

Approved: 4/1/93
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 8:00 a.m. on March 16, 1993 in Room 123-S of the Capitol.

Members present: Senators Burke, Downey, Feleciano, Jr., Gooch, Harris, Hensley, Kerr, Petty, Ranson, Reynolds, Steffes and Vidricksen

Committee staff present: Lynne Holt, Legislative Research Department
Jerry Ann Donaldson, Legislative Research Department
Jim Wilson, Revisor of Statutes
Bob Nugent, Revisor of Statutes
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee: Terry Leatherman, KCCI
Wayne Maichel, AFL-CIO
Jim Ward, Administrative Law Judge, Workers Compensation Division, Kansas Department of Human Resources
Gary Burhop, Director of Public Affairs, Fleming Companies, Inc., Oklahoma City
Roland Smith, Wichita Independent Business Association, Wichita
Michael Welch, BRB Contractors
Janice Tow, Olathe

Others attending: See attached list

Hearing on Substitute for HB 2354--Workers compensation reform

Terry Leatherman, KCCI, testified **Sub for HB 2354**, when coupled with amendments will produce a comprehensive reform of the Kansas Workers compensation system. He also proposed a consent to settle clause amendment, see Attachment 1.

Wayne Maichel, AFL-CIO, testified in support of workers compensation reform. He supported cutting costs to employers and protecting injured workers. He did not support all of the Senate amendments. In response to a Committee question, he said he supported the concept of a benefit review conference, but he preferred the House version over the Senate version.

James R. Ward, Administrative Law Judge, Division of Workers Compensation, Kansas Department of Human Resources, requested an opportunity to clear up controversy surrounding his decision as Administrative Law Judge in the Fletcher Bell claim. Additionally, Judge Ward made recommendations on workers' compensation reform legislation. Removing the director's reviews and appeals to the district courts will reduce needless and costly time consuming litigation. He approved of the proposal to remove from the formal hearing process, issues regarding workers compensation fund liability. He did not approve of the legislation dealing with fraud. He recommended stiffer penalties for non-payment of compensation and medical bills.

Mr. Ward stated the Kansas Supreme Court has long held, with a vast majority of states, that an injury which aggravates, accelerates or intensifies an existing disease or condition is compensable and it is error to apportion an award between the pre-existing disability and the disability suffered because of the accident.

In regard to attorneys and public officials who are involved in workers compensation matters, Mr. Ward suggested these claimants not be allowed to enter into lump sum settlements. Where there is a possibility of a conflict of interest in the trial of a public official's claim for workers compensation, the defense should be undertaken by independent counsel or the Attorney General, see Attachment 2

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMERCE, Room 123-S Statehouse, at 8:00 a.m. on March 16, 1993.

Gary Burhop, Director of Public Affairs, Fleming Companies, Inc., testified in support of workers compensation reform that reduces fraud, reduces litigation, educates workers on how the system works, encourages safety in the work place and redefines accidental injury, so that compensation is paid for job related injuries, but not for the natural aging process, see Attachment 3.

Roland Smith, Wichita Independent Business Association, testified substantial amendments to **Sub for HB 2354** are needed. He recommended addressing 1. Work disability: Language to overturn the Hughes decision and stay with the concept of being able to earn comparable wages. 2. Vocational rehabilitation: Completely the employer's choice. 3. Pre-existing conditions: Pay only for the conditions aggravated by the workplace. 4. Schedule upper extremity injuries: A schedule as a guide for providing disability payments for specific injuries. 5. Recalculation of off-schedule injury awards: This would place a salary cap on the state average weekly wage as the multiplying factor for all permanent partial injuries, not just those which happen to fall on the schedule, see Attachment 4.

Michael Welch, BRB Contractors, testified in support of workers compensation reform. Some recommendations are: making workers compensation insurance a true no fault system; limit attorney's fees; stop the practice of shopping for doctors; the State keep data on doctors who get involved in work comp cases to see what percentage of their business is generated by injured workers; make every lawyer that produces ads for the media disclose what their average percentage of compensation for claims has averaged for the past three years and also inform the public that claims can be processed by the system without a lawyer; provide doctors that are truthful about an injury protection from lawyers and their malpractice suits; accept the package in SB 215 as a good starting point; give employers the ability to speak to their employees without going through a lawyer; start a campaign to educate the public regarding workers compensation and how to work safely; and make it illegal to give the public the perspective that employers are the bad guys, see Attachment 5.

Janice Tow, Olathe, testified she suffered a work related injury. She related her experiences with the workers compensation system. She stated workers compensation should be a system that identifies with the injured worker. One should not come out of the experience in financial disaster. Bills should be paid in a timely fashion and the injured worker should break even financially, see Attachment 6.

Tom Joyce, Executive Vice President, Landoll Corporation, submitted prepared testimony in support of workers compensation reform. He recommended SB 215 as a reasonable start on reform, see Attachment 7.

Stephen S. Richards, Manager-Government Relations, Yellow Freight System, Inc., submitted prepared testimony in support of workers compensation reform. He stated Sub HB 2354 passed by the House provided a good foundation, however, issues in SB 215 would improve the reform effort, see Attachment 8.

Senator Steffes moved and Senator Ranson seconded to adopt the minutes of the 4:15 p.m. meeting on March 9 and the minutes of March 10, 1993. The motion carried on a voice vote.

The Committee meeting was adjourned at 9:00 a.m.

The next meeting is scheduled for March 17, 1993.

GUEST LIST

COMMITTEE: SENATE COMMERCE COMMITTEE

DATE: 3/16/93

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Dorothy Taylor	Topeka	PHIAK
Jim Allen	"	PRM Inc
Janet Stubbs	"	HBAK
Bill Curtis	Topeka	Ks Assoc. of School Bds
Roland Amitts	Wichita	WLBA
Mike Payne	Wichita	City of Wichita
Janice Dow	1645 Sunvale Dr. Olathe	Self
Pete Strauss	Chicago	NCCI
James A Ward	Topeka	DHR - Work Comp
Bee Denton	Topeka	Fleming Cos.
GARY BURKHOP	OKlahoma City OK	FLEMING Cos. INC
DAVID GRANT	TOPEKA	KCCJ
SHELBY Smith	Wichita	EL-II
Bill Morrissey	Topeka	DHR/Work Comp
Bill Dempsey	Topeka	Ks. Ins. Dept.
ALAN COBB	Wichita	Ks Assoc. for Small Business
Patrick Nichols	TOPEKA	KTLA
Richard Dean	"	"
George PUCKETT	WICHITA/TOPEKA	KRHA
Wickie Roberts	Fredonia	Close-Up Kansas
Andrea Barron	Fredonia	Close-Up Kansas
John P. ...	Fredonia	" " "
John Marshall	" "	" " "
Randy Burns	"	" " "
Tom Bullock	Topeka Ks	BRB Contractors

GUEST LIST

COMMITTEE: SENATE COMMERCE COMMITTEE

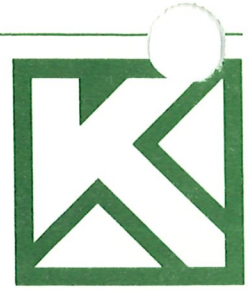
DATE: _____

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
FRANCES KASTNER	TOPEKA	Ks Food Dealers ASSN
KETAN R LANDIS	TOPEKA	CHRISTIAN SCIENCES COMMUNICATION PUBLICATION FOR KANSAS
ALBERT BROWN	---	KS Lumiser dealers
MICHAEL WELCH	TOPEKA	BRB CONTRACTORS
HAL HUDSON	TOPEKA	NFIB/Kansas
BOB TOTTEN	TOPEKA	Ks Contractors Assn
Courtney Brackin	Bennington, Ks	Bennington High
Henny Bross	Bennington, Ks	Kansas Close-Up
ERIC SMITH	TOPEKA	Kansas Inc. Dept.
J.P. Small	TOPEKA	Learjet Inc
ROW NITHEZ	TOPEKA	INSURANCE DEPT.
RICHARD THOMAS	TOPEKA	DHR/WORK COMP
GEORGE WELCH	TOPEKA	DPS
JOE DICK	TOPEKA	DHR
Don Bounce	"	DHR
Jessie Lensch	TOPEKA	NECA
Joe Furjan	TOPEKA	KCA
Timothy D. Boy	TOPEKA	KCA
Jim Schuwerk	TOPEKA	KECH
B.V. SNEED	TOPEKA	State Farm
Larry Shaffer	TOPEKA	Kns. Hosp. Assoc.
Dick Dsaver	Wichita	Coleman Co.
Harold Riegel	TOPEKA	KADM
Melie Sweeney	Overland Park	OP Chamber
Pam Somerville	TOPEKA	Ks Motor Car Dtrs Assn

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 Bank IV Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321



A consolidation of the
Kansas State Chamber
of Commerce,
Associated Industries
of Kansas,
Kansas Retail Council

Sub. for HB 2354

March 16, 1993

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the
Senate Committee on Commerce

by

Terry Leatherman
Executive Director
Kansas Industrial Council

Madam Chairperson and members of the Committee:

I am Terry Leatherman. I am the Executive Director of the Kansas Industrial Council, a division of the Kansas Chamber of Commerce and Industry. Thank you for the opportunity to explain why the Kansas Chamber feels Substitute for HB 2354, when coupled with amendments from this Committee, will produce a comprehensive reform of the Kansas workers' compensation system.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees. KCCI receives no government funding.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

3/16/93
Commerce
Attachment 1-1

There are many dramatically compelling reasons why the Kansas business community is looking to the Kansas Legislature to revamp the extremely troubled workers' compensation process in our state. However, in the interest of time, I will restrict my comments today to specific areas which KCCI feels are the most critical areas in achieving comprehensive reform.

FRAUD No organization has been more outspoken about the need for a strong "fraud" provision in Kansas law than the Kansas Chamber. KCCI has been convinced that a fraud statute is the cornerstone of restoring employer confidence that the workers' compensation system would only benefit truly injured workers.

However, KCCI feels the sea of administrative fines and penalties in Sub. for HB 2354 for "abusive" practices would send the wrong direction, by increasing confrontation, rather than cooperation, between the principal parties in a workers' compensation case. As a result, KCCI supports the amendment of the Senate Commerce Subcommittee to return this portion of reform to what KCCI has been proposing for two years, civil and criminal penalties for parties which commit fraud.

BENEFIT REVIEW CONFERENCES One very evident problem in today's Kansas workers' compensation system is that no structure currently exists which attempts to bring employers and injured workers together to resolve their differences in a workers' compensation case. The system literally drives employers and employees to lawyers. Once litigation begins, not only do costs soar, but the process systemically pits employer versus employee. Our best opportunity to break the vicious cycle of employer/employee legal combat is through development of a benefit review conference structure. In simple terms, the benefit review conference creates a step in the process where mediation and cooperation is given a chance to work. If the case cannot be resolved, the legal system remains.

Sub. for HB 2354 permits lawyer participation in the benefit review conference. KCCI feels this would trivialize the benefit review conference into nothing more than a discovery session for lawyers before legal combat begins. Therefore, KCCI strongly supports the Senate Commerce Subcommittee amendment to reinstitute a benefit conference system as a true dispute resolution process for the Kansas workers' compensation system.

PERMANENT PARTIAL GENERAL DISABILITY During a February 23 appearance before the Senate Commerce Subcommittee on Workers' Compensation, KCCI suggested there were two key policy questions to answer in the area of permanent partial general disability. During

Committee action last week, a third policy question was injected into the workers compensation reform debate.

1) What objective standard should be used to determine the degree of work disability? Sub. for HB 2354 and the Senate Subcommittee amendment in this area both adopt a "wage based" approach to defining "work disability," which KCCI supports. Of the two approaches, KCCI strongly prefers the Senate Subcommittee's definition because it does the better job of clearly telling the legal process legislative intent.

2) What cases should qualify for work disability compensation? The key difference in this area is that Sub. for HB 2354 denies work disability while an employee "is engaging" in comparable wage work, while the Senate Subcommittee bans work disability if the employee "engages" in comparable wage work. Of the two, KCCI prefers the Senate Subcommittee approach, however the key to this provision will be how the courts apply the definition of permanent partial general disability.

3) During Subcommittee deliberations last week, a new issue in the workers' compensation reform debate surfaced when a new calculation formula for permanent partial general disability was proposed. KCCI urges the Committee to consider this proposal, which provides prompter compensation payments to injured workers and would address the much discussed problem of individuals who maximize awards due to their high income, rather than their degree of disability.

VOCATIONAL REHABILITATION Sub. for HB 2354 greatly changed the vocational rehabilitation process which injured workers would follow in Kansas. Senate Commerce Subcommittee amendments went a step further, making vocational rehabilitation an employer-option program. While the Senate Subcommittee action is generally viewed as "killing" vocational rehabilitation in Kansas, KCCI respectfully disagrees.

The Kansas Chamber has maintained the key to correcting the flaws in the current vocational rehabilitation process is to define "work disability" to encourage the social good which can be achieved through vocational rehabilitation. Confidence in the "work disability" definition makes KCCI believe vocational job placement and training will be pursued by employers, when appropriate, in an attempt to reduce the work disability compensation an employee would qualify to receive. While KCCI finds both approaches supportable, an organization representing business must support an approach which leaves the decision on using vocational services in the hands of the employer.

*3/16/93
Commerce*

✓ **WORKERS' COMPENSATION FUND** Sub. for HB 2354 makes two substantial changes in how employers can involve the workers' compensation fund in a case. The first removes the requirement an employer show knowledge of a disability to implead the fund. The second creates a system where the fund's responsibility is negotiated, rather than the current practice of the fund being a party in the legal process. Both of these provisions were stricken by the Senate Commerce Subcommittee.

While KCCI did not advance these proposals in our organization's blueprint for reforming workers' compensation, the Kansas Chamber does support the changes in Sub. for HB 2354. In recent years, the Workers' Compensation Fund has changed from a pool of state money to encourage the hiring of disabled Kansans, to a state/employer partnership in achieving the fund's social objective, to a totally employer paid fund which "socializes" the cost of cases involving prior disability.

Since the state of Kansas has abandoned its involvement in contributing to the Workers' Compensation Fund, KCCI supports the concept of employer negotiation with the Insurance Commissioner's office to determine fund responsibility.

CONSENT TO SETTLE One issue which has not been included in Sub. for HB 2354 or the Senate Commerce Subcommittee's work on this bill is the requirement that a "consent to settle" clause be included in workers' compensation insurance contracts.

One of the major differences between insuring your workers' compensation coverage and self-insuring is an employer's ability to be actively involved in a claim. A "consent to settle" clause in insurance contracts would bring the insured employer one of the privileges enjoyed by self-insuring employers, by giving the insured employer the right to be involved in a decision to resolve a workers' compensation case. If an insured employer exercises the right this proposal gives them not to settle a claim, the employer would accept the responsibility to further contest the case. An amendment to create a "consent to settle" provision in Kansas is included with my testimony, for the Committee's consideration.

The Kansas Chamber began the 1993 session of the Kansas Legislature promoting a proposal to comprehensively reform the workers' compensation process in Kansas. Included in my testimony is a summary of the elements which comprise the KCCI's blueprint for reform, and whether the element is included in Sub. for HB 2354. Obviously, KCCI would support Senate amendments to include items which are not in Sub. for HB 2354.

3/16/93
Commerce
1-4

Madam Chairperson, thank you for the opportunity to comment on critical areas achieving workers' compensation reform in Kansas for the state's business community. I would be happy to attempt to answer any questions.

CONSENT TO SETTLE CLAUSE AMENDMENT

KSA 44-559. Insurance against liability; form and contents of policy. Every policy of insurance against liability under this act shall be in accordance with the provisions of this act and shall be in a form approved by the Commissioner of Insurance. Such policy shall contain an agreement that the insurer accepts all of the provisions of this act, that the same may be enforced by any person entitled to any rights under this act as well as by the employer, that the insurer shall be a party to all agreements or proceedings under this act, and his appearance may be entered therein and jurisdiction over his person may be obtained as in this act provided, and such covenants shall be enforceable notwithstanding any default of the employer.

Such policy shall provide that the insurer shall not settle any claim in excess of \$5,000 without the consent of the employer. Should the employer refuse to consent to any settlement recommended by the insurer and elect to contest the claim, or continue any legal proceedings in connection with such claims, the policy may provide that the insurer's liability for the claim shall not exceed the amount in excess of the settlement offer which the employer refused to consent, plus the costs and expenses incurred with the insurer's consent up to the date of the refusal.

3/16/93
Commerce

CCI PROPOSAL TO REFORM WORKERS' COMPENSATION**SUB FOR HB 2354**

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| 1. Establish a program to encourage employers to implement effective safety programs. | YES |
| 2. Establish criminal and civil penalties to combat workers' compensation "fraud." | YES, BUT SENATE PROPOSAL IS PREFERRED |
| 3. Absolve employers of liability when alcohol or drug use "contributed to" a work place accident. | YES, BUT SENATE PROPOSAL IS PREFERRED |
| 4. Establish a Workers' Compensation Board as the system's appeals arm, replacing current appeals to the workers' compensation director and to district court. | YES |
| 5. Increase the current \$10,000 total payroll exemption from workers' compensation coverage. | YES |
| 6. Disallow the use of "unauthorized medical" for impairment rating purposes. | YES |
| 7. Encourage the creation of a medical fee schedule and utilization review by giving authority to the workers' compensation director. | YES |
| 8. Reform the vocational rehabilitation process. | YES |
| 9. Require the use of American Medical Association Guides when determining permanent impairment of function. | YES |
| 10. Permit employers to contest cases which an insurance company proposes to settle. | NO |
| 11. Establish a workers' compensation data collection process. | YES |
| 12. Eliminate the payment of work disability compensation to employees who have the ability to engage in work for comparable pre-injury wages. | YES, BUT SENATE PROPOSAL IS PREFERRED |
| 13. Reduce compensation to individuals who are also eligible for Social Security benefits. | YES |
| 14. In cases involving preexisting condition, compensation should be limited to the percentage of aggravation caused by the work related injury. | YES, BUT SENATE PROPOSAL IS PREFERRED |
| 15. Compensation limits should be established in cases which only involve functional impairment. | YES, BUT NEW SENATE PROPOSAL IS PREFERRED |

3/16/93
Commerce

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| All parties should be permitted to appeal preliminary hearing decisions. | YES |
| 17. A benefit review process should be established where a mediator attempts to resolve disputes, without attorney involvement. | YES, BUT SENATE CHANGE IS ESSENTIAL |
| 18. To encourage dispute resolution, limits should be established on claimant attorney fee. | YES, BUT SENATE PROPOSAL IS PREFERRED |
| 19. The current requirement for an employee to notify an employer within 10 days of an injury should only be waived if an employee shows "just cause" for the failure to notify. | YES, BUT SENATE PROPOSAL IS PREFERRED |
| 20. Compensation should not be awarded when an injury results from an employee's failure to follow established safety procedures. | NO |
| 21. Establish objective standards for determining permanent total disability. | NO |
| 22. Establish lifetime limits for permanent partial disability benefits. | NO |
| 23. Classify all injuries to opposite upper extremities as scheduled injuries. | NO |
| 24. The term of the Workers' Compensation Director should coincide with their appointing Governor. | NO |
| 25. Attorney legal ads should include a disclosure statement that w.c. benefits do not require legal representation. | NO |
| 26. Temporary disability compensation should not be awarded without medical opinion that an employee cannot return to work, with or without accommodations. | NO |

3/16/93
Commerce
 1-7

SENATE COMMERCE COMMITTEE

MARCH 16, 1993

Madam Chairman:

Thank you for allowing me to appear before you. I requested this opportunity because of recent publicity concerning an award of mine in the case of Fletcher Bell, former Insurance Commissioner. The award was based solely on the stipulated facts and evidence presented to me by Mr. Bell and the State Self-Insurance Fund, which represented the interests of the State of Kansas in the matter. The State stipulated that claimant met with personal injury by accident arising out of and in the course of his employment. The only issues were the nature and extent of disability and future medical. The medical evidence consisted of two doctors' reports. No depositions were taken of either doctor by the parties.

What made the award relatively high were the high impairment ratings of 25% and 37% and claimant's high average weekly wage of \$1,167.33. Neither party appealed my decision of 30% impairment.

I will be glad to answer any questions you may have concerning Mr. Bell's case.

Since you have also asked me to comment on pending workers compensation legislation, I will do so. Removing the director's reviews and appeals to the district courts will reduce needless and costly time-consuming litigation. Providing for appeals of preliminary hearing orders, however, will virtually guarantee a new and needless step in the litigation process that has not been present up to now. Also, there is a danger in my opinion that the proposed "benefit review conference" could develop into a new level of hearings, with attendant delays and expense due to lawyer involvement.

3/16/93

Commerce

Attachment 2-1

The proposal to remove from the formal hearing process issues regarding workers compensation fund liability appears to be an excellent alternative dispute resolution; a solution to burdensome case loads and litigation expense.

The elaborate legislation dealing with fraud is, in my opinion, largely unnecessary. In my 17 years experience in workers compensation matters, I have probably conducted in excess of 5,000 hearings. I have seen relatively little evidence of outright fraud. The adversarial system of trial which includes discovery and cross-examination of claimants is, I believe, an adequate safeguard for weeding out unmeritorious claims. Most injured workers merely want to have their medical bills paid and get back to their jobs. Normally, people do not relish the prospect of putting themselves under what can be and often is withering cross-examination by a skilled attorney, with attacks on their credibility. Under this process, even slightly exaggerated claims are usually exposed so that they may be weighed in the judicial balance in making awards.

Related to the issue of fraud is bad faith dealing by insurance companies and self-insureds when it comes to complying with orders for the payment of compensation and medical bills. This has been a serious problem in the past and could become one again since the pyramiding of penalties is no longer allowed. Much stiffer penalties for non-payment of compensation and medical bills needs to be provided.

With regard to attorneys and public officials who are involved in workers compensation matters, I would suggest these claimants not be allowed to enter into lump sum settlements but should be required to have their cases fully heard and awards paid out

3/16/193
Commercel

weekly. Where there is a possibility of a conflict of interest in the trial of a public official's claim for workers compensation wherein the agency defending the claim on behalf of the public has had prior dealings with that official which might compromise the agency's ability to objectively defend the taxpayers' interest, the defense should be undertaken by independent counsel or the Attorney General.

Lastly, but perhaps most important, are the various proposals dealing with the effort to deny compensation to injured workers for the sum total of the effects of their injuries by reducing or eliminating compensation for pre-existing conditions, beyond the provisions in the anti-pyramiding statute and added relief for employers and insurance companies through the workers compensation fund for pre-existing handicaps and conditions. The current proposals could have the effect of virtually eliminating compensation to injured workers who are unemployed due to the combination of a work injury and a pre-existing impairment, neither of which by themselves would cause such a result.

The Kansas Supreme Court has long held, with the vast majority of states, that an injury which aggravates, accelerates, or intensifies an existing disease or condition is compensable and it is error to apportion an award between the pre-existing disability and the disability suffered because of the accident. The steady application of this rule over the years should not have caused any dramatic increase in workers compensation costs. The fact that insurance rates have gone up substantially in the last few years is no reason to discard this well-reasoned rule. It is common knowledge that many insurance companies in the past several years have suffered substantial losses in the real estate and junk bond markets, as have savings and loans and banks. It is also true that more employers are opting to be self-insured, thus taking away

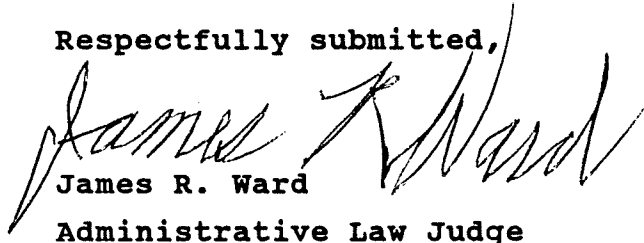
3/16/93
Commerce
2-3

premium income.

To make up for those losses it is not surprising that insurance premiums have been going up. However, for the legislature to be stampeded into making substantial changes in longstanding social policy would be, I think, a mistake.

Our workers compensation legislation has represented a social pact for over 80 years between business, labor and taxpayers. If the costs of work place injuries are not borne by industry this pact will be broken and the taxpayers will be called upon to provide more welfare benefits for injured workers as a result.

Respectfully submitted,

A handwritten signature in cursive script that reads "James R. Ward". The signature is written in dark ink and is positioned above the typed name and title.

James R. Ward

Administrative Law Judge

3/16/93
Commerce
2-4

TESTIMONY
OF
GARY BURHOP
DIRECTOR OF PUBLIC AFFAIRS
FLEMING COMPANIES, INC.

SUB. For HB 2354
Senate Commerce Committee
March 16, 1993

Madam Chairperson and members of the Committee, I am Gary Burhop, Director of Public Affairs, for the Fleming Companies, Inc. Thank you for allowing me to appear before you today to express, first, our serious concern about rapidly escalating workers' compensation premiums in Kansas as well as in other states in which the Fleming Companies do business, and second to applaud the Kansas legislature for their willingness to address this problem and resolve it.

The Fleming Companies employ nearly 800 people in Kansas, maintain its Mid America Region offices in Shawnee Mission, Kansas, operate a warehouse in Kansas City, Kansas, and two warehouses in Topeka. Our firm serves 126 retail grocers in Kansas and has an annual payroll in this state of \$23.5 million. With such a presence, and an annual \$1,000,000 workers' compensation cost in this state, we are anxious to see you succeed in this effort on behalf of Kansas businesses and Kansas working men and women.

Our company strongly supports a program that aids workers who sustain job related injuries. We believe they should be fairly compensated for an injury and for lingering disabilities resulting from an injury. We also believe this can be achieved while reforms are made in the system that reduce fraud, reduce litigation, educate workers on how the system works, encourage safety in the work place, and redefine what an injury is, so that compensation is paid for job related injuries, but not for the

3/16/93
Commerce

Attachment 3-1

natural aging process.

Although we have not yet had an opportunity to closely review your amendments to Substitute for HB 2354, information we have received clearly indicates that the Senate amendments to the House bill will result in stronger legislation that could hold the line on premium increases or at least reduce possible increases.

By addressing the following problems, you will, our experts believe, reform a system that appears to be a burden not only to employers, but to injured workers who deserve to be promptly and fairly compensated for injuries and disabilities that occur in the work place.

First, you have addressed the problem of doctor-shopping.

Second, you have changed the definition of "accident" to return to the original intent of the law which is to cover traumatic injuries and occupational diseases, and eliminate payments for natural aging and for stress resulting from day to day living.

Third, you have added bilateral carpal tunnel syndrome to the list of scheduled injuries.

Fourth, you have proposed a strong ombudsman program similar to the one which appears to be succeeding in reducing confusion and litigation in Texas.

With the inclusion of these and other amendments by your Committee, it appears the Senate is building on the more modest reforms the House initiated in Substitute for HB 2354. We believe that these amendments are necessary if the system is to be truly reformed and escalating costs contained. We are here today to offer you our encouragement and support, and best wishes in this important effort.

3/16/93
Commerce



WICHITA INDEPENDENT BUSINESS ASSOCIATION

Riverview Plaza Suite 103 • 2604 W. 9th St. N. • Wichita, Kansas 67203-4794
(316) 943-2565 FAX (316) 943-7631

March 16, 1993

ROLANDE SMITH, *Executive Director*

STATEMENT TO THE SENATE COMMERCE COMMITTEE
SUBJECT: Sub. HB 2354

Madam Chairperson and Members of the committee, I would like to Thank You! for the opportunity to appear before you today regarding workers' compensation reform as proposed in Sub. HB 2354.

I am Roland Smith, Executive Director for the Wichita Independent Business Association. WIBA is an association made up of over 400 types of locally owned businesses in the Wichita trade area. WIBA represents over 900 employers and they all have a very big stake in the issue of workers' compensation costs that are devastating many of them.

I do not believe we need to repeat a number of horror stories of some of our members, however, here are examples as to how two employers are dealing with the situation. One has 23 employees and he is laying off one and spreading the work load in order to pay his workers' compensation insurance premiums. Another man and wife with four other employees have laid off all four employees due to the combination costs of medical insurance, unemployment taxes and workers' compensation insurance premiums. In Kansas 88.9% of all business have 25 or fewer employees and 88.1% have less than 10 employees. They make up 50 to 55% of all jobs in Kansas. Now if most of these business take the same remedy as these two examples, the Boeing layoffs would look very small in comparison. This issue is a serious component to economic development and all legislators, regardless of their party affiliation should realize this. Many jobs in Kansas are currently being lost and this is another nail in the coffin for many small businesses trying to survive.

No small independent business wants to deprive an injured worker of medical care or his ability to return to work at comparable wages or be compensated fairly for their injuries. It is unfortunate that the trial lawyers and many in organized labor try to paint a different picture much of the time. It is time everyone realizes it is small independent businesses that create the most jobs that allows our state and county's economy to grow. It is my hope that we all can pull together on this issue... share the blame and share in the solution by passing the necessary legislation to stop the bleeding.

The Worker' Compensation System in Kansas is hemorrhaging and we are looking at a band aid in Sub. HB 2354 as it was passed out of the House. Substantial amendments to this bill are needed to address the real cost drivers. The spiraling cost of Workers' Compensation Insurance for small independent businesses must be reduced substantially or many will not survive this year.

In brief, the following must be addressed: (1.) Work Disability - Language to overturn the Hughs decision and stay with the concept of being able to perform comparable wages as was the intention in the beginning. (2.) Vocational Rehabilitation - completely the employers' choice. (3.) Pre-existing Conditions - pay only for the conditions aggravation by the workplace. (4.) Schedule Upper Extremity Injuries - A schedule as a guide for providing disability payments for specific injuries. (5.) Recalculation of Off-Schedule Injury Awards - This would place a salary cap of the state average weekly wage as the multiplying factor for all permanent partial injuries, not just those which happen to fall on the schedule.

This means returning to the no-fault insurance concept intended in the creation of workers' compensation years ago.

It is my understanding from sitting in on most of your sub-committee meetings, that the subcommittees' proposed amendments have addressed these cost drivers. WIBA intends to support Sub. HB 2354, if amended to include those amendments that will result in legislation that will reduce the cost of Workers' Compensation Insurance as soon as possible.

WIBA members will do all they can to convince members of this legislature and the Governor of the urgency of this matter.

Thank You!

*3/16/93
Commerce*

Attachment 4

BRB Contractors, Inc.
HEAVY AND UNDERGROUND CONSTRUCTION

Phone (913) 232-1245
Fax # (913) 235-8045



400 N.W. Curtis Street

P.O. BOX 8128
TOPEKA, KANSAS 66608-0128

TESTIMONY

**BY THE KANSAS CONTRACTORS ASSOCIATION
BEFORE THE SENATE COMMERCE COMMITTEE**

REGARDING

SENATE BILL 215

MADAME CHAIR AND MEMBERS OF THE SENATE COMMERCE COMMITTEE,
THANK YOU FOR ALLOWING ME THE OPPORTUNITY TO SPEAK TO YOU IN
SUPPORT OF S.B.215 TODAY.

I AM MICHAEL WELCH, PRESIDENT OF BRB CONTRACTORS, A 34-YEAR
OLD TOPEKA GENERAL CONTRACTING FIRM THAT CONSTRUCTS HEAVY
INFRASTRUCTURE IN THE STATES BETWEEN THE ROCKIES AND THE
MISSISSIPPI.

THE OPPORTUNITY TO CONDUCT BUSINESS IN SEVERAL STATES GIVES
OUR COMPANY AN ADDITIONAL PERSPECTIVE OVER SOME LOCAL
BUSINESSES. WE CAN COMPARE THE STATES AND COSTS OF DOING
BUSINESS IN THE DIFFERENT STATES.

ABOUT 5 YEARS AGO WE ELECTED TO CLOSE AN OFFICE IN AUSTIN,
TEXAS, AND TO CEASE OPERATIONS IN THAT STATE. WE DID THIS
DUE TO THE WORKERS COMPENSATION CRISIS AT THAT TIME IN
TEXAS. OUR INSURANCE CARRIERS WERE ABANDONING US. EVEN
THOUGH WE ONLY WITNESSED A COUPLE MINOR (SPRAINS AND
STRAINS) INJURIES ON A PROJECT AT GAINESVILLE, TEXAS,
LAWYERS AND DOCTORS WERE ABLE TO MILK \$600,000.00 OUT OF OUR
INSURANCE CARRIER AT THE END OF THE JOB, RAISE OUR
EXPERIENCE MODIFIER TO 1.7 IN ALL STATES, AND MAKE DOING
BUSINESS IN TEXAS UNPROFITABLE. IT ALSO AFFECTED OUR
ABILITY TO DO WORK IN EVERY OTHER STATE, BECAUSE IT MADE US
NON-COMPETITIVE IN NON-PARASITIC STATES, DUE TO OUR
ATROCIOUS MODIFIER. SINCE LEAVING TEXAS, OUR MODIFIER HAS
GONE DOWN TO 0.84. NOW KANSAS IS STARTING TO LOOK LIKE

3/16/93

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Attachment 51

TEXAS DID BEFORE THEY REFORMED THEIR SYSTEM, INCLUDING ANTI-BUSINESS ATTITUDES, LAWYERS ACTING ON TV, AND STATE LAWS THAT ARE OBSOLETE AND UNWORKABLE.

OUR COMPANY IS INTERESTED IN OUR EMPLOYEES. WE ARE AN EMPLOYEE OWNED COMPANY, SO WE DO HAVE AN INTEREST IN OUR "OWNERS". EVEN THOUGH WE HAVE ONE OF THE BEST SAFETY AND HEALTH PROGRAMS AROUND, SEVERAL OF OUR NEWER EMPLOYEES HAVE ABANDONED US AND THROWN IN THEIR LOT WITH SOME LAWYER THAT THEY MET ON A TV AD. AS PRESIDENT OF OUR COMPANY, I HAVE AN OPEN DOOR POLICY TO ALL EMPLOYEES. I VISIT THE EMPLOYEES PERIODICALLY ON ALL OF OUR JOBS. HOW MANY TIMES DO YOU THINK AN EMPLOYEE HAS CALLED ME ABOUT A PROBLEM WITH EITHER OUR INSURANCE COMPANY OR US OVER AN INJURY? NOT ONCE!! WHY?? BECAUSE WORKERS COMPENSATION LAWYERS HAVE GIVEN THE PUBLIC THE PERCEPTION THAT INSURANCE COMPANIES AND EMPLOYERS ARE THE BAD GUYS, AND LAWYERS ARE THE GOOD GUYS. SO, WORKERS DON'T CALL US ABOUT A PROBLEM FOR ONE OF TWO REASONS THAT I CAN FIGURE OUT: 1) THEY DON'T KNOW WHAT THEIR RIGHTS ARE AND HAVE THE MISCONCEPTION THAT ONLY A LAWYER CAN GET WHAT IS RIGHTLY THEIRS, OR 2) THEY ARE IRRESPONSIBLE, HAVE NO WORK-RELATED INJURY AND ARE MILKING SOCIETY FOR EVERYTHING THEY CAN GET FOR NOTHING, ALONG WITH THEIR LAWYER AND DOCTOR.

I WOULD BET THAT 90% OF THE CLAIMS THAT COME THRU OUR DOORS ARE FAKE. FROM MY PERSPECTIVE I FEEL THAT ALL CITIZENS ARE RESPONSIBLE TO GET PROPER HEALTH CARE ON THEIR OWN AND RELY ON THE SYSTEM TO GET THEIR REMUNERATION. WHEN I THREW MY BACK OUT LIFTING A CAST IRON FITTING A COUPLE YEARS AGO, I DID NOT CALL A LAWYER. I WANTED RELIEF, NOT A THIEF. I WENT TO A CHIROPRACTOR, LIMITED MY VISITS TO THREE, DID SOME EXERCISE, CARED FOR MY BACK, AND WITHIN THREE MONTHS IT WAS AS GOOD AS NEW. I HAD NO LOST TIME FROM WORK, AND THE COST WAS LESS THAN \$500.00. YOU SEE I HAVE AN ATTITUDE THAT'S RIGHT. I TRY TO BE SELF- RELIANT AND RESPONSIBLE. I REALIZE THAT INSURANCE COMPANIES ARE MIDDLEMEN. ANYTHING THAT THEY PAY OUT COSTS SOMEONE ABOUT DOUBLE. FOR INSTANCE,

3/16/93
Commerel
5-2

OVER THE LAST THREE YEARS WE HAVE PAID IN \$1,345,582.00 IN EARNED PREMIUM AND OUR EMPLOYEES HAVE INCURRED LOSSES OF \$697,307.00 FOR A LOSS RATION OF 52%. SINCE OUR COMPANY WORKS FOR THE PUBLIC, THE PEOPLE PAYING TAXES AND USER FEES PAY FOR OUR INSURANCE AND CLAIMS; THAT INCLUDES EVERYBODY. THE SOLUTIONS TO OUR PROBLEMS AS I SEE THEM ARE:

1) MAKE WORKERS COMPENSATION INSURANCE A TRUE NO FAULT SYSTEM, AND KEEP ATTORNEYS FROM BENEFITING FROM THE SUFFERING OF OTHERS. LIMIT ATTORNEY'S FEES AND STOP THE PRACTICE OF "SHOPPING" FOR DOCTORS.

2) THE STATE SHOULD KEEP DATA ON DOCTORS WHO GET INVOLVED IN WORK COMP CASES TO SEE WHAT PERCENTAGE OF THEIR BUSINESS IS GENERATED BY INJURED WORKERS. IF THE PERCENTAGE IS OVER 1%, THEN CAREFUL SCRUTINY SHOULD OCCUR, INCLUDING FULL DISCLOSURE OF TREATMENTS, FEES, EFFICIENCY, RESULTS, TIME FOR RECUPERATION, PERCENTAGE OF CASES RESTORED TO HEALTH, AND OTHER DATA TO BE USED TO GRADE THE DOCTOR. DOCTORS WHO ARE NOT SUCCESSFUL TREATING PATIENTS SHOULD BE BARRED FROM PRACTICING IN THIS ARENA OR THEIR FEES SHOULD BE ADJUSTED TO THE COST PER HOUR FOR THEIR RECEPTIONIST. IN SHORT IF THEY WANT TO PLAY, THEY SHOULD GET RESULTS, NOT JUST REMUNERATION, LIKE THE REST OF US.

3) MAKE EVERY LAWYER THAT PRODUCES ADS FOR THE MEDIA DISCLOSE WHAT THEIR AVERAGE PERCENTAGE OF COMPENSATION FOR CLAIMS HAS AVERAGED FOR THE PAST THREE YEARS, AND ALSO INFORM THE PUBLIC THAT CLAIMS CAN BE PROCESSED BY THE SYSTEM WITHOUT A LAWYER. A DATA BASE ALSO SHOULD BE KEPT BY THE STATE ON PARTICIPATING LAWYERS TO DETERMINE THEIR EFFICIENCY. THE NUMBER OF HOURS SHOULD BE DISCLOSED, THE PRICE PER HOUR FOR EACH CLAIM, THE DISPOSITION OF THE CLAIM, THE EXTRA BENEFITS THE LAWYER GOT THE CLAIMANT OVER WHAT THE INSURANCE COMPANY OFFERED, HOW SOON THE CLAIMANT WAS ABLE TO RETURN TO WORK, THE MEDICAL CONDITION BEFORE AND AFTER THE LAWYER'S ASSISTANCE TO THE CLAIMANT, AND THE PERCENTAGE OF TIME THAT THE LAWYER WON WHAT WERE HIS/HER OBJECTIVES.

4) PROVIDE DOCTORS THAT ARE TRUTHFUL ABOUT AN INJURY,

3/16/93
Commerel
5-3

PROTECTION FROM PARASITIC LAWYERS AND THEIR MALPRACTICE SUITS. HOW MANY DOCTORS ARE GOING TO SAY THAT A CLAIMANT IS OK WHEN THAT CLAIMANT HAS A LAWYER READY TO TAKE THE DOCTOR OUT OF HIS PRACTICE AND DEPOSE HIM AND HARASS HIM? DOCTORS' PRACTICES SHOULD NOT BE DICTATED BY LAWYERS!

5) ACCEPT THE PACKAGE IN S.B. 215 AS A GOOD STARTING POINT AND REFINE IT IN THE FUTURE.

6) GIVE EMPLOYERS THE ABILITY TO SPEAK TO THEIR EMPLOYEES^e WITHOUT GOING THRU A LAWYER. WE CANNOT EVEN SPEAK TO AN EMPLOYEE ONCE HE OR SHE HAS BECOME THE VICTIM OF AN ATTORNEY (USUALLY BEFORE WE KNOW THE EMPLOYEE IS INJURED). WE WOULD LIKE TO BE ABLE TO ASSIST AN EMPLOYEE IN OBTAINING HEALTH CARE. WHEN YOU CAN'T EVEN TALK TO THEM WITHOUT HIRING AN ATTORNEY TO TALK TO THEIR ATTORNEY TO DETERMINE WHAT IS WRONG, WHAT CAN WE OR THE INSURANCE COMPANY DO?

7) START A CAMPAIGN TO EDUCATE THE PUBLIC OF THEIR RIGHTS, BENEFITS, RESPONSIBILITY, HOW INSURANCE COSTS ARE FUNDED, HOW FRAUDULENT CLAIMS DESTROY THE ECONOMY, HOW TO BE MORE SELF-RELIANT WHEN NEEDING HEALTH CARE, HOW TO LIVE A HEALTHY LIFESTYLE, AND MOST IMPORTANTLY, HOW TO WORK SAFELY. ABOUT 80% OF ACCIDENTS OCCUR DUE TO THE EMPLOYEE'S DISREGARD FOR SAFETY RULES. LETS FACE IT, IF SOMEONE FEELS THAT ALL HUMAN BEINGS FOLLOW RULES, LET THAT PERSON GET A RADAR GUN AND CHECK A FEW HUNDRED PEOPLE FOR SPEED ON ANY HIGHWAY WITH GOOD SPEED SIGNAGE. MORE TRAINING IS NEEDED.

8) LASTLY, MAKE IT ILLEGAL TO GIVE THE PUBLIC THE PERSPECTIVE THAT EMPLOYERS ARE THE BAD GUYS. THIS IS THE ULTIMATE DECEIT.

THANK YOU FOR YOUR VALUABLE TIME; I WOULD BE GLAD TO ANSWER ANY QUESTIONS.

3/16/93
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5-4

My name is Janice Tow. I at the time of my work related accident was an employee of USD #233. My job was as a paraprofessional in speech and language. I use sign language to relate to hearing impaired preschool children.

I am contracted for 6 1/2 hours per day for nine months. In order to pay for my personal health insurance, I am required to have my salary spread from nine months to twelve. On a separate contract, I am involved with a summer school program.

I have been employed with the district for 16 years. I am proud of my work ethic, honesty, and dependability. Throughout my ordeal, my integrity was steadfast. I am a credible individual when it comes to discussing work comp related issues.

I am here today to ask you to carefully consider any changes you might recommend to reform the Workman's Compensation Law. Hopefully your wisdom will prevail as you consider the injured worker.

Briefly I will impart to you my injury and the experience with the system. I flipped over boxes left in the walking path of the school workroom. This injured my neck, shoulder and head, aggravating a pre-existing condition that had not been resolved. Now my pain was literally from top to bottom, as the fall re-injured the broken coccyx, low and mid-back.

At first dealing with the work comp insurance carrier was a breeze. The agent I had to deal with was amiable and considerate, as I involved her in every aspect of my case. After months of physical therapy, surgery, and muscle injections, I became frustrated with what seemed to be new rules to the "game" and asked for a medical case manager. She kept my medical care active while working with the carrier in every detail of my slowly improving condition. Just as suddenly as I entered the work comp arena, my treatment was suspended with my last visit to the carrier's p h y s i c i a n t o b e e v a l u a t e d a n d r a t e d.

After a very brief examination by an orthopedic surgeon who knew little about soft tissue injuries, I was told to engage in weight lifting, an activity that would set-up a potential injury to muscles that have developed a trauma related disease.

- A. Problems related to Workman's Comp and the Comp Ins. Carrier
1. too little information is available to the injured employee concerning the system
 2. method of getting TTD checks and cashing them was frustrating
 3. due to the complexity of my case and the aggravation of the system, felt forced to hire an attorney and ask for a medical case manager
 4. ins. carrier became defensive and their attitude change
 - a. payment of medical bill were paid slowly - 18 months
 5. when rated the carrier transferred case to their attorney
 - a. this created an expensive review of my record by their doctor, although all treatment was approved by carrier
 - b. there was refusal to communicate with my attorney
 - c. created many expenses to charge to the carrier
 - d. by the time he was finished and the case was closed

3/16/93

Commence

Pa 1 of 3

Attachment 6-1

the \$2,000 he saved the carrier didn't equal his bill

B. Personal ramifications

1. I lost a great deal of income during the period of TTD
I made 3 of every 8 dollars I earned.
2. at the time of settlement I lost 1/4 (\$4,000) because of
spread method of payment and the law addressing my position
part-time
3. I was offered a new position as an educational interpreter
a. due to the neck and shoulder injuries, my doctor would
not release me so as to accept
4. medical bills became a part of the settlement and I lost
there too
a. they would pay only \$2,000 of \$4,000 approved while with
the case manager
b. the settlement losses now came \$6,000 of which \$2,000
was to come out of my pocket
5. every day it became evident that I was dealing with a system
that was not suited for a white collar worker playing by
blue collar rules
6. I am convinced that this is a system that protects the
employer and its' work comp insurance carrier
a. we are victims of a system that protects the employer and
most of all the insurance companies

C. Changes to be addressed by work comp reform

1. school district employees with a 9 month contract at 6 1/2
hr. per day (or similarly employed) be considered full time
on the basis of set contract
2. when dealing with salary payment due to spread method,
settlement should reflect actual dollars earned not adjusted
3. better method of explaining benefits - calling Topeka was
difficult- they were helpful if you knew the questions to
ask
4. better control of the carrier when they refuse or drag out
payment of approved medical bill
5. when a medical case manager is hired those approved bills
incurred during that time should be paid regardless and not
be a settlement issue
6. limit the time the carrier's attorney can drag a case on
7. limit the fee of the carrier's attorney the same as for the
attorney of the injured party
8. address the needs of the injured as well as the intent of
the law
9. soft tissue injury must be viewed equally with boney injury
10. white collar injuries do occur, considering the injuries to
be of a different nature than typical blue collar injuries,
the law should take this into consideration

Please allow me to clarify any questions you might have in
regard to this summary or my experience, as it was difficult to
condense a 4-5" volume for you.

This horrible experience with the system causes me to vow to

3/16/93

Commerce

Pa 2 of 3

6-2

never again admit to a work related injury. Since all I wanted was to have my medical bills paid and they weren't, it left me with a sour taste in my mouth as I received settlement. The experience compounded the pain I had as a hellish nightmare.

Ours should be a system that identifies with the injured worker. One should not come out of the experience in financial disaster. Our bills should be paid in a timely fashion and financially break even.

I don't believe I would have survived this nightmare without the assistance of a competent attorney who worked for me. He didn't make magic happen, the law is too restrictive for that. He didn't get rich, and neither did I. What he did do was deal with things I no longer could deal with.

I greatly appreciate the opportunity to talk and be listened to. I continue to be at your service if needed. Thank you.

Respectfully submitted,

Janice Tow
1645 Sunvale Dr.
Olathe, Kansas 66061

913-782-1680

3/16/93
Commerce
Pg 3 of 3
6-3

February 25, 1993

Senator Mike Harris
State Capitol Bldg.
Topeka, Kansas

Dear Senator Harris,

I was bitterly disappointed that the overnight snow storm kept me from meeting with you today. I just knew that putting a face with my summary would impact you and your sub-committee.

Perhaps at some point in time, I will still have that opportunity to lobby for the common man so that their experience with WC will have a more pleasant ending than mine.

I, unlike Former Commissioner Fletcher Bell or Robert Anderson, made approximately \$9,000 a year from my contract employer. I realize that his \$60,000 income was a big factor, but there is more to his claim that interests me.

After all was said and done, I was given a 12% body as a whole disability rating from my carrier's physician, rather than 30% Mr. Bell got from his carrier. My muscle rehab doc rated me 25%, finally after negotiating we settled for 18.5% rating with a loss of several thousand dollars.

I would have loved to have settled for what my attorney originally computed at 25%. \$16,000 was where we started. I would have liked the \$12,000 before the judge said I was considered a part time employee by law. We finally took a \$10,000 offer which included \$2,000 to be paid toward the \$4,000 plus unpaid approved 18 month old doctor bill. Wow! I walked out with a settlement check of approximately \$6,000 plus a debt of \$2,000 for the above bill.

My health prohibits me from riding any distance in a car, cleaning my house for more than 15 min. at a time, using sign language for more than a few minutes at a time, most any kind of fitness exercise, shopping, standing or sitting for prolonged periods of time.

The list could go on. The point is my entire life will never be the same. I come home from work many days and go to bed. I limit my evening activities to once a week. I continue to work because I must, I am uninsurable elsewhere, and must work at USD #233 to be insured. There is no way that I could consider playing golf with Mr. Bell, I rarely have good days. My pain level goes from bad to worse. Mr. Bell may need surgery, but surgery will not help my severe headaches, nor control the pain that goes down my arms, numbing my hands.

I thought by coming today, I would find some justice in a system that fails the common man. My husband was out of work during a period of one year of my work comp experience. I had to use my personal sick days to continue to qualify for my families'

3/16/93

Commerce

Pg 1 of 2

6-4

health coverage. After paying \$450.00 a month and spread my salary over 12 months, I had school district checks of \$35.00 and TTD of maybe \$40.00. Yet another slap in the face by Work Comp and their unfair laws.

It sickens me to read about Mr. Bell and his \$24,000 or Mr. Anderson's \$30,000. My appeal remains the same, remember the people like myself. White collar includes people making \$6.00-\$10.00 an hour and get \$6,000-\$10,000 settlements for whole body permanent injuries. \$10,000 for a ruined life - I guess it is too bad - after all life isn't fair.

I followed every letter of the law and procedure of the insurance carrier. What I'd like to know is who was the insurance carrier, attorney, doctor and judge that thought Mr. Bells whole body injury warranted 30% rating. I would have like the just and fair treatment that he got.

Honestly, I tried in my summary to be brief, factual, and tempered emotionally. That article made me remember quickly the emotion that I had left out. I thought for the longest time the saying "it isn't what you know, but who you know," had some truth. Wrong, I now believe Mr. Bell has it right, it is not only who you know but what you know. It worked for him.

Yours,

Janice Tow

3/16/93
Commerce

Pg 2 of 2

6-5



LANDOLL CORPORATION

1700 May St. • Marysville, Kansas 66508 • Ph. (913) 562-5381

March 4, 1993

The Honorable Alicia Salisbury
The Kansas Senate
State Capitol, Room 143-N
Topeka, KS 66612

Dear Senator Salisbury:

I am writing in response to the Workers Compensation proposed increase. For the last three years we have absorbed substantial increases, and in 1993 a 21 percent increase is proposed. It is assumed by business that the compensation board will negotiate this increase and reach a compromise that everyone will be happy with. Rest assured this is not the case.

Senate Bill 215 is a reasonable start on reform. We need to enact this or a similar bill that will help resolve the enormous problems we are experiencing. Employees view this as a haven for money. Mr. Todd retires at \$48,000 a year and comes back at \$60,000 a year as a consultant and still draws retirement pay. In addition, Fletcher Bell gets his brief case out of the back of his car and is awarded a \$95,000 Workman's Compensation settlement. If that isn't enough, Robert Anderson, Director of Workman's Compensation, gets a book off the shelf; and this costs \$30,000.

In many cases we have liberal judges deciding the cases on Workman's Compensation. It is extremely difficult to be fair and objective when these abuses go on every day by our administrative bodies. We need to overhaul the Workman's Compensation system immediately. We need a program that will be fair to both industry and the worker. Our position today is that industry cannot win a Workman's Compensation case. Many of the claims are fraudulent, and it is very difficult to do anything about them.

Your assistance and help is needed. Rest assured we have many horror stories to tell if you would like to hear them.

Very truly yours,

LANDOLL CORPORATION


Tom Joyce
Executive Vice President

slm

63@1-25

Remember: Quality is always a bargain!

3/16/93

Commerce
Attachment
7



March 4, 1993

The Honorable Alica Salisbury
Kansas State Senator
State of Kansas
State Capital - Room 120-S
Topeka, Kansas 66612

Dear Senator Salisbury:

One of the most dynamic problems facing Yellow Freight System today is the rising cost of workers compensation. Yellow, like other self-insureds, pay these increased costs directly through inflated costs of benefits, administration and litigation. Obtaining meaningful cost reductions has become our number one priority in Kansas for 1993.

The Kansas House of Representatives recently passed Sub HB 2354 which provides meaningful reform to the workers compensation crisis. The House version provided a good foundation; however, it did not address all the issues we believe are necessary.

As Chairperson of the Senate Commerce Committee you will continue to discuss Senate Bill 215. We look to this process to improve the reform effort. Issues like employee change in physician, elimination of attorneys in the benefit review conference and carpal tunnel syndrome must be contained in SB 215. Without these additional reforms, business may not receive the relief to major cost drivers in the workers compensation system.

During your deliberations in the upcoming weeks we urge you to stand strong and consider those reform issues not included in the House reform package. I have enclosed a list of issues we believe need your consideration.

Thank you for your consideration of our views.

Sincerely,

Stephen S. Richards
Manager-Government Relations

3/16/93
Commerce
recycled and recyclable

Attachment 8-1

YELLOW FREIGHT SYSTEM, INC.
KANSAS WORKERS COMPENSATION REFORM

Issues not addressed in Sub HB 2354

- Change in Physician. Some methodology is needed to eliminate the dueling doctors for impairment ratings. Either use an employers provided list or incorporate the responsibility in the benefit review conference, but without attorney involvement.
- Scheduled injuries. Provide for injuries to extremities to be scheduled injuries. This is aimed principally at carpel tunnel syndrome.
- Benefit Review Conference. Attorney involvement in this dispute resolution process will not provide any better forum than presently exists. Attorneys need to be excluded to reduce litigation and provide a non-advisorial climate.
- Vocational Rehabilitation. While the reforms contained in Sub HB 2354 eliminate the mandatory aspect of rehabilitation, if employees can dictate rehabilitation it will only continue the practice of including vocational rehabilitation in lump sum settlements. The definition of work disability provides an incentive to employer's to provide rehabilitation services to injured employees. Employers should control when vocational rehabilitation is warranted.
- Preexisting Conditions. Exclusion of pre-existing conditions where the employee has knowledge does not go far enough. What knowledge is required? Pre-existing conditions supported by medical evidence should also be excluded from compensation.
- Employer Retirement. While there is an offset to workers compensation for social security benefits, employer provided retirement plans should be treated in the same manner. To allow for multiple employers, compensation could be offset by any retirement received from the current employer.
- Lump Sum Settlements. Labor has supported a prohibition for lump sum settlements as an attempt to prevent employers from discharging employees to avoid a work disability claim. We disagree. The employee has several protections: First, lump sum settlements are employee's choice and under review of the Division of Worker's Compensation. Second, a discharged employee may bring civil action for wrongful discharge and has job protection under ADA if they can perform the job functions. To preclude lump sum settlements is contrary to the purpose of workers compensation.

3/16/93
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