

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

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

All members were present.

Committee staff present:

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

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

Others attending:

See Attached List.

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

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

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

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

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

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

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

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

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

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

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

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

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

In 2002 there was an individual that gained legal representation after working for the company for just under four months. The company was named in the suit for repetitive trauma. Upon court hearings, and depositions, information was exposed where the employee had reported to her previous employer of her condition. This had gone on for over four years at her previous employment with some conservative medical treatment provided in the beginning, however, towards the end of her employment with her previous employer she was given no treatment by them. She terminated her employment with that

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company and came to work for our company without notifying us about her condition. The first time we knew anything about her condition is when we received paperwork on the suit. She informed us at that time that she did not want to bring a suit against the company because she felt that her previous employer was the one responsible for her injury, but her attorney said that she should sue us because we were her current employer and that we would be the ones having to pay. The other company was also named in the suit, however, we lost the case and the Administrative Law Judge (ALJ) ruled that we owed all due compensation and all medical costs. This case cost the company over \$25,000. The other company which did not provide proper medical treatment got off free and clear just because the individual did not work there anymore. The claimant, however, did indeed make proper notification of injury prior to leaving her previous employer. The ALJ ruled that since she was currently employed by us, that we were responsible because it was an aggravation. Our company suffered the consequences for another company not complying with the statutes of Kansas Workers Compensation by providing due medical care. The employee was for sure within her ten day rule of notification of injury (Attachment 6).

Docking Report is filed in the Chairman's Office.

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