

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:00 A.M. on February 16, 2006 in Room 123-S of the Capitol.

All members were present except:  
Jean Schodorf- excused

Committee staff present:  
Helen Pedigo, Revisor of Statutes  
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:  
Jeff Glendening-Kansas Chamber  
Duane Simpson-KFRA & KARA  
Larry Karns-Kansas Self-Insurer Association

Others attending:  
See attached list.

Chairperson Brownlee announced the Committee would be continuing the hearing on **SB 461-Workers compensation; preexisting condition; permanent partial general disability; supplemental functional disability compensation.**

Chairperson Brownlee introduced Jeff Glendening to give his testimony as a proponent for **SB 461.** Mr. Glendening presented written testimony. (Attachment 1) Mr. Glendening stated that work comp cost is an increasing concern for their members. The KCCI feels that **SB 461** is the first step in addressing their concerns. They feel the bill will restore the original legislative intent of the 1993 workers compensation reform bill as it relates to pre-existing condition. In closing, Mr. Glendening urged the Committee to vote for **SB 461.**

Chairperson Brownlee introduced Duane Simpson representing KFRA & KARA to give his testimony as a proponent of **SB 461.** Mr. Simpson presented written testimony. (Attachment 2) Mr. Simpson stated work comp agribusiness rates are out of control in the state of Kansas. In 2001 there was a dramatic increase in the agribusiness work comp rates. Mr. Simpson offered a comparison of the agribusiness work comp rates from the year 2001. Mr. Simpson stated, with the high rates combined with high energy prices, drought conditions in much of the state, government proposals to idle productive land, and doubling of the state franchise tax, it is a wonder that their members are able to keep their doors open at all. Many of the ones that have survived have done so by reducing the size of their work force. In closing, Mr. Simpson stated **SB 461** is absolutely necessary to keep jobs and businesses in rural Kansas.

Chairperson Brownlee introduced Larry Karns representing the Kansas Self-Insurers Association to give his testimony as a proponent for **SB 461.** Mr. Karns presented written testimony. (Attachment 3) Mr. Karns stated in 1993 the Legislature overhauled the Kansas Workers Compensation law. He stated prior to 1993, when the Workers Compensation Fund existed, physicians testified and stated their opinions regarding the percentage a preexisting condition, rateable or not, contributed to the disability or impairment resulting from a work injury. The current bill will continue to utilize the AMA Guides for rating impairments following a work injury. The bill will allow the physicians to testify as they did prior to 1993 regarding the percentage the preexisting condition contributed to the resulting impairment. Mr. Karns sited examples of preexisting conditions under the present law. He made reference to the case Hanson v Logan USD 326, that requires a preexisting condition to have been symptomatic and to have limited the employee's activities in order to be a rateable impairment under the AMA Guides 4<sup>th</sup> Edition. Unless a preexisting condition is a rateable impairment under the Guides, the Courts have held that no reduction or credit for the preexisting condition is appropriate. If a claimant stated that their preexisting condition did not bother them, the employer may be required to pay an award for which includes both the effect of the work injury and the preexisting condition. Mr. Karns stated that the payment of medical expenses incurred by the aggravation of a preexisting condition due to an on the job injury would not be affected by the proposed bill. If an employee suffers an injury as defined by the Act, the employer is required to provide reasonable and necessary medical treatment to the employee to treat the effects of the injury. As the definition of accidental injury includes the aggravation of a preexisting condition, the

## CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:00 A.M. on February 16, 2006 in Room 123-S of the Capitol.

employer's duty to provide medical treatment in such cases is unchanged. The proposed bill only addresses the amount of money the employee is to be paid for permanent impairment. The employee would not be paid for that portion of permanent impairment contributed to by the preexisting condition.

Upon the conclusion of Mr. Karns' testimony there was discussion with the Committee. Senator Wagle entered the discussion with concerns regarding a paper she received just before coming in the door to the Committee room which gives a list of preexisting conditions and saying these would prevent workers from getting benefits. Senator Wagle presented Mr. Karns with the paper and ask for his opinion. Mr. Karns stated that there were several conditions listed on the paper which he did not understand. Senator Wagle stated she feels that the work comp system is not to compensate for the aging process if it is the cause of an injury. She stated that there are problems with the Court System, which is very liberal in its interpretation of the law. Mr. Karns stated employers only want to pay for injuries caused by the job and on the job. Chairperson Brownlee entered the discussion calling on Dr. Reitz and discussing some of the conditions listed on the paper received before the meeting started. Senator Reitz stated some of the things on the list are things that most people are going to have. He stated they may set the stage but they don't cause the problem for the injury. Senator Barone entered the discussion asking Mr. Karns if he could present documentation regarding the evidence which he sited in his testimony. Mr. Karns stated he could get that information for the Committee. Senator Barone had concerns and asked Mr. Karns to explain his comments regarding the 1993 law. Mr. Karns stated **SB 461** would allow the physicians to testify as they did prior to 1993 regarding the percentage the preexisting condition contributed to the resulting impairment. Senator Barone asked if the driving force for the bill is to control work comp costs. Mr. Karns stated yes, and added, the secondary reason is fairness for the employer to not have to pay costs which they are not responsible for. Senator Reitz joined the discussion and stated he did not want to vote on the bill. He has had many people write him and ask him to vote against the bill. He is interested in the concept of fairness. He further stated that the rising costs of health care is of grave concern. Chairperson Brownlee called on Duane Simpson who represents KFRA and KARA with a question regarding his testimony on costs for knee injuries. She asked Mr. Simpson if he had looked at the work comp schedules and compared them with the schedules of Blue Cross the primary health carrier in Kansas. Mr. Simpson stated he had not. Senator Barone entered discussing the rising work comp insurance costs for agribusiness and the causes. Senator Wysong entered the discussion stating the bill, according to the Department of Labor, would increase the amount of litigation and hearings before the Administrative Law Judges. Senator Wysong had a question for Ms. Forrester, who is representing the Kansas AFL-CIO, regarding her testimony asking how it would be attainable for the employers and workers to stand together to improve the system. He asked her to come back to the Committee with a balloon to address that portion of her testimony. Chairperson Brownlee entered the discussion with Ms. Forrester concerning her testimony regarding the statement that the bill would cause an increase in litigation and arbitrarily reduce benefits for virtually every on the job injury. Ms. Forrester stated that the language in the bill was broad enough that attorneys representing the work comp insurance carriers could say that any contribution from a preexisting condition contributed to the injury. Ms. Forrester referred to Page 1, Section 1, line 38 through 41 of the bill. Chairperson Brownlee asked what language Ms. Forrester would offer to correct this issue. Ms. Forrester stated that current law allows for preexisting condition reductions and that current law corrects the issue. Mr. Karns entered the discussion with his response stating that there are times when they do get preexisting condition reductions and times when they don't. The problem is gathering the information on preexisting conditions having to go back 5, 10, 15 years. The discussion turned to the AMA guidelines which must be used for the workers in this bill and would not have to be used for determining preexisting. Ms. Forrester stated that with the current law both sides must use the AMA guidelines

Chairperson Brownlee closed the hearing on **SB 461** stating the Committee would be working the bill tomorrow morning.

Chairperson Brownlee opened the hearing on **SB 515-Workers compensation pool; group-funded; surplus funds; adequate surplus funds** by introducing Scott Heidner representing Kansas Self-Insurers Association to give his testimony as a proponent on **SB 515**. Mr. Heidner presented written testimony. (Attachment 4)

Mr. Heidner stated the bill addresses the difficulty self-insured pools are having obtaining aggregate

## CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:00 A.M. on February 16, 2006 in Room 123-S of the Capitol.

excess insurance coverage by allowing them to appeal to the Insurance Commissioner to waive that requirement. All self insured pools are required by statute to carry aggregate excess insurance coverage. Even though the private sector pools have the ability to appeal the Insurance Commissioner to waive that requirement, the private sector pools do not. They are asking for a change at this time because it is almost impossible to find an insurance company that will write an aggregate excess policy for private sector pools. The insurance companies that do write aggregate excess policies often require that the attachment point at which the insurance kicks in is so high that it could never realistically be reached. In closing, Mr. Heidner stated the bill will probably need a cleanup amendment. They had intended this bill only to apply to aggregate excess insurance, but the way it was drafted it would apply to both aggregate and specific excess insurance. Since that was not their intent he suggested that the bill be amended. Mr. Heidner also stated that they are opposed to the amendments which Mr. McGill is offering.

Chairperson Brownlee introduced Jeff Glendening representing the Kansas Chamber to give his testimony as a proponent for **SB 515**. Mr. Glendening presented written testimony. (Attachment 5) Mr. Glendening stated Self-Insured workers compensation pools are important for many Kansas businesses. They provide an excellent alternative to the traditional insurance marketplace and can increase employer involvement in claims management and workplace safety. Self-Insured pools must carry aggregate excess insurance coverage. The public sector pools can make an appeal to the Insurance Commissioner to waive that requirement. This bill would provide the same opportunity for the private sector pools, thereby increasing the opportunity for private sector pools to compete to provide workers compensation coverage to employees. In closing, Mr. Glendening urged the Committee to support the bill.

Chairperson Brownlee introduced Larry McGill representing the Kansas Association of Insurance Agents to give his testimony as an opponent to **SB 515**. Mr. McGill presented written testimony. (Attachment 6) Mr. McGill stated they think that changes need to be made in the bill. They feel the Department should have the clear authority to require a pool to provide an actuarial review of its claims reserves before the Department passes judgment on their request to waive excess. That would give an independent evaluation of the adequacy of the pool's reserving practices and is vital to analyzing their financial condition. They also, feel that the proposal should work both ways. Currently the Department does not have the clear authority to look at a pool's excess coverage and pass judgment on whether it is adequate or not. We have heard of one pool that has an aggregate attachment point around 400%. That dramatically increases their participants' exposure to assessments and to potentially much larger ones. When they analyzed pool financial results this year they found a number of pools with pending aggregate excess claims. The coverage is important. In closing, Mr. McGill stated with these two changes and the cleanup of the bill as Mr. Heidner suggested, they will support the bill.

Upon conclusion of Mr. McGill's testimony there was discussion. Mr. Heidner, representing the Self-Insurer Association, entered the discussion stating that they support the language change to clear up the intent of the bill to apply to aggregate excess insurance only. He also stated if the intent is only to allow the insurance commissioner the authority to request an independent audit as opposed to mandating she request an audit, they are comfortable with that but they still have a problem allowing the Insurance Commissioner review the market and apply a coverage level. Chairperson Brownlee closed the hearing on **SB 515** and stated both bills from today would be worked tomorrow.

Meeting was adjourned at 9:20 a.m. with the next schedule meeting February 17, 2006 at 8:30 a.m. in room 123S.



# Legislative Testimony

SB 461

February 14, 2006

## Testimony before the Kansas Senate Commerce Committee By Jeff Glendening, Vice President of Political Affairs

Thank you Madam Chair and members of the Committee for allowing me to appear before you today as a proponent of SB 461. My name is Jeff Glendening and I am here on behalf of the Kansas Chamber and our over 10,000 member businesses.

The area of workers compensation is a growing concern to many of our members. Although insurance costs have been lower than surrounding states, there has recently been a price surge.

One of our members who employs over 3,500 people in Kansas has indicated that while 10% of their workforce is in Kansas, our state represents 66% of their workers compensation costs.

This bill is intended to restore the original legislative intent of the 1993 workers compensation reform bill as it relates to pre-existing condition. Unfortunately, recent court rulings have undermined the current system making it nearly impossible for an employer to receive credit for an employees pre-existing condition.

Under current law, employers may only receive credit for a pre-existing condition if a previous workers compensation claim has been filed and a rating has been assigned for an injury on the same body part.

Employers will continue responsibility for all medical bills associated with an injury regardless of whether an employee had a pre-existing condition or not. However, the employer will only be responsible for the percentage of the functional impairment from the injury that was caused by work.

This measure will reduce workers compensation rates for employers. Currently, they must pay for injuries unrelated to the workplace and this measure will exempt that practice.

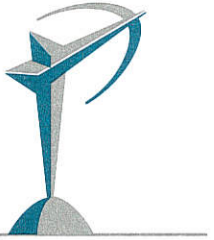
This measure also addresses work disability rules that should also be changed so that employees will receive compensation under a supplemental income formula instead of the current disability formula.

If an employee's injury prohibits them from returning to work, the current work disability formula would be used. This formula is derived from a determination of the percentage loss of job skills an employee has used over the past fifteen years and the percentage difference in the employees pre-injury and post-injury wages. These two percentages are then averaged to determine how long an injured worker will be paid disability.

Senate Commerce Committee

February 16, 2006

Attachment 1-1



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There are problems with both tests. The loss of job tasks over a fifteen year period prompts compensation to be paid for skills the employee may no longer need, and is a poor barometer of the physical effects of the injury. The wage test is an objective measure, which is good, but it also encourages an employee to avoid work to maximize an award. The work disability definition disregards an employee's physical impairment, which is the best test for a physical injury.

In SB 461, if a worker suffers wage loss due to their injury, the current work definition is deleted. Functional impairment compensation, the best method to compensate an individual for loss of body function, will be paid in work disability cases.

Furthermore, an employee will receive supplemental compensation to compensate for wage loss. Supplemental compensation will be determined through a simple wage comparison. The percentage difference in pre-injury wages will become the number of weeks of supplemental compensation awarded to the worker. For instance, an employee who was earning \$500 per week, but after recovering from an injury earns only \$400 per week, has suffered a 20% wage loss. In this scenario, the employee's 20% wage loss would lead to 20 additional weeks of supplemental compensation, in addition to their compensation for functional impairment.

Kansas' work disability formula is completely unique to our state. Determining compensation under the current job task loss formula is problematic at best. This bill establishes meaningful supplemental compensation that is fair to both the employee and the employer.

We are asking you to return fairness to the workers compensation system by voting for SB 461.

*The Kansas Chamber, with headquarters in Topeka, is the statewide business advocacy group moving Kansas towards becoming the best state in America to do business. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have more than 10,000 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, medium and large employers all across Kansas.*



STATEMENT OF THE  
KANSAS GRAIN & FEED ASSOCIATION  
AND THE  
KANSAS AGRIBUSINESS RETAILERS ASSOCIATION  
SUBMITTED TO THE  
SENATE COMMERCE COMMITTEE  
IN SUPPORT OF SENATE BILL 461  
SEN. KARIN BROWNLEE, CHAIR  
FEBRUARY 14, 2006

Senate Commerce Committee

February 16, 2006

Attachment 2-1

KGFA & KARA MEMBERS ADVOCATE PUBLIC POLICIES THAT ADVANCE A SOUND ECONOMIC CLIMATE FOR AGRIBUSINESS TO GROW AND PROSPER SO THEY MAY CONTINUE THEIR INTEGRAL ROLE IN PROVIDING KANSANS AND THE WORLD THE SAFEST, MOST ABUNDANT FOOD SUPPLY.

Thank you Madam Chair, members of the Senate Commerce Committee, I am Duane Simpson testifying on behalf of the Kansas Grain and Feed Association (KGFA) and the Kansas Agribusiness Retailers Association (KARA). The KGFA is a voluntary state association with a membership encompassing the entire spectrum of the grain receiving, storage, processing and shipping industry in the state of Kansas. KGFA's membership includes over 950 Kansas business locations and represents 99% of the commercially licensed grain storage in the state. KARA's membership includes over 700 agribusiness firms that are primarily retail facilities that supply fertilizers, crop protection chemicals, seed, petroleum products and agronomic expertise to Kansas farmers. KARA's membership base also includes ag-chemical and equipment manufacturing firms, distribution firms and various other businesses associated with the retail crop production industry. On behalf of these organizations, I am testifying in support of Senate Bill 461.

Starting in 2001, agribusiness in Kansas began to see their work comp rates increase dramatically. In one category, the rate more than doubled in only 3 years. In 2005, the most rates began to flatten out and I'm proud to say we have seen an actual reduction in all but one category for 2006. Unfortunately, fewer and fewer companies even offer work comp insurance to agribusiness, reducing competition and making it difficult to lower rates. Our members have been forced to take higher and higher deductibles just to find an insurance provider willing to carry the insurance.

Our industry is working hard to reduce accidents. We are in a voluntary program with OSHA to improve workplace safety. Our association offers training programs to improve safety among our members. A cottage industry of agribusiness safety companies has sprung up in the past couple of years to help curb the cost of workers compensation. In addition, minor reforms by the Legislature have helped reduce litigation costs, therefore reducing rates. Throughout this decade, our actual accident history has declined, but our costs for the most part have increased.

In 2001, it cost an employer \$2497 per year for the average grain elevator employee. By 2005, that rate had spiked to \$5656. This year, I am pleased to announce those rates have dropped to \$4184 per employee. The good news is the rates are coming back down; the bad news is they are still 67.6% higher than they were just 5 years ago. For every dollar an elevator employee makes, an additional thirteen cents goes to work comp. At its peak, elevators paid eighteen cents for every dollar.

A Feed Mill employee work comp cost went from \$1853 per year in 2001 to \$3080 today with a peak of \$3254 in 2005. Today's rate represents an increase of 66.2% in 5 years.

Farm Machinery/Equipment operators have not seen a break at all. In 2001, the average employee work comp cost was \$2277, today it is \$4473, an increase of 96.5%.

Unfortunately, this is not just a national problem for our industry, it is Kansas specific. One company reports that their average knee injury costs 13% more in Kansas than it does in Indiana. Another company compared similar back injuries in Kansas with other



states\*\*. In Kansas, the cost for that injury was \$91,305, in Colorado it was \$35,199, in Missouri it was \$23,467, and in Nebraska it was \$38,955.

The reason I give the statistics is to demonstrate that a problem does exist in Kansas. Not only has our industry seen dramatic increases in rates, the costs of work comp in Kansas are greatly different than they are in other states. SB 461 is designed to address the major cost drivers of Kansas' work comp system.

First of all, it restores the original intent of the 1993 workers compensation reform bill with respect to pre-existing conditions. It's important to note, that if SB 461 becomes law, an employer will still pay all medical bills for work related injuries, whether or not there is a pre-existing condition. This legislation only applies to the percentage of functional impairment that was not caused by a workplace injury. Under the current system, injured workers are often discriminated against after they have recovered because employers cannot afford to risk paying the functional impairment for an injury that is not related to their employment.

Second, the bill reforms the way Kansas pays for work disability to bring it into line with other states. Kansas is the only state with a 15-year rule that determines what the extent of the disability is. This rule causes an employer who hires someone to pay for physical capabilities that may have been lost after a work place accident at another employer, or perhaps even to pay for the effects of aging. How many of us sitting in this room today are physically capable of everything we were capable of 15 years ago? Senate Bill 461 will compensate employees for loss of the use of the injured body part, similar to how functional impairment works under current law. The bill also creates a loss of earnings standard, similar to what exists in other states. The loss is tied to what the employee was earning at the time of the injury.

Agribusiness in Kansas has seen dramatic increases in work comp rates in the past few years. Combined with high energy prices, drought conditions in much of the state, government proposals to idle productive land, and doubling of the state franchise tax, it is a wonder that our members are able to keep their doors open at all. Unfortunately, many of them have not survived, and the ones that have, have done so by reducing the size of their work force. Senate Bill 461 is absolutely necessary to keep jobs and businesses in rural Kansas. I urge you to support this bill.

*\*\* (Example assumes a 35 year old who is married with one dependent. Injury is to the back, rated as man as a whole. Injury rates as a functional permanent partial disability of 20%. Restrictions do not allow the employee to return to work. The average weekly wage is \$440.)*

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Larry G. Karns, Attorney  
Appearing on behalf of the Kansas Self Insurers Association

Testimony in Support of S.B. 461

Preexisting Condition

A major change in the Kansas Workers Compensation law was intended by the 1993 overhaul of the Kansas Workers Compensation Act. The 1993 amendments to K.S.A. 501(c) provide:

“The employee shall not be entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased disability. Any award of compensation shall be reduced by the amount of functional impairment determined to be preexisting.”

The 1993 revisions also eliminated the Kansas Workers Compensation Fund. The Fund had previously paid the portion of a workers disability contributed to by a preexisting condition. The combination of the enactment of 44-501(c) and the elimination of the Workers Compensation Fund’s payment for preexisting conditions reflected the intention of the legislature not to pay disability for preexisting conditions. Unfortunately, as case law has developed over the years, that has not been the result.

K.S.A. 44-501(c) speaks to reduction of awards in cases with preexisting conditions “by the amount of functional impairment determined to be preexisting.” Case law has held, including *Hanson v. Logan USD 326*, 28 K.A.2d 92, it is the employer’s burden to prove the extent of impairment present from a preexisting condition. This burden is problematic for several reasons.

First, it requires that the employee be forthright about the limitations presented by a preexisting condition while knowing that a preexisting condition will reduce their award of benefits. Often an injured worker will minimize or deny any previous impairment or symptoms from a preexisting condition which medically would be expected to have been symptomatic.

Senate Commerce Committee  
February 16, 2006  
Attachment 3-1

Second, case law has developed, *Hanson v. Logan USD 326*, that requires a preexisting condition to have been symptomatic and to have limited the employee's activities in order to be a rateable impairment under the AMA Guides 4<sup>th</sup> Edition. Unless a preexisting condition is a rateable impairment under the Guides, the courts have held that no reduction or credit for the preexisting condition is appropriate. If a claimant states that their preexisting condition did not bother them, the employer may be required to pay an award for which includes both the effect of the work injury and the preexisting condition.

Third, physicians often testify that a claimant's preexisting arthritis or degenerative condition was the cause of the resulting impairment. If that preexisting condition is not rateable under the AMA Guides 4<sup>th</sup> Edition, the employer pays the entire cost of the claim.

Prior to 1993, when the Workers Compensation Fund existed, physicians testified and stated their opinions regarding the percentage a preexisting condition, rateable or not, contributed to the disability or impairment resulting from a work injury. The current bill would continue to utilize the AMA Guides for rating impairments following a work injury. The bill would allow the physicians to testify as they did prior to 1993 regarding the percentage the preexisting condition "contributed to" the resulting impairment.

The payment of medical expenses incurred by the aggravation of a preexisting condition due to an on the job injury would not be affected by the proposed amendment. If an employee suffers an injury as defined by the Act, the employer is required to provide "reasonable and necessary medical treatment to the employee to treat the effects of the injury." As the definition of accidental injury includes the aggravation of a preexisting condition, the employer's duty to provide medical treatment in such cases is unchanged. The proposed bill only addresses the amount of money the employee is to be paid for permanent impairment. The employee would not be paid for that portion of permanent impairment contributed to by the preexisting condition.

FA



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TESTIMONY

TO: SENATE COMMERCE COMMITTEE  
FROM: SCOTT HEIDNER, EXECUTIVE DIRECTOR  
KANSAS SELF INSURERS ASSOCIATION (KSIA)  
RE: SB 515  
DATE: FEBRUARY 16, 2006

Chairs Brownlee and Jordan, members of the committee, thank you for the opportunity to appear today as a proponent for SB 515. My name is Scott Heidner, and I am the Executive Director of the Kansas Self Insurers Association (KSIA).

KSIA represents employers that self insure for workers compensation. We have several self funded pools within our membership. It is on behalf of those pools that we appear before you today. SB 515, put in its simplest terms, addresses the difficulty self insured pools are having obtaining aggregate excess insurance coverage by allowing them to appeal to the Insurance Commissioner to waive that requirement. All self insured pools are required by statute to carry aggregate excess insurance coverage. The public sector pools already have the ability to appeal to the Insurance Commissioner to waive that requirement. No such opportunity is provided for the private sector pools. SB 515 would correct that disparity.

We are asking for a change at this time because the insurance market has changed dramatically over the last few years. It is now almost impossible to find an insurance company that will write an aggregate excess policy for these pools. Those that do often require that the attachment point at which the insurance kicks in is so high that it could never realistically be reached. Because of this difficulty in finding insurance, and the extreme cost in those cases where it can be found, we have drafted SB 515 to provide private sector pools an opportunity to appeal to the Insurance Commissioner for a waiver of that coverage requirement.

A logical question might be "What are the additional risks to the employee and company members of the pools?" The answer is "virtually none". The first and strongest line of defense is the review by the Insurance Commissioner. Unless a pool can convince the Insurance Commissioner that their financial health is extremely impressive, the Insurance Commissioner can deny the request. Even if a waiver is granted, the reality is that it is

Senate Commerce Committee  
February 16, 2006  
Attachment 4-1

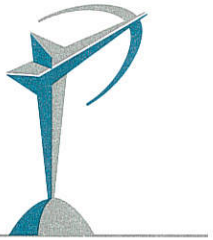
virtually unheard of for a pool to reach the claim level where aggregate excess insurance coverage kicks in. If that is not enough support, keep in mind that the members of these pools are jointly and severally liable for all debts of the pool. If a pool were somehow to go bankrupt, each individual member of the pool would still be liable for whatever was due to an injured worker.

We have communicated with Larry Magill and KAIA as we drafted this bill and asked for its introduction. Mr. Magill has been very helpful with his communications and suggestions. However, I should probably also speak to an amendment that may be offered by that association. There was discussion of language that would create a mandate for the Insurance Commissioner to study the market, find out what level of aggregate excess insurance coverage is available, and set that as a requirement. This would defeat the purpose of the bill, and make a tough situation even worse. Even without any statutory coverage levels, our pools are having a very difficult time finding insurance coverage. Mandating a coverage level would exacerbate this situation significantly.

Self funded pools are good for Kansas. They write over \$60 million dollars in premiums each year, and they keep a large number of Kansas employers out of the assigned risk pool. This change will help keep them competitive and successful while producing no measurable increase in risk. It simply mirrors the rules that public pools have operated under for years.

One quick note, this bill will probably need a cleanup amendment. There are statutory requirements for specific excess insurance and aggregate excess insurance. We had intended this bill only to apply to aggregate excess insurance, but the way we have it drafted I believe it would apply to both. That was not our intent, and we would suggest the bill be amended to reflect that.

Thank you for your consideration of SB 515, and I would stand for questions at the appropriate time.



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## Legislative Testimony

**SB 515**

**February 16, 2006**

**Testimony before the Kansas Senate Commerce Committee  
By Jeff Glendening, Vice President of Political Affairs**

Thank you Madam Chair and members of the Committee for allowing me to appear before you today as a proponent of SB 515. My name is Jeff Glendening and I am here on behalf of the Kansas Chamber and our over 10,000 member businesses.

Self-Insured workers compensation pools are important for many Kansas businesses.

They provide an excellent alternative to the traditional insurance marketplace and can increase employer involvement in claims management and workplace safety.

Self insured pools must carry aggregate excess insurance coverage. The public sector pools can make an appeal to the Insurance Commissioner to waive that requirement. This bill would provide the same opportunity for the private sector pools, thereby increasing the opportunity for private pools to compete to provide workers compensation coverage to employers.

Thank you again for this opportunity to testify today as a proponent to SB 515, and we would appreciate your support.

Senate Commerce Committee

February 16, 2006

Attachment 5-1

*The Kansas Chamber, with headquarters in Topeka, is the statewide business advocacy group moving Kansas towards becoming the best state in America to do business. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have more than 10,000 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, medium and large employers all across Kansas.*

Kansas Association of Insurance Agents



Testimony on Senate Bill 515  
Before the Senate Commerce Committee  
By Larry Magill  
February 16, 2006

Thank you madam co-chair, mister co-chair and members of the committee for the opportunity to appear today in opposition to Senate Bill 515 without some amendments. My name is Larry Magill and I represent the Kansas Association of Insurance Agents. We have approximately 425 member agencies across the state and another 125 branch offices that employ a total of approximately 2,500 people. Our members write roughly 70% of the business property and liability insurance in Kansas and 35% of the personal insurance. Independent agents are free to represent a number of different insurance companies.

The excess insurance coverage required of group self-insurance pools is one of the principal ways that the state protects the pool participants from assessments or reduces the potential size of assessments. Under current law *homogeneous* group workers compensation self-insured pools are only required to carry specific and aggregate excess insurance but that is really not defined. Homogeneous pools are defined as ones that insure only one industry.

The law allows *heterogeneous* pools to form, but it places a more precise requirement on them of specific and aggregate with the aggregate having an attachment point of no more than 125% and a \$2,000,000 policy limit. Heterogeneous pools insure all different kinds of businesses and are assumed to have a greater risk since they can be providing workers compensation for vastly different exposures. The safety services need to vary by industry and may not be as effective and the pool management may not be careful enough about which businesses are allowed in.

Attached is a chart that attempts to show how the specific and aggregate excess apply and the "unfunded gap" that generally exists between the amount of funds in the claims fund and the attachment point of the excess. In theory, this measures a participant's exposure to assessments although it can't depict what happens if the claims exceed the aggregate excess policy limit.

The specific excess used to be broadly available with a \$250,000 self insured retention (SIR) and a "statutory" limit, meaning whatever benefits the statutes provided on the claim, that was the amount of coverage under the specific excess. It is protection from individual large losses, which can run into the millions. In today's market most pools are buying closer to a \$500,000 limit either because that is all the underwriters will offer or because that is all the pool wants to pay for. In addition, some excess insurers for some pools are no longer willing to provide a statutory limit on the specific and are putting a dollar limit on it. The pool is then liable for the excess above the policy limit.

There are only three or four markets that provide the bulk of the excess workers compensation insurance for group self-insured pools. You can think of the excess as reinsurance for pools.

Senate Commerce Committee

February 16, 2006

Attachment 6-1

Because of the importance of the excess insurance in protecting pool participants, we assume that the Insurance Department will be very cautious about waiving the excess based on a pool's net worth. We track pool financial results and report on them annually in our association magazine and I have attached the latest article. We have seen most pools' net worth fluctuate up and down significantly over the years—sometimes going into the red or negative net worth for a period of time.

My point of all this background is that we think two changes need to be made in the proposal. First, the Department should have the clear authority to require a pool provide an actuarial review of its claims reserves before the Department passes judgment on their request to waive excess. That will give an independent evaluation of the adequacy of the pool's reserving practices and is vital to analyzing their financial condition.

Secondly, we feel that the proposal should work both ways. Currently the Department does not have the clear authority to look at a pool's excess coverage and pass judgment on whether it is adequate or not. We have heard of one pool that has an aggregate attachment point around 400%. That dramatically increases their participants' exposure to assessments and to potentially much larger ones.

When we analyzed pool financial results this year we found a number of pools with pending aggregate excess claims. The coverage is important.

With these two changes we can support the bill. In fact, it will represent a step forward in regulation of the Kansas pools.





# KAIA's Pool Financial Analysis for the 2004 Calendar Year

By Larry W. Magill, Jr.

Each year KAIA obtains the annual audits from the Kansas Insurance Department of every pool authorized to do business in Kansas. We submit those audits to our CPA firm, Mayer, Hoffman & McCann, for their help putting them together in the accompanying spreadsheet format. That sounds easier than it is with the number of different ways that the various CPA firms show the pools' results.

The information is intended to help our members answer their clients' questions when they are considering joining or deciding whether to stay members of

one of these group self-insurance arrangements. Hopefully the article will shed some light on a fairly significant part of the Kansas workers compensation market today.

## Public Entities Analysis

With the exception of the School Board Association's workers compensation pool, the public entity pools fared well in 2004 showing sizeable profits. Even KASB lost less than it had in previous years. KASB lost \$119,443, which reduced its net worth to \$140,708. Using the traditional insurance company yardstick of premiums to surplus, that

gives them a 70 to 1 ratio. They have lost money six out of the last 10 years. KASB's current aggregate attachment point has been increased to \$20,375,515 or 208% of earned premium.

KCAMP's (the counties' multiline pool) excess premiums continue to rise and are now 29% of premium. They started out paying 13.7%. They have an aggregate attachment point of 95.4% of their "normal" premium, which is fairly low compared to many other pools. KCAMP showed a 15% profit of \$890,803 and have built their net worth to \$3.9 million giving them a premium

## Pools Comparison

	Kansas Building Industry Workers' Compensation Fund 12/31/04	Builders' Association of Self Insurers' Fund of Kansas 12/31/04	Kansas Association of Homes for the Aging Insurance Group, Inc. 03/31/04	Kansas Automobile Dealers Workers' Compensation Fund 12/31/04	Kansas Health Care Association Workers' Compensation Insurance Trust Corporation 12/31/04	Kansas Restaurant and Hospitality Association Self Insurance Fund, Inc. 12/31/04	KHA Worker Compensati Fund, Inc. 12/31/04
<b>Revenues:</b>							
Premiums earned	\$ 12,420,292	\$ 8,494,450	\$ 3,030,265	\$ 2,785,486	\$ 1,508,244	\$ 3,243,170	\$ 4,405,3
Ceded reinsurance premiums	-	(450,618)	(173,241)	(198,629)	(66,720)	(221,016)	(374,7
Unbilled supplemental premium assessment	-	-	-	-	-	-	-
Investment income	192,984	783,768	299,246	130,867	(80,783)	206,974	35,3
Assessments	-	-	-	-	-	-	-
Other income	116,235	-	-	-	-	28,431	-
<b>Total revenues</b>	<b>12,729,511</b>	<b>8,827,600</b>	<b>3,156,270</b>	<b>2,717,724</b>	<b>1,360,741</b>	<b>3,257,559</b>	<b>4,065,9</b>
<b>Expenses:</b>							
Incurred losses/workers compensation claims	-	5,856,231	1,945,114	1,552,508	1,378,678	2,885,260	2,917,3
Reinsurance	-	-	-	-	-	-	-
Claims adjustment	8,650,371	-	234,930	-	259,929	86,347	-
Claims management fees	-	-	-	-	-	-	-
Administration	862,666	-	-	406,614	598,580	-	839,2
Premium taxes	336,148	-	-	57,834	-	-	-
Insurance taxes	-	-	-	-	-	-	-
Refunds of premiums	-	-	-	-	-	-	-
Excess insurance premiums	2,049,180	-	-	-	-	-	-
Other underwriting expenses	-	1,785,411	-	-	-	-	-
Transition costs	-	-	-	-	-	707,000	-
Realized capital loss	-	(13,355)	-	-	-	-	-
Other expenses	899,515	-	941,905	120,509	-	-	-
<b>Total expenses</b>	<b>12,797,880</b>	<b>7,628,287</b>	<b>3,121,949</b>	<b>2,137,465</b>	<b>2,237,187</b>	<b>3,678,607</b>	<b>3,756,9</b>
Net income (loss) before dividends and income taxes	(68,369)	1,199,313	34,321	580,259	(876,446)	(421,048)	309,4
Dividends paid to members	-	1,000,000	-	400,000	-	-	-
Net income (loss) before income taxes	(68,369)	199,313	34,321	180,259	(876,446)	(421,048)	309,4
Provision for income tax expense (benefit)	23,317	144,904	-	73,000	(297,998)	(142,083)	-
Net income (loss)	(45,052)	54,409	34,321	107,259	(578,448)	(278,965)	309,4
Change in nonadmitted assets	-	8,848	10,581	-	(121,813)	16,914	76,5
Prior period adjustment to non-admitted assets	-	-	-	-	-	-	-
Cumulative effect for change in accounting principle	(601,135)	-	-	-	-	-	-
Correction in net deferred income taxes	-	184,684	-	-	-	-	-
Correction of error	-	-	-	-	-	-	-
Change in net deferred income tax	-	21,326	-	9,300	-	-	-
Change in net unrealized losses on investment	-	134,825	313,245	-	152,284	(117)	77,4
Members' fund balance, beginning of year	771,010	13,031,270	3,727,050	956,055	519,795	606,386	(701,6
Members' fund balance, end of year	\$ 124,823	\$ 13,435,362	\$ 4,085,197	\$ 1,072,614	\$ (28,182)	\$ 344,218	\$ (238,1

6-3

to surplus ratio of 1.5 to 1. KERIT, the Kansas Eastern Regional Insurance Trust, is writing at about 1 to 1, KMIT (cities' wc pool) is a little over 3 to 1 and KWORCC is a little over 1 to 1.

KWORCC (counties' wc pool) specific excess self-insured retention has increased from \$250,000 in 1993 when they started to \$400,000 today. KERIT's audit revealed that they have had excess claims in four years, 2000,'01,'03 and '04 for a total outstanding at last year end of over \$1 million and \$377 thousand of that was for aggregate excess claims. Proving to those who claim that aggregate serves no real purpose, that it can be valuable depending on the attachment point.

The public pools still enjoy pretty low cost excess with KASB's running 5.7%, KMIT's 7.2% and KWORCC at 4.9%. Of course,

keep in mind the comments about attachment points and SIR's, which can account for some of the low cost. KMIT's specific SIR is up to \$500,000, KWORCC and KASB are at \$400k and KERIT is at \$350k.

### Business Pools Analysis

There are some interesting differences in the excess insurance costs of various pools as well as the self insured retentions (SIR) and aggregate attachment points that may give a clue as to what the excess markets are thinking. Costs ranged from highs of 20.3% for the Kansas Employers group, 16.5% for the Kansas Building Industry WC Fund and 12.7% for the Truckers to lows of 4.4% for the KHCA fund. The average of the eleven business funds is 9.4%.

Another measure of standard insurance company solvency is their premium to surplus ratios. If you apply that standard to pools, the highest of those ratios (among pools that had a positive net worth) was the Kansas Building Industry WC Fund at 99.5 to 1. This was caused by a loss of \$45,052 and the cumulative impact of changing their accounting approach from GAAP to statutory. Their deferred taxes and equipment are not admitted assets under the statutory accounting guidelines of the NAIC. That change reduced their net worth on a statutory basis by \$601,135 and left them with a net worth of \$124,823. The high premium to surplus ratio is also due, in large part, to their dividend declaration policy.

Continued on page 19

Account	Wichita Auto Dealers Self Insurance Fund 12/31/04	Kansas Employers Workers' Compensation Fund 12/31/04	Kansas Livestock Association Risk Management Services, Inc. 12/31/04	Kansas Truckers Risk Management Group, Inc. Trust 12/31/04	Public Entity Pools				
					Kansas Counties Association Multiline Pool 12/31/04	Kansas Association of School Boards Workers Compensation Fund, Inc. 06/30/05	Kansas Eastern Region Insurance Trust 12/31/04	Kansas Municipal Insurance Trust 12/31/04	Kansas Workers Risk Cooperative For Counties 12/31/04
113	\$ 626,188	\$ 1,791,004	\$ 2,294,747	\$ 2,257,630	\$ 5,768,056	\$ 9,793,142	\$ 2,658,840	\$ 3,256,648	\$ 4,988,164
'12)	(61,739)	(364,206)	(154,630)	(286,798)	-	(555,415)	-	(235,850)	-
195	13,624	57,058	120,948	55,941	299,097	594,905	126,809	59,068	288,697
-	-	-	-	-	3,500	-	-	-	-
196	578,073	1,483,856	2,261,065	2,026,773	6,070,653	9,832,632	2,785,649	3,079,866	5,276,861
114	59,132	1,204,595	-	639,991	2,636,095	-	1,380,095	1,582,673	3,721,400
-	-	78,594	820,519	119,147	392,188	9,161,124	-	136,178	165,000
-	20,000	-	-	-	-	-	-	-	-
210	37,571	402,708	247,564	613,327	430,469	677,493	334,399	772,107	661,056
-	11,451	-	52,655	-	40,928	113,458	-	-	96,079
-	-	-	-	-	-	-	78,613	-	-
-	-	-	-	-	1,680,170	-	-	-	242,894
-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-
-	11,896	-	40,246	-	-	-	-	-	-
224	140,050	1,685,897	1,160,984	1,572,465	5,179,850	9,952,075	1,793,107	2,490,958	4,886,429
172	438,023	(202,041)	1,100,081	454,308	890,803	(119,443)	992,542	588,908	390,432
-	193,507	-	110,000	-	-	-	-	-	-
172	244,516	(202,041)	990,081	454,308	890,803	(119,443)	992,542	588,908	390,432
-	2,044	(68,695)	89,563	-	-	-	-	-	-
172	242,472	(133,346)	900,518	454,308	890,803	(119,443)	992,542	588,908	390,432
150	-	-	-	-	-	-	(24)	-	219,472
-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	(191,836)	-	-
-	-	-	60,537	-	-	-	-	-	-
165	-	44,506	55,805	-	(39,887)	-	-	-	(126,747)
20)	888,468	32,787	23,621	654,608	3,035,263	260,151	1,693,730	413,601	3,716,741
133)	\$ 1,130,940	\$ (56,053)	\$ 1,040,481	\$ 1,108,916	\$ 3,886,179	\$ 140,708	\$ 2,494,412	\$ 1,002,509	\$ 4,199,898

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**Continued from page 17**

BASIF, the Builders Association Self Insurance Fund, by contrast, had a .63 to 1 premium to surplus ratio. In other words, their net worth was higher than their earned premiums for the year. KAHSA was at .74 to 1, Kansas Auto Dealers at 2.6 to 1, Ks Restaurant at 9.4 to 1, Wichita Auto Dealers at .55 to 1, Ks Livestock at 2.2 to 1 and Ks Truckers at 2 to 1.

There are three pools with negative net worth where we did not calculate a premium to surplus ratio. They are the Ks Health Care Association, Ks Hospitals and Ks Employers WC fund. The latter is the only heterogeneous fund operating now in Kansas. They work through agents and its interesting that their financial statements show that commissions paid

decreased by 43% from \$140,384 to \$60,819 while their premiums decreased by 16%.

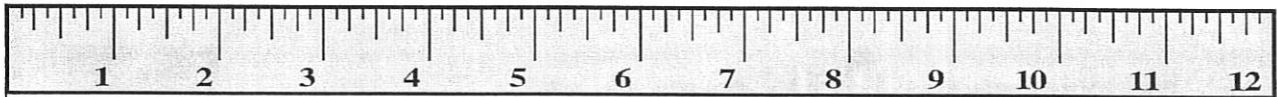
The Truckers have had a remarkable turnaround in the last three years where they went from a deficit net worth of \$759,647 to a positive net worth of December 31, 2004 of \$1,108,916. Their specific excess now has a \$500,000 SIR and their aggregate attachment point is at 125% of their premiums. The Livestock Association's fund has also had a very nice recovery from a net worth of \$23,621 to \$1,104,481 in three years. This was largely due to decreasing their losses by 62% in 2004 compared to '03. Their specific excess SIR is also at \$500k up from \$200k originally and their aggregate attaches at 125%.

The Livestock pool has a \$553k excess insurance recoverable on their books that

will be finally determined when all the relevant claims are closed. The Hospitals are looking to recover \$1.3 million for 2004 and \$1.4 for '03 in both specific and aggregate excess claims. They also have total excess claims of \$463,082 with a liquidated excess insurer. But again, you are seeing more pools all the time showing significant excess insurance amounts recovered and recoverable on their books.

Most of the audits include supplemental exhibits that show the results of every year the pool has been in operation and the development of claims over the calendar year for each year of operation. KHCA's pool, for example, has been hit with bad current year results and significant increases in claims reserves from prior years. Their picture would be much worse but for \$587,000 in loss

**Continued on page 27**



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**Continued from page 19**

carry back recoveries on income taxes. The statement doesn't indicate how much additional loss carry back might be available, if any, in future years.

The Hospital Association's audit indicates that it lost two members from the pool over the last two years and despite that, it increased premium income by 34% while losses increased by 9.1%. That pretty much seems to account for the turnaround in their results.

There were only 3 pools that paid dividends this year, BASIF paid out an even million, the Ks Auto Dealers \$400,000, the Wichita Auto Dealers \$193,507 and Livestock \$110,000. Although they did not pay a dividend this year, KAHS.A has paid out a cumulative total of \$4.5 million over their years of

operation or an average of 12% of earned premium over that time. The Building Industry fund has declared a total of \$5.3 million in dividends over the years from 1993 when they began operations. We did not calculate their average percentage dividend because their audit does not show the premiums collected over that period. They have yet to pay \$1.7 million of the dividends.

KAIA members may access copies of any pool's audit on our website at [www.kaia.com](http://www.kaia.com) under News then General Reading. If you have any questions, we are happy to help with those as well.



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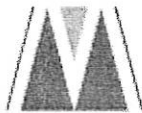
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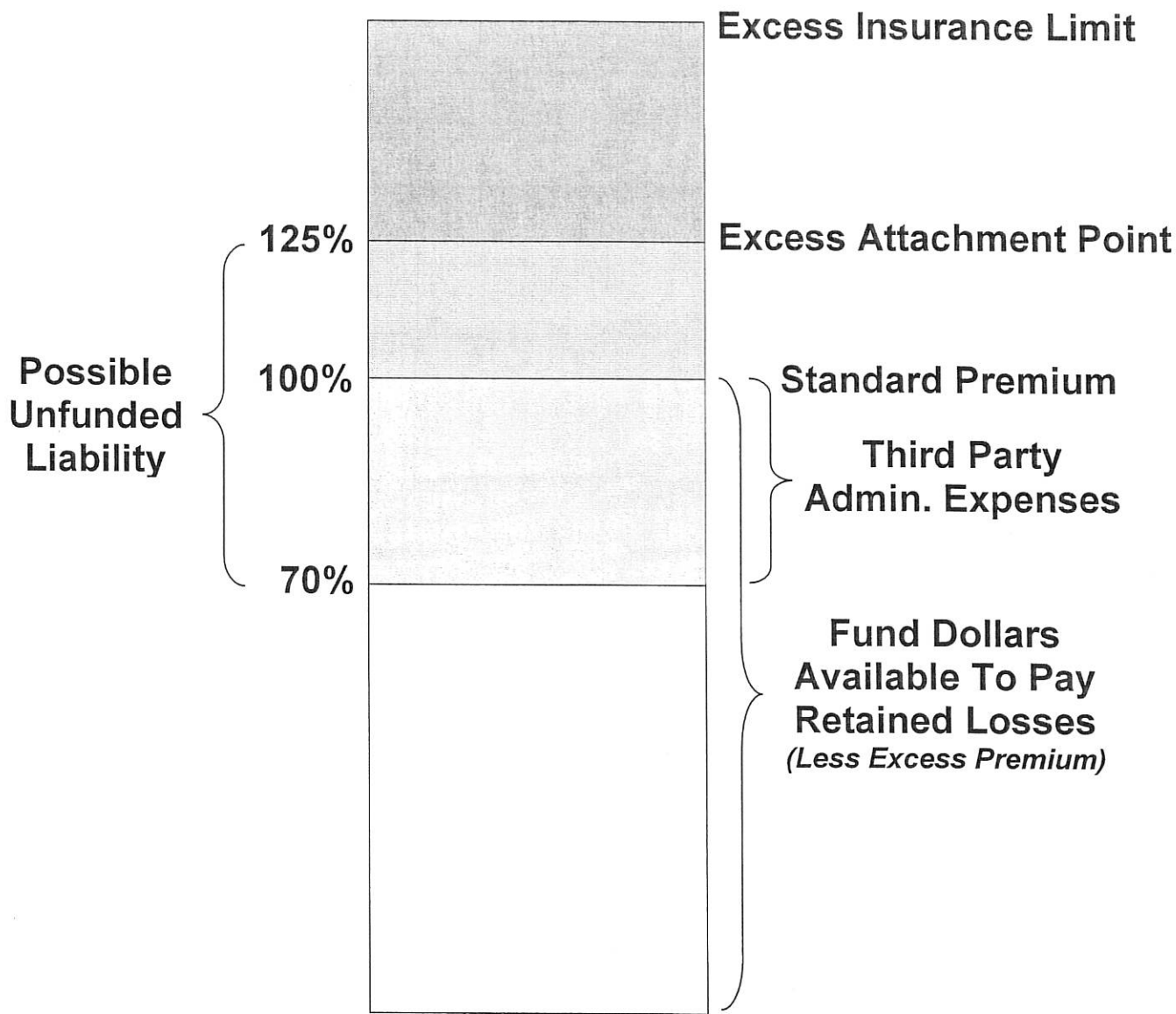


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**Bas on Aggregate Excess Attachment Point at 125% of Manual Premium**



**EXAMPLE**

100% of Standard Prem. =	\$ 1,000,000
30% of Standard Prem. TPA Expenses =	\$ 300,000
70% of Standard Prem., Claims =	\$ 700,000
Attachment point of Excess Insurance Equal to 125% of Standard Prem. =	\$ 1,250,000

\$1,250,000
<u>- 700,000</u>
\$ 550,000 Unfunded Exposure

Maximum Potential Assessment Expressed as Percentage is 55%.  
 Excess premiums are now paid from both administrative and claims funds.