Approved: 4/1/93
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Alicia Salisbury at 7:00 a.m. on March 17, 1993 in Room 123-S of the Capitol.

Members present: Senators Burke, Downey, Feleciano, Jr., Gooch, Harris, Hensley, 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: Representative William M. Bryant
Pat Nichols, Kansas Trial Lawyers Association
Shelby Smith, Economic Lifeline II
Walter Straub, Straub International, Great Bend
Brad Allen, Allen Roofing, Lawrence
Michael Payne, Risk Manager, City of Wichita
Governor Joan Finney
John Buselt, Manager of Safety, Cessna Aircraft Company, Wichita
Wanda Roehl, Safety and Workers Compensation Manager, Coleman Company, Wichita
Bill Dempsey, Workers Compensation Fujnd, Kansas Insurance Department
Paulette Cordova, Overland Park
Hugh Aiken, Atchison Casting Corp., Atchison
Anthony Talton, Independence
L. A. "Mick" McBride, Risk Manager, Wichita Public Schools

Others attending: See attached list

Continuation of Hearing on Substitute for HB 2354, Workers compensation reform

Representative William M. Bryant proposed 25% of the workers compensation premiums be paid for by a payroll deduction from the employee's wages. He stated it is not unprecedented for employees to contribute to a workers compensation plan. Oregon law requires 11 cents per day be retained from employees' wages to help fund their benefit plan, see Attachment 1.

Pat Nichols, Kansas Trial Lawyers Association, testified in opposition to **Substitute for HB 2354.** He stated **Substitute for HB 2354** should be voted down because it will increase the costs of the system; fuel litigation over a host of new issues; cut workers benefits and access, all while ignoring the real potential cost saver -- workplace safety. He stated the Legislative Post Audit Report encouraged tough workplace standards, stream-lined vocational rehabilitation and imposition of medical fee caps, see Attachment 2.

Shelby Smith, Economic Lifeline II, testified in support of an ombudsman's program coupled with benefit review conferences. He recommended changing the language regarding ombudsman to an ombudsman may "assist" claimants, instead of "represent" claimants. In regard to permanent partial disability, he suggested "Excluding scheduled benefits, if employee returns to work at a wage equal to or greater than the pre-injury wage, the employee's Permanent Partial Disability shall be equal to physical impairment and no evidence of vocational disability shall be considered" with the American Association Guidelines for Impairment Ratings used as the source for the determination of functional disability. He further recommended the states of Kansas and Missouri should coordinate to stop an employee from collecting on both sides of the state line for the same injury, see Attachment 3.

Walter Straub, Straub International, proposed a cap on increases that can be incurred by the workers compensation system, develop a review board that can arbitrate and decide cases without the use of attorneys, and redefine fraud as it relates to workers compensation, see Attachment 4. He stated his cost of workers compensation in 1990 was $18, 000 and last year it was $61,500.

Brad Allen, Allen Roofing, Lawrence, testified his company is currently paying $32.00 in workers compensation premiums per $100.00 payroll. In May the rate will increase to $42.56 in premiums per $100.00 of payroll. He recommended returning to the original concept of "no-fault" for workers compensation insurance, and to educate both employees and employers about specific rights, remedies and obligation in the system. He also recommended strict fee caps for attorneys. Employers should establish and maintain safety programs in the workplace, and employees should share in the responsibility for a safe workplace with a ninety/ten percent co-payment on all medical bills associated with workers compensation claims. Insurance carriers should have the opportunity to review the medical records and workers compensation files pertaining to any claims, disabilities and settlements of prospective employees. A medical fee schedule with caps should be established and caps also should be established on the total outlay of money in any given case, see Attachment 5.

Mike Payne, Risk Manager, City of Wichita, testified in support of workers compensation reform as outlined in SB 215 and subcommittee amendments to Substitute for HB 2354. Based on the language in SB 215 and current amendment, workers compensation expenses for the City of Wichita are expected to be reduced by a minimum of 25%, see Attachment 6.

Governor Joan Finney addressed the Committee. She stressed that a workers compensation bill must be passed this session. She stated the workers compensation reform bill was probably the most important piece of legislation, in regard to the economy and the future, that the state will face for many years. There are two principle sides, one is represented by the business community. Something must be done to resolve the problems facing small businesses. Small businesses are being destroyed by the excessive costs of workers compensation. The other side is the injured worker. The needs of the injured worker must be protected.

John Buselt, Manager of Safety, Cessna Aircraft Company, Wichita, testified in support of methods that reduce the involvement of attorneys, such as an ombudsman concept and benefit review conferences without attorneys, see Attachment 7.

Wanda Roehl, Safety and Workers Compensation Manager, Coleman Company, Wichita, suggested if a person is unable to go back to work at comparable wages, the employer would owe 66 2/3% of the difference between the new wage and the old wage for 415 weeks. Or, if the employee is unable to find work, perhaps the employer should pay 66 2/3% of the pre-injury wage for two years, plus books and tuition as long as the claimant is actively and successfully retraining in a program that can be measured or graded, see Attachment 8.

Bill Dempsey, Workers Compensation Fund, Kansas Insurance Department, testified the ultimate goals of cost containment and effectiveness will not be served by Sections 49 and 50 in **Substitute for HB 2354**, as amended by the House Committee of the Whole. He said the Department of Insurance and the Kansas Workers Compensation Fund support any reasonable idea to reduce costs for the system; however, the loss of defense expertise and resultant increase in Fund liability which will undoubtedly occur, appear at this time to supersede any savings which may or may not be realized by resolving the issue of Fund liability. The Fund currently contracts with approximately 60 Kansas law firms. The law firms generally use attorneys with 10-20 years of comprehensive experience in the field of workers compensation to defend the Fund. Contract counsel are paid $60 per hour. Legal assistants are billed at the rate of $30 per hour. These rates are at least 50% below minimum billing rates provided to legal clients other than the State of Kansas, see Attachment 9. If the issue of knowledge of a pre-existing impairment is removed as a defense to liability for the Fund, the number of cases filed against the Fund will increase dramatically. Fund liability will also increase.

Paulette Cordova, Overland Park, testified she was injured May 15, 1990. The numerous doctors she has seen that were paid by the insurance company showed a lack of concern for her well being. The insurance company reported that the doctors said she could work but chose not to and that vocational rehabilitation had been provided. She said she had not received vocational rehabilitation, see Attachment 10.

Hugh Aiken, Atchison Casting Corporation, Atchison, testified the workers compensation system is out of balance in that it protects or benefits workers, lawyers and doctors, but does not protect employers. He recommended: 1. forbid legal contingency fees for workers compensation; 2. forbid advertising for legal services related to workers compensation; 3. sharply limit or eliminate payments for injuries caused by an

employee to himself due to failure to obey clear and simple instructions; 4. forbid payments for pre-existing conditions, whether known or not; 5. allow full testimony by an employer, in the preliminary hearing, in cases where there is no proof that any injury occurred in the workplace, and allow evidence bearing on the truthfulness of the claimant; 6. eliminate temporary compensation if the employee can work at previous wages or salary, for the old employer or a new employer. 7. adopt the recommendations of the KCCI as well as those that refer to legal fees and advertising, see Attachment 11.

Anthony Talton, Independence, testified he is an injured worker. He stated he has been victimized by the workers compensation system. The insurance company, the doctors and the lawyers have compounded the problems. He feels he has fallen through the cracks of the system as an injured worker. He doesn't want a token job, but a chance to grown in a job within his restrictions.

L. A. "Mick" McBride, Risk Manager, Wichita Public Schools, submitted prepared testimony in support of SB 215, see Attachment 12.

The committee meeting recessed at 9:00 a.m. The Chairman announced the Committee meeting would resume on adjournment of the Senate.

GUEST LIST

COMMITTEE: SENATE COMMERCE COMMITTEE DATE: 3-17-93

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jonathan Small	Topeka	KOCH. INDUS.; LEARJET
Roland Smith	Wichita	WIBA
BRAD ALLEN	LAWRENCE	ALLEN ROOFING
Gary Toebben	"	Chamber of Commerce
TIM FRITZEL	"	Gene FRITZEL Const Co.
MERLE GENTRY	LAWRENCE	GILL AGENCY
MARILYN DOBSKI	LAWRENCE	McDONALD'S RESTAURANTS
DARROLL ATWOOD	LAWRENCE	PAYROLL PLUS
Bill Dempsey	Topeka	Ks. Ins. Dept.
Leslie Leach	Topeka	NECA
SHELBY SMITH	Wichita	EL-JI
Lisa Unruh	Topeka	DOB
KEITH R LANDIS	TOPEKA	CHRISTIAN SCIENCE COMM ON PUBLICATION FOR KS
Paul Shelby	"	OIA
Tom WHITAKER	TOPEKA	KS MOTOR CARRIERS ASSN
John M. Ostrowski	AFL-CIO	TOPEKA
Kathy Sexton	Topeka	DOB
Pamela Nichols	Topeka	KTLA
DON BRUNER	"	KDHR
Wanda Rothe	Wichita	Coleman Co
RAY LASPACAN	WICHITA	BEECH AIRCRAFT CORP.
BILL FARRELL	WICHITA	BOEING
ALAN COBB	Wichita	KS Assoc. for Small Business
Larry Shaffer	Topeka	Kns. Hosp. Assoc.
Frances Kastner	Topeka	Ks Food Dealers Assn.

GUEST LIST

COMMITTEE: SENATE COMMERCE COMMITTEE DATE: 3/17/93

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
R.D. CHARLTON	1951 SW [illegible], TOPEKA	SUNFLOWER/[illegible] AMERICA/[illegible]
Jim Allen	Topeka	PRM Inc
Hal Hudson	Topeka	NFIB/Kansas
Sharon Huffman	Topeka	KCDC
Bill Curtis	Topeka	Ks Assoc of School Bds
[illegible]	"	URW
Jim DeHoff	Topeka	KS AFL-CIO
Wayne Maichel	Topeka	"
Harry D. Helser	Wichita	"
[illegible] Langston	Topeka	MRCC
Terry Leatherman	Topeka	KCCI
[illegible]	"	Dillon Companies
Bill Morrissey	Topeka	DHR/Work Comp
Nobie Sweeney	Overland Park	OP Chamber
L M CORNISH	Topeka	NAII
L. Eric Loewe	Des Plaines, IL	NAII
[illegible]	Chicago	NCCI
Mike Payne	Wichita	City of Wichita
John Buselt	Wichita	Cessna Aircraft Co
RICHARD L THOMAS	TOPEKA	DHR (WORK COMP
DON A. DUNN	Topeka	URW LOCAL 307
[illegible] Richards	Overland Park	Yellow Freight System
Glenda Allison	Topeka	individual
Cameron Brewer	"	KTLA
Dick Dilsaver	Wichita	Coleman Co.

GUEST LIST

COMMITTEE: SENATE COMMERCE COMMITTEE DATE: ____________

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Debra Harshaw	426 New Jersey Holton, Ks	State of Ks
Linda Halverson	~~2613~~ Topeka	Blue Cross Blue Shield
Pat Tarcas	Topeka	Blue Cross Blue Shield unemployed
Gwen Mayo	Topeka	State of Ks
Darlene Uhl	Scranton, Ks	Aldersgate
Beth R. Foerster	Topeka	Attorney
Art Brown	Topeka	KS Car dealers
[illegible] Miller	TOPEKA	[illegible]
Roger Franzke	Topeka	Ks Gov Consulting
Anthony Talton	Independence	Self
Paulette Cordova	Overland Park	self
Loren O. Albright	Topeka	unemployed
Sylvia J. Boyd	TOPEKA KS	SELF - injured
Victoria Gotcher		City of Kansas City, KS
JANET STUBBS	TOPEKA	HBAK
Jim Hunt	Oskaloosa	KATS
Walter J. Straub	Great Bend Ks	Straub International
Harold Riehm	TOPEKA	KAOM
John Hanna	TOPEKA	Associated Press

STATE OF KANSAS

WILLIAM M. BRYANT, D.V.M.
REPRESENTATIVE, 106TH DISTRICT
WASHINGTON, REPUBLIC, MARSHALL,
RILEY AND GEARY COUNTIES
RURAL ROUTE 2
WASHINGTON, KANSAS 66968

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
CHAIRMAN: FINANCIAL INSTITUTIONS AND INSURANCE
MEMBER: AGRICULTURE AND SMALL BUSINESS
LOCAL GOVERNMENT
JOINT COMMITTEE ON HEALTH CARE DECISIONS FOR THE 1990S
HEALTH CARE STABILIZATION FUND OVERSIGHT COMMITTEE

March 17, 1993
Senator Alicia Salisbury, Chairman
Senate Commerce Committee
Sub. HB 2354-- Workers Compensation Reform

Chairman Salisbury and members of the Committee,

Thank you for this opportunity to testify before you on Sub. for HB 2354. As you are well aware, the original intent of Worker's Comp was to establish a system to reimburse employees for legitimate work related injuries in a timely manner without costly litigation which in the long run benefits no one.

What we have today is a far cry from what was established in 1927. Honor in the system is practically nonexistent, the system is being used for medical benefits that are not job related, nearly any pre-existing condition will qualify an employee for the second injury fund, and litigation is rampant.

***In the meantime the workplace is safer.

The proposal that I have to offer may well bring some true reform to an ailing and costly system. My suggestion is that to help control skyrocketing costs of Work Comp premiums that an amount equal to approximately 25% of the premium be paid for by a payroll deduction from the employees' wages. All provisions of the act have changed since its' inception except for who pays the bill.

Since the balance continually seems to tilted in favor of the employee it is only fair that the employee be allowed to assume some of the costs incurred.

Why?
--in many cases employees are receiving benefits for injuries that are not work related.
--in many cases employees are receiving work comp benefits in place of health benefits.
--employees are still in court driving up costs of benefits

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--in the case of many other benefits employees share the costs such as health and retirement benefits.
--it would provide some incentive for employees to participate in cost savings. Waste and abuse seem to be reduced in businesses where employees participate in profit sharing plans and this would relate closely to that.

Ask yourself, "how many employees have been before you asking for rates to be reduced?" I have heard many employers discuss workplace safety programs with me where they are frustrated that they put on training workshops for workplace safety and the employees go through the motions and then ignore all suggestions on how to reduce injury on the job.

Where do I arrive at the figure of 25%? It is an arbitrary figure, but since attorney's fees are limited to 25% in some instances I thought it would be a reasonable place to start. It is not unprecidented for employees to contribute to a Work Comp Plan. I have attached a portion of the Oregon law that requires 11 cents per day to be retained from employees wages to help fund the benefit plan in their state.

What is being heard from across the state is that relief is needed for the rising costs of worker's compensation. What we have before us in Sub. HB 2354 may or may not give the relief that employers are asking for, and if it does it will not come about for several years at best. This proposal does provide for immediate relief. By implementing this change in funding policy we can give employers in this state an immediate 25% cut in the cost of Worker's Comp premiums and probably put some character back in the program through increased pride of involvement by employees.

Bill Bryant
Representative 106th District

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OREGON

656.462 [Amended by 1953 c.674 §13; repealed by 1965 c.285 §95]

656.464 [Amended by 1953 c.674 §13; 1957 c.574 §5; 1959 c.449 §2; 1965 c.285 §66b; renumbered 656.642]

656.466 [Amended by 1953 c.674 §13; 1959 c.449 §3; 1965 c.285 §67g; renumbered 656.644]

656.468 [Amended by 1953 c.674 §13; 1965 c.285 §66; renumbered 656.640]

656.470 [Repealed by 1953 c.674 §13]

656.472 [Amended by 1953 c.674 §13; 1957 c.574 §6; 1959 c.449 §4; 1965 c.285 §68a; renumbered 656.602]

656.474 [Amended by 1953 c.674 §13; 1965 c.285 §68c; renumbered 656.604]

CHARGES AGAINST EMPLOYERS AND WORKERS

656.502 Definition of fiscal year. As used in ORS 656.502 to 656.530, "fiscal year" means the period of time commencing on July 1 and ending on the succeeding June 30.

656.504 Rates, charges, fees and reports by employers insured by SAIF Corporation. (1) Every employer insured by the State Accident Insurance Fund Corporation shall pay to the State Accident Insurance Fund Corporation on or before the 15th day of each month, for insurance coverage, a percentage of the employer's total payroll for the preceding calendar month of subject workers according to and at the rates promulgated by the State Accident Insurance Fund Corporation under ORS 656.508 and shall forward to the State Accident Insurance Fund Corporation on or before the 15th day of each month a signed statement showing the employer's total payroll for the preceding calendar month, the kind of work performed, the number of workers and the number of days worked. The State Accident Insurance Fund Corporation may establish other reporting periods and payment-due dates and in lieu of payment based upon a percentage of total payroll may promulgate rates to be paid by employers insured with the State Accident Insurance Fund Corporation utilizing a certain number of cents for each work-hour worked by workers in such employer's employ. Each such employer shall also pay an annual fee, deposit and minimum premium in such amount and at such time as the State Accident Insurance Fund Corporation shall prescribe, to the Industrial Accident Fund for each calendar year. Each such employer may be required to pay a registration fee in such amount and at such time as the State Accident Insurance Fund Corporation shall prescribe. The State Accident Insurance Fund Corporation may vary the amount of these fees and minimum premium by employer groupings, accept them in lieu of the other premiums which are based on the employer's payroll, and may adjust the period of application from a calendar year to a fiscal year.

(2) The State Accident Insurance Fund Corporation may provide for a short rate premium applicable to employers who cancel their coverage with the State Accident Insurance Fund Corporation prior to the expiration of the coverage period using a standard short rate table. [Amended by 1957 c.441 §3; 1959 c.450 §6; 1965 c.285 §69; 1967 c.341 §8; 1979 c.348 §2; 1981 c.535 §11; 1981 c.854 §33]

656.505 Estimate of payroll when employer fails to file payroll report; demand for and recovery of premiums and assessments. (1) In every case where an employer fails or refuses to file any report of payroll required by ORS 656.504 and fails or refuses to pay the premiums and assessments due on such unreported payroll the State Accident Insurance Fund Corporation shall have authority to estimate such payroll and make a demand for premiums and assessments due thereon.

(2) If the report required and the premiums and assessments due thereon are not made within 30 days from the mailing of such demand the employer shall be in default as provided in ORS 656.560, and the corporation may have and recover judgment or file liens for such estimated premiums and assessments or the actual premium and assessment, whichever is greater. [1953 c.679 §2; 1979 c.348 §3; 1981 c.854 §34]

656.506 Assessments for Retroactive Reserve and Reemployment Assistance Reserve; use of reserves; determination by director of benefit level. (1) Every employer shall retain from the moneys earned by all subject workers 11 cents for each day or part of day the worker is employed and pay the money retained in the manner and at such intervals as the director shall direct. The amount produced by nine cents of the money so deducted from workers' wages shall be set aside in the Insurance and Finance Fund in a special reserve account to be known as the Retroactive Reserve. The amount produced by two cents of the money so deducted from workers' wages shall be placed in the Reemployment Assistance Reserve.

(2) In addition to all moneys retained under subsection (1) of this section, the director shall assess each subject employer nine cents per day for each worker employed for each day or part of a day. The assessment shall be paid in such manner and at such intervals as the director may direct. All moneys received from this assessment shall be placed in the Retroactive Reserve.

(3) The purpose of the Retroactive Reserve is to provide increased benefits to claimants or beneficiaries eligible to receive compensation under the benefit schedules of ORS 656.204, 656.206, 656.208 and 656.210

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payment. An agency which has, during the period for which dividends are computed, an administrative budget supported by a General Fund contribution which constitutes less than five percent of its total administrative budget shall not be considered as being supported in substantial part from General Fund moneys for purposes of paying such dividends and interest to the General Fund under this subsection.

(5) For the purposes of subsection (4) of this section, the administrative budget of an agency also includes:

(a) All receipts and expenditures attributable to federal payments.

(b) All receipts and expenditures attributable to higher education construction projects financed under Article XI-F(1) of the Oregon Constitution.

(c) The administrative budgets of all self-supporting divisions, boards and commissions within the agency. [Amended by 1953 c.674 §13; 1955 c.323 §3; 1957 c.574 §8; 1965 c.285 §72; 1967 c.252 §1; 1969 c.589 §1; 1971 c.385 §3; 1971 c.725 §1; 1981 c.854 §36; 1982 s.s.3 c.2 §3]

656.530 Rehabilitation facility premium refunds. (1) As soon as practicable after each calendar quarter, the director shall pay from the Reemployment Assistance Reserve to each rehabilitation facility that was an employer during all or part of the preceding calendar quarter, an amount equal to 75 percent of the premiums paid by such facility during that quarter pursuant to any guaranty contract filed with the director under ORS 656.419.

(2) As used in this section, "rehabilitation facility" means a nonprofit facility established and operated by a private organization, agency or institution to provide vocational training, employment opportunity and employment for disabled and severely handicapped individuals, but does not include a facility established or operated by this state or a political subdivision within this state. [1969 c.536 §2; 1971 c.768 §2; 1975 c.556 §43; 1981 c.535 §23; 1990 c.2 §32; 1991 c.93 §10]

656.532 Assessment for Reopened Claims Reserve. (1) The director shall assess each subject employer two cents per day for each worker employed for each day or part of a day. The assessment shall be paid in such manner and at such intervals as the director shall direct.

(2) All moneys received by the director pursuant to this section shall be deposited in the Reopened Claims Reserve.

(3) The director may suspend imposition of the assessment if the director determines that moneys in the reserve exceed the amounts necessary to carry out the provisions of ORS 656.605. [1987 c.884 §40]

656.535 [1973 c.669 §2; repealed by 1973 c.669 §4]

656.536 Premium charges for coverage of reforestation cooperative workers based on prevailing wage; manner of determining prevailing wage. (1) The premiums charged by an insurer for coverage under this chapter for members of a workers' cooperative engaged primarily in reforestation work and all computations for benefits payable to such individuals under this chapter shall be based on the prevailing rate of wage paid to individuals performing the same work in the same locality as members of the workers' cooperative.

(2) Each time a cooperative contracts for services, the cooperative shall determine the prevailing rate of wage of each job category involved in performance of the contract. The determination of the prevailing rate of wage shall be filed with the insurer and used during the term of the contract. If a dispute arises between the workers' cooperative and the insurer concerning the propriety of the prevailing rate of wage determination by the workers' cooperative, the director shall determine the appropriate prevailing rate of wage.

(3) The determination of the prevailing rate of wage shall be based on the best evidence available concerning wages paid employees who do not have an ownership interest in the contracting enterprise performing the same work under similar conditions in the same locality as the cooperative. If such work is being performed in the same locality at the time the workers' cooperative engages in a contract for services, the best evidence available from the latest such contract for services for the same work under similar conditions in the nearest locality shall be used by the workers' cooperative to determine the prevailing rate of wage.

(4) Notwithstanding any other provision of this section, in no case shall the prevailing rate of wage used for the purpose of this section be less than the rate of wage specified in the contract for services as the minimum wage to be paid for services performed under the contract. If no such minimum wage requirement is specified in the contract for services, the most recent such contract for services for the same work under similar conditions in the nearest locality which specifies minimum wages shall be used to determine the prevailing rate of wage.

(5) As used in this section:

(a) "Prevailing rate of wage" means the average wage paid to employees who do not have an ownership interest in the contracting enterprise performing the same work under similar conditions in the same locality as the cooperative.

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KANSAS
TRIAL LAWYERS ASSOCIATION
Jayhawk Tower, 700 SW Jackson, Suite 706, Topeka, Kansas 66603-3731
(913) 232-7756 FAX (913) 232-7730

TESTIMONY
of the
KANSAS TRIAL LAWYERS ASSOCIATION
before the
SENATE COMMERCE COMMITTEE
regarding
Substitute for HB 2354
March 16, 1993

We appear here today on behalf of our members who represent employees injured on the job and speak in opposition to Sub. for HB 2354 as amended by the Senate Commerce Committee's Sub-Committee on Workers Compensation.

The Sub-Committee's work product was only made available to the public yesterday and we have not had time to go through the nearly 100-page bill section by section. KTLA has previously submitted detailed written testimony in opposition to SB 215, which it appears Sub. for 2354 has become. Thus, our comments today will necessarily be generalized.

Before this Committee takes formal action on the Sub-Committee's recommendations, we urge you to reconsider the conclusions of the Legislative Post Audit Report, the one impartial analysis available to you:

"1. Tinkering with the basic benefits will not control workers compensation costs in Kansas.

2. Vocational rehabilitation, on the other hand, is not a basic benefit and many people believe it is unnecessary and not cost-effective, nor does it get people back to work.

3. There does not appear to be a cause/effect relationship between the level of benefits offered by a state and the amount of premiums in the state.

4. Some costs, like medical care, appear to be growing at a phenomenal rate and should be the focus of your attention if you want to attempt to control a cost area.

5. Nothing will truly control workers compensation costs unless you start at the root of the problem--workplace safety. This is the only area where you can actually reduce claims and this translates into lower costs and eventually lower premiums.

6. There are no quick fixes here, and you lack the basic information system to assess the cost-benefits of any changes you do manage to make."

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The Sub-Committee's recommendation does not include a meaningful workplace safety program and does tinker with basic benefits. This proposal offers virtually nothing to injured workers except reduced benefits and, perhaps even more importantly, reduced access to the full benefits they deserve under the workers compensation system.

KTLA believes the Sub-Committee's proposal will both increase litigation and increase system costs. Litigation will necessarily result from new, untried definitions for pre-existing conditions, work disability, accident and eligibility for temporary total disability. More litigation will arise due to the provisions regarding the 10-day notice, allowing employers to present evidence to an ALJ regarding compensability and allowing appeals of some ALJ preliminary hearing decisions.

The costs of the Kansas workers compensation system will be increased by the very expensive and unnecessary Workers Compensation Board, new appeals from preliminary hearings, creation of the ombudsman/benefit review program bureaucracy, establishing the medical advisor position within the Division of Workers Compensation and dropping House provisions which would have eliminated the filing of unnecessary accident reports and saved millions of dollars in attorney fees paid by the Fund.

Your task is to legislate appropriate changes in the Kansas Workers Compensation Act that will lower costs to employers without cutting benefits to Kansans injured on the job. We urge you to make the changes recommended by Legislative Post Audit. First, establish an effective workplace safety program. Second, control medical costs by quickly implementing a medical fee schedule and utilization review. And third, make vocational rehabilitation more cost effective.

Legislative Post Audit concludes you do not have the basic information system to assess the cost-benefits of changes you make. They also told you that tinkering with the basic benefits will not control costs. Many of the areas of concern we have identified clearly fall into the category of tinkering.

If the purpose of the bill is to lower premiums, the Legislative Post Audit has given you the guidance you need. Implement a tough worker safety program, "the only area where you can...eventually lower premiums". If the purpose is to encourage litigation and increase costs, this bill will accomplish that goal at a terrible cost to the greatest resource of this State, our working men and women.

Thank you for the opportunity to express our concerns with the Sub-Committee's version of Sub. for HB 2354.

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Commerce
Attachment 2-2

KANSAS
TRIAL LAWYERS ASSOCIATION
Jayhawk Tower, 700 SW Jackson, Suite 706, Topeka, Kansas 66603-3731
(913) 232-7756 FAX (913) 232-7730

TESTIMONY
of the
KANSAS TRIAL LAWYERS ASSOCIATION
before the
SENATE COMMERCE COMMITTEE
regarding
Substitute for HB 2354
March 17, 1993

KTLA thanks you for the opportunity to address this Committee in opposition to the substitute for HB 2354. It should be voted down because, simply, it will increase the costs of the system, fuel litigation over a host of new issues, cut worker benefits and access, all while ignoring the real, potential cost saver - workplace safety.

We have submitted previous written testimony on SB 215 which we would ask you to consider and I have other testimony attached here as well.

The Workers' Compensation system is like a fragile ship. Its cargo is the lives and the welfare of Kansas' most valuable resource, our working women and men. It must carry that cargo safely but at a reasonable cost. Like sailors, we know our goal, our port, but the route is unclear and the way is filled with peril and danger. We lack the map that would say *"do this, follow that course and with certainty all will be right."*

Ideas for reform are as plentiful as stars in the sky, but on which can we rely, which will lead us to our destination with this cargo intact? We must choose one which we can truly trust, it must be a guide of proven worth.

Ancient sailors would steer by the stars because they could not see the way. We too must choose by which star we will steer our course and we must choose carefully. The wrong course will result in injustice or we will be swamped by rising costs. We must choose a guiding star, a vantage point of reference with reliability. If we choose wrongly all will suffer. This bill is a chimera, a false hope, that will lead the men and women of Kansas to ruin.

Everyone involved hungers for a system free from abuse. This bill proposes to scrap the abuse provisions passed by the House which would have stopped the improper practices that clog our courts, starve our workers and fatten the pockets of the unscrupulous. For years we have heard the cry from that side of the aisle, stop abuse, stop abuse, yet now this bill removes provisions designed for that purpose. On behalf of those who value the fairness and justice of this system, we ask *"by what star do you steer our course?"*

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Commerce
Attachment 2-3

The workers of Kansas need fair treatment. This bill strips the moderation and compromise from the House bill, instead imposing radical cuts in benefits and access, willy-nilly casting about for new and different ways to hamper the injured, the helpless, the jobless and wrench from them the little that they have from this system.

If this bill is passed, the damage done by years of labor will go uncompensated because it has been called a *"pre-existing condition."* If this bill is passed, the loss of use of a shoulder or an arm will receive only a few weeks of compensation because it is called a *"scheduled injury."* If this bill is passed, the wear and tear of a job that takes away a worker's livelihood won't be compensable because it is not called *"an accident"*. On behalf of the injured workers of Kansas, I ask, *"By what star do you steer our course?"*

Employers want less litigation, not more. This bill creates an avalanche of new issues to be heard and decided by Administrative Law Judges, including appealable, contested, preliminary hearings, mandatory ten (10) day notice of accident rules, and wild speculation about what conditions may or may not have pre-existed. It makes no sense to inject all of these new issues when the desire is to reduce litigation, not increase it. This represents what could be called the *"full employment for Respondents' Attorneys' Act."* On behalf of those employers who want to see less litigation, we ask, *"by what star do you steer our course?"*

All of us want lower costs. Yet this bill creates layer upon layer of new bureaucracy; a workers' compensation board of five (5) fully paid judges, secretaries, offices and staff, ranks of ombudsmen, and claimant's advisories and $200,000 for a doctor to *"advise"* the Director; over 1 million dollars of extra spending every year. On behalf of those who are spending too much today for far to little, I ask, *"by what star do you steer our course?"*

This bill is an abomination and an injustice for the worker, for the rate payer and the tax payer. It strips away the little that is left to the injured and hurting women and men and cruelly holds out a false promise to the employers of lower costs without a shred of credible evidence to back this up. There are those who say this is the course, but I say to them where is your proof that the course you chart for us, the suffering you will inflict, will do more than to simply raise the *"misery index?"* Where is the proof that we don't need a safer work place, that we don't need less litigation and less spending? Where is the proof that at the end of the suffering of the worker, there will be even $1.00 saved in premiums? I tell you there is no such evidence. It is not presented here -- it does not in fact exist!! Not a single company has promised to lower rates if this bill is passed.

But there is available a reliable source to guide us. We need not rely on speculation or the advice of strangers. This body has its own trusted expert guide in the Legislative Post-Audit Report.

After extensive study and months of work, this 60-page document concludes that there is a path which can bring us to our goal, lower costs without lower benefits to injured people. It should be with gratitude and thanksgiving that we accept and follow

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injured people. It should be with gratitude and thanksgiving that we accept and follow the plan that is given to us by our own state sponsored study group and it must be that map by which we chart our course.

The Legislative Post Audit says work place safety is the only area we can actually reduce costs. Common sense tells us that this is true, every accident prevented is money saved whether it be for medical, legal, administrative or vocational services. Surely the this bill would contain aggressive work place safety provisions. But no, sadly, this one area where we can save an enormous amount of money is virtually ignored. This bill merely requires insurance companies to *"be available"* for safety; it mandates nothing but turns a blind eye to our best hope for cost reduction. What purpose guides those who would ignore this advice?

The Legislative Post Audit Report says there is no relationship between benefits and premiums. That to tinker with benefits won't save costs, yet that advice is ignored by those who propose this bill. Redefine this, reduce that, exclude the other, tinker with accident definitions, disability payments, procedural barriers, for what purpose? Their report says there will be no savings. What purpose guides those who would ignore this advice?

Third, the Legislative Post Audit says we simply don't have the data we need to make intelligent decisions. They say that we must go forth in the coming years and collect the data on which to make future judgments. This bill pays only lip service to the collection of that information so that future legislatures will have no better idea than those today how to solve this problem. Legislators will have no better idea than those today how to solve this problem. What purpose guides those who would ignore this advice?

It is time to cast aside the false course, the unproven and the unreliable. Slashing benefits will not reduce costs. That is a false hope. Kansans deserve better. To ignore work place safety is to ignore our best and greatest chance for long term cost reductions. Kansans deserve better. Creating layers of bureaucracy and spending an extra million dollars a year won't save money. Kansans deserve better.

As honorable people on an honorable quest you must now choose, will it be the quick fix that is the path of devastation for the worker or careful salvation for the system? Will your actions provide the help needed or merely be a political tool for other agenda? If you choose this bill as your vehicle of change you have chosen the path of more litigation, higher costs and increased suffering to Kansas' greatest resource, the honest hard working people of this state.

Choose instead to follow your own guide. The Legislative Post Audit Report encourages tough work place safety standards, stream-lined vocational rehabilitation and imposition of medical fee caps. Enact these provisions! Then, collect data for future legislators to make future choices. Resist the false hopes that this bill's benefits cuts will do anything but inflict more suffering. Remember Andrew Jackson who said, *"One man with courage makes a majority"* -- now is the time for courage. Now is the time to defeat this bill. Thank you.

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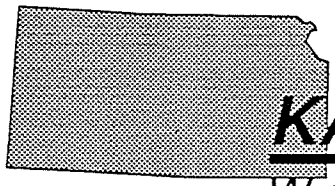

KANSAS
Workers Compensation Reform

TESTIMONY
SHELBY SMITH
ECONOMIC LIFELINE II

SENATE COMMERCE COMMITTEE
MARCH 16, 1993

- Ombudsman, Not Lawyers, Key to Workers Compensation Reform.

  We're pleased to see your Subcommittee's recommendation for an ombudsman's program coupled with benefit review conferences. You may want to change Section 6, Page 6, Line 20 of SB 215 from: "An ombudsman may represent claimants in benefit review conferences" to "An ombudsman may assist", so it is clear that there is no intent they are to be lawyers or acting in the role of an attorney.

- Permanent Partial Disability Definition.

  Substitute for House Bill No. 2354, as Amended by House Committee of the Whole, Section 23, Page 41, increases both disability costs and litigation. I don't think you have adequately addressed this definition problem to return to a no fault system. We suggest a basic position of: "Excluding scheduled benefits, if employee returns to work at a wage equal to or greater than the pre-injury wage, the employee's Permanent Partial Disability shall be equal to physical impairment and no evidence of vocational disability shall be considered." with American Medical Association Guidelines for Impairment Ratings used as the source for the determination of functional disability.

- Fraud and Abuse.

  Problem: Currently, a claimant may be able to bring separate claims under both the Missouri and Kansas Workers' Compensation laws and recover benefits under each claim. Both states have provisions which allow for a credit to be given for benefits paid under another state's laws, but still allow additional benefits to be claimed.

  Current Law: A typical claim pursued under both Kansas and Missouri laws results in the claimant pursuing temporary benefits under Missouri law until released to return to some type of work. This is due to Missouri's temporary total benefits being higher than Kansas benefits. Once released to return to work, the claimant will pursue the Kansas benefits which provide for a greater recovery than is provided for under Missouri law. The Kansas benefits include additional temporary total disability until the claimant can return to the same or similar work and earn comparable wages, vocational rehabilitation, and permanent disability focusing on the ability to return to the same or similar work and to earn comparable wages in the open labor market. Additionally, Kansas focuses on the weeks of temporary disability paid in Missouri and not the amount paid when calculating permanent disability.

  Solution: Kansas and Missouri should coordinate/correlate to stop an employee from collecting on both sides of the state line for the same injury.

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OUTLINE
SENATE HEARING TESTIMONIAL
WORK COMP LEGISLATION

I. WALLY STRAUB / PRESIDENT & CEO

STRAUB INTERNATIONAL IN GREAT BEND, KS.

AGRICULTURAL, OIL & TRUCKING RELATED FIRM.

LAST YEARS REVENUES 7.2 MILLION.

45 EMPLOYEES.

II. THE FOLLOWING IS AN EXAMPLE OF JUST HOW THIS SYSTEM IS TEARING APART NOT ONLY BUSINESS BUT THE PEOPLE THEY EMPLOY:

TOTAL REVENUES (1992)	$7,238,682
FIGURE 3% REVENUE INCREASE ..	.03
REVENUE INCREASE	$ 217,160
LAST YEARS PROFIT MARGIN	1.64%
EXPECTED INCREASE IN PROFITS FROM 3% REVENUE INCREASE ..	$ 3,561
LESS: TAXES @ 33%	$ 1,175
HEALTH INSURANCE COST INCREASE @ 9% BASED ON $108,000	$ 9,720
WORK COMP COST INCREASE @ 23% BASE ON $61,500	$ 14,145
REMAINDER OF PROFIT AFTER TAXES AND INCREASES IN WORK COMP AND HEALTH INSURANCE .	$ -21,479

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III. OUR PEOPLE HELPED US GENERATE A 3% REVENUE INCREASE AND THEY WILL BE THE ONLY ONES WHO DON'T GET A PART OF IT, THERE WAGES ARE ONE OF THE FEW AREAS WE CAN CONTROL TO GET BACK THE $21,479 THAT IS LOST TO HIGHER INSURANCE COSTS.

THE WORKERS ARE THE ONES PAYING THE BIGGEST PRICE FOR THE ESCALATING WORK COMP COSTS.

NEXT YOU WILL SEE HEALTH INSURANCE BENEFITS DECREASE AS WORK COMP COSTS CONTINUE TO INCREASE. IF CURRENT RATES CONTINUE WE WILL HAVE TO DISCONTINUE HEALTH INSURANCE BENEFITS COMPLETELY WITHIN THE NEXT 5 YEARS.

IV. AS INSURANCE COSTS CONTINUE TO RISE, OUR COMPANY AS WELL AS OTHERS WILL CUT DOWN ON THE NUMBER OF PEOPLE WE EMPLOY. THIS IS ALREADY HAPPENING NATIONWIDE.

V. SUGGESTIONS FOR CHANGES IN THE SYSTEM.

1. CAP ON INCREASES THAT CAN BE INCURRED BY THE WORK COMP SYSTEM.

   A. CANNOT INCREASE MORE THAN 1.5% PER YEAR ABOVE INFLATION RATE.

   B. WILL HELP CONTROL FRAUD BECAUSE THERE WILL BE MORE PRESSURE ON TO WORK WITH WHAT IS AVAILABLE.

   C. WILL GIVE BUSINESS SOME GUIDELINE FOR PLANNING.

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2. DEVELOP A REVIEW BOARD THAT CAN ARBITRATE AND DECIDE CASES WITHOUT THE USE OF ATTORNEYS.

   A. THIS SYSTEM WAS NOT DESIGNED TO PROVIDE ATTORNEYS A LIVING.

3. REDEFINE FRAUD AS IT RELATES TO WORK COMP.

   A. HEARING OF TOPEKA ATTORNEY WHO GOT IN EXCESS OF $100,000 AND NEVER MISSED A DAY OF WORK ALL BECAUSE HE PUT A WHEEL ON HIS DESK CHAIR.

   B. ALL HE CAN SAY IN HIS DEFENSE IS THAT IT WAS LEGAL. DOES NOT ATTEMPT TO DEFEND THE ETHICS OF IT.

   C. CLASSIFY FRAUD AS IT RELATES TO WORK COMP AS A FELONY.

VI. MUCH EMPHASIS HAS BEEN ON INDUSTRY RECRUITMENT. THE STATE THAT CAN DEVELOP A WORK COMP SYSTEM THAT DOES NOT PENALIZE BUSINESSES FOR OPERATING THERE WILL HAVE A DEFINITE ADVANTAGE IN INDUSTRIAL RECRUITMENT.

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SENATE COMMITTEE HEARING
WORK COMP - 3/17/93

WALTER STRAUB - PRESIDENT / CEO
STRAUB INTERNATIONAL - GREAT BEND, KS.

THE FOLLOWING IS AN EXAMPLE OF JUST HOW THIS SYSTEM IS TEARING APART NOT ONLY BUSINESS BUT THE PEOPLE THEY EMPLOY:

TOTAL REVENUES (1992)	$7,238,682
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REMAINDER OF PROFIT AFTER TAXES AND INCREASES IN WORK COMP AND HEALTH INSURANCE .	$ -21,479

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Testimony to the Senate Commerce Committee
Worker's Compensation
Wednesday, March 17, 1993

Good morning Senator Salisbury and members of the Committee. My name is Brad Allen. I am a small business owner in Lawrence. My company has been in the roofing business since 1977 and we employ 12 people.

I am here today representing hundreds of small business owners in Lawrence who have literally have been brought to their knees under the weight of worker's compensation premiums.

My own company is currently paying $32.00 in worker's compensation premiums per $100.00 of payroll. When our policy renews this coming May, our rate will increase to $ 42.56 in premiums per $100.00 of payroll. And if the proposal currently before the insurance commissioner is approved, we can expect to pay $52.88 in premiums per $100.00 of payroll in May of 1994. To put this increase in perspective, just eight years ago, we were paying $12.72 per $100.00 of payroll. These premium increases obviously impact the operating cost of our company. While much of this is borne by the consumers in the prices of goods and services, there is a limit to what the market can absorb. With the price increases necessary to cover worker's compensation premium increases, there is little, if any, additional revenue left for justly deserved increases in employee compensation or business expansion. For myself and most other small business owners, the crisis in worker's compensation insurance hit several years ago. We are buried today. Nothing short of dramatic and major reform will help us now.

Small businesses hope that the reform you are currently considering will make a difference in the cost of worker's compensation insurance to our companies. Reform, to us, will be measured by a substantial relief from the exorbitant worker's compensation premiums we now pay. The reform bill passed in 1987 adding vocational rehabilitation made a bad situation worse. We have learned that whenever reform adds more players to the system, it costs the small business owner more money.

Under the rules of the game today, none of the other players in the worker's compensation system have any incentive to find the most equitable and efficient way of taking care of employees who are injured as a result of their job, and consequently getting that employee well and back to work as soon as possible.

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Attorneys, through the use of television advertising ,encourage employees to think that it is necessary to use their services if they hope to receive fair and just treatment under the current system. Doctors charge higher fees for similiar services than are charged under typical health insurance coverage. Insurance companies would rather pay for these higher claims ,through premium increases, than contest them. Employees file claims, even for non-work related injuries under worker's compensation , to avoid paying the deductible or co-payment required by their personal health insurance.

We believe that true reform will only take place when we address four major issues.

1. "No-Fault"

Return to the original concept of "no-fault" for worker's compensation insurance. Let's educate both employees and employers as to how the system can work. This should include all specific rights, remedies, and obligations that are inherent in the system. Get the litigation and "ambulance-chaser" mentally out of the system through strict fee caps for attorneys. Let settlements compensate those who are truly injured , and not pay for television and yellow-page advertising.

2. "Prevention of Injuries"

Employers should establish and maintain safety programs in the workplace. By doing so they should receive premium discounts from their insurance carriers. Employees should also share in the responsiblity for a safe workplace. To that end, we feel a ninety/ten percent co-payment on all medical bills associated with worker's compensation claims would be both fair and reasonable .

3. "Definition of Workplace Injury"

The definition of what constitutes a workplace injury must be narrowed and refined from the open-ended interpretation it enjoys today. It is unconscionable for employers and their insurance carriers to be held accountable for undisclosed pre-existing conditions or the natural aging process itself. We would like our insurance carriers to have the opportunity to review the medical records and worker's compensation files pertaining to any claims, disabilities and settlements of perspective employees. All too often we hire individuals in good faith only to have a subsequent claim filed for an injury that we discover has already been treated, possibly even rated and awarded a settlement.

4. "Cost Containment"

Given the fact that fifty percent of worker's compensation payouts are needed to cover medical expenses, we feel that a strict medical fee schedule with caps should be established. Caps should also be established in regard to the total outlay of money in any given case. We would like to see a more direct relationship between the time of work lost and the amount of payout to an individual.

I thank-you for your time and consideration of this matter. Brad H. Allen.

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March 17, 1993

TESTIMONY TO THE
SENATE COMMERCE COMMITTEE
ON
SENATE BILL 215 AND
SUB HB 2354

Madam Chairperson and members of the Committee:
I am Mike Payne, Risk Manager for the City of Wichita. Thank you for the opportunity to explain why the City of Wichita supports Workers' Compensation reform as outlined in SB 215 and and Subcommittee amendments to Sub. HB 2354.

The issue of Workers' Compensation and the associated rising costs are not only an expense shouldered by business and every citizen when they purchase goods and services. It is also a portion of every tax dollar paid to the State, County, City, and School District where the individual resides. Last calendar year alone, the State spent more than $14 million for workers compensation claims. The City of Wichita has budgeted in excess of $2 million dollars for expected costs in 1993. In spite of an aggressive safety program and a reduction in the number of accidents being reported, the taxpayers of the City of Wichita, under the current law, can expect to experience workers compensation increases in excess of 15% annually.

There are five major cost drivers that have been addressed by the KCCI, WIBA, Fleming Companies, and others. These are: (1) Redefine work disability as an individuals ABILITY to earn comparable wages, (2) Eliminate employer liability for pre-existing conditions and the natural aging process, (3) Schedule all injuries to extremities as defined in SB 215, (4) Institute the State Average Weekly Wage as a cap for all injuries and impairments, and not just those covered by the schedule, and (5) Allow vocational rehabilitation solely at the employer's discretion.

While I strongly support all five of the above modifications, there is an additional cost driver that is equal or greater in importance to the taxpayers of the City of Wichita. This is the retirement offset that is included in SB 215 for social security and other pension plans provided by the employer against which a compensation claim is being made.

Under the current law, certain City employees are retiring with net earnings through the City's disability retirement plan that are equal or greater than the wages being earned prior to the injury. In addition to their retirement income these same employees are currently entitled to their functional impairment and a work disability based upon their lack of ability to earn comparable wages and reduction in the number of jobs they are able of doing in the open labor market. This is true even though any income earned by this individual would have to be repaid to the retirement plan or disability insurer of their relief association if they were to become employed. The passage of the Retirement Offset as established in SB 215 would decrease the workers compensation expenses of the City of Wichita in excess of 10%. This savings is greater for the City of Wichita than it would be for some other employers based upon the retirement system for City employees. The Retirement Offset does not deprive the employee of compensation. **The injured employee still receives medical and disability compensation for that injury. The only change is that any work disability is reduced by the amount of retirement income. The injured employee's compensation is never less than the functional impairment.**

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Based upon the language in SB 215 and current amendments thereto, it is my belief that passage of this bill will cause the workers compensation expenses for the City of Wichita to be reduced by a minimum of 25%. The savings for the City of Wichita may very well be higher than the figures that the KCCI is providing through their analysis. This is the result of being self insured, having a large diversity of jobs in order to accommodate an injured employees restrictions, and the substantial savings that would be incurred as a result of the retirement offset provisions of the Senate Bill. I do not expect any meaningful savings to the taxpayers of the City of Wichita through Sub. HB 2354 (As Amended by House COW).

Workers Compensation reform is of vital importance to economic development, job creation, and the tax and mill levies of the political subdivisions of this state.

Thank you very much for allowing me to speak before you. I am available for any questions that you may have.

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Testimony to the Senate Commerce Committee
by John Buselt, Manager of Safety, Cessna Aircraft Company
Regarding Senate Bill 215 and House Substitute for House Bill 2354
March 17, 1993

Madam Chair and Members of the Committee:

My name is John Buselt, Manager of Safety at Cessna Aircraft Company in Wichita, Kansas. Cessna currently employs over 5,000 good men and women of Kansas, and has a safety program we will match against any employer. Our safety indices traditionally indicate safety performance substantially better than our industry. I would like to talk to you about three specific areas of Workers Compensation reform that are included in both Senate Bill 215 and House Substitute for House Bill 2354. I will then give you a brief overview of three particularly egregious examples of problems with the current Workers Compensation law through short case studies, and will offer my comments as to how reform legislation might have changed the outcome of these cases.

DISPUTE RESOLUTION

I will begin with comments on dispute resolution. Senate Bill 215 allows for an ombudsman and benefit review conference, whereas the House Substitute for HB 2354 (I will refer to this bill as the House Substitute Bill) allows for a benefit review conference only, without the benefit of an ombudsman to assist the employee. Instead, the

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House Substitute Bill will allow an attorney to represent the employee in the benefit review conference. It has been my experience after sitting through preliminary and regular hearings that many issues could be resolved without an attorney if only a fair, non-partial representative were available to listen and moderate issues presented by the employee and the employer or employer's adjuster. The facts are well documented, so I won't belabor them here, only to add that studies have shown that fewer employees return to work, or it takes longer for employees to return to work, in litigated cases than in non-contested cases, and costs increase. Increased litigation is a major concern of employers - including Cessna - so methods that reduce the involvement of attorneys, such as an ombudsman concept, and benefit review conferences without attorneys, are a positive step in reform.

APPEALS BOARD

If attorneys are allowed to participate in Benefit Review Conferences, then one of the justifications for the Appeals Board is defeated, which was to further streamline the appeals process by eliminating one appeal level. The use of an Appeals Board to replace appeals of Workers Compensation cases to the Workers Compensation Director and the District Court is included in both Senate Bill 215 and the House Substitute Bill. An impartial Appeals Board would be a noteworthy change to our current method of appeal of Workers Compensation cases. You may know that Preliminary Hearings of Workers Compensation cases cannot currently be contested by

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employers. This means that, in most cases, employers pay for medical and indemnity costs without the opportunity to appeal a decision by an Administrative Law Judge until the Regular Hearing. This may take months and sometimes, years. By then, of course, many medical bills and indemnity payments have potentially been made by the employer, and an attorney is involved to represent both the employer and the employee at the resulting Regular Hearing. The stakes are higher by the time a Regular Hearing is held, and, in most cases I have been involved in, the employee prevails in the Regular Hearing. The employee simply has more to lose at this stage of the Workers Compensation dispute resolution process. Both bills allow the appeal of Preliminary Hearings, and both bills allow for the use of an Appeals Board. These are welcome and positive changes.

EMPLOYER CHOICE OF PHYSICIAN

Senate Bill 215 allows for an employer to provide a list of three physicians for an employee to choose from when the employee requests a change of physician, but the House Substitute Bill allows the employee to choose a physician of their liking, whether acceptable to the Company or not. Predictable disagreements result when the employee chooses their own physician. The phenomenon of "dueling doctors" occurs as it becomes apparent that the employer and employee doctors don't necessarily agree on the percentage of functional disability rating, or method of treatment. If the employee was indeed injured at work, it is in the best interests of the Company to return that employee to work, and resolve all medical problems in the

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most expeditious and cost effective manner possible. "Dueling Doctors" only thwarts this process as a new area for disagreement is injected into the Workers Compensation arena. If the goal is indeed to reduce attorney involvement and costs for employers in Workers Compensation, then allowing the employee to choose from a list of three physicians provided by the employer for change of physician requests would be a positive change.

I would now like to address three Workers Compensation cases that are all too familiar to those of us that work with this system every day. Only the names change - the circumstances are very much the same from one company to another.

CASE NUMBER ONE

In this case, the claimant worked for Cessna for 37 years until his retirement in February, 1990. The claimant was 63 years old at this time, and worked as a Maintenance Welder while at Cessna.

In February of 1989, the claimant fell off a ladder when the leg of the ladder broke. The claimant testified he injured his lower back and right hip as a result of this fall. He was then referred to the Company physician for treatment, and was returned to work with no restrictions. After continued complaints, the claimant was referred by the Company to another physician, this time a board certified orthopedic surgeon. X-rays revealed no abnormalities of the lumbar spine, so the physician recommended stretching exercises.

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There were further visits with the orthopedic surgeon, with no evidence found of any neurological deficiencies and no weakness found in the claimant's lower extremities. The claimant then pressed for an impairment rating from the Company-appointed orthopedic surgeon, and he received a 5% impairment of function to the body as a whole.

But, the problems persisted. Two more orthopedic surgeons saw the claimant, one chosen by the employee. The first physician felt the claimant's back problems were caused by pre-existing osteoarthritis, and placed restrictions of no lifting over 20 pounds, which Cessna accommodated. The doctor was of the opinion that activities such as bending, stooping, and lifting would cause discomfort to the claimant because of the pre-existing osteoarthritis regardless of whether such activities were performed at home or at work.

At this time, the employee consulted with a physician of his own choice - a General Practitioner. This time, however, the physician found that the claimant had a 25% impairment to the body as a whole, with the claimant suffering from a "chronic lumbosacral sprain superimposed upon degenerative arthritis of the lumbar spine."

Of course, this employee did not miss a single day of work due to this injury, and performed the job he held prior to his original injury until the day he retired. He filled out his paperwork for retirement about 3 months prior to his regular hearing.

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His attorney argued the claimant would not have retired but for his back injury, and therefore he had a work disability. The claimant's counsel offered to settle this work disability case for $70,000.00, after the Regular Hearing, in which the employee prevailed. The case was appealed by Cessna to the District Court, in which the employee again prevailed. The case is now awaiting decision from the Kansas Court of Appeals. The total award may be in excess of $100,000.00.

This case is a good example of how work disability can be used as a tool against companies to obtain large settlements, and how "dueling doctors" can dramatically change the financial impact of an injury. It also shows how the Workers Compensation system forces employers to accept the costs of preexisting conditions. Both bills before you would have limited this award due to their work disability, preexisting conditions, and retirement/Social Security offset language.

CASE NUMBER TWO

In this case, the claimant openly admitted that 4 to 6 years ago he injured his knees at home and needed arthroscopic surgery on them. At that point, degenerative arthritis set in, and he has had pain in his knees ever since. He was actually diagnosed with degenerative arthritis and ankylosing spondylitis over four years ago, which is also affecting his back.

At this time, the claimant found it difficult to perform his job as a

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Maintenance Pipefitter, so he was accommodated in a new job - Boiler Operator. This job did not require the movement and strength that the Maintenance Pipefitter required. Then in mid-1992, the claimant needed surgery on both knees again, again due to arthritis. He was restricted by his physician from squatting, bending or climbing, so now he could no longer work as a Boiler Operator. Suddenly, things changed. The claimant consulted with an attorney. He was taken completely off work by his physician, and claimed that although he did not injure his knees and back at work, he felt his overall arthritic condition was aggravated at work. His doctor told him his arthritic disease was continuing to progress. He was 56 years old.

At the Preliminary Hearing, Cessna was ordered to pay prior Temporary Total Disability, all outstanding medical bills incurred, and to have a vocational rehabilitation assessment completed. A review of plant medical records revealed that the claimant had problems with his back since 1963, and problems with both knees since 1964. None of these conditions were job related. There were two back surgeries and surgeries to both knees in the 1960's, with the right knee later sustaining significant damage after a motorcycle accident in 1987. A final disability rating will be coming any day, and Cessna is preparing for a huge work disability settlement.

In this case, Cessna is being asked to pay for all preexisting conditions through the Workers Compensation system that were potentially aggravated through the claimant performing his job. Both bills before you will address this problem area. We have impled the

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Fund, and although Cessna would be reimbursed by the Fund, please understand that the Fund is funded by employers.

CASE NUMBER THREE

In this case, we have an employee that worked for Cessna on 5 separate occasions, with work at other aircraft companies filling the gaps of employment at Cessna. The most recent rehire was in 1989, at which point a series of injuries started that was almost out of a story book. There were injuries to forearms (itching), eye irritation, fingers, and a serious cut to the middle knuckle on the right ring finger after the claimant was transferred to a new job as a Plastics Finisher. In this job, the claimant became known as the "slasher" due to the many cuts and injuries that were received. There were even cuts to the navel and nose during this time. Over 120 visits to the Cessna Health Services facility occurred in a six-month period due to injuries. The claimant was transferred to another job that didn't involve use of anything sharp - a Burr Bench Operator.

Following this was nausea, gastric distress, headaches, back pain, shoulder pain, a hiatal hernia, a burn to the hand, and even an irritation on the end of the nose - all allegedly caused by work.

The claimant was transferred to several other jobs, including sanding and finishing the dorsal fin of an aircraft tail section. Coughs, colds, another burn to the hand, "respiratory distress", swollen

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upper eyelids, more cuts, dry throat - the list just continued on and on. But finally, the inevitable happened - tingling to the right and left hands and wrists.

You can guess how this ends. Cessna paid for bilateral carpal tunnel surgery for the claimant, and just settled for $55,000.00 to close out this claim.

Well, we found out this claimant had a prior settlement due to an injury to the right hand from another aircraft company, and that 14 form 88's had been filed by this previous employer for various injuries and preexisting conditions. Preexisting conditions language and a fraud statute would have limited the award on this case. Language that would have limited the claim when the injury was caused by the failure to follow safety procedures would have helped, also.

Thank you for your time in listening to Cessna's cases - it makes me feel better just to explain them to someone who can possibly help. In short, I urge you to consider methods for decreasing litigation, such as the Benefits Review Conference, controls on medical disputes, and an offset for preexisting conditions. I wish you the best as you continue to search for ways to improve the Kansas Workers Compensation system through legislative reform. I hope my testimony has been helpful to you.

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THE COLEMAN COMPANY, INC.

TESTIMONY TO SENATE COMMERCE COMMITTEE
By Wanda Roehl, Safety and Work Comp Manager, Coleman Company

March 17, 1993

Madam Chair and members of the Commerce Committee:

Thank you for this opportunity to testify regarding some portions of House Substitute for HB 2354 and Senate Bill 215.

I am Wanda Roehl, safety and workers compensation manager for The Coleman Company, Inc. whose outdoor recreation products are known and used throughout the world. Our 1400 Kansas employees received a payroll in excess of $45 million in 1992.

The first issue I'd like to address is the pre-existing language in 44-501, which states "an employee shall not be entitled to compensation for any disability that is determined to be preexisting. The employee shall be entitled to recover for the aggravation of a preexisting condition, but only 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".

This language from SB 215 is better than the House Substitute of HB 2354, which states the "employee" has to have knowledge of the preexisting condition. We had a situation where an employee had a back injury a couple of years ago, which resulted in him needing back surgery. We had a Form 88 on this person, because he told us about a previous back problem which required bedrest and traction prior to his employment with us. When asked about his previous problem, he was positive that it had nothing to do with his lower back, but instead involved his upper back, and perhaps his neck. As I investigated the claim and retrieved records from the previous treating physician, I found his prior problem to be exactly at the level of his current problem, at L4-L5. This person is a very honest

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P.O. Box 2931 Wichita, Kansas 67201-2931 316-261-3211

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person, and was not being dishonest, but, rather, simply forgot the specifics of his previous problem.

As we review the language in this portion of the statute, it also appears that an offset for preexisting conditions can only be taken on the functional impairment and not on the work disability. Perhaps that is appropriate, especially if the work disability portion of the law is better defined.

The other area I'd like to address is work disability. SB 215 states "The extent of permanent partial disability shall be the extent, expressed as a percentage, to which the ability of the employee to perform work at comparable wage in the open labor market has been reduced, taking into consideration the employee's education, training, experience and capacity for rehabilitation".

The words "in the open labor market" are going to cause companies to pay 100% work disabilities in many situations where that is not appropriate. For instance, if an employee making $15 an hour has an injury during a period when a number of companies are laying off in Wichita, and, is therefore unable to return to work because of the layoff, an employer will owe a 100% work disability because the employee cannot find a job at $15 in the open labor market in Wichita. Of course, this inability to get a job paying $15 an hour has nothing to do with the injury or the physical condition of the employee, but rather is a reflection of the economic situation in Wichita.

Work disability, as you know, is a troublesome portion of the workers compensation law. To decrease costs, litigation needs to be decreased. To decrease litigation, the language of the law must be absolute. Comparable wages should be defined in the statutes, perhaps as 85% of pre-injury wages

The portion of this statute which says "taking into consideration the employee's education, training, experience and capacity for rehabilitation" is also going to spawn litigation. The issue is <u>physical ability</u>.

We have a 1992 claim in which a work disability is being litigated. In this instance, the claimant's employment was terminated because of a second positive test for substances of abuse. Her first test was positive for cocaine; the second for alcohol. Now that she has been terminated for those reasons, her right wrist problem has become a

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bilateral problem and the case is being litigated for a 100% work disability.

In it's present form, work disability is a "pot of gold" claimants "hold out" for. I have some ideas for some non-traditional approaches, but have attached those ideas on a separate sheet of paper, as I knew time would be short today.

I am afraid that we are going to pass a reform that will not be meaningful and will not result in significant cost savings; in fact, we may experience more litigation in more areas than we are currently experiencing. If we do not address the litigation issues, we will not address cost drivers. We may save pennies here and there, but the big dollars will continue to be paid and Kansas will lose more jobs as more businesses are unable to continue to pay workers compensation premiums.

I would be happy to answer any questions you may have. Thank you for your attention.

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ATTACHMENT TO
TESTIMONY TO SENATE COMMERCE COMMITTEE
By Wanda Roehl, Coleman Company, Inc.
March 17, 1993

Instead of work disability in it's present form, perhaps the following approaches could be taken:

If a person is unable to go back to work at comparable wages, the employer would owe 66 2/3% of the difference between the new wage and the old wage for 415 weeks.

Or, if the employee is unable to find work, perhaps the employer should pay 66 2/3% of the pre-injury wage for two years, plus books and tuition as long as the claimant is actively and successfully retraining in a program that can be measured or graded.

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COMPELLING REASONS FOR STRIKING
SECTION 49 FROM SUBSTITUTE
FOR HOUSE BILL NO. 2354 AS AMENDED BY HCW
TESTIMONY PRESENTED TO THE
SENATE COMMERCE COMMITTEE

The rationale currently motivating reform of the workers compensation system appears to be primarily based on monetary considerations. A thorough examination of Section 49 of Substitute for House Bill No. 2354 AHCW raises serious questions whether these monetary considerations will be served if the proposed legislation is enacted. The following list of reasons illustrates why cost effectiveness cannot be achieved by stripping the Kansas Workers Compensation Fund of contract attorneys and defenses to liability.

Loss of Expertise: The Fund currently contracts with approximately 100 Kansas law firms. These law firms generally use attorneys with 10-20 years of comprehensive experience in the field of workers compensation to defend the Fund. Many of these attorneys have defended the Fund since its inception. The absence of this experience base would create an irreparable loss to the Fund. Contract counsel for the Fund has done an excellent job of minimizing Fund expenditures by rebutting the opinions of hired medical personnel when the testimony of the injured worker and other witnesses clearly show that the nature and extent of the pre-existing impairment was not as serious as the attorney for the employer alleged.

Potential Drawbacks: The absence of experienced outside Fund counsel to safeguard the interests of the Fund during the resolution of a workers compensation claim creates a very dangerous environment where the ultimate objective of the attorney for an employer will be to establish and maximize Fund liability. The proposed amendments to K.S.A. 44-566a would prevent the Fund from participating in the resolution of issues involved in a workers compensation case such as compensability of the claim, nature and extent of the disability and reasonableness of the settlement. The ultimate legal determination of Fund liability will be made by a doctor if an employers settlement offer is not accepted. Even though the Fund will have no right to participate in the resolution of the issues associated with a claim, the Fund potentially has exposure for all of the liability resulting from the claim. Needless to say this unguarded procedure will result in dramatic increases in Fund liability.

The Fund is often involved in complex multi-employer, multi-insurance carrier files or cases involving contractor/subcontractor and statutory employer issues where the determination of Fund liability is extremely confusing. These complex cases are best handled by outside Fund counsel who possess expertise and experience in complex workers compensation matters. To allow these matters to be handled by relatively inexperienced in-house counsel or adjusters would greatly increase Fund liability simply because the Fund would be stripped of its resources for effectively defending against other parties represented by counsel with superior expertise in regard to these complex issues.

In order to determine the appropriate amount of Fund liability, an injured workers medical history prior to the current injury must be ascertained. Many times this information is not contained in medical records and this issue will not be

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explored by the attorney for an employer if the answer can adversely affect their case. Determinations of Fund liability and thus, expenditures could be based on an undeveloped medical history. Knowledgeable decisions would be difficult, at best, for either the Fund or a doctor reviewing the case.

Cost Effectiveness: Contract counsel are paid $60 per hour. Legal assistants are billed at the rate of $30 per hour. These rates are at least 50% below minimum billing rates provided to legal clients other than the State of Kansas. In addition to the legal services provided by contract counsel for the Fund, the following services are also provided:

Secretarial services . . .
Runners and file clerks . .
Employee benefits . . . . .
Utilities . . . . . .
Office Space . . . . . .
Office Supplies . . . . . .
Office Equipment including furniture, computers, copiers, etc.
Legal libraries . . . . . .

As the attached schedule indicates, it is important to note that during the preceding four fiscal years, the average amount of attorney fees paid from the Fund per closed claim has decreased from $1,303 to $1,117, a reduction of over 14%.

The Kansas Workers Compensation Fund paid approximately $3.4 million in fiscal year 1992 for the services rendered by contract attorneys. It should be noted that this figure includes $254,000 paid to attorneys for services rendered in fiscal year 1991 due to a shortage in funds as a result of an under assessment. The adjusted amount thus paid in fiscal year 1992 is approximately $3.15 million. The $60 per hour rate includes the services listed above at the contract rate despite economic fluctuations and inflation.

Estimates recently prepared by the Division of Budget indicate the Insurance Department could implement the proposed amendments for $2.89 million per year. The Insurance Department believes the cost estimate computed by the Division of Budget may be low and has estimated that the cost for these services would approach $3.87 million for the first year and $3.55 million in subsequent years. None of the estimates cited account for growth of the Fund.

Legislative Post Audit:

A report presented by the Legislative Division of Post Audit in November of 1992 appears to support the continued use of contract attorneys by the Workers Compensation Fund.

Page 28 "Our analysis of costs for hiring legal staff generally supported the Departments findings."

This report expressed the concern that without some steps to limit the number of claims being filed against the Fund expenditures would rise dramatically. However, if knowledge is eliminated as an issue in Fund claims substantial increases in the number of claims filed against the Fund would undoubtedly occur. Further, the

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report noted that the Fund was being administered more efficiently than in 1985 and that administrative costs for operating the Fund have decreased as a percentage of total costs over the past few years.

Page 26 "total Fund expenditures in 1992 were more than four times greater than they were in 1985, but the portion spent for Fund administration was a significantly smaller piece of the pie."

It should be noted that administrative costs as defined by the Post Audit report included costs allotted to attorney fees.

Cost Shifting:

Another area addressed by the Post Audit report focused on the issue of cost shifting and the effect upon employers.

Pages 11-12 " . . . economic conditions of the past several years may have created an incentive for employers and their workers' compensation insurance plans to "control" their rising claims costs by shifting some claims to the Fund . . . If the employer or insurer is able to shift a claim to the Fund, the insurer avoids paying the claim, and the employer avoids increased premiums because of the claims' cost."

Page 32 "Insurance companies and employers that are able to shift a significant portion of their claims to the Fund benefit the most, while those companies that use it less benefit less."

The relevance of these statements is illustrated by research conducted by the Fund. This research indicated that in fiscal years 1991 and 1992, many large Kansas employers received reimbursements from the Fund in amounts greater than the amount which they were assessed. Contributions of smaller employers, as an explicit portion of their premiums, somewhat subsidizes the Fund payment made to the larger employers.

Additional Considerations:

1. The question has arisen whether enough competent neutral physicians exist to fulfill the need for expert medical opinions. The Fund is currently being implead into approximately 3,400 new files per year. If only 5 physicians are selected to made determinations regarding Fund liability, each physician would be required to review at least 680 cases annually. These case loads would cause any physician to devote a significant portion of their time to such reviews. In addition, the Fund believes that the $200 figure per review, as proposed by the Division of Budget, is far below what physicians would be willing to accept for rendering these opinions. Additional problems arise concerning the issue of "work disability". The Fund believes that physicians in general are not qualified to render opinions regarding the apportionment of an award based on "work disability". Such opinions are generally rendered by expert vocational testimony.

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2. Uninsured insolvent employers continue to create exposure for the Workers Compensation Fund. In fiscal year 1992, the Fund paid almost $1.5 million dollars in benefits on behalf of uninsured insolvent employers and was implead in 86 new cases. Many of these claims motivate insolvent employers to seek discharge of their debts resulting from workers compensation claims in bankruptcy court. The Fund doubts that claim adjusters have the expertise or legal ability to resolve such difficult claims.

3. If the provisions of new subsection (h) are enacted into law, the Fund believes that unnecessary and imprudent duplication of services and expenses will occur. Files which have been assigned to contract attorneys should remain with those attorneys until their resolution. To permit these files to be returned to the Fund at the discretion of the employer would create an unnecessary hardship on the Fund due to the large number of active cases pending resolution as well as the wasteful duplication of personnel services required to "get up to speed" on each file.

4. Knowledge of a pre-existing impairment is one of the major components upon which Fund liability has traditionally been established. Recently it has been proposed that knowledge of a pre-existing impairment should no longer be necessary to establish because employers are obligated to hire "qualified individuals" for whom they can make a "reasonable accommodation" under the provisions of the Americans with Disabilities Act. If this is true, knowledge of a pre-existing condition is not an issue which needs to be resolved between an employer and the Fund. Knowledge would still be a viable defense for the Fund, however, in cases where neither the employer nor the employee knew of the existence of a pre-existing condition and which was not a handicap in obtaining or retaining employment for the affected worker. If the issue of knowledge is removed as a defense to liability for the Fund as proposed in Section 50 of Substitute for House Bill No. 2354, the number of cases filed against the Fund will increase dramatically. Fund liability will also increase in proportion to the number of new cases.

CONCLUSION

Because of the above cited reasons, the Workers Compensation Fund believes that the ultimate goals of cost containment and effectiveness will not be served by these legislative proposals.

While the Department of Insurance and the Kansas Workers Compensation Fund support any reasonable idea to reduce costs for the system, the loss of defense attorney expertise and resultant increase in Fund liability which will undoubtedly occur, appear at this time to supercede any savings which may or may not be realized by resolving the issue of Fund liability as proposed in Substitute for House Bill No. 2354 AHCW.

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WORKERS' COMPENSATION FUND

	Average Amount of Attorney Fees Paid Per Closed Claim	
FY 1989	$1,303	
FY 1990	1,148	
FY 1991	1,197	
FY 1992	1,178	
FY 1993	1,117	(overall decrease of 14.3%)

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Top 15 Employers Benefitting Through
The Workers' Compensation Fund
FY 91

	Employer	Number of Vouchers Paid	Amount	FY 91 Assessments Based on Calendar Year 1989 Paid Losses
* 1.	State of Kansas	238	$ 862,274.55	$ 594,439.74
2.	Boeing	280	725,660.11	
3.	Goodyear Tire	315	481,475.44	
* 4.	Excel	185	473,273.64	196,864.15
5.	Safeway/Food Barn	40	432,626.07	
* 6.	IBP	174	416,550.12	224,641.03
* 7.	General Motors	300	333,409.48	101,492.38
8.	Falleys/Food 4 Less	7	251,162.73	
* 9.	City of Wichita	65	198,631.23	58,373.13
10.	United Parcel Service	33	198,008.00	
*11.	Yellow Freight	19	193,727.20	54,421.32
*12.	Dillons	49	165,365.64	83,900.56
*13.	Roadway Express	64	139,923.51	35,017.46
14.	Farmland Industries	20	138,084.02	
15.	National Carrier	7	136,032.03	
		1,796	$5,146,203.77	

*Self-Insurers

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Top Employers Receiving Benefits
From Workers' Compensation Fund
FY 92

	Employer	Number of Vouchers Paid	Amount	FY 92 Assessments Based on Calendar Year 1990 Paid Losses
* 1.	State of Kansas	640	$1,651,646.12	$1,269,313.57
2.	Goodyear	544	972,956.60	
* 3.	Excel	384	464,443.88	313,103.00
* 4.	Food Barn and Safeway	178	410,545.04	12,763.13
* 5.	IBP, Inc.	324	398,640.16	369,036.40
6.	Gott/Rubbermaid	226	385,087.25	
* 7.	GM	371	376,750.92	142,398.81
8.	UPS	179	310,120.18	
9.	Cessna	107	301,830.77	
10.	Boeing	297	278,375.75	
11.	Ark City Packing	159	273,320.92	
*12.	Wichita	166	267,511.90	125,239.89
*13.	Beech	319	248,894.67	44,424.38
*14.	Hallmark Cards	85	240,198.93	67,852.39
15.	Colgate	77	209,243.66	
		4,056	$6,789,566.75	

*Self-Insurers

ASVE/FMS

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PROJECTED COST TO EMPLOY IN-HOUSE WORKERS' COMPENSATION FUND ATTORNEYS
(Offices located throughout the State)

1. Non-Recurring Expense (initial purchase of equipment)

(1) Office Equipment

Item	Quantity	Price	Total Cost
Attorney Desk	1	$ 444	$ 444
Attorney Chair	1	290	290
Steno Desk	1	380	380
Steno Chair	1	200	200
Personal Computer, Monitor, Printer and Software	1	3,963	3,963
Work Station for Personal Computer	1	130	130
Dictating Machine	1	250	250
Transcribing Machine	1	375	375
Typewriter	1	364	364
Adding Machine	1	88	88
File Cabinet	4	200	800
Bookcase	1	160	160
Storage Cabinet	1	260	260
Side Chairs	2	110	220
Lobby Chairs	2	50	100
Telephone and Installation	1	94	94
SUB TOTAL			$2,252/Attorney
			$5,866/Secretary

(2) Library

Item	Quantity	Price	Total Cost
Set of K.S.A.	1	$ 405[1]	$ 405
Shepards Citations	1	225[2]	225
Set of Kansas Reports	1	5,800[2]	5,800
Dictionary			
(Medical)	1	60[3]	60
(Legal)	1	50[3]	50
(Regular)	1	10[3]	10

SUB TOTAL: For offices maintaining two or three attorneys $ 7,360/Office
SUB TOTAL: For offices maintaining ten or twelve attorneys $11,125/Office
SUB TOTAL: For offices maintaining eighteen attorneys $13,675/Office

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1. 1 set for each attorney
2. 1 set for each office
3. 1 book in offices with 2 or 3 attorneys
   2 books in offices with 10 or 12 attorneys
   3 books in offices with 18 attorneys

	Offices Maintaining Two or Three Attorneys	Offices Maintaining Ten or Twelve Attorneys	Office Maintaining Eighteen Attorneys
2. Annual Expense			
Rent and Utilities	$ 9,625	$32,725	$ 48,125
Photocopying	1,376	5,772	6,912
Telephone and Postage	7,467	29,867	44,800
Office Supplies	1,804	7,217	10,825
Travel	2,500	10,000	15,000
SUB TOTAL	$22,772	$85,581	$125,662

Salary Expense:

Attorney Salary (per year)	$ 36,412[1]
Attorney Fringe Benefits (per year)	7,503
Secretary Salary (per year)	18,088[2]
Secretary Fringe Benefits (per year)	5,067

GRAND TOTAL	First Year	Annual
Topeka Office/Headquarters (ten attorneys and three secretaries)	$ 645,189	$ 594,196
Kansas City Office:		
Wyandotte County Office (twelve attorneys and four secretaries)	766,794	705,181
Johnson County Office (twelve attorneys and four secretaries)	766,794	705,181
Wichita/Hutchinson Office (eighteen attorneys and six secretaries)	1,144,469	1,055,062
Pittsburg Office (three attorneys and one secretary)	197,654	177,672
Garden City Office (two attorneys and one secretary)	151,487	133,757
Salina Office (three attorneys and one secretary)	197,654	177,672
	$3,870,041	$3,548,721

1. Average salary based on:
   10 Attorney IVs $39,708
   30 Attorney IIIs $37,812
   20 Attorney IIs $32,664

2. Average salary based on:
   6 Secretary IIIs $19,344
   14 Secretary IIs $17,550

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March 17, 1993

To:Senate Council
From; Paulette Cordova
Subject; Workmans Compensation

My name is Paulette Cordova. My accident and nightmare started with Workmans Compensation 5-15-90.

I injured my right knee, left hip, and lower back in a fall at my place of employment. My physician, Dr. Donald Miskew MD, performed surgery on my knee, injected my hip with cortisone injections and none of this stopped the pain. After a period of time he told me that Firemans Fund would no longer pay for any medical care.

In three years I have went to countless doctors, I feel that the doctors being paid by Firemans Fund did not have my best interests at heart. I believe that due to their lack of concern for my well being prolonged my pain and suffering.

That in a court of law they are permitted to state partsof the facts. In my case it was stated, "According to our doctors she can work but chooses not to." "Provided me with Vocational Rehab." Which they have not.

Firemans Fund has also been able to cut off any and all compensation checks. Putting me and my young son into poverty. Forcing me to really on my elderly parents for support. And the state for food stamps.

In my opinion, workmans compensation is not for the hourly paid people. And does not work. We have paid into it for most of our lives, thinking it would be there when we need it. Just to find out that it's all a joke.

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Paulette Cordova
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ATCHISON CASTING

March 17, 1993

SENATE TESTIMONY

Q - What is the difference between workers compensation and the lottery?

A - Workers compensation has better odds, and the tickets are free.

Workers compensation law and the system which has grown up around it involves some of the most complex issues in our society. The Substitute for House Bill 2354 shows that you have worked hard to understand the issues and to face some of the tough questions that need to be dealt with. I commend you.

The Substitute Bill does address a number of problems, such as drug and alcohol use in the work place, but does not attack the single biggest problem in workers compensation today.

What is the biggest problem? The temptation to 1) exaggerate minor work place injuries that actually occurred, 2) to make claims for injuries which either did not occur or did not occur in the work place, and 3) to self-inflict minor injuries and claim extensive disability therefore. This temptation exists primarily because of massive solicitation for injury claims by lawyers, and the ability of claimants to file and pursue claims for free.

When someone uses a gun to take money, which they did not earn, from a bank, we call that person a criminal. When someone uses a pen to take money, which they did not earn, from the workers compensation system, we call that person a lawyer. Even if the "alleged" event under consideration is completely voluntary and self-directed, such as

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taking a book from his shelf, fixing a castor on his chair or putting his briefcase in the trunk rather than on the seat, and even though no income was lost nor work missed, a lawyer who knows how to manipulate the workers compensation system can take sizeable amounts of money from his employer or from the taxpayers. Even if the event did not take place, or if the event took place at home and not at work, it is possible to extract money from the workers compensation system.

Should we blame the lawyers? No. They are merely abusing a system which was created by the legislature. We may direct our anger at the lawyers for actions which seem at best to be unethical, but such anger cannot fix the workers compensation system. Only this legislature can fix the workers compensation system in Kansas.

The recent publicity surrounding direct payments to some smart lawyers who claimed to have been injured on the job hides a far larger part of the problem. The larger part of the workers compensation problem is the total amount of money paid out for equally frivolous claims filed by lawyers on behalf of clients. Even though the lawyers themselves keep only a third of such "third-party" claims, the total amount collected is far larger than that for "first-party" claims which are filed on behalf of the lawyers themselves.

Over 90% of the legal advertising which I have seen on TV consists of solicitations by lawyers for people who are willing to claim to be injured. I ask myself, "Why don't I see other types of legal advertising?" I suggest to you that the answer is that the legal system which the legislature has created, coupled with the non-eradicable fact of human greed, allows lawyers to make more money from injury claims than from other types of law.

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This area, solicitation by lawyers of claimants, is the single most dangerous facet of the workers compensation system. The temptation to "get something for nothing" is present in some of our population, and is therefore present in some of our workers - although from my observation it is far less common in our employees than in the population at large.

Why do we need lawyers to appear on the air and in print begging workers to call them to find out, at no charge to the employee, whether they might have a claim?

If we are truly afraid that workers might not know that they have rights in case of a work place injury, then let's post a better notice in the work place. TV advertising is not the way to get out the word. (Mention steward solicitation here)

We need to eliminate, wherever possible, the temptation to file claims that are not valid. By offering to file and pursue claims for free, lawyers magnify this temptation.

Is this productive?

No.

The workers compensation system is out of balance. It is hurting American competitiveness. It is accelerating the transfer of jobs from America to Mexico.

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The reason it is out of balance is that it protects or benefits workers, lawyers and doctors, but does not protect employers! If you don't fix the system to a greater degree than proposed by the current Substitute Bill, employers might become an endangered species, like the spotted owl or the pelican.

The bill before you is a step in the right direction. However, it has loop holes that clever lawyers can chase an ambulance through.

To put the workers compensation system in balance, we must:

1. Forbid legal contingency fees for workers compensation.
2. Forbid advertising for legal services related to workers compensation.
3. Sharply limit or eliminate payments for injuries caused by an employee to himself due to failure to obey clear and simple instructions.
4. Forbid payments for pre-existing conditions, whether known or not. Why should an employer pay for inherited or congenital conditions?
5. Allow full testimony by an employer, in the preliminary hearing, in cases where there is no proof that any injury occurred in the work place. Allow evidence bearing on the truthfulness of the claimant.
6. Eliminate temporary compensation if the employee can work at previous wages or salary, for the old employer or a new employer.

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7. Adopt points 1 thru 26 of KCCI recommendation, attached, except points 24 and 32, which refer to legal fees and advertising and are addressed in points 1 and 2 above.

In 1992 the total number of Americans employed by local, state and federal government (18,200,000) exceeded, for the first time in history, the number of Americans employed in the manufacturing sector (18,000,000). Abuse of the workers compensation system is one of several reasons for the decline of manufacturing jobs in America today. Please take a step to help reverse this decline by restoring balance and fairness to workers compensation.

Hugh H. Aiken
Atchison Casting Corp.
Chief Executive Officer

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AREAS OF KCCI/AFL-CIO AGREEMENT

1. Establish a program to encourage employers to implement effective safety programs.

2. Establish criminal and civil penalties to combat workers' compensation "fraud."

3. Absolve employers of liability when alcohol or drug use "contributed to" a work place accident.

4. Establish a Workers' Compensation Board as the system's appeals arm, replacing current appeals to the workers' compensation director and to district court.

5. Increase the current $10,000 total payroll exemption from workers' compensation coverage.

6. Disallow the use of "unauthorized medical" for impairment rating purposes.

7. Encourage the creation of a medical fee schedule and utilization review by giving authority to the workers' compensation director.

8. Reform the vocational rehabilitation process.

9. Require the use of American Medical Association Guides when determining permanent impairment of function.

10. Permit employers to contest cases which an insurance company proposes to settle.

11. Establish a workers' compensation data collection process.

12. Exclude from coverage any injury occurring at a social, recreational or promotional event where employee participation is voluntary.

13. Create a management-labor advisory council to recommend future changes in workers' compensation law.

14. Allow the collection of child support from workers' compensation benefits.

15. Establish a system for distribution of educational materials to employers and employees.

16. Eliminate the "knowledge" requirement to implead the workers' compensation fund, and administratively mediate the fund's responsibility in cases.

17. Change accident reporting criteria to more than seven days lost time, due to injury.

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NO OPPOSITION, IF CERTAIN CONDITIONS ARE INCLUDED

18.	Eliminate the payment of work disability compensation to employees who have the ability to engage in work for comparable pre-injury wages.	If an employee can pursue work disability if they are no longer engaging in comparable wage work, and if lump sum settlement limits are set.
19.	Reduce compensation to individuals who are also eligible for Social Security benefits.	If workers' compensation is considered "secondary" in Social Security disability cases.
20.	In cases involving preexisting condition, compensation should be limited to the percentage of aggravation caused by the work related injury.	If the employee had knowledge of the preexisting impairment.
21.	Compensation limits should be established in cases which only involve functional impairment.	If the employee misses less than 10 weeks of work, the limitation would be $50,000.
22.	All parties should be permitted to appeal preliminary hearing decisions.	If appeals are limited to four broad categories of appeals.
23.	A benefit review process should be established where a mediator attempts to resolve disputes, without attorney involvement.	If attorneys are permitted to participate in the benefit review conference process.
~~**24.**~~	~~To encourage dispute resolution, limits should be established on claimant attorney fee.~~	~~If attorney fee limits are the lesser of 50% of an award in excess of a written settlement offer, or 25% of the overall award.~~
25.	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.	If the employee is allowed 90 days to show "just cause" for failing to meet the 10 day notice of injury requirement.
26.	An employer should be allowed to intervene in 3rd party cases to protect their subrogation rights.	If current subrogation computation formula is not changed.

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27. Compensation should not be awarded when an injury results from an employee's failure to follow established safety procedures.

28. Establish objective standards for determining permanent total disability.

29. Establish lifetime limits for permanent partial disability benefits.

30. Classify all injuries to opposite upper extremities (such as carpal tunnel syndrome) as scheduled injuries.

31. The term of the Workers' Compensation Director should coincide with their appointing Governor.

~~32. Attorney legal ads should include a disclosure statement that workers' compensation benefits do not require legal representation.~~

33. Temporary disability compensation should not be awarded without medical opinion that an employee cannot return to work, with or without accommodations.

34. Redefine "accidental injury" as a sudden, unexpected occurrence.

35. Limit the 10% hearing period rule to only cases involving amputations.

36. In cases where a change in health care provider is ordered, the employee should choose the new provider from a list provided by the employer.

37. Eliminate the presumption that a full-time hourly employee should have disability calculated at a 40-hour week, if their work week is less than 40 hours.

As this Special Report goes to press, the Kansas House of Representatives has given tentative approval to Sub. HB 2354. This bill represents the House version of workers' compensation reform and, if approved on final action Wednesday, March 3, will go to the Senate for its consideration.

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WICHITA
PUBLIC SCHOOLS

Risk Management Department

Testimony of L.A. "Mick" McBride, Risk Manager, before the Senate Financial Institutions and Insurance Committee in support of Senate Bill No. 215.

Mr. Chairman and Members of the Committee:

My name is L. A. "Mick" McBride. I am Risk Manager for the Wichita public school system. Thank you for allowing me to speak to you today regarding Senate Bill No. 215. We support Senate Bill No. 215 as amended by recommendations submitted to Senator Mike Harris by Ray Lagpacan, Supervisor of Employee Relations for Beechcraft, on March 11, 1993. I would like to specifically speak to you concerning §18. K.S.A. 1992 Supp. 44-504b, which states in part as follows:

> In event of recovery from such other person by the injured worker or the dependents or personal representatives of a deceased worker by judgment, settlement or otherwise, the employer shall be subrogated to the extent of the compensation and medical aid provided by the employer to the date of such recovery and shall have a lien therefor against *the entire amount of such recovery including any recovery, or portion thereof, designated as loss of consortium or loss of services to a spouse. The employer shall receive notice of the action, have a right to intervene and may participate in the action. The district court shall determine the extent of participation of the intervenor, including the apportionment of costs and fees.*

Since October 30, 1990, the Wichita public school system has had three workers' compensation claims involving a negligent and liable third party where the District employee chose to be represented by an attorney. In all three cases, settlement between the negligent party and the district employee was negotiated through an out-of-court settlement. In each case, the attorney interpreted the words "*the district court shall determine the extent of participation of the intervenor, including the apportionment of costs and fees,*" to mean that the school district must pay a full contingency fee for work supposedly done on the subrogation rights of the school district. This is outlined in the following chart. This data does not

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include expenses and attorney's fees incurred by the school district in processing the workers' compensation claim.

SETTLEMENT	USD PAID	SUBROGATED AMOUNT	ATTORNEY FEE	PERCENT-AGE
$95,302.00	$21,559.77	$16,169.83	$5,389.95	25
9,380.54	9,380.54	6,254.01	3,126.53	33
85,000.00	42,318.00	28,212.00	14,106.00	33
	73,258.31		22,622.48	

The attorney interpretation mentioned above cost the Unified School District No. 259 $22,622.48 plus expenses for three incidents totally beyond the control of the school district. I do not have factual data, but I must assume that the attorneys involved in these three cases also charged the school district employees the normal 25 percent fee for handling the workers' compensation claim. However one looks at these three cases, the school district was the big loser. If in fact the attorneys were allowed to collect two contingency fees, it is my opinion that the employee was also a loser.

I recommend that this legislation be changed to provide an employer total immunity and remove this type of situation from the auspices of the Kansas Workers' Compensation Law, thus allowing the injured employee to seek appropriate restitution from the liable third party, **OR** to give the employer the absolute right to recover in full for all benefits and expenses paid for the workers' compensation claim. If attorney involvement is necessary, the employer's attorney, who is paid on an hourly basis as opposed to a contingency basis, should be allowed to represent the employer.

The Kansas Workers' Compensation system should not be allowed to continue to subsidize plaintiff attorneys in this manner.

Thank you again for allowing me to speak to you. I will answer any questions you may have.

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