement offer, for example, to ensure that it is fair and will not jeopardize the employee's future medical needs. But under the proposed amendment, the claimant's attorney's fees would be so low that few lawyers will be willing or able to take the injured worker's case. That's what insurance companies are counting on. It's a ploy to squeeze injured workers into accepting a smaller settlement because even a small settlement will pay more bills than a theoretical "capacity to earn" will.

Date of Accident

Last but not least, I want to mention briefly the proposal to change the definition of date of accident. Put simply, this change is aimed at workers who suffer repetitive-use injuries, such as carpal tunnel syndrome. This is a very complex area of law, and the proposed amendments have been studied in depth by the Workers Compensation Advisory Council. The Advisory Council has recommended several modifications to the amendment that proponents have rejected, including the elimination of the written claim requirement. Suffice it to say, the proposed amendment could mean an injured worker would receive very low benefits or no benefits at all. What is almost certain is that the proposed change to date of accident would lead to more litigation in repetitive-use cases.

Proponents of these changes clearly have not taken a balanced approach to the issue of workers compensation. As a nurse and chairman of a coalition that represents almost a half-million workers, it is

difficult for me to understand how they came to the conclusion that it's okay to balance their books on the backs of their injured workers. Why not tackle the real problems: rising medical costs, poor safety records, employer fraud, spikes in the insurance cycle? Maybe it's just easier to target injured workers than it is to ask hard questions and make hard choices.

Now let me leave you with one question: Why are these bills necessary?

Proponents keep telling you that if you don't enact these changes there will be dire consequences for Kansas – businesses will flee. The Kansas Chamber of Commerce and Industry released their survey in March 2004 in which they claimed that 30 percent of the 300 businesses surveyed "would consider leaving Kansas because of the overall business climate if they could" (Topeka Capital-Journal, 3-4-04). I'm sure it came as quite a relief to KCCI when *Forbes* magazine ranked Kansas as the number one location in the country to start or expand a business. To leave Kansas is to go to a lower-ranked state!

The *Forbes* study came on the heels of a contentious legislative session in which the KCCI attempted to show a correlation between their bleak view of the Kansas economy and the cost of workers compensation benefits. They strenuously argued that to stimulate the economy, Kansas must cut benefits to workers injured on the job—even though Kansas already pays among the lowest benefits in the nation. Had the KCCI succeeded with their "prescription" to improve the business climate, injured workers, especially older workers, could have seen their benefits drastically cut—or even eliminated. Fortunately for working Kansans who rely on workers compensation if they are injured on the job, the KCCI's egregious plan was not adopted. And, as the *Forbes* ranking demonstrates, the Kansas economy is no worse for it.

Kansas workers are among the most vital assets to the state's economy. For the health of the economy and the health of the workers who keep it going, we urge all Kansas businesses to keep their workplaces safe. Preventing workplace injuries, not punishing injured workers, is the best solution.

On behalf of the Kansas Coalition on Workplace Safety and the members of my organization, the Kansas National Education Association, I urge you to reject **House Bill 2142.**

ECONOMIC FREEDOM

We're No. 1!

A prestigious study found that Kansas is the least restrictive place to operate a business

Even the Wall Street Journal has now given its blessing to the designation of Kansas as the state with the greatest economic freedom.

In other words, Kansas imposes fewer restrictions on the ability to make a business profitable.

The results of the study by the Pacific Research Institute, called the U.S. Economic Freedom Index, isn't news. That has been reported before. But having it recognized in an editorial in Wednesday's Wall Street Journal is news.

The WSJ noted that the index looks at several variables in ranking the states on their relative economic freedom: tax rates, state spending, occupation licensing, environmental regulations, income redistribution, right-to-work laws, minimum wage and tort law.

The editorial quoted Lawrence McQuillian, a co-author of the study, as saying that Kansas was ranked No. 1 "largely due to its respect for property rights: it engages in less income redistribution and attracts less tort litigation than most states."

WSJ noted that the findings of the Economic Freedom Index coincide with a study done every year as a partnership between WSJ and the Heritage Foundation. That study has always shown "an essential link between economic freedom and prosperity."

"And sure enough," the editorial continued, "the Pacific Research Institute study finds that a 10 percent improvement in a state's economic freedom score yields, on average, about a half-percent increase in annual per capita income. If all states were as free as Kansas, the annual income of the average American worker would increase 4.42 percent, or $1,161."

Unfortunately, the relevance of the PRI study has been questioned. In last Sunday's Capital-Journal, Dr. Arthur Hall, executive director of The Center for Applied Economics at the University of Kansas School of Business, said he believed the methodology used in the study was flawed.

That's unfortunate, Hall wrote, because it is true that greater economic freedom does mean greater prosperity.

Hall did the best he could to put the arcane mathematics and jargon of economists into lay language when he wrote, "This research method is the analytical equivalent of throwing mud at a wall until you're satisfied with how much has stuck — and calling the results art."

So whether we deserve the WSJ accolades, let's just sit back and enjoy them. After all, Kansas has suffered decades of verbal abuse by other parts of the country that weren't justified

Topeka Capital Journal
11-28-04

My name is Johnnie Neal Rodriguez. I worked for Southwest Caging for approximately two years before I started having problems with both my hands and shoulders. I turned this problem in to my employer. I was eventually sent for treatment with Dr. David Beard.

I had surgery with Dr. Beard for bilateral carpal tunnel syndrome. The surgery helped my hands, but my shoulders remained painful. Dr. Beard recommended additional testing to determine the source of problems in my shoulders.

The insurance company, Hartford, did not want to authorize this testing. Instead, they de-authorized Dr. Beard and transferred my care to Dr. Steven Hendler. Dr. Hendler just provided me with some pills, and then eventually told me my shoulder pain was due to posture and weight. He released me from his treatment.

I continued to have pain in my shoulders, but I believed the doctor and so I started to lose weight. I went back to work and just put up with the problems.

Hartford sent me a letter of settlement to conclude my workers compensation case for about $3,700.00, but I didn't want the money, I wanted my shoulders fixed. I called the insurance company about this letter and left a message. They did not return my phone call.

I put up with the problem as long as I could and even though I lost weight, but the shoulder pain did not decrease. I returned back to Dr. Beard's office and saw his partner, Dr. Gilbert. Dr. Beard by that time was no longer practicing in Topeka. Dr. Gilbert also said I needed treatment for my shoulders. My employer, Dr. Gilbert and I all tried to get Hartford to pay for more medical treatment. None of us was successful.

I had no choice, I finally hired an attorney. I didn't want their settlement offer, I wanted my shoulders fixed. We went to court and the Judge ordered Hartford to pay for medical treatment on my shoulders. I've had surgery on both shoulders since that time. I am confident

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that if I had not gotten an attorney my shoulders would still not be fixed and I would have no way to support myself or my children.

Since that time I have continued to have problems with the insurance carrier. For example, one time I came down with pneumonia and could not attend my physical therapy. Everyone was aware of my situation, but the insurance carrier still cut off my weekly checks. They have also interrupted or threatened to interrupt my medical care many times forcing my attorney to file for repeated hearings with the Judge.

Again, without my attorney I would never have received the medical care I need.

THE HARTFORD

June 29, 2001

Johnnie Neal
1160 Washburn
topeka KS 66604

Re: File – 045 C 17352
Insured – Southwest Caging
Claimant – Neal, Johnnie
08/31/99

Dear Ms. Neal:

The purpose of this letter is to follow up with you regarding your workers' compensation claim captioned above.

We are in receipt of Dr. Hendler's final report. He has determined that you have sustained some permanent impairment as a result of this injury. Under Kansas statutes this would entitle you to an award to settle your workers' compensation claim.

He has determined that you have sustained 5% permanent impairment to the body as a whole which would entitle you to an award in the amount of $3768.62.

We are therefore extending an offer to settle this claim in it's entirety for a lump sum payment of $3768.62.

I will be out of the office the week of 7/2/01-7/6/01 and will return to the office on Monday, 7/9/01. Please call me some time after that date at 800/255-6440 x38729 so we may discuss settlement of your claim.

I look forward to speaking with you.

Sincerely,

Linda A Gray
Claim Service Representative

Kansas City Workers'
Compensation Claim Center
7300 West 110th Street
Overland Park, KS
Mailing Address:
P.O. Box 400
Shawnee Mission, KS 66201
Telephone 913 451 2324
Toll Free 1 800 255 6440 Countrywide
Facsimile 913 469 6834

6-3

TESTIMONY ON BEHALF OF THE KANSAS TRIAL LAWYERS ASSOCIATION REGARDING HB 2142

By

JEFF K. COOPER
COOPER & LEE, L.L.C.
ATTORNEYS AT LAW
COMMERCE BANK BUILDING
100 S.E. 9TH STREET, 3RD FLOOR
TOPEKA, KANSAS 66612
785-233-9988

February 7, 2005

Thank you Chairman Dahl and Members of the Committee. My name is Jeff Cooper, and I appear on behalf of the Kansas Trial Lawyers Association. I am an attorney, adjunct law professor at Washburn School of Law teaching workers compensation, and have been involved in workers compensation for 20 years. In the work comp field I represent injured workers, self-insured employers, workers compensation insurance companies, and the Kansas Workers Compensation Fund. I am also a member of the Attorneys Advisory Committee founded by Director Greathouse to study work comp issues, and also serve as a Pro Tem on the Appeals Board for Workers Compensation in Kansas.

DATE OF INJURY

In Kansas workers compensation, as in all other states, a "series of events, repetitive use, cumulative traumas, or micro traumas" which culminates in disability/impairment is compensable. A legitimate issue is where to fix the date of accident. Consider the following example:

> A meat cutter, who cuts meat for eight or more hours, at a meat packing company notices fatigue in his wrist after working all day. He continues to work his regular job and the problem gets worse. He takes some aspirin and keeps working. The fatigue eventually turns to numbness and then outright pain. He finally sees a doctor and receives a temporary restriction from work. He returns to work and eight months later the problems return, and the situation worsens with more pain and restrictions and, finally, surgery.

Assume there is a 12 month history between the meat cutter first noticing the fatigue and the time of surgery. Settling a date of injury along the 12 month continuum <u>is very important</u>, because the date of injury determines such items as:

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1. Claimant's average weekly wage

2. When an oral notice of the injury must be given

3. When written claim must be made

4. Who is the proper insurance carrier

5. What constitutes a preexisting condition

6. What entity will direct control and medical care

The bottom line is that fixing a certain date of accident is an important concept. In part, it is a "legal fiction" and one which the Court's have struggled with in Kansas. Obviously, the problem is not unique to Kansas and is dealt with in all states. In Kansas, we have three separate time limits relative to any given workers compensation claim. These limits are:

1. 10 day oral notice

2. 200 days written claim

3. Usually 2 years for Application for Hearing

No other state has three statutes of limitation for workers compensation. If the injured worker stumbles on any one of the three, the claim is totally denied. Primarily, the 200 day written claim statute of limitation creates the problem when coupled with the proposed change to date of accident contained in HB 2142.

The proposed change with regard to date of injury will set a "time limit trap" for workers. This change will exclude otherwise valid workers compensation claims. The faithful employee who continues to do their work will be the ones most likely to be waylaid by this "time limit trap."

Take the earlier example of the meat cutter. Using the language in HB 2142, where the earliest of three occurs:

1. **Date upon which the employee gives written notice to the employer of the injury.**

This section in itself would not create a "time limit trap" with written claim.

2. **The date the condition is diagnosed as work-related providing such fact is communicated in writing to the injured worker.**

The meat cutter in our example worked another eight months after seeing the doctor who probably diagnosed the condition as work-related. If so, the meat cutter's claim would be denied based on 200 days going by if he did not file a written claim.

3. **The first day the authorized physician takes the employee off work due to the condition or restricts the employee from performing the work which is the cause of the condition.**

Again, the meat cutter continued to work for eight months while the problems continued to worsen would be precluded by the written claim statute if written claim was not made.

Again, this language will not affect someone who fakes a claim, they will not miss any time lines. The faithful hardworking employee who likes his job and continues to work hoping the condition will get better will be the one who is waylaid by this "time limit trap."

Can this problem be fixed?

We are confident that language can be drafted to give a definite date of accident in this type of situation and protect workers. We will be happy to provide and suggest amendments to address concerns of all the parties within the next three days if the Committee would like us to provide the same.

ATTORNEY FEES

Under present Kansas workers compensation law, the fees on "normal" cases are limited to 25% of monies recovered for injured workers. There are no fees paid for obtaining medical care, a change of physician, enforcing other non-monetary rights, or for temporary total disability benefits voluntarily paid by the insurance carriers.

The proposed language limits fees on cases where the employer or carrier have made an offer to the worker. The proposed limitation is designed to limit workers' access to representation.

It is common for a carrier to extend an offer to a worker to resolve all issues. The offer may or may not be adequate, however, it closes medical treatment for that injury and the right to review and modify the award if the situation changes. If a worker closes out his or her rights, it may be impossible to obtain further medical treatment. Most all health, disability, or other insurance policies exclude benefits for work-related injuries.

It is important to note here that a recent study reported by the *New York Times* shows that 30% of all bankruptcies were a result of medical bills incurred by persons who were insured. Imagine that rate for those with no coverage.

Under Kansas law, the worker is entitled to keep his or her rights to medical treatment and the right to review and modify the award. The carrier's offer to close medical is not in accordance with available workers' rights.

When the worker obtains legal advice, he or she may wish to retain the right to medical treatment and to leave the case open. In addition, the offer may be less than fair.

Under current law, the employee may obtain legal assistance for a fee up to 50% of the increase over the written offer, not to exceed 25% of the entire award or settlement. This approach allows the worker to obtain legal assistance and retain medical benefits. Without this approach, many attorneys cannot not afford to assist a worker with a written offer.

Example: Worker receives a written offer for $5,000.00 to close all issues. The worker obtains counsel to evaluate the claim and they have a statutorily approved contract of 50% of any increases.

The case settles for $7,500.00 with the worker's right to medical remaining open.

The fee on the $7,500.00 settlement or award which preserves the injured worker's medial benefits is $1,250.00. The fee is minimal yet it provides the worker a great service in that the right to medical treatment is preserved.

HB 2142 would seek to limit the fee to $625.00. At this level, most workers would find it impossible to obtain counsel.

This proposal is designed to preclude a large number of injured workers from obtaining representation once an offer is made. This in no way precludes the employer or carrier from its right to counsel at any cost. The worker is disadvantaged by this proposal and the carriers are advantaged.

It is important to remember that the Director must approve all fees on all cases.

CONCLUSION

In conclusion, HB 2142 sets the date of injury which will harm injured workers and families by setting a "time limit trap" which will exclude otherwise valid claims. The proposed changes in attorney fees will limit workers' access to representation. Injured workers and their families will be disadvantaged, because they will not be able to enforce their rights to future medical treatment and review and modification. HB 2142, in its present form, is unfair to injured workers and their families, and we ask that you treat Kansas workers with the respect they deserve.

The New York Times
nytimes.com

February 2, 2005

Study Ties Bankruptcy to Medical Bills

By REED ABELSON

Sometimes, all it takes is one bad fall for a working person with health insurance to be pushed into bankruptcy.

Hundreds of thousands of Americans file for personal bankruptcy each year because of medical bills - even though they have health insurance, according to a new study by Harvard University legal and medical researchers.

"It doesn't take a medical catastrophe to create a financial catastrophe," said Elizabeth Warren, a Harvard law professor who studies bankruptcy and is one of the authors of the study.

The study, which is scheduled to appear today on the Web site of Health Affairs, an academic journal, provides a glimpse into a little-researched area connecting bankruptcy and medical costs. About 30 percent of people said they filed for bankruptcy because of an illness or injury, even though most of them had health insurance when they first got sick.

Many lost their jobs - and their insurance - because they got sick, while others faced thousands of dollars in co-payments and deductibles and for services not covered by their insurance.

One person cited in the bankruptcy study, for example, broke a leg, missed a couple of months of work and then had $13,000 in unpaid medical bills, though his employer-based health plan had already paid for much of his care, Ms. Warren said.

Another respondent to the survey was able to pay for hospital stays for lung surgery and a heart attack but could not return to his old job. When he found a new job, he was denied coverage because of his pre-existing conditions, which continued to require costly medical care and contributed to his bankruptcy.

Policy analysts say these findings underscore the limitations of the nation's current system of providing health insurance largely through employers. Some argue that even for those with insurance, benefits can be ephemeral.

"You can lose it because it's tied to employment," said Joseph Antos, a health policy researcher with the American Enterprise Institute, who said people were also at risk if their employers went out of business.

To understand the effect of illness or injury on bankruptcy, the researchers surveyed 1,771 people who filed for bankruptcy in 2001 and interviewed 931 of them. They discovered a complex web of factors leading to bankruptcy, particularly as illness caused people to lose their jobs or cut back the hours they worked just as they were facing high medical bills.

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Many of those families, Ms. Warren said, then "endured a one-two punch."

The researchers examined those who specifically reported that their bankruptcies were precipitated by financial burdens caused by medical illness. They also included in a broader category of medical-related bankruptcy people who had more than $1,000 in unpaid medical bills at the time of the bankruptcy filing or had mortgaged their home to pay those bills.

The researchers acknowledged that often there was no single reason why someone went bankrupt. "There's definitely overlapping reasons," said Steffie Woolhandler, an associate professor of medicine at Harvard and one of the authors of the report.

They also pointed to gaps in coverage that left people vulnerable to financial crisis - particularly when workers switched jobs or were temporarily unable to afford contributions to a health plan. The high cost of continuing coverage under Cobra, the federal rule that allows former employees to stay on health plans for a time if they pay the entire cost, "is a cruel joke to these people," Ms. Warren said.

Even when people remain insured, the study also notes that many health plans have limits on certain kinds of coverage, like physical therapy or prescription drugs.

"If you're sick enough long enough, you're in deep trouble in our society," said David Himmelstein, an associate professor of medicine at Harvard Medical School, another of the study's authors.

While some policies do offer catastrophic coverage, which pays for care after costs reach a certain threshold, Dr. Himmelstein said that coverage "often kicks in after people are bankrupted" because they must incur high medical bills to qualify.

And employees, who often have little choice of plans and frequently do not understand the differences among plans, are increasingly offered policies with less and less coverage, some policy analysts say.

"There's a race to the bottom in terms of what health insurance means today," said Ron Pollack, the executive director of Families USA, a consumer advocacy group in Washington.

This area is ripe for additional research, said Uwe E. Reinhardt, a professor at Princeton University, who said that there had not been enough hard evidence about working Americans who became ill and then went broke. "We put together vignettes, but they are not powerful enough," he said.

The findings also raise questions about the effect of asking employees to bear a greater share of health cost through higher co-payments and the like. Many employers are shifting the increasing cost of care onto their employees, arguing that that trend gives workers an incentive to make judicious use of health care. But the researchers say higher co-payments and deductibles may well exacerbate the problem of medical bankruptcies.

Cornelia Dean contributed reporting for this article.

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MARY COUNTS CLARK

Thank you for this opportunity to speak. My name is Mary Counts Clark. I live at 3424 Bates Road, Topeka. I am testifying in opposition to HB 2142 because it appears to be an attempt to stop injured workers from obtaining legal representation.

I was injured on the job, and would like to tell you about why I had to get an attorney to help me. I can assure you that I understood from the beginning that my claim was not worth a lot of money.

I worked for UPS for 25 years as a package driver. I was injured in February of 2003, and hurt my left knee. The first doctor the insurance company sent me to told me that my problem was all due to arthritis. This was very troublesome to me since I had been doing heavy work for a long time without a problem before my injury. Their doctor (Dr. Wallace) wanted to do an injection in my knee, but the insurance carrier refused to authorize it. Therefore, I got no treatment despite my pain.

On the second visit to this doctor, he told me my problem was simply "scar tissue" and he released me to return to work without any restrictions.

I called the insurance company immediately and told them how unhappy I was with the doctor. I knew that having heard a loud "pop" in my knee at the time of injury, that it was ridiculous to believe this was all simply arthritis or scar tissue from a previous injury. The insurance company indicated they would go ahead with another doctor.

I returned to my regular duties because their first doctor had told me to do so. It was incredibly hard, my knee hurt all the time, and I was basically in tears. I had no choice under these circumstances but to return to work, again, because their doctor told me to do so and UPS would have fired me if I did not report to work.

To make a long story short, the second doctor ultimately did surgery on my knee. I attempted to return to work, and even went to such extremes that I was wearing ice packs four and five hours per day at work. Finally, the doctor gave me some permanent restrictions. I reported the restrictions to my employer, and I was immediately terminated from the employment that I had held for over 25 years. I loved my job very much, it was a good paying job, and I had important fringe benefits like full health insurance and retirement.

The insurance company then offered me $4177.44 to settle my claim. A copy of the settlement proposal is attached. As you can see, they did not offer me future medical, and did not tell me that I had a right to future medical. They also never explained that any other health insurance would not pay for problems which were related to on-the-job injuries.

It is important to note that the insurance carrier knew that my knee was going to need additional medical attention. I was now being offered $4100, I had lost my career,

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and the insurance carrier was trying to get me to give up future medical.

I finally told the insurance carrier that I would not give up future medical, and that it looked like I would need to get an attorney. At that point, the insurance company still did not tell me that I had an absolute right to the money PLUS future medical.

I then hired an attorney, again primarily because of my need for future medical. I also did not feel that the $4100 was fair, although I understood it would not be enough money to compensate me for my losses. My attorney also explained to me that when my knee condition requires additional surgery (I will need a knee replacement), I will have the right to additional compensation when I am hospitalized and recovering. This is also something the insurance carrier never told me.

Through today, I and my attorney are still having to fight the insurance carrier for medical care. We had to go to a hearing to get the medical care I needed. The Judge ordered the medical care I needed because the insurance carrier had no evidence to indicate that I did not need what the doctors said I needed. In my opinion, it was ridiculous because they never had any evidence to contradict my need for medical–but I know that without having an attorney, I would not have gotten the help I needed.

Even now, I have problems getting my medical needs taken care of. There are constant problems with getting my prescriptions filled. In addition, because of the medication I am on, I have to have regular blood work. Again, the insurance carrier is very reluctant to voluntarily provide this ongoing medical care.

I would reiterate that just because people get an attorney does not mean that they are trying to get rich off of their injuries.

I would also add that I should never have gotten hurt in the first place. This has all been unnecessary. Had the employer followed some minimal safety requirements, or maintenance standards, my accident would not have occurred. I have gone from a very good, high paying job, to a very low paying job, simply because the employer was so concerned about their profits. In fact, if I could have continued my employment for approximately five more years, I would have had a very worthwhile retirement package. Now, that has also been destroyed.

Thank you for your attention.

Liberty Mutual Group
1000 Plaza Drive, Suite 600
Mail Address: P.O. Box 967900
Schaumburg, Illinois 60196-7900
Telephone: (847) 413-9090
Fax: 603-334-8074

December 4, 2003

Mary Counts
3424 SE Bates Rd.
Topeka, KS 66607

Re:	File Number:	413-691693
	Insured:	UPS
	Claimant:	Mary Counts
	Date of Injury:	February 27, 2003

Dear Ms. Counts,

We are in receipt of your final Permanent Partial Impairment rating from Dr. Stechschulte. He rates your permanent disability at 2% loss of use of the leg. Due to the fact that you had a surgery we're prepared to offer you 5% of the leg. His offer also takes in to consideration, a credit we have for your prior settlement for the same knee.

Leg=200 weeks.
200 weeks less Temporary Total paid (6.43 weeks) = 193.57 weeks
193.57 weeks x 5 % Permanent Partial Impairment = 9.67 weeks
9.67 weeks x Permanent Partial Disability rate $432.00 = $4,177.44 Full & Final!

Please review and sign on the appropriate line below. If settlement is accepted it will have to be approved by and the check will be presented to you at the settlement hearing.

Yours truly,

Janet Keating
Sr. Case Manager

_____
Accept

_____
Reject

FROM: Patricia Griffith
To: House Commerce and Labor Committee

Dear Mr. Chairman and Committee Members:

My name is Patricia Griffith and I live in Burlington, Kansas. I was an employee of Wolf Creek Nuclear Operating Corporation for many years. I first began work there in 1979. After a period of several years, I left Wolf Creek for other employment. I returned to Wolf Creek in 1990, where I continued to work as an Office Assistant until September, 2002.

In 1992, I began to experience problems with my wrists. At that time, I was being treated by Dr. Mitra. I reported these problems to Wolf Creek, who sent me to their doctor in 1994. Dr. Mitra put some plastic mesh in my wrist to relieve the symptoms. I sent the bills to Mr. David Reynolds at Wolf Creek, who decided that the surgery was not work related and told me to submit my bills to Blue Cross.

I continued to work as an Office Assistant, eventually being promoted to Office Assistant III. My wrist problems continued. In 1995, my current physician, Dr. Bene, told me that the mesh should be removed, as my work was aggravating my symptoms. I notified Dave Reynolds of my need for medical treatment, due to my work aggravating my wrist problems. On September 21, 1995, Dave Reynolds wrote me a letter telling me that my wrist problems were not related to my work and told me to submit my bills to my personal health insurance, which I did. In 1997, Dr. Kennedy, who was my personal physician, wrote a letter for me to give to Wolf Creek telling them that my wrist condition was being aggravated by my work.

I continued to receive treatment, which was paid in part by Blue Cross and Blue Shield. I paid the balance myself. My wrist condition worsened. My last day of employment with Wolf Creek was in September, 2002. Wolf Creek did not report my condition as an accident to the Division of Workers' Compensation. Wolf Creek did not give me any written information about filing a workers' compensation claim. My supervisors at Wolf Creek were aware of my wrist problems up until my last day on the job.

I went to my attorney about my wrist problems in early September, 2003, as I could no longer work due to my wrist problems. My attorney filed a claim for workers' compensation benefits on my behalf on September 16, 2003, about one week before the end of one year after my last day on the job at Wolf Creek. I did not file a workers' compensation before then, because I was told by Wolf Creek that it was not going to pay for it and I didn't want to make waves.

If the current bill that is being considered by your committee had been the law in September, 2003, when I went to see my attorney about my wrist problems, it would have been too late for me to file a claim for workers' compensation benefits. I respectfully ask your committee to reject the proposed changes to workers compensation law contained in HB 2142, as it would make it more difficult for injured workers to receive benefits for injuries they have suffered on the job.

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"PROGRESS THROUGH UNITY"

KANSAS STATE COUNCIL OF FIRE FIGHTERS

Affiliated With

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS • KANSAS AFL-CIO • CENTRAL LABOR BODIES

February 7th, 2005

To: Members of the State of Kansas House of Representatives Commerce and Labor Committee

I appreciated this opportunity to address the committee regarding the concerns that the Kansas State Council of Firefighters have regarding HB2142. Under this bill, firefighters in the state of Kansas stand to lose many of the protections they currently have under existing workman's compensation laws. Injuries sustained while battling a blazing fire or rescuing someone can go unnoticed and not present themselves till a later date. The time limits proposed in HB2142 would hamper the ability of the firefighters to seek treatment under workman's compensation.

This bill would also have an adverse effect on firefighters, and all workers, being able to obtain legal representation, when necessary, for workman's compensation cases. The limits that HB2142 would place on attorney's fees would make it very difficult at best to find competent attorneys that would be willing to represent injured workers. The worker would be placed at a great disadvantage if this were to pass.

Kansas has one of the lowest premium rates in the country for workman's compensation insurance. Due to this fact, the KSCFF finds the changes proposed by HB2142 to be unnecessary at this time, and only detrimental to the health and welfare of all workers in Kansas. To allow these changes sought in HB2142 would put the worker at a disadvantage in seeking treatment and relief under workman's compensation. The KSCFF would ask the members of the House Commerce and Labor Committee to vote against HB2142 and protect the rights of workers in the State of Kansas.

If you have any questions please contact me at (785) 286-2929 or email: djpiaff83@yahoo.com.

Respectfully submitted,

Dennis J. Phillips

Dennis J. Phillips
Lobbyist, KSCFF

Comm. Labor
2-7-05
Atch # 10

KSNA
KANSAS STATE NURSES ASSOCIATION

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H.B. 2142 Workers Compensation: Date of Accident & Reduction of Attorney's Fees

February 5, 2005

Representative Dahl and members of the House Commerce and Industry Committee, the KANSAS STATE NURSES ASSOCIATION is opposed to the changes in the workers compensation laws that appear in H.B. 2142 because both these provisions are aimed at reducing (or eliminating) benefits that injured workers are entitled to for work-related injuries.

Changing the "Date of Accident" language for "repetitive-use" injuries, as proposed would have the affect of in many instances, eliminating workers whose onset is gradual and cumulative. They will be more likely to miss the statute of limitations and be barred from compensation if what is proposed is passed. Registered Nurses and others in health care, such as LPN's and aides and orderlies often have heavy lifting in their day to day activities as they assist and re-position patients. Injuries resulting from this kind of daily work are by their very nature cumulative, because the ligaments, muscles and tissues of the body sustain strain, then small tears that over time increase in size, with accompanying pain that then impedes their ability to perform these tasks.

The bill also proposes lowering attorney's fees for those who represent injured workers—even though these fees are already capped under current law. With the "guiding hand of counsel", Kansas injured workers already receive the 7th lowest workers comp benefits in the country. The proposal is so ridiculously low, that few attorneys will be able to afford to take an injured worker's case. There is nothing in the law that says a worker who is injured on the job must seek legal counsel. In fact, most don't. It is usually the most serious physical injury cases that demand legal representation to get fair compensation in a no-fault system. Protecting injured workers future medical care benefit is essential. This provision is aimed directly at injured workers, a move to force injured workers to navigate the complexities of the system on their own, making them more vulnerable to "accepting" insurance company's low-ball settlement offers. Good or Bad, the workers compensation system is quite sophisticated, and attention to detail and documentation from a legal perspective is an essential component. If an injured worker needs legal representation, why shouldn't they be able to get it? What is the compelling argument for this proposal and change in public policy?

For 94% of the Kansas workforce, workers compensation is the only remedy if they are injured on the job. There is no other remedy. Date of accident definitions are an essential component of qualifying employees for benefits. What is fair about making it harder for workers with cumulative injuries to access compensation to which they are legally entitled?

Thank You.

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KANSAS BAR ASSOCIATION

Testimony in Opposition to

HOUSE BILL NO. 2142

House Commerce and Labor Committee
February 7, 2005

The Kansas Bar Association is a voluntary association made up of over 6300 of the over 9800 lawyers registered in Kansas. Our membership includes bank trust officers, general counsel of large corporations, prosecutors, solo practitioners, and even trial lawyers. Consequently, the views and interests of members of KBA are numerous and varied. Nevertheless, there are certain legislative policies adhered to be the KBA. These include opposition to statutory regulation of attorney fees in worker compensation cases.

The amendments beginning on the top of page 8 of **HB 2142** create a significant reduction in attorney compensation, which in turn raises the likelihood that injured workers will not be represented by competent counsel. In comparison to the changes suggested by the bill, **SB 146** actually raises the fee paid to attorneys on malpractice screening panels from a maximum of $500 to a minimum of $500, with the court allowed to consider additional compensation based on the time spent and the usual hourly charge of the attorney. This bill was requested by a judge in southeast Kansas because of the difficulty in getting attorneys to serve on screening panels.

The drastic reductions of attorney fees in the bill make it more likely that injured workers will be forced to represent themselves in worker compensation proceedings. In such cases, the KBA then recommends that there be additional procedures to ensure that such *pro se* litigants do not waive their rights to other causes of action.

Thank you.

James W. Clark
KBA Litigation Counsel
1200 S.W.Harrison
Topeka, Ks 66612
785-234-5696

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