



Board of Trustees

Board Meeting

August 24, 2018

Overland Park, Kansas

DoubleTree Hotel
10100 College Boulevard
9:00 AM

BOARD OF TRUSTEES MEETING KANSAS MUNICIPAL INSURANCE TRUST

**9:00 AM, Friday, August 24, 2018
DoubleTree Hotel Overland Park, KS**

1. Call-To-Order (President Randy Frazer)
2. Welcome (if any)
3. Trustee Absences / Quorum Declaration (Frazer)
4. Minutes Approval: McPherson Trustee Meeting of June 29, 2018 (Frazer)
5. Risk Management: Financial Reports (Kifer)
 - a. June 30, 2018 Financials
 - b. July 31, 2018 Financials
 - c. Second Quarter (7/31) 2018 KID Report
 - d. July 31, 2018 Cash and Investment Summary (Osenbaugh)
6. Claims Management: Settlement Authority & Reserve Advisory (Miller)
7. Loss Control Management: Activities/Update (Chris Retter)
8. Risk Management: Loss Cost Review/2019 LCM (Rate) Determination (Cornejo/Osenbaugh)
9. Admission of New Member Entity (Osenbaugh)
 - a. Independence Community College
10. Policy #5: *Ad Hoc* Board Position for Community Colleges (Osenbaugh)
11. 2018 Nomination Committee Report (Lasher)
12. POET Update (Dorothy Riviere and Taylor Ediger, Bardavon)
13. Administrator Report
14. Other Business
15. Adjourn (approximately 12:00 Noon)

*US-69 @ College Blvd.

KANSAS MUNICIPAL INSURANCE TRUST

Board of Trustees Minutes from June 29, 2018

Unapproved

Meeting Convened: Friday, April 29, 2018, at the KMU Headquarters/Training Facility, in McPherson, KS. The meeting was called to order by KMIT Vice President David Dillner at 9:18 A.M.

Welcome: Dillner welcomed all.

Resignations: Previous KMIT Trustees Kerry Rozman (Clay Center) and Michael Webb (Edwardsville) had both submitted their immediate resignations from the KMIT Board since the last board meeting. Both resignations were accepted unanimously, following a motion by Cox and a second by Simons.

Members Present: *Board Members Present:* Vice President David Dillner (El Dorado), Past President Tim Hardy (Elkhart), Janie Cox (Haysville), Carey Simons (Pittsburg), Keith Schlaegel (Stockton) and Ty Lasher (Bel Aire). *Staff:* Barbie Kifer (CORnerstone), Kyle Johnston (CORnerstone), Jess Cornejo (CORnerstone), Gene Miller (TRISTAR), and Don Osenbaugh (KMIT Pool Administrator).

Trustee Absences/Quorum Declaration: President Randy Fraser (Moundridge), Michael Reagle (Garden City) and Greg DuMars (Lindsborg) were absent. A (minimum) quorum was declared by Dillner.

Minutes Approval: The minutes from the Garden City meeting of April 29, 2018 were unanimously approved as written, following a motion by Schlaegel and a second by Hardy.

Financial Reports:

- a. April 30, 2018 Financials
- b. May 31, 2018 Financials
- c. Fourth Quarter (12/31) 2017 'Audited' KID Financial Report
- d. First Quarter (3/31) 2018 'Revised' KID Financial Report
- e. May 31, 2018 Cash/Investments Summary

The motion to approve the above reports was made by Schlaegel; seconded by Cox. Approved unanimously.

Annual Actuary Report Review/Analysis: Cornejo presented the annual actuary report (as prepared by Mindy Steichen, Milliman), and gave an interpretive analysis. Motion to receive/file by Lasher; second by Schlaegel. Unanimously approved.

Annual Financial Audit: Stuart Bach (Summer, Spencer & Co.) presented the annual (2016/2017) financial audit. There were no irregularities noted. The KMIT net worth on 12/31/17 was \$5,981,447 (compared to \$5,975,000 on 12/31/16). Motion to receive/file by Hardy; second by Cox. Unanimously approved.

Reserve Advisory and Settlement Authority: Miller presented the following claims--

1. Claim #2016075317 (Neodesha)--Recommendation by Miller to attempt to settle for \$20,000 approved unanimously, following a motion by Hardy and a second by Schlaegel.

2. Claim #2016073948 (Edwardsville)--Recommendation by Miller to attempt to settle in the amount of \$21,768 approved unanimously, following a motion by Schlaegel and a second by Lasher.
3. Claim #2016074253 (Kinsley)--Reserve Advisory only.
4. Claim #18721899 (Stafford)--Reserve Advisory only.
5. Claim #18717866 (Benton)--Reserve Advisory only.
6. Claim #18709621 (Augusta)--Reserve Advisory only.
7. Claim #18722113 (Wellington)--Reserve Advisory only.
8. Claim #18715936 (Reading)--Reserve Advisory only.

Osenbaugh also advised that there has been a recent Kansas court ruling that certain parts of the AMA Six work comp medical guidelines book are unconstitutional. (Miller explained what the guidebook is, and how it is used by work comp doctors to determine ratings. It is thick and detailed, suffice to say.) It is unclear what the next legal step might be, but it may be expected that the 2019 Kansas Legislature will at least consider reverting back to the AMA Four, which was used by KS until several years ago. The State Legislature controls which updates to adopt. AMA Six is considered to be more conservative (against claimants) in a number of ways, and has been criticized by claimant attorneys since its inception.

Loss Control Activities: Rhodes being unable to attend due to illness, Cornejo gave a brief update.

New Members: Coffeyville Community College and Independence Community College will become the first two 'non-city' members ever accepted into KMIT on July 1, 2018.

KMIT staff has been notified that Grainfield will be leaving the pool on August 1.

Policy #5--Ad Hoc Board Members: Osenbaugh presented a draft of a proposed policy which would add 'Ad Hoc' (non-voting) board members from the community colleges coming into KMIT. The draft policy was discussed, with any final decision coming at the August meeting in Overland Park.

Nominating Committee: On behalf of President Frazer, VP Dillner appointed this year's Nominating Committee, comprised of Lasher (Chair), Cox and DuMars. There will be four vacant positions to fill. (Dillner has agreed to stand for another 2-year term.) Motion to approve the appointments made by Hardy; second by Schlaegel, and approved unanimously.

Other Business: Osenbaugh gave a brief update concerning a number of issues related to the operation of KMIT. Among those items:

1. KMIT did quote the Buhler USD (KMIT's first quote for a K-12 school district), through an agent in Hutchinson, and that quote was not accepted;
2. The August 24 Trustee meeting will be in Overland Park, at the IMA offices in Corporate Woods.

Adjournment: Motion to adjourn by Schlaegel; second by Hardy. Unanimous. Adjourned at 11:59 A.M.

KMIT Balance Sheet

June 30, 2018

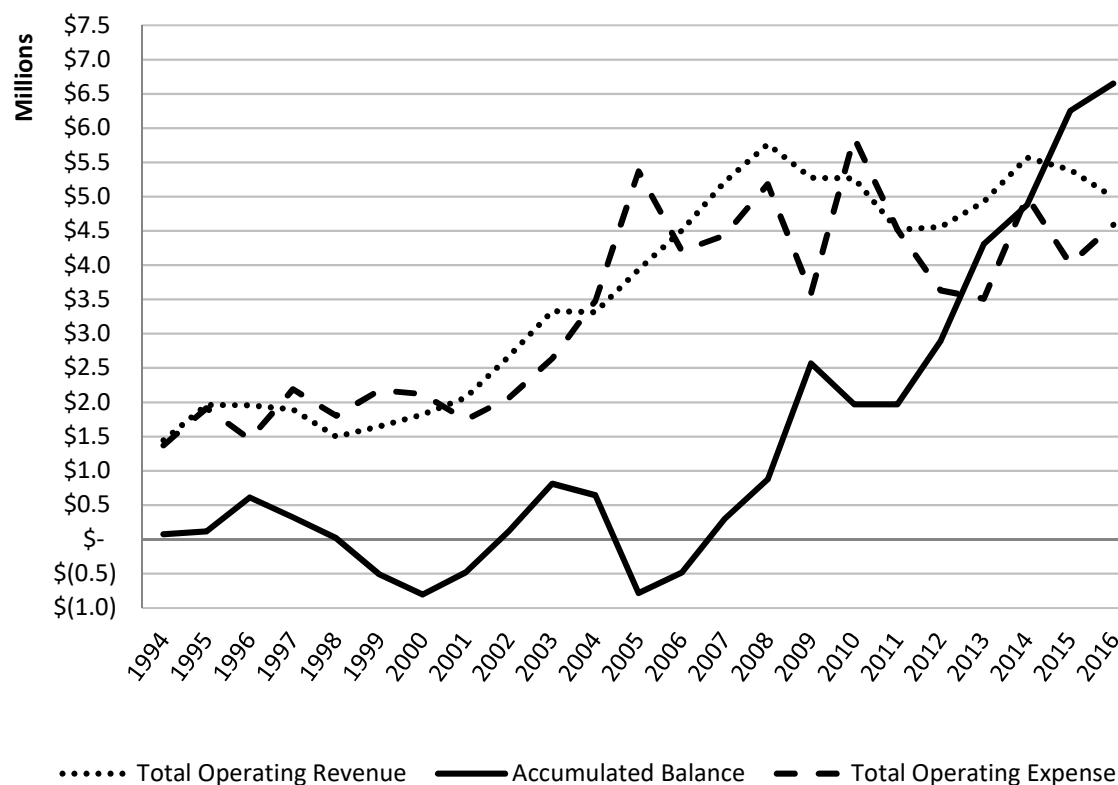
ASSETS

Checking Accounts	\$ 378,290
Investments	\$ 16,585,068
Accrued Interest	\$ 111,213
Accounts Receivable	\$ 75,470
Excess Premium Receivable	\$ 18,907
Specific Recoverable	\$ 1,347,291
Aggregate Recoverable	\$ 7,011
Prepaid Expenses	\$ 313,932
Total Assets	\$ 18,837,183

LIABILITIES & EQUITY

Accounts Payable	\$ 10,098
Excess Premium Payable	\$ -
Reserve for Losses	\$ 6,213,597
IBNR Reserve	\$ 4,043,198
Deposits on Premium	\$ 2,507,617
Accrued Taxes and Assessments	\$ 377,596
Total Liabilities	\$ 13,152,104
Total Equity	\$ 5,685,078
Total Liabilities and Equity	\$ 18,837,183

KMIT Financial Overview



KMIT Profit and Loss

June 30, 2018

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
	Closed	Closed	Closed	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date
REVENUE FUND																
Direct Premium Earned	\$ 1,422,582	\$ 1,885,501	\$ 1,843,047	\$ 1,754,515	\$ 1,377,722	\$ 1,552,110	\$ 1,689,773	\$ 1,965,656	\$ 2,616,641	\$ 3,274,489	\$ 3,256,648	\$ 3,837,793	\$ 4,272,140	\$ 4,950,171	\$ 5,519,169	\$ 5,193,427
Interest Income	\$ 22,675	\$ 73,225	\$ 114,912	\$ 142,705	\$ 116,190	\$ 96,882	\$ 129,613	\$ 101,694	\$ 50,668	\$ 52,492	\$ 59,068	\$ 96,274	\$ 234,986	\$ 263,024	\$ 245,802	\$ 81,601
Miscellaneous Income	\$ -	\$ -	\$ -	\$ -	\$ 4,445	\$ 75	\$ -	\$ -	\$ 2,335	\$ -	\$ -	\$ -	\$ -	\$ 2,405	\$ -	\$ -
Total Operating Revenue	\$ 1,445,257	\$ 1,958,726	\$ 1,957,959	\$ 1,897,220	\$ 1,498,357	\$ 1,649,067	\$ 1,819,386	\$ 2,067,350	\$ 2,669,644	\$ 3,326,981	\$ 3,315,716	\$ 3,934,067	\$ 4,507,126	\$ 5,215,600	\$ 5,764,971	\$ 5,275,028
		\$ 390,462														
ADMINISTRATION FUND EXPENSE	\$ 477,137	\$ 601,545	\$ 492,669	\$ 527,664	\$ 491,879	\$ 456,714	\$ 450,159	\$ 437,027	\$ 533,041	\$ 649,336	\$ 739,018	\$ 818,662	\$ 906,753	\$ 916,851	\$ 957,455	\$ 952,073
CLAIMS FUND EXPENSE																
Claims Paid Expense	\$ 716,700	\$ 1,049,152	\$ 790,125	\$ 2,073,604	\$ 2,008,098	\$ 1,743,694	\$ 1,448,856	\$ 1,097,496	\$ 1,211,714	\$ 1,874,209	\$ 2,291,987	\$ 3,929,509	\$ 2,608,959	\$ 2,778,886	\$ 3,332,483	\$ 2,030,707
Claims Paid Adjusting Expense	\$ 25,541	\$ 54,345	\$ 46,505	\$ 90,802	\$ 85,703	\$ 143,973	\$ 123,960	\$ 83,220	\$ 129,112	\$ 149,296	\$ 150,382	\$ 246,568	\$ 182,291	\$ 193,633	\$ 238,759	\$ 133,200
Claims Reserve Expense	\$ -	\$ -	\$ -	\$ -	\$ 53,643	\$ 51,376	\$ 5,738	\$ -	\$ -	\$ -	\$ 38,025	\$ 126,874	\$ 51,845	\$ 100,447	\$ 181,268	\$ 20,569
Claims Reserves Adjusting Expense	\$ -	\$ -	\$ -	\$ -	\$ 4,667	\$ 3,957	\$ 1,762	\$ -	\$ -	\$ -	\$ 457	\$ 15,784	\$ 18,635	\$ 15,577	\$ 12,259	\$ 8,459
IBNR Reserve Expense	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 38,690	\$ 43,290	\$ 52,965	\$ 61,438	\$ 155,593	\$ 98,999
Excess Work Comp Insurance	\$ 151,393	\$ 210,142	\$ 133,376	\$ 117,122	\$ 79,456	\$ 80,124	\$ 86,819	\$ 127,168	\$ 189,458	\$ 366,991	\$ 221,435	\$ 374,472	\$ 384,425	\$ 420,728	\$ 372,790	\$ 341,935
Specific Recoverable Expense	\$ -	\$ -	\$ -	\$ -	\$ (180,999)	\$ 48,322	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Specific Recovery Expense	\$ -	\$ -	\$ -	\$ (268,748)	\$ (740,988)	\$ (232,568)	\$ -	\$ -	\$ -	\$ (400,137)	\$ -	\$ (188,126)	\$ -	\$ (53,999)	\$ (66,549)	\$ -
Aggregate Recoverable Expense	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (7,011)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Aggregate Recovery Expense	\$ -	\$ -	\$ -	\$ (352,627)	\$ -	\$ (112,699)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Claims Fund Expense	\$ 893,634	\$ 1,313,638	\$ 970,007	\$ 1,660,153	\$ 1,309,579	\$ 1,719,169	\$ 1,667,135	\$ 1,307,883	\$ 1,530,284	\$ 1,990,358	\$ 2,740,976	\$ 4,548,371	\$ 3,299,120	\$ 3,516,711	\$ 4,226,603	\$ 2,633,867
Total Operating Expense	\$ 1,370,771	\$ 1,915,183	\$ 1,462,676	\$ 2,187,817	\$ 1,801,458	\$ 2,175,883	\$ 2,117,294	\$ 1,744,911	\$ 2,063,325	\$ 2,639,694	\$ 3,479,994	\$ 5,367,033	\$ 4,205,873	\$ 4,433,561	\$ 5,184,058	\$ 3,585,940
BALANCES																
KMIT Statutory Fund Balance	\$ 74,486	\$ 43,543	\$ 495,283	\$ (290,597)	\$ (303,101)	\$ (526,816)	\$ (297,908)	\$ 322,439	\$ 606,319	\$ 687,287	\$ (164,278)	\$ (1,432,966)	\$ 301,253	\$ 782,039	\$ 580,913	\$ 1,689,088
Accumulated Balance	\$ 74,486	\$ 118,029	\$ 613,312	\$ 322,715	\$ 19,614	\$ (507,202)	\$ (805,110)	\$ (482,670)	\$ 123,648	\$ 810,935	\$ 646,657	\$ (786,309)	\$ (485,055)	\$ 296,983	\$ 877,896	\$ 2,566,984

KMIT Profit and Loss

June 30, 2018

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2018	Total
	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Budget	Accrued To Date
REVENUE FUND											
Direct Premium Earned	\$ 5,213,859	\$ 4,442,326	\$ 4,484,533	\$ 4,853,835	\$ 5,460,344	\$ 5,261,044	\$ 4,829,526	\$ 5,007,888	\$ 2,462,567	\$ 4,900,000	\$ 88,427,305
Interest Income	\$ 52,768	\$ 72,925	\$ 70,104	\$ 71,861	\$ 107,601	\$ 128,600	\$ 160,374	\$ 220,606	\$ 144,702	\$ 165,000	\$ 2,911,302
Miscellaneous Income	\$ -	\$ 1,441	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 10,701
Total Operating Revenue	\$ 5,266,578	\$ 4,516,692	\$ 4,554,637	\$ 4,925,696	\$ 5,567,945	\$ 5,389,644	\$ 4,989,900	\$ 5,228,494	\$ 2,607,268	\$ 5,065,000	\$ 91,349,309
ADMINISTRATION FUND EXPENSE	\$ 1,034,821	\$ 967,690	\$ 933,546	\$ 996,092	\$ 1,069,752	\$ 1,049,388	\$ 1,123,794	\$ 1,209,404	\$ 622,949	\$ 1,230,000	\$ 19,415,421
CLAIMS FUND EXPENSE											
Claims Paid Expense	\$ 3,868,124	\$ 2,725,675	\$ 1,920,451	\$ 1,706,794	\$ 3,236,669	\$ 1,661,943	\$ 1,519,179	\$ 1,536,109	\$ 563,668	\$ -	\$ 49,724,788
Claims Paid Adjusting Expense	\$ 188,258	\$ 148,225	\$ 171,144	\$ 129,206	\$ 141,721	\$ 133,603	\$ 101,422	\$ 93,821	\$ 27,643	\$ -	\$ 3,212,331
Claims Reserve Expense	\$ 229,781	\$ 137,059	\$ 58,373	\$ 28,937	\$ 1,292,565	\$ 145,924	\$ 287,952	\$ 1,455,094	\$ 1,170,182	\$ -	\$ 5,435,653
Claims Reserves Adjusting Expense	\$ 26,720	\$ 3,753	\$ 9,626	\$ 5,670	\$ 62,804	\$ 38,637	\$ 74,161	\$ 253,677	\$ 221,339	\$ -	\$ 777,944
IBNR Reserve Expense	\$ 162,686	\$ 199,023	\$ 210,592	\$ 247,769	\$ 289,143	\$ 533,128	\$ 1,031,919	\$ 917,964	\$ -	\$ -	\$ 4,043,198
Excess Work Comp Insurance	\$ 351,375	\$ 336,966	\$ 337,595	\$ 395,128	\$ 432,750	\$ 456,352	\$ 451,042	\$ 476,604	\$ 251,815	\$ 504,000	\$ 7,147,460
Specific Recoverable Expense	\$ -	\$ -	\$ -	\$ -	\$ (1,214,614)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (1,347,291)
Specific Recovery Expense	\$ (43)	\$ -	\$ (9,965)	\$ -	\$ (311,814)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (2,272,936)
Aggregate Recoverable Expense	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (7,011)
Aggregate Recovery Expense	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (465,326)
Claims Fund Expense	\$ 4,826,900	\$ 3,550,701	\$ 2,697,816	\$ 2,513,503	\$ 3,929,224	\$ 2,969,587	\$ 3,465,676	\$ 4,733,269	\$ 2,234,647	\$ 504,000	\$ 66,248,810
Total Operating Expense	\$ 5,861,721	\$ 4,518,391	\$ 3,631,362	\$ 3,509,595	\$ 4,998,976	\$ 4,018,975	\$ 4,589,470	\$ 5,942,673	\$ 2,857,596	\$ 1,734,000	\$ 85,664,231
BALANCES											
KMIT Statutory Fund Balance	\$ (595,143)	\$ (1,699)	\$ 923,275	\$ 1,416,100	\$ 568,968	\$ 1,370,669	\$ 400,431	\$ (714,179)	\$ (250,328)	\$ 3,331,000	\$ 5,685,078
Accumulated Balance	\$ 1,971,841	\$ 1,970,142	\$ 2,893,417	\$ 4,309,517	\$ 4,878,485	\$ 6,249,154	\$ 6,649,585	\$ 5,935,406	\$ 5,685,078		

KMIT Admin Expenses

June 30, 2018

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
	Closed	Closed	Closed	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date
GENERAL EXPENSES															
Agent Commissions	\$ -	\$ -	\$ -	\$ -	\$ 969	\$ 4,919	\$ 5,239	\$ 12,669	\$ 33,803	\$ 44,060	\$ 43,231	\$ 61,486	\$ 75,650	\$ 77,961	\$ 88,532
Directors and Officers Insurance	\$ -	\$ 489	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 20,367	\$ 18,542
Meetings/Travel	\$ -	\$ 6,971	\$ 976	\$ 5,318	\$ 1,206	\$ -	\$ 149	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Contingencies/Miscellaneous	\$ -	\$ 8,984	\$ 2,596	\$ 3,913	\$ 5,357	\$ 11,585	\$ 6,020	\$ 18,223	\$ 26,103	\$ 28,939	\$ 41,820	\$ 23,173	\$ 66,332	\$ 33,865	\$ 26,155
Bank Fees	\$ 1,249	\$ 4,735	\$ 579	\$ 658	\$ 263	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,638
Write Off	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
LKM Clearing	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Marketing	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Office Supplies	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Sub Total	\$ 1,249	\$ 21,179	\$ 4,151	\$ 9,889	\$ 7,795	\$ 16,504	\$ 11,408	\$ 30,892	\$ 59,906	\$ 72,999	\$ 85,051	\$ 84,659	\$ 141,982	\$ 132,193	\$ 135,867
REGULATORY															
Kansas Insurance Dept (KID) Premium Tax	\$ 12,847	\$ 18,402	\$ 13,177	\$ 10,823	\$ 13,893	\$ 18,215	\$ 19,568	\$ 18,564	\$ 24,377	\$ 29,017	\$ 30,168	\$ 34,004	\$ 40,212	\$ 46,194	\$ 54,139
KID Pool Assessment	\$ 9,407	\$ -	\$ 5,372	\$ 3,470	\$ 3,798	\$ 1,855	\$ 2,693	\$ 4,355	\$ 3,341	\$ 5,983	\$ 2,844	\$ 3,900	\$ -	\$ 4,300	\$ 3,409
KID Workers Compensation Assessment	\$ 64,034	\$ 44,011	\$ 25,322	\$ 48,345	\$ 31,243	\$ 14,594	\$ 10,372	\$ 1,795	\$ 7,770	\$ 19,748	\$ 47,137	\$ 91,805	\$ 47,193	\$ 32,896	\$ 32,770
KID State Audit	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
KDOL Annual Assessment Fee	\$ 9,073	\$ 15,053	\$ 12,410	\$ 42,620	\$ 40,430	\$ 46,402	\$ 39,446	\$ 30,885	\$ 34,311	\$ 39,671	\$ 57,449	\$ 75,030	\$ 79,800	\$ 81,262	\$ 91,774
Sub Total	\$ 95,360	\$ 77,466	\$ 56,281	\$ 105,257	\$ 89,363	\$ 81,066	\$ 72,078	\$ 55,599	\$ 69,799	\$ 94,418	\$ 137,599	\$ 204,739	\$ 167,205	\$ 164,652	\$ 182,091
CONTRACTURAL															
Financial Audit	\$ 4,603	\$ -	\$ 6,639	\$ 32,625	\$ 12,292	\$ 8,288	\$ 10,973	\$ 8,474	\$ 9,600	\$ 9,806	\$ 10,465	\$ 10,264	\$ 33,013	\$ 6,462	\$ 13,127
Actuarial	\$ -	\$ -	\$ 2,855	\$ 5,000	\$ 25,033	\$ 5,859	\$ 5,703	\$ 7,062	\$ 6,148	\$ 6,272	\$ 7,862	\$ 9,000	\$ 9,991	\$ 12,860	\$ 13,000
Risk Management	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 40,000	\$ 40,000	\$ 50,000	\$ 50,000	\$ 60,000	\$ 70,000
Risk Control	\$ -	\$ -	\$ 82,500	\$ 99,073	\$ 87,000	\$ 80,000	\$ 80,000	\$ 85,000	\$ 92,500	\$ 105,000	\$ 113,000	\$ 120,000	\$ 130,000	\$ 140,000	\$ 140,000
Claims Adjusting	\$ 298,447	\$ 312,500	\$ 194,842	\$ 105,470	\$ 100,000	\$ 105,000	\$ 110,000	\$ 110,000	\$ 125,000	\$ 135,000	\$ 140,000	\$ 140,000	\$ 150,000	\$ 165,000	\$ 165,000
Risk Analysis	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
POET	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Pool Admin Services	\$ 77,478	\$ 190,400	\$ 145,400	\$ 170,350	\$ 170,396	\$ 159,996	\$ 159,996	\$ 140,000	\$ 160,000	\$ 176,000	\$ 193,000	\$ 200,000	\$ 210,000	\$ 220,000	\$ 220,000
Payroll Audits	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 10,088	\$ 9,840	\$ 12,042	\$ -	\$ 14,562	\$ 15,684	\$ 18,370
Rating Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Crime	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Web Hosting	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Endorsement Fee	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Sub Total	\$ 380,528	\$ 502,900	\$ 432,236	\$ 412,518	\$ 394,721	\$ 359,144	\$ 366,672	\$ 350,536	\$ 403,336	\$ 481,918	\$ 516,368	\$ 529,264	\$ 597,566	\$ 620,006	\$ 639,497
Administration Fund Expense	\$ 477,137	\$ 601,545	\$ 492,669	\$ 527,664	\$ 491,879	\$ 456,714	\$ 450,159	\$ 437,027	\$ 533,041	\$ 649,336	\$ 739,018	\$ 818,662	\$ 906,753	\$ 916,851	\$ 957,455

KMIT Admin Expenses

June 30, 2018

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2018	Total
	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Budget	Accrued To Date
GENERAL EXPENSES												
Agent Commissions	\$ 94,214	\$ 93,637	\$ 82,860	\$ 96,481	\$ 102,636	\$ 97,189	\$ 97,505	\$ 90,158	\$ 104,978	\$ 48,151	\$ 102,000	\$ 1,356,329
Directors and Officers Insurance	\$ 15,857	\$ 15,942	\$ 16,038	\$ 16,488	\$ 17,224	\$ 15,956	\$ 15,667	\$ 15,970	\$ 15,939	\$ 7,970	\$ 16,000	\$ 192,449
Meetings/Travel	\$ -	\$ -	\$ 829	\$ 4,881	\$ 19,334	\$ 29,749	\$ 19,897	\$ 22,638	\$ 20,165	\$ 8,418	\$ 23,000	\$ 140,531
Contingencies/Miscellaneous	\$ 34,318	\$ 2,657	\$ 1,708	\$ 3,175	\$ 3,623	\$ 4,385	\$ 3,884	\$ 2,594	\$ (2,597)	\$ 4,390	\$ 6,000	\$ 361,202
Bank Fees	\$ 2,758	\$ 9,239	\$ 5,776	\$ 4,159	\$ 7,528	\$ 4,460	\$ 5,998	\$ 6,333	\$ 7,391	\$ 3,616	\$ 6,000	\$ 67,381
Write Off	\$ -	\$ -	\$ (104)	\$ -	\$ -	\$ -	\$ -	\$ 464	\$ -	\$ -	\$ -	\$ 360
LKM Clearing	\$ -	\$ -	\$ 60	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 60
Marketing	\$ -	\$ -	\$ -	\$ 439	\$ 452	\$ 161	\$ 34	\$ 502	\$ -	\$ -	\$ 1,000	\$ 1,588
Office Supplies	\$ -	\$ -	\$ -	\$ 1,112	\$ 1,830	\$ 3,732	\$ 4,485	\$ 6,176	\$ 9,399	\$ 2,432	\$ 9,000	\$ 29,165
Sub Total	\$ 147,147	\$ 121,475	\$ 107,167	\$ 126,735	\$ 152,627	\$ 155,632	\$ 147,469	\$ 144,835	\$ 155,276	\$ 74,978	\$ 163,000	\$ 2,149,065
REGULATORY												
Kansas Insurance Dept (KID) Premium Tax	\$ 48,525	\$ 49,030	\$ 40,919	\$ 43,445	\$ 44,349	\$ 51,057	\$ 47,827	\$ 46,830	\$ 48,793	\$ 22,108	\$ 50,000	\$ 826,482
KID Pool Assessment	\$ 3,476	\$ 3,500	\$ 3,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 64,701
KID Workers Compensation Assessment	\$ 28,363	\$ 57,704	\$ 65,962	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 671,063
KID State Audit	\$ -	\$ -	\$ 12,652	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 12,652
KDOL Annual Assessment Fee	\$ 59,587	\$ 103,374	\$ 39,163	\$ 83,234	\$ 84,997	\$ 131,222	\$ 81,630	\$ 98,358	\$ 166,207	\$ 56,540	\$ 200,000	\$ 1,599,929
Sub Total	\$ 139,951	\$ 213,608	\$ 161,696	\$ 126,679	\$ 129,346	\$ 182,279	\$ 129,457	\$ 145,187	\$ 215,001	\$ 78,647	\$ 250,000	\$ 3,174,826
CONTRACTURAL												
Financial Audit	\$ 18,608	\$ 31,565	\$ 12,023	\$ 11,738	\$ 11,904	\$ 15,803	\$ 13,803	\$ 12,000	\$ 13,165	\$ -	\$ 27,000	\$ 317,240
Actuarial	\$ 13,750	\$ 14,000	\$ 14,000	\$ 14,250	\$ 14,250	\$ 15,000	\$ 14,500	\$ 15,000	\$ 15,000	\$ -	\$ 15,000	\$ 246,395
Risk Management	\$ 70,000	\$ 70,000	\$ 70,000	\$ 70,000	\$ 170,000	\$ 170,000	\$ 170,000	\$ 190,000	\$ 205,000	\$ 126,420	\$ 210,700	\$ 1,621,420
Risk Control	\$ 145,000	\$ 145,000	\$ 145,000	\$ 145,000	\$ 150,000	\$ 150,000	\$ 155,000	\$ 155,000	\$ 155,000	\$ 95,580	\$ 159,300	\$ 2,794,653
Claims Adjusting	\$ 175,000	\$ 195,000	\$ 185,000	\$ 185,000	\$ 185,000	\$ 185,000	\$ 205,000	\$ 205,000	\$ 210,000	\$ 129,780	\$ 216,500	\$ 4,216,039
Risk Analysis	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 9,671	\$ 14,651	\$ 27,647	\$ 12,113	\$ 19,045	\$ 15,000	\$ 83,127
POET	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,425	\$ 10,513	\$ 20,138	\$ 11,175	\$ 15,000	\$ 49,250
Pool Admin Services	\$ 225,000	\$ 225,000	\$ 230,000	\$ 230,004	\$ 75,600	\$ 81,900	\$ 98,560	\$ 99,360	\$ 102,240	\$ 52,560	\$ 105,000	\$ 4,013,240
Payroll Audits	\$ 17,617	\$ 19,173	\$ 19,000	\$ 16,318	\$ 16,000	\$ 20,143	\$ 19,923	\$ 19,954	\$ 20,772	\$ -	\$ 21,000	\$ 249,485
Rating Services	\$ -	\$ -	\$ 22,650	\$ 6,636	\$ 18,702	\$ 10,887	\$ 754	\$ 27,105	\$ 11,595	\$ 24	\$ -	\$ 98,353
Crime	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 348	\$ 697	\$ -	\$ 1,045
Web Hosting	\$ -	\$ -	\$ 1,155	\$ 1,187	\$ 2,663	\$ 3,439	\$ 2,846	\$ 2,193	\$ 3,758	\$ 1,544	\$ -	\$ 18,784
Endorsement Fee	\$ -	\$ -	\$ -	\$ -	\$ 70,000	\$ 70,000	\$ 70,000	\$ 70,000	\$ 70,000	\$ 32,500	\$ 32,500	\$ 382,500
Sub Total	\$ 664,975	\$ 699,738	\$ 698,827	\$ 680,133	\$ 714,119	\$ 731,842	\$ 772,461	\$ 833,772	\$ 839,128	\$ 469,324	\$ 817,000	\$ 14,091,529
Administration Fund Expense	\$ 952,073	\$ 1,034,821	\$ 967,690	\$ 933,546	\$ 996,092	\$ 1,069,752	\$ 1,049,388	\$ 1,123,794	\$ 1,209,404	\$ 622,949	\$ 1,230,000	\$ 19,415,421

KMIT Balance Sheet

July 31, 2018

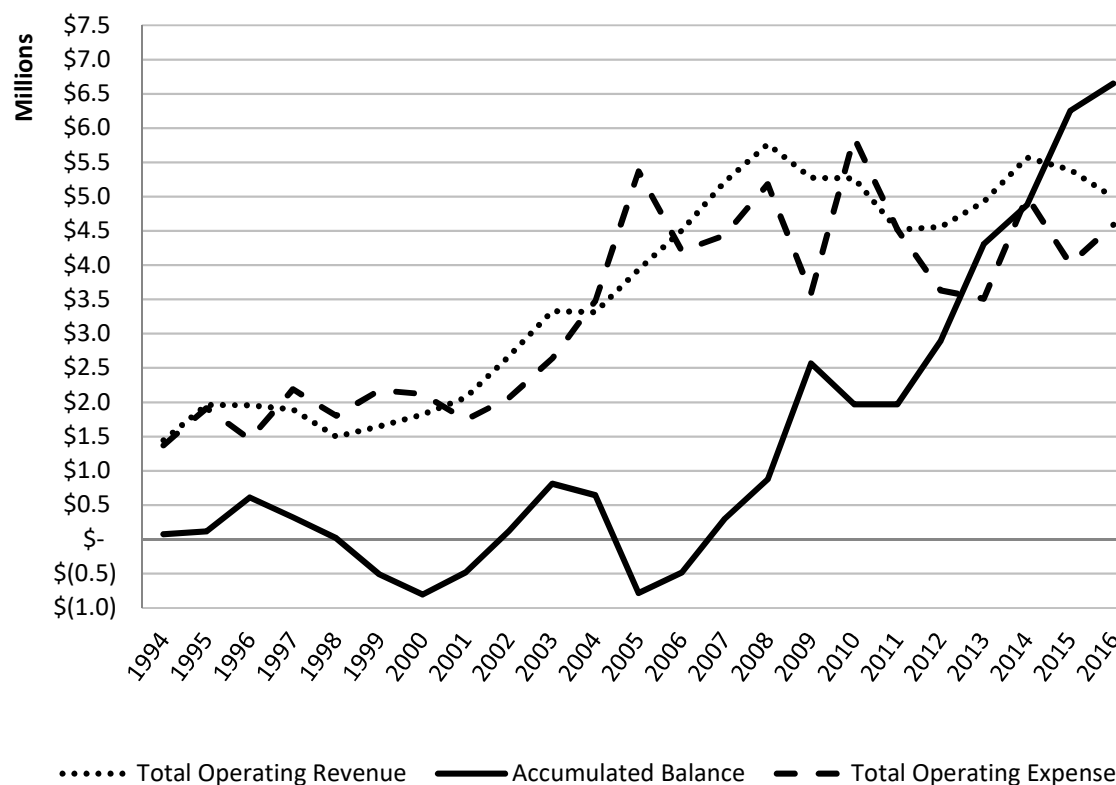
ASSETS

Checking Accounts	\$ 482,596
Investments	\$ 16,378,266
Accrued Interest	\$ 123,512
Accounts Receivable	\$ 1,332
Excess Premium Receivable	\$ -
Specific Recoverable	\$ 1,329,854
Aggregate Recoverable	\$ 7,011
Prepaid Expenses	\$ 266,028
Total Assets	\$ 18,588,598

LIABILITIES & EQUITY

Accounts Payable	\$ 10,098
Excess Premium Payable	\$ -
Reserve for Losses	\$ 6,504,605
IBNR Reserve	\$ 4,025,051
Deposits on Premium	\$ 2,119,867
Accrued Taxes and Assessments	\$ 377,596
Total Liabilities	\$ 13,037,216
Total Equity	\$ 5,551,382
Total Liabilities and Equity	\$ 18,588,598

KMIT Financial Overview



KMIT Profit and Loss

July 31, 2018

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
	Closed	Closed	Closed	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date
REVENUE FUND																
Direct Premium Earned	\$ 1,422,582	\$ 1,885,501	\$ 1,843,047	\$ 1,754,515	\$ 1,377,722	\$ 1,552,110	\$ 1,689,773	\$ 1,965,656	\$ 2,616,641	\$ 3,274,489	\$ 3,256,648	\$ 3,837,793	\$ 4,272,140	\$ 4,950,171	\$ 5,519,169	\$ 5,193,427
Interest Income	\$ 22,675	\$ 73,225	\$ 114,912	\$ 142,705	\$ 116,190	\$ 96,882	\$ 129,613	\$ 101,694	\$ 50,668	\$ 52,492	\$ 59,068	\$ 96,274	\$ 234,986	\$ 263,024	\$ 245,802	\$ 81,601
Miscellaneous Income	\$ -	\$ -	\$ -	\$ -	\$ 4,445	\$ 75	\$ -	\$ -	\$ 2,335	\$ -	\$ -	\$ -	\$ -	\$ 2,405	\$ -	\$ -
Total Operating Revenue	\$ 1,445,257	\$ 1,958,726	\$ 1,957,959	\$ 1,897,220	\$ 1,498,357	\$ 1,649,067	\$ 1,819,386	\$ 2,067,350	\$ 2,669,644	\$ 3,326,981	\$ 3,315,716	\$ 3,934,067	\$ 4,507,126	\$ 5,215,600	\$ 5,764,971	\$ 5,275,028
	\$ 390,462															
ADMINISTRATION FUND EXPENSE	\$ 477,137	\$ 601,545	\$ 492,669	\$ 527,664	\$ 491,879	\$ 456,714	\$ 450,159	\$ 437,027	\$ 533,041	\$ 649,336	\$ 739,018	\$ 818,662	\$ 906,753	\$ 916,851	\$ 957,455	\$ 952,073
CLAIMS FUND EXPENSE																
Claims Paid Expense	\$ 716,700	\$ 1,049,152	\$ 790,125	\$ 2,073,604	\$ 2,015,646	\$ 1,744,740	\$ 1,449,006	\$ 1,097,496	\$ 1,211,714	\$ 1,874,209	\$ 2,291,310	\$ 3,930,472	\$ 2,609,566	\$ 2,780,916	\$ 3,335,536	\$ 2,031,957
Claims Paid Adjusting Expense	\$ 25,541	\$ 54,345	\$ 46,505	\$ 90,802	\$ 85,841	\$ 144,122	\$ 123,971	\$ 83,220	\$ 129,112	\$ 149,296	\$ 151,415	\$ 246,672	\$ 182,319	\$ 193,537	\$ 237,887	\$ 133,653
Claims Reserve Expense	\$ -	\$ -	\$ -	\$ -	\$ 50,908	\$ 50,330	\$ 5,588	\$ -	\$ -	\$ -	\$ 37,702	\$ 125,850	\$ 51,238	\$ 98,595	\$ 178,975	\$ 19,319
Claims Reserves Adjusting Expense	\$ -	\$ -	\$ -	\$ -	\$ 4,528	\$ 3,808	\$ 1,752	\$ -	\$ -	\$ -	\$ 425	\$ 15,742	\$ 18,607	\$ 15,494	\$ 12,183	\$ 8,505
IBNR Reserve Expense	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 38,690	\$ 43,290	\$ 52,965	\$ 61,438	\$ 155,781	\$ 98,499
Excess Work Comp Insurance	\$ 151,393	\$ 210,142	\$ 133,376	\$ 117,122	\$ 79,456	\$ 80,124	\$ 86,819	\$ 127,168	\$ 189,458	\$ 366,991	\$ 221,435	\$ 374,472	\$ 384,425	\$ 420,728	\$ 372,790	\$ 341,935
Specific Recoverable Expense	\$ -	\$ -	\$ -	\$ -	\$ (163,562)	\$ 48,322	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Specific Recovery Expense	\$ -	\$ -	\$ -	\$ (268,748)	\$ (763,239)	\$ (232,568)	\$ -	\$ -	\$ -	\$ (400,137)	\$ -	\$ (188,126)	\$ -	\$ (53,999)	\$ (66,549)	\$ -
Aggregate Recoverable Expense	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (7,011)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Aggregate Recovery Expense	\$ -	\$ -	\$ -	\$ (352,627)	\$ -	\$ (112,699)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Claims Fund Expense	\$ 893,634	\$ 1,313,638	\$ 970,007	\$ 1,660,153	\$ 1,309,579	\$ 1,719,169	\$ 1,667,135	\$ 1,307,883	\$ 1,530,284	\$ 1,990,358	\$ 2,740,976	\$ 4,548,371	\$ 3,299,120	\$ 3,516,711	\$ 4,226,603	\$ 2,633,867
Total Operating Expense	\$ 1,370,771	\$ 1,915,183	\$ 1,462,676	\$ 2,187,817	\$ 1,801,458	\$ 2,175,883	\$ 2,117,294	\$ 1,744,911	\$ 2,063,325	\$ 2,639,694	\$ 3,479,994	\$ 5,367,033	\$ 4,205,873	\$ 4,433,561	\$ 5,184,058	\$ 3,585,940
BALANCES																
KMIT Statutory Fund Balance	\$ 74,486	\$ 43,543	\$ 495,283	\$ (290,597)	\$ (303,101)	\$ (526,816)	\$ (297,908)	\$ 322,439	\$ 606,319	\$ 687,287	\$ (164,278)	\$ (1,432,966)	\$ 301,253	\$ 782,039	\$ 580,913	\$ 1,689,088
Accumulated Balance	\$ 74,486	\$ 118,029	\$ 613,312	\$ 322,715	\$ 19,614	\$ (507,202)	\$ (805,110)	\$ (482,670)	\$ 123,648	\$ 810,935	\$ 646,657	\$ (786,309)	\$ (485,055)	\$ 296,983	\$ 877,897	\$ 2,566,984

KMIT Profit and Loss

July 31, 2018

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2018	Total
	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Budget	Accrued To Date
REVENUE FUND											
Direct Premium Earned	\$ 5,213,859	\$ 4,442,326	\$ 4,484,533	\$ 4,853,835	\$ 5,460,344	\$ 5,261,044	\$ 4,829,526	\$ 5,007,888	\$ 2,857,298	\$ 4,900,000	\$ 88,822,037
Interest Income	\$ 52,768	\$ 72,925	\$ 70,104	\$ 71,861	\$ 107,601	\$ 128,600	\$ 160,374	\$ 220,606	\$ 169,042	\$ 165,000	\$ 2,935,643
Miscellaneous Income	\$ -	\$ 1,441	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 10,701
Total Operating Revenue	\$ 5,266,578	\$ 4,516,692	\$ 4,554,637	\$ 4,925,696	\$ 5,567,945	\$ 5,389,644	\$ 4,989,900	\$ 5,228,494	\$ 3,026,341	\$ 5,065,000	\$ 91,768,381
ADMINISTRATION FUND EXPENSE	\$ 1,034,821	\$ 967,690	\$ 933,546	\$ 996,092	\$ 1,069,752	\$ 1,049,388	\$ 1,123,794	\$ 1,209,404	\$ 721,210	\$ 1,230,000	\$ 19,513,681
CLAIMS FUND EXPENSE											
Claims Paid Expense	\$ 3,870,858	\$ 2,729,786	\$ 1,920,451	\$ 1,706,257	\$ 3,246,910	\$ 1,662,486	\$ 1,518,161	\$ 1,574,654	\$ 617,450	\$ -	\$ 49,849,161
Claims Paid Adjusting Expense	\$ 188,321	\$ 148,287	\$ 171,144	\$ 129,206	\$ 141,882	\$ 139,569	\$ 101,435	\$ 101,739	\$ 32,629	\$ -	\$ 3,232,448
Claims Reserve Expense	\$ 227,047	\$ 132,948	\$ 58,373	\$ 27,244	\$ 1,282,324	\$ 143,225	\$ 302,483	\$ 1,418,991	\$ 1,458,205	\$ -	\$ 5,669,345
Claims Reserves Adjusting Expense	\$ 26,657	\$ 3,691	\$ 9,626	\$ 5,481	\$ 62,643	\$ 29,901	\$ 85,657	\$ 243,475	\$ 287,086	\$ -	\$ 835,260
IBNR Reserve Expense	\$ 162,686	\$ 199,023	\$ 210,592	\$ 250,187	\$ 289,143	\$ 538,054	\$ 1,006,898	\$ 917,806	\$ -	\$ -	\$ 4,025,051
Excess Work Comp Insurance	\$ 351,375	\$ 336,966	\$ 337,595	\$ 395,128	\$ 432,750	\$ 456,352	\$ 451,042	\$ 476,604	\$ 293,784	\$ 504,000	\$ 7,189,429
Specific Recoverable Expense	\$ -	\$ -	\$ -	\$ -	\$ (1,214,614)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (1,329,854)
Specific Recovery Expense	\$ (43)	\$ -	\$ (9,965)	\$ -	\$ (311,814)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (2,295,186)
Aggregate Recoverable Expense	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (7,011)
Aggregate Recovery Expense	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (465,326)
Claims Fund Expense	\$ 4,826,900	\$ 3,550,701	\$ 2,697,816	\$ 2,513,503	\$ 3,929,224	\$ 2,969,587	\$ 3,465,676	\$ 4,733,269	\$ 2,689,154	\$ 504,000	\$ 66,703,318
Total Operating Expense	\$ 5,861,721	\$ 4,518,391	\$ 3,631,362	\$ 3,509,595	\$ 4,998,976	\$ 4,018,975	\$ 4,589,470	\$ 5,942,673	\$ 3,410,364	\$ 1,734,000	\$ 86,216,999
BALANCES											
KMIT Statutory Fund Balance	\$ (595,143)	\$ (1,699)	\$ 923,275	\$ 1,416,100	\$ 568,968	\$ 1,370,669	\$ 400,431	\$ (714,179)	\$ (384,024)	\$ 3,331,000	\$ 5,551,382
Accumulated Balance	\$ 1,971,841	\$ 1,970,142	\$ 2,893,417	\$ 4,309,517	\$ 4,878,485	\$ 6,249,154	\$ 6,649,585	\$ 5,935,406	\$ 5,551,382		

KMIT Admin Expenses

July 31, 2018

	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
	Closed	Closed	Closed	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date
GENERAL EXPENSES															
Agent Commissions	\$ -	\$ -	\$ -	\$ -	\$ 969	\$ 4,919	\$ 5,239	\$ 12,669	\$ 33,803	\$ 44,060	\$ 43,231	\$ 61,486	\$ 75,650	\$ 77,961	\$ 88,532
Directors and Officers Insurance	\$ -	\$ 489	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 20,367	\$ 18,542
Meetings/Travel	\$ -	\$ 6,971	\$ 976	\$ 5,318	\$ 1,206	\$ -	\$ 149	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Contingencies/Miscellaneous	\$ -	\$ 8,984	\$ 2,596	\$ 3,913	\$ 5,357	\$ 11,585	\$ 6,020	\$ 18,223	\$ 26,103	\$ 28,939	\$ 41,820	\$ 23,173	\$ 66,332	\$ 33,865	\$ 26,155
Bank Fees	\$ 1,249	\$ 4,735	\$ 579	\$ 658	\$ 263	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,638
Write Off	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
LKM Clearing	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Marketing	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Office Supplies	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Sub Total	\$ 1,249	\$ 21,179	\$ 4,151	\$ 9,889	\$ 7,795	\$ 16,504	\$ 11,408	\$ 30,892	\$ 59,906	\$ 72,999	\$ 85,051	\$ 84,659	\$ 141,982	\$ 132,193	\$ 135,867
REGULATORY															
Kansas Insurance Dept (KID) Premium Tax	\$ 12,847	\$ 18,402	\$ 13,177	\$ 10,823	\$ 13,893	\$ 18,215	\$ 19,568	\$ 18,564	\$ 24,377	\$ 29,017	\$ 30,168	\$ 34,004	\$ 40,212	\$ 46,194	\$ 54,139
KID Pool Assessment	\$ 9,407	\$ -	\$ 5,372	\$ 3,470	\$ 3,798	\$ 1,855	\$ 2,693	\$ 4,355	\$ 3,341	\$ 5,983	\$ 2,844	\$ 3,900	\$ -	\$ 4,300	\$ 3,409
KID Workers Compensation Assessment	\$ 64,034	\$ 44,011	\$ 25,322	\$ 48,345	\$ 31,243	\$ 14,594	\$ 10,372	\$ 1,795	\$ 7,770	\$ 19,748	\$ 47,137	\$ 91,805	\$ 47,193	\$ 32,896	\$ 32,770
KID State Audit	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
KDOL Annual Assessment Fee	\$ 9,073	\$ 15,053	\$ 12,410	\$ 42,620	\$ 40,430	\$ 46,402	\$ 39,446	\$ 30,885	\$ 34,311	\$ 39,671	\$ 57,449	\$ 75,030	\$ 79,800	\$ 81,262	\$ 91,774
Sub Total	\$ 95,360	\$ 77,466	\$ 56,281	\$ 105,257	\$ 89,363	\$ 81,066	\$ 72,078	\$ 55,599	\$ 69,799	\$ 94,418	\$ 137,599	\$ 204,739	\$ 167,205	\$ 164,652	\$ 182,091
CONTRACTURAL															
Financial Audit	\$ 4,603	\$ -	\$ 6,639	\$ 32,625	\$ 12,292	\$ 8,288	\$ 10,973	\$ 8,474	\$ 9,600	\$ 9,806	\$ 10,465	\$ 10,264	\$ 33,013	\$ 6,462	\$ 13,127
Actuarial	\$ -	\$ -	\$ 2,855	\$ 5,000	\$ 25,033	\$ 5,859	\$ 5,703	\$ 7,062	\$ 6,148	\$ 6,272	\$ 7,862	\$ 9,000	\$ 9,991	\$ 12,860	\$ 13,000
Risk Management	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 40,000	\$ 40,000	\$ 50,000	\$ 50,000	\$ 60,000	\$ 70,000
Risk Control	\$ -	\$ -	\$ 82,500	\$ 99,073	\$ 87,000	\$ 80,000	\$ 80,000	\$ 85,000	\$ 92,500	\$ 105,000	\$ 113,000	\$ 120,000	\$ 130,000	\$ 140,000	\$ 140,000
Claims Adjusting	\$ 298,447	\$ 312,500	\$ 194,842	\$ 105,470	\$ 100,000	\$ 105,000	\$ 110,000	\$ 110,000	\$ 125,000	\$ 135,000	\$ 140,000	\$ 140,000	\$ 150,000	\$ 165,000	\$ 165,000
Risk Analysis	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
POET	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Pool Admin Services	\$ 77,478	\$ 190,400	\$ 145,400	\$ 170,350	\$ 170,396	\$ 159,996	\$ 159,996	\$ 140,000	\$ 160,000	\$ 176,000	\$ 193,000	\$ 200,000	\$ 210,000	\$ 220,000	\$ 220,000
Payroll Audits	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 10,088	\$ 9,840	\$ 12,042	\$ -	\$ 14,562	\$ 15,684	\$ 18,370
Rating Services	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Crime	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Web Hosting	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Endorsement Fee	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Sub Total	\$ 380,528	\$ 502,900	\$ 432,236	\$ 412,518	\$ 394,721	\$ 359,144	\$ 366,672	\$ 350,536	\$ 403,336	\$ 481,918	\$ 516,368	\$ 529,264	\$ 597,566	\$ 620,006	\$ 639,497
Administration Fund Expense	\$ 477,137	\$ 601,545	\$ 492,669	\$ 527,664	\$ 491,879	\$ 456,714	\$ 450,159	\$ 437,027	\$ 533,041	\$ 649,336	\$ 739,018	\$ 818,662	\$ 906,753	\$ 916,851	\$ 957,455

KMIT Admin Expenses

July 31, 2018

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2018	Total
	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Accrued To Date	Budget	Accrued To Date
GENERAL EXPENSES												
Agent Commissions	\$ 94,214	\$ 93,637	\$ 82,860	\$ 96,481	\$ 102,636	\$ 97,189	\$ 97,505	\$ 90,158	\$ 104,978	\$ 56,156	\$ 102,000	\$ 1,364,333
Directors and Officers Insurance	\$ 15,857	\$ 15,942	\$ 16,038	\$ 16,488	\$ 17,224	\$ 15,956	\$ 15,667	\$ 15,970	\$ 15,939	\$ 9,298	\$ 16,000	\$ 193,777
Meetings/Travel	\$ -	\$ -	\$ 829	\$ 4,881	\$ 19,334	\$ 29,749	\$ 19,897	\$ 22,638	\$ 20,165	\$ 11,030	\$ 23,000	\$ 143,143
Contingencies/Miscellaneous	\$ 34,318	\$ 2,657	\$ 1,708	\$ 3,175	\$ 3,623	\$ 4,385	\$ 3,884	\$ 2,594	\$ (2,597)	\$ 4,559	\$ 6,000	\$ 361,371
Bank Fees	\$ 2,758	\$ 9,239	\$ 5,776	\$ 4,159	\$ 7,528	\$ 4,460	\$ 5,998	\$ 6,333	\$ 7,391	\$ 4,183	\$ 6,000	\$ 67,948
Write Off	\$ -	\$ -	\$ (104)	\$ -	\$ -	\$ -	\$ -	\$ 464	\$ -	\$ -	\$ -	\$ 360
LKM Clearing	\$ -	\$ -	\$ 60	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 60
Marketing	\$ -	\$ -	\$ -	\$ 439	\$ 452	\$ 161	\$ 34	\$ 502	\$ -	\$ -	\$ 1,000	\$ 1,588
Office Supplies	\$ -	\$ -	\$ -	\$ 1,112	\$ 1,830	\$ 3,732	\$ 4,485	\$ 6,176	\$ 9,399	\$ 2,432	\$ 9,000	\$ 29,165
Sub Total	\$ 147,147	\$ 121,475	\$ 107,167	\$ 126,735	\$ 152,627	\$ 155,632	\$ 147,469	\$ 144,835	\$ 155,276	\$ 87,659	\$ 163,000	\$ 2,161,746
REGULATORY												
Kansas Insurance Dept (KID) Premium Tax	\$ 48,525	\$ 49,030	\$ 40,919	\$ 43,445	\$ 44,349	\$ 51,057	\$ 47,827	\$ 46,830	\$ 48,793	\$ 22,108	\$ 50,000	\$ 826,482
KID Pool Assessment	\$ 3,476	\$ 3,500	\$ 3,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 64,701
KID Workers Compensation Assessment	\$ 28,363	\$ 57,704	\$ 65,962	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 671,063
KID State Audit	\$ -	\$ -	\$ 12,652	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 12,652
KDOL Annual Assessment Fee	\$ 59,587	\$ 103,374	\$ 39,163	\$ 83,234	\$ 84,997	\$ 131,222	\$ 81,630	\$ 98,358	\$ 166,207	\$ 56,540	\$ 200,000	\$ 1,599,929
Sub Total	\$ 139,951	\$ 213,608	\$ 161,696	\$ 126,679	\$ 129,346	\$ 182,279	\$ 129,457	\$ 145,187	\$ 215,001	\$ 78,647	\$ 250,000	\$ 3,174,826
CONTRACTURAL												
Financial Audit	\$ 18,608	\$ 31,565	\$ 12,023	\$ 11,738	\$ 11,904	\$ 15,803	\$ 13,803	\$ 12,000	\$ 13,165	\$ 13,124	\$ 27,000	\$ 330,363
Actuarial	\$ 13,750	\$ 14,000	\$ 14,000	\$ 14,250	\$ 14,250	\$ 15,000	\$ 14,500	\$ 15,000	\$ 15,000	\$ -	\$ 15,000	\$ 246,395
Risk Management	\$ 70,000	\$ 70,000	\$ 70,000	\$ 70,000	\$ 170,000	\$ 170,000	\$ 170,000	\$ 190,000	\$ 205,000	\$ 147,490	\$ 210,700	\$ 1,642,490
Risk Control	\$ 145,000	\$ 145,000	\$ 145,000	\$ 145,000	\$ 150,000	\$ 150,000	\$ 155,000	\$ 155,000	\$ 155,000	\$ 111,510	\$ 159,300	\$ 2,810,583
Claims Adjusting	\$ 175,000	\$ 195,000	\$ 185,000	\$ 185,000	\$ 185,000	\$ 185,000	\$ 205,000	\$ 205,000	\$ 210,000	\$ 151,410	\$ 216,500	\$ 4,237,669
Risk Analysis	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 9,671	\$ 14,651	\$ 27,647	\$ 12,113	\$ 21,070	\$ 15,000	\$ 85,152
POET	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 7,425	\$ 10,513	\$ 20,138	\$ 14,100	\$ 15,000	\$ 52,175
Pool Admin Services	\$ 225,000	\$ 225,000	\$ 230,000	\$ 230,004	\$ 75,600	\$ 81,900	\$ 98,560	\$ 99,360	\$ 102,240	\$ 61,320	\$ 105,000	\$ 4,022,000
Payroll Audits	\$ 17,617	\$ 19,173	\$ 19,000	\$ 16,318	\$ 16,000	\$ 20,143	\$ 19,923	\$ 19,954	\$ 20,772	\$ -	\$ 21,000	\$ 249,485
Rating Services	\$ -	\$ -	\$ 22,650	\$ 6,636	\$ 18,702	\$ 10,887	\$ 754	\$ 27,105	\$ 11,595	\$ 24	\$ -	\$ 98,353
Crime	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 348	\$ 813	\$ -	\$ 1,161
Web Hosting	\$ -	\$ -	\$ 1,155	\$ 1,187	\$ 2,663	\$ 3,439	\$ 2,846	\$ 2,193	\$ 3,758	\$ 1,544	\$ -	\$ 18,784
Endorsement Fee	\$ -	\$ -	\$ -	\$ -	\$ 70,000	\$ 70,000	\$ 70,000	\$ 70,000	\$ 70,000	\$ 32,500	\$ 32,500	\$ 382,500
Sub Total	\$ 664,975	\$ 699,738	\$ 698,827	\$ 680,133	\$ 714,119	\$ 731,842	\$ 772,461	\$ 833,772	\$ 839,128	\$ 554,904	\$ 817,000	\$ 14,177,109
Administration Fund Expense	\$ 952,073	\$ 1,034,821	\$ 967,690	\$ 933,546	\$ 996,092	\$ 1,069,752	\$ 1,049,388	\$ 1,123,794	\$ 1,209,404	\$ 721,210	\$ 1,230,000	\$ 19,513,681

GROUP - FUNDED POOL - QUARTERLY REPORT
K.S.A 12-2620

Kansas Municipal Insurance Trust
(Name of Company)

As of 06/30/2018
1st (2nd) 3rd 4th Quarter (CIRCLE ONE)

	CURRENT FISCAL YEAR TO DATE 06/30/2018	PREVIOUS FISCAL YEAR END 12/31/2017 Audited
ASSETS		
Administrative fund:		
Cash	\$ 63,370	\$ 130,378
Investments	0	0
Claims fund:		
Cash	314,920	427,130
Investments	16,585,068	15,213,125
Premium contributions receivable	75,470	149,956
Excess insurance recoverable on claims payments	521,837	32,351
Interest income due and accrued	111,213	125,822
Receivable from affiliates		
Other assets:		
Agent Commissions Receivable	0	4,602
Prepaid Excess Insurance	251,814	0
Prepaid Expenses	61,073	1,045
Excess Insurance Premium Receivable	18,907	18,907
Less: Non Admitted Assets	(312,887)	(1,045)
Total Assets	\$ 17,690,786	\$ 16,102,271

To the best of my knowledge, I hereby certify that the balance sheet and summary of operations contained herein represents a true and complete accounting of

Kansas Municipal Insurance Trust
(Name of Pool)

By:



Chair of Trustees

Administrator

GROUP-FUNDED POOL-QUARTERLY REPORT
K.S.A 44-582

<u>LIABILITIES, RESERVES AND FUND BALANCE</u>	<u>CURRENT FISCAL YEAR TO DATE</u> 06/30/2018	<u>PREVIOUS FISCAL YEAR END</u> 12/31/2017 - Audited
Reserve for unpaid workers' compensation claims	\$ 4,607,080 \$	3,342,258
Reserve for unpaid claim adjustment expenses	774,052	383,386
Reserve for claims incurred but not reported	4,043,198	4,813,095
Unearned premium contribution	0	688,875
Other expenses due or accrued		
Taxes, licenses and fees due or accrued	377,596	403,764
Borrowed money \$_____ and interest thereon \$_____		
Dividends payable to members		
Deposits on premium contributions	2,507,617	491,947
Excess insurance premium payable		
Payable to affiliates		
Accounts payable	10,098	47,500
Miscellaneous liabilities:		
Return Premium Payable		
Total Liabilities:	\$ 12,319,640 \$	10,170,825
Special reserve funds:		
Total Special Reserve Funds		
<u>FUND BALANCE</u>		
Total Reserves and Fund Balance (Assets-Liabilities)	5,371,146 \$	5,931,446
Total Liabilities, Reserves and Fund Balance	\$ 17,690,786 \$	16,102,271

GROUP-FUNDED POOL-QUARTERLY REPORT
K.S.A 44-582

<u>SUMMARY OF OPERATIONS</u>	<u>CURRENT FISCAL YEAR TO DATE</u> 06/30/2018	<u>PREVIOUS FISCAL YEAR END</u> 12/31/2017 - Audited
Underwriting Income		
Direct Premium Contributions Earned	\$ <u>2,485,837</u>	\$ <u>4,984,618</u>
Deductions:		
Excess insurance premium incurred	<u>251,815</u>	<u>476,604</u>
Workers' compensation claims incurred	<u>1,462,758</u>	<u>3,308,274</u>
Claims adjustment expenses incurred	<u>521,186</u>	<u>297,888</u>
Other administrative expenses incurred	<u>642,193</u>	<u>1,164,966</u>
Total underwriting deductions	<u>2,877,951</u>	<u>5,247,732</u>
Net underwriting Gain or (Loss)	\$ <u>(392,115)</u>	\$ <u>(263,114)</u>
Investment income		
Interest income earned (Net of investment expenses)	<u>144,702</u>	<u>220,606</u>
Other income		
Other income	<u>0</u>	<u>0</u>
Net income before dividends to members	<u>(247,413)</u>	<u>(42,508)</u>
Dividends to members		
Net income after dividends to members	<u>(247,413)</u>	<u>(42,508)</u>
Net Income(Loss)	\$ <u>(247,413)</u>	\$ <u>(42,508)</u>

GROUP-FUNDED POOL-QUARTERLY REPORT
K.S.A 44-582

<u>ANALYSIS OF FUND BALANCE</u>		<u>CURRENT FISCAL YEAR TO DATE</u> 06/30/2018	<u>PREVIOUS FISCAL YEAR END</u> 12/31/2017 - Audited
Fund balance, previous period	\$	<u>5,931,446</u>	<u>5,974,999</u>
Net income (Loss)		<u>(247,413)</u>	<u>(42,508)</u>
Change in non-admitted assets		<u>(312,887)</u>	<u>(1,045)</u>
<u>Rounding</u>			
<u>Change in Non Admitted Assets</u>			
Change in fund balance for the period		<u>(560,300)</u>	<u>(43,553)</u>
Fund balance, current period	\$	<u>5,371,146</u>	<u>5,931,446</u>

Contract Year January 1, 2018 to December 31, 2018
KANSAS PREMIUM AND LOSS EXPERIENCE EXHIBIT
 (1st 2nd 3rd 4th Quarter (circle one))

NAME OF KANSAS GROUP-FUNDED POOL Kansas Municipal Insurance Trust

LINE OF BUSINESS: Workers Compensation EXPERIENCE CURRENT AS OF 06/30/2018

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Current Injuries	Total Injuries	Contract Period	Direct Premium Earned	Excess Insurance Premium Incurred	Net Premiums Earned	Direct Losses Incurred	Loss Adj. Exp. Incurred	Loss & Loss Exp Incurred	Service Agent Fees Incurred	General Expenses Incurred	Taxes, Licenses & Fees Incurred	Total Expenses Incurred Col 10 + 11 + 12	Claims Ratios as a % Col 9 / Col 6	Admin. Ratios as a % Col 13 / Col 6	Investment Income Earned
					Col 4-5			Col 6+7							
0	310	PCY 24	1,422,582	151,393	1,271,189	716,700	25,541	742,241	268,447	83,330	95,360	477,137	58.4%	37.5%	22,675
0	243	PCY 23	1,885,501	210,142	1,675,359	1,049,152	54,345	1,103,496	312,500	211,579	77,466	601,545	66.9%	35.9%	73,225
0	424	PCY 22	1,843,047	133,376	1,709,671	790,125	46,506	836,631	277,342	159,046	50,281	486,669	46.9%	28.8%	114,912
1	524	PCY 21	1,754,515	117,122	1,637,393	1,804,856	90,802	1,895,658	204,543	217,894	102,541	624,948	115.8%	32.1%	142,705
2	572	PCY 20	1,377,722	79,456	1,298,266	1,320,753	90,598	1,411,350	187,000	211,071	82,901	480,972	108.7%	37.0%	113,190
4	551	PCY 19	1,552,110	80,124	1,471,986	1,583,775	147,702	1,731,477	185,000	190,573	77,853	453,226	116.3%	30.8%	93,882
1	552	PCY 18	1,689,773	86,819	1,602,954	1,454,564	125,722	1,580,317	190,000	188,080	73,593	451,673	98.6%	28.2%	129,513
0	805	PCY 17	1,985,853	127,168	1,858,685	1,097,466	83,220	1,180,715	195,000	186,428	55,589	437,017	94.2%	25.8%	101,594
1	870	PCY 16	2,916,641	189,458	2,727,183	1,211,714	129,112	1,340,826	217,500	243,407	69,799	530,703	55.2%	21.9%	50,888
1	912	PCY 15	3,274,489	355,951	2,918,538	1,474,072	149,266	1,623,367	280,000	274,918	90,084	651,602	55.8%	22.4%	52,492
2	845	PCY 14	3,256,648	221,435	3,035,213	2,350,312	150,839	2,480,851	293,000	308,419	134,300	735,719	81.7%	24.2%	59,069
10	770	PCY 13	3,837,793	374,472	3,463,321	3,872,057	258,502	4,130,560	310,000	303,623	195,148	809,071	119.3%	23.4%	98,274
16	765	PCY 12	4,272,140	384,426	3,887,715	2,660,804	201,076	2,861,880	330,000	406,548	164,537	904,085	73.8%	23.3%	234,988
7	906	PCY 11	4,950,171	420,728	4,529,443	2,825,334	209,237	3,034,571	365,000	384,784	157,905	907,689	67.0%	20.0%	263,024
12	768	PCY 10	5,519,166	372,790	5,146,376	3,447,202	251,106	3,698,311	375,000	400,364	180,033	955,397	71.9%	18.6%	245,802
10	654	PCY 9	5,193,427	341,935	4,851,492	2,051,275	141,556	2,192,933	390,000	422,122	158,861	970,983	45.2%	20.0%	81,601
15	666	PCY 8	5,213,859	351,375	4,862,484	4,067,024	215,003	4,312,026	410,000	411,213	218,444	1,039,657	88.7%	21.4%	52,768
7	635	PCY 7	4,142,326	336,956	4,105,361	2,862,734	151,978	3,014,712	400,000	374,349	211,548	985,897	73.4%	24.0%	72,925
8	598	PCY 6	4,484,533	337,535	4,146,998	1,968,759	180,770	2,149,529	400,000	407,086	174,889	981,755	61.8%	23.7%	70,104
4	596	PCY 5	4,853,835	355,128	4,498,707	1,735,730	154,378	1,870,606	580,600	266,205	112,977	979,782	42.0%	22.0%	71,861
8	742	PCY 4	5,460,344	432,750	5,027,594	4,217,421	204,525	4,421,945	596,571	291,945	383,143	1,271,559	88.0%	25.3%	107,501
10	725	PCY 3	5,261,044	456,352	4,804,692	1,807,888	172,240	1,980,107	628,560	291,393	190,117	1,110,070	41.2%	23.1%	128,800
15	778	PCY 2	4,829,529	474,701	4,354,745	1,807,132	175,583	1,982,715	649,390	329,247	24,920	1,003,526	45.5%	23.0%	160,374
278	831	PCY 1	1,541,119	251,815	1,389,304	2,891,203	347,468	3,338,701	671,847	206,797	124,882	1,003,526	240.3%	72.2%	144,702
259	385	CCY	2,462,567	251,815	2,210,752	1,733,850	246,982	1,982,832	588,300	(68,165)	124,059	642,193	99.7%	29.0%	144,702

PFY = Prior fiscal Year

CFY = Current Fiscal Year

Column 1 should reflect the number of claims incurred in each respective contract period which were initially reported during the current fiscal year.

Column 2 should reflect the grand total of claims reported pertaining to each respective contract period.

Column 14 should reflect the Total Loss and Loss Expenses Incurred divided by the Net Premiums earned. (Column 9 divided by Column 6)

Column 15 should reflect the Total Expenses Incurred divided by the Net Premiums Earned. (Column 13 divided by Column 6)

Column 16 should reflect the Investment Income Earned during the contract year as reflected on the income statement.

KMIT Cash/Investment Summary

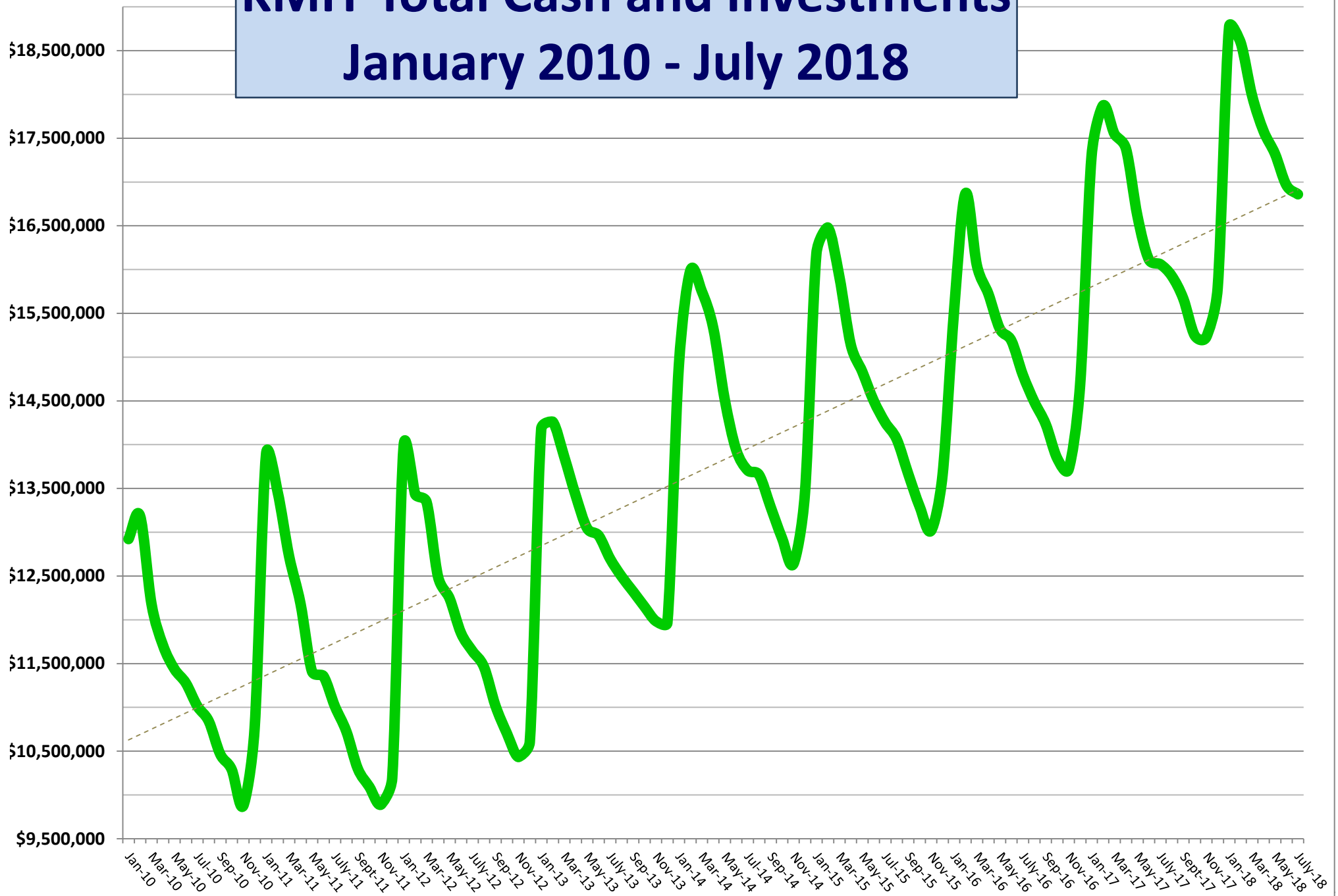
August 31, 2016--July 31, 2018

	7/31/16	8/31/16	9/30/16	10/31/16	11/30/16	12/31/16	1/31/17	2/28/17	3/31/17	4/30/17	5/31/17	6/30/17	7/31/17	8/31/17	9/30/17	10/31/17	11/30/17	12/31/17	1/31/18	2/28/18	3/31/18	4/30/18	5/31/18	6/30/18	7/31/18
KMIT Admin Fund																									
Admin Account (CORnerstone)	428,163	354,802	283,967	234,079	219,697	430,948	708,262	1,076,226	859,998	525,561	43,165	175,479	41,756	94,380	25,971	230,390	208,808	443,016	1,237,217	734,337	479,954	361,759	351,489	220,252	216,049
Admin Checking	428,163	354,802	283,967	234,079	219,697	430,948	708,262	1,076,226	859,998	525,561	43,165	175,479	41,756	94,380	25,971	230,390	208,808	443,016	1,237,217	734,337	479,954	361,759	351,489	220,252	216,049
KMIT Claims Fund																									
Claims Account (CORnerstone)	598,584	574,353	566,173	372,993	539,135	2,566,118	3,609,069	3,356,821	2,765,303	1,909,755	884,370	647,100	252,911	681,320	866,691	988,013	792,603	1,070,206	3,588,666	2,452,059	2,227,550	1,972,942	1,978,378	1,561,469	1,584,416
Claims Checking Acc't (TRISTAR)	89,682	127,454	199,161	52,523	77,000	252,457	162,189	274,153	262,147	296,457	393,557	75,262	475,262	271,193	171,316	176,942	198,612	250,559	169,273	122,596	237,228	205,299	187,183	130,636	8,397
Claims Checking	688,266	701,807	765,335	425,515	616,135	2,818,574	3,771,258	3,630,973	3,027,450	2,206,212	1,277,928	722,362	728,173	952,513	1,038,007	1,164,955	991,215	1,320,765	3,757,939	2,574,655	2,464,778	2,178,241	2,165,561	1,692,105	1,592,813
INVESTMENTS																									
All Investments	13,684,000	13,435,000	13,186,000	13,186,000	12,883,596	11,433,000	12,818,000	13,168,000	13,662,000	14,650,000	15,292,000	15,292,000	15,292,000	14,880,000	14,605,000	14,029,000	14,027,920	14,026,823	13,778,823	15,286,800	15,042,978	15,042,978	14,806,000	15,051,000	15,052,000
TOTAL CASH	14,800,429	14,491,609	14,235,302	13,845,595	13,719,428	14,682,522	17,297,520	17,875,199	17,549,448	17,381,774	16,613,093	16,189,841	16,061,929	15,926,893	15,668,978	15,424,345	15,227,943	15,790,604	18,773,979	18,595,792	17,987,710	17,582,978	17,323,050	16,963,358	16,860,862
	7/31/16	8/31/16	9/30/16	10/31/16	11/30/16	12/31/16	1/31/17	2/28/17	3/31/17	4/30/17	5/31/17	6/30/17	7/31/17	8/31/17	9/30/17	10/31/17	11/30/17	12/31/17	1/31/18	2/28/18	3/31/18	4/30/18	5/31/18	6/30/18	7/31/18



KMIT Total Cash and Investments

January 2010 - July 2018



CLAIM SUMMARY-RESERVES

Employer: City of Abilene
Claim No.: 18712881
Employee Age: 45
AWW: \$873.45
Attorneys: Employee -NA
Adjuster: Gene Miller

Date of Injury: 3/15/18
Job Description: Police-Office Mgr
Updated: 7/25/2018
TTD Rate: \$562.30
Employer: -NA

	Medical	Indemnity	Expense	Total
Reserves	\$35,000.00	\$21,000.00	\$6,500.00	\$62,500.00
Amount Paid	\$1,378.54	\$0.00	\$65.04	\$1,443.58
Outstanding	\$33,621.46	\$0.00	\$5,634.96	\$61,056.42

Accident Description/Nature of Injury:

Claimant is 21 year employee of city and works as office manager and court clerk. Her duties are primarily keyboard entry and she has developed carpal tunnel symptoms in her right upper extremity.

Investigation/Compensability

The injury was promptly reported, no outside activities contribute, authorized doctor relates to her keyboard entry and claim accepted as compensable.

Medical Management

Conservative treatment failed with the city's doctor and she was referred to orthopedic Dr. Graurerholtz. Nerve conduction study was normal but clinically she continues to exhibit wrist, hand and finger pain/numbness so doctor is recommending surgery which has been approved.

Periods of Disability

No lost time to date.

Permanent Partial Impairment/Permanent Disability

Reserves reflect 15% to right upper extremity.

Subrogation/Other Issues

No source for subrogation or contribution.

Plan of Action:

Will follow-up after surgery for early return to work as the city has a modified duty work program. I will then check with her after every doctor's appointment until she is released MMI, at which point I will request a disability rating, obtain settlement authority, negotiate full/final settlement, obtain Division approval and close file.

CLAIM SUMMARY-RESERVES

Employer: City of El Dorado
Claim No.: 18718001
Employee Age: 58
AWW: \$520.00 (est)
Attorneys: Employee -No
Adjuster: Gene Miller

Date of Injury: 10/9/2017
Job Description: Custodian
Updated: 7/17/2018
TTD Rate: \$346.67 (est)
Employer: -No

	Medical	Indemnity	Expense	Total
Reserves	\$45,000.00	\$10,000.00	\$6,500.00	\$51,500.00
Amount Paid	\$0.00	\$0.00	\$0.00	\$0.00
Outstanding	\$45,000.00	\$10,000.00	\$6,500.00	\$51,500.00

Accident Description/Nature of Injury:

Claimant sets up and takes down tables/chairs at community center. Injured left shoulder lifting table.

Investigation/Compensability

There was a question if an accident occurred as notice was not given promptly but further research revealed she had reported within the 20-day requirement and claim was accepted as compensable.

Medical Management

Conservative treatment failed to relieve her symptoms and a MRI was done which revealed tears in her left shoulder. Surgery has been authorized and is being scheduled.

Periods of Disability

No time lost to date.

Permanent Partial Impairment/Permanent Disability

Reserves reflect 10% shoulder.

Subrogation/Other Issues

No source for subrogation or contribution.

Plan of Action:

Following surgery I will strive for early return to work with the city's modified duty work program. I will also follow-up after every doctor's appointment till she is released MMI. At that time I will request a disability rating, negotiate full/final settlement, obtain Division approval and close file.

CLAIM SUMMARY-RESERVES

Employer: City of Dodge City
Claim No.: 18726541
Employee Age: 50
AWW: \$1,228.14
Attorneys: Employee -NA
Adjuster: Gene Miller

Date of Injury: 6/19/18
Job Description: Police Sargent
Updated: 7/24/2018
TTD Rate: \$630.00
Employer: -NA

	Medical	Indemnity	Expense	Total
Reserves	\$20,000.00	\$10,000.00	\$3,000.00	\$33,000.00
Amount Paid	\$0.00	\$0.00	\$15.00	\$15.00
Outstanding	\$20,000.00	\$10,000.00	\$2,985.00	\$32,985.00

Accident Description/Nature of Injury:

Claimant climbed a fence to the city's water park and when he jumped down he landed awkward on his left leg, injuring his left knee.

Investigation/Compensability

The injury was witnessed by a coworker and promptly reported and accepted as compensable.

Medical Management

Conservative treatment failed and a MRI was ordered which revealed a torn meniscus. He was referred to orthopedic Dr. Neel who recommends arthroscopic surgery.

Periods of Disability

No lost time to date.

Permanent Partial Impairment/Permanent Disability

Reserves reflect 5% knee.

Subrogation/Other Issues

There are no sources for subrogation. He did have a previous left knee injury from last year which we just settled, so we will have an offset for his preexisting disability.

Plan of Action:

I will follow-up after surgery and strive for early return to work with the city's lite duty work program. Then I will monitor his recovery until released MMI, at which point I will request a disability rating, negotiate a full/final settlement of his claim, obtain Division approval and close file.

CLAIM SUMMARY-RESERVES

Employer: City of Galena
Claim No.: 18728206
Employee Age: 51
AWW: \$467.70
Attorneys: Employee -NA
Adjuster: Gene Miller

Date of Injury: 7/3/2018
Job Description: Mechanic
Updated: 7/9/2018
TTD Rate: \$311.80
Employer: -NA

	Medical	Indemnity	Expense	Total
Reserves	\$50,000.00	\$10,000.00	\$6,500.00	\$66,500.00
Amount Paid	\$0.00	\$0.00	\$0.00	\$0.00
Outstanding	\$50,000.00	\$10,000.00	\$6,500.00	\$66,500.00

Accident Description/Nature of Injury:

Claimant was changing tire on trash truck and as he jerked wheel from truck, he felt a sharp pain in his right arm.

Investigation/Compensability

The accident was witnessed by his supervisor and several coworkers, reported promptly and accepted as compensable.

Medical Management

He had a MRI which revealed a ruptured distal biceps tendon and surgery scheduled 7/11/18 by Dr. Lieurance. Recovery from this surgery expected to take 6 months.

Periods of Disability

No lost time to date.

Permanent Partial Impairment/Permanent Disability

Reserves reflect 12% PPD to arm.

Subrogation/Other Issues

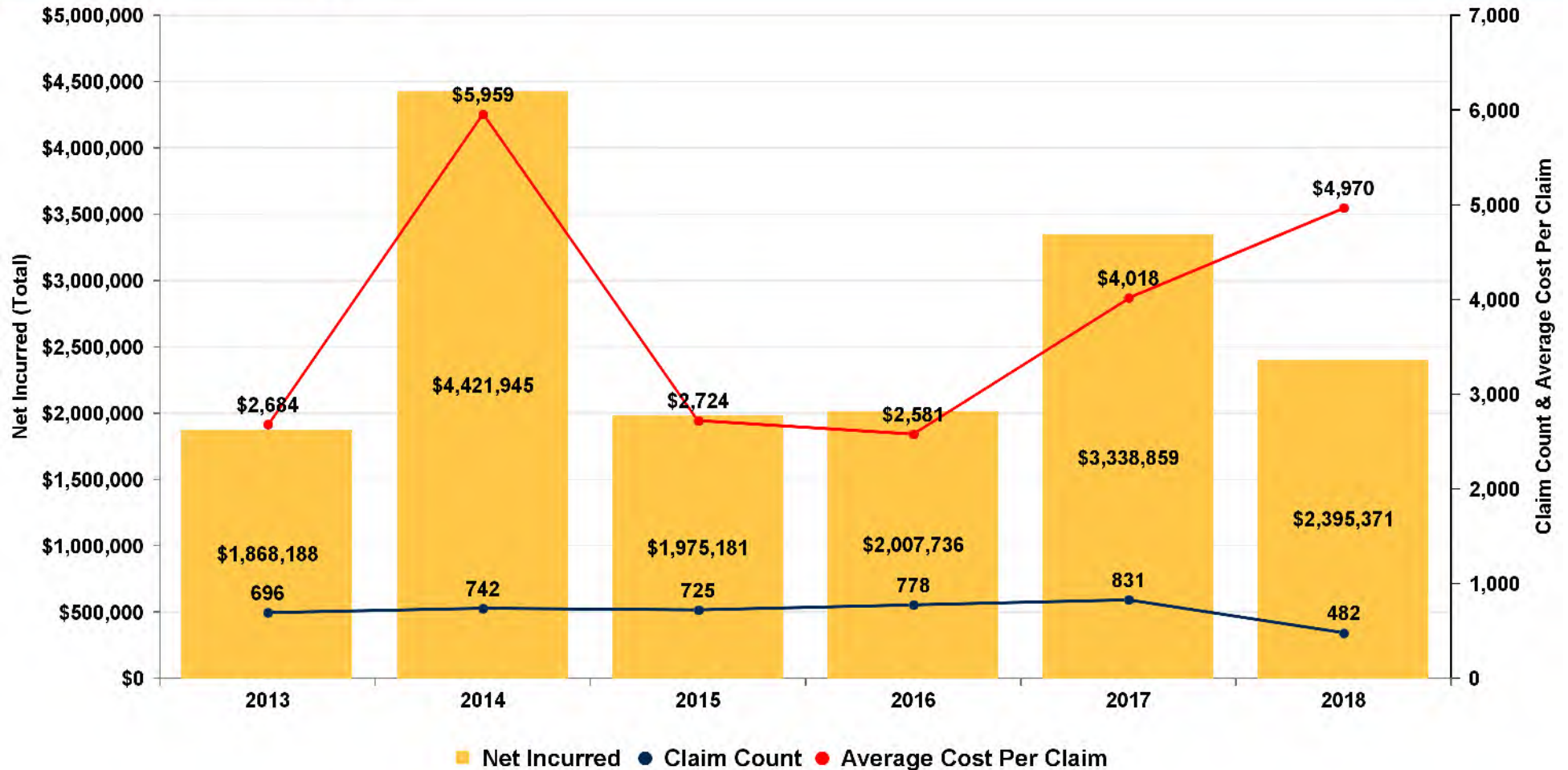
There are no sources for subrogation or contribution.

Plan of Action:

I will follow-up with him after his doctor's visits and maintain control of the claim. Early return to work anticipated with the city's modified duty program. When he is released from care, I will obtain a disability rating, negotiate full settlement, obtain Division approval and close file.

KMIT Loss Control: Claim Trend Analysis
Accident Date Range: 1/1/2013 to 7/31/2018
Valued As Of 7/31/2018

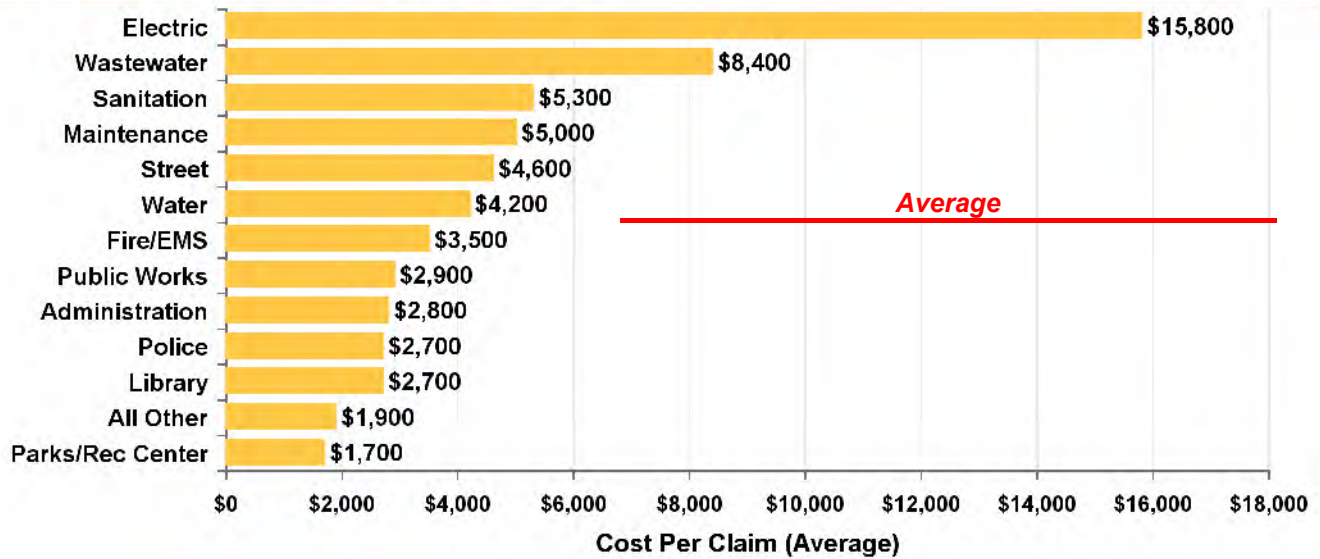
Severity & Frequency By Year



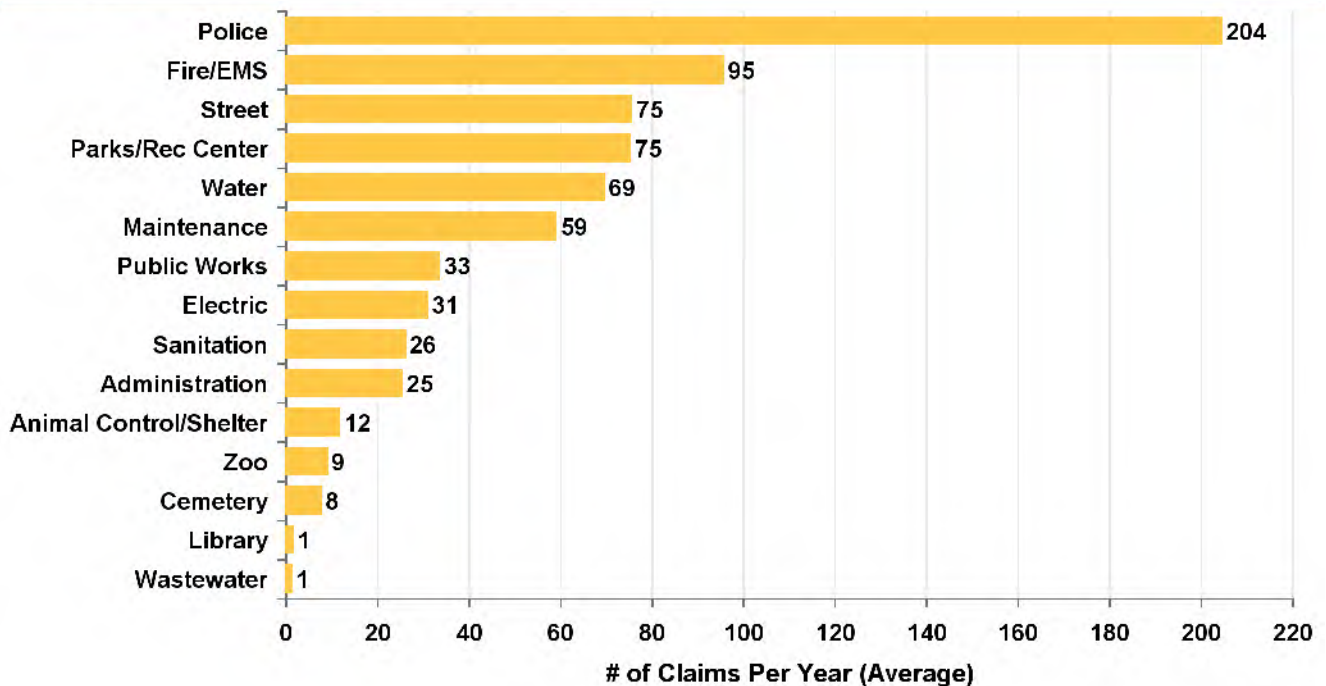
KMIT Loss Control: Claim Trend Analysis

Accident Date Range: 1/1/2013 to 7/31/2018
Valued As Of 7/31/2018

Average Severity Per Claim By Department



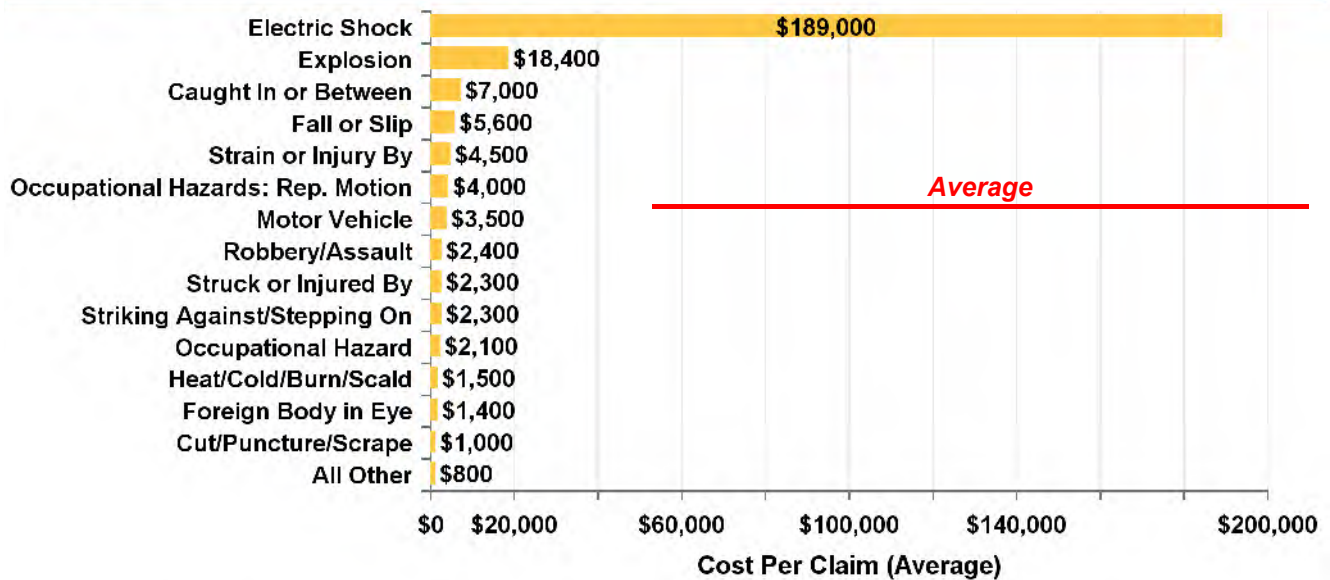
Average Frequency Per Year By Department



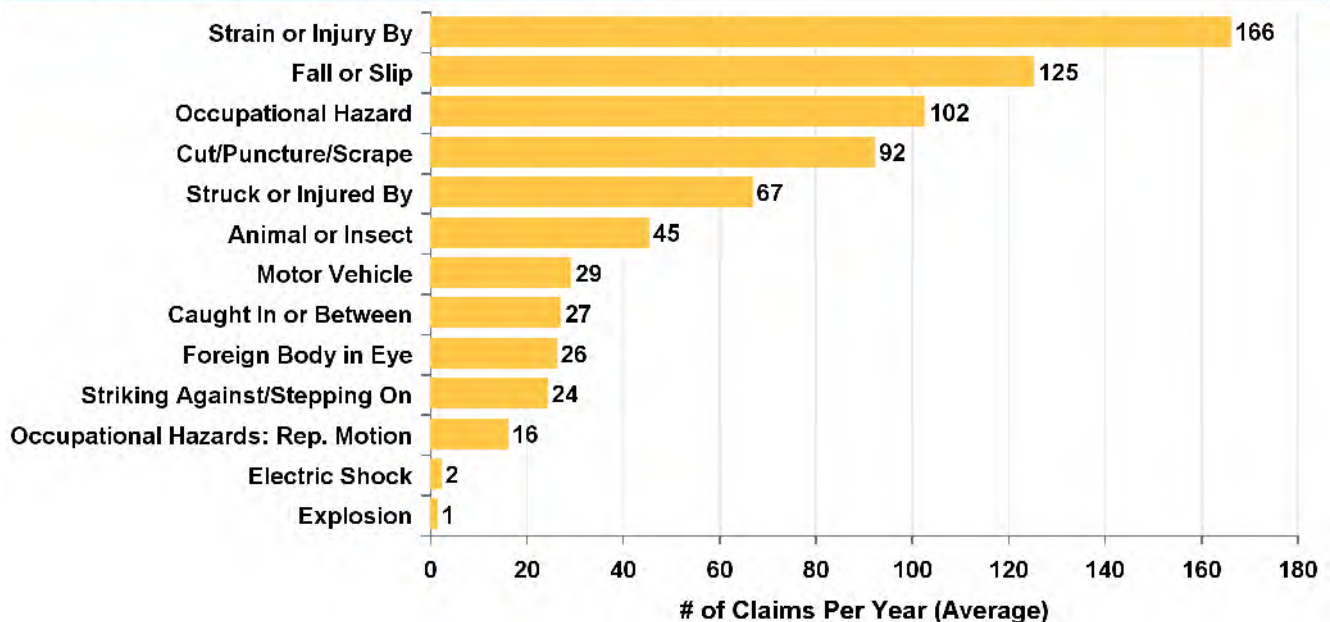
KMIT Loss Control: Claim Trend Analysis

Accident Date Range: 1/1/2013 to 7/31/2018
Valued As Of 7/31/2018

Average Severity Per Claim By Accident Type



Average Frequency Per Year By Accident Type



KMIT Loss Control: Claim Trend Analysis
Accident Date Range: 1/1/2013 to 7/31/2018
Valued As Of 7/31/2018

Claims \$100,000 or Greater

Rank	Policy Year	Claim Number	Accident Date	Claim Status	City	Department	Accident Type	Claim Cost
1	2014	2014048019	4/14/14	Open	City Of Russell	Electric	Electric Shock	\$1,964,614
2	2018	18702074	1/1/18	Open	City Of Wamego	Fire	Fall or Slip	\$445,000
3	2015	2015071784	8/17/15	Open	City Of Augusta	Sanitation	Caught In or Between	\$390,000
4	2017	17701681	12/21/17	Open	City Of Arkansas City	Street	Caught In or Between	\$345,000
5	2017	2017076443	5/2/17	Open	City Of Fort Scott	Police	Occupational Hazard	\$270,000
6	2014	2014048312	6/11/14	Closed	City Of Lucas	Maintenance	Electric Shock	\$247,481
7	2013	2013047001	10/11/13	Closed	City Of Spring Hill	Street	Strain or Injury By	\$244,305
8	2017	17700057	12/6/17	Open	City Of Wellsville	Police	Fall or Slip	\$195,000
9	2016	2016074973	10/11/16	Open	City Of Eudora	Water	Fall or Slip	\$176,073
10	2018	18714294	3/27/18	Open	City Of Halstead	Maintenance	Fall or Slip	\$175,400
11	2014	2014069536	10/9/14	Open	City Of Atchison	Maintenance	Strain or Injury By	\$145,000
12	2017	2017076410	4/30/17	Open	City Of Garden City	Electric	Occupational Hazard	\$141,000
13	2017	2017076725	5/26/17	Open	City Of Osawatomie	Street	Striking Against/Stepping On	\$139,000
14	2014	2014069973	12/5/14	Open	City Of Fredonia	Police	Motor Vehicle	\$137,500
15	2014	2014069578	10/7/14	Open	City Of Minneapolis	Water	Foreign Body in Eye	\$137,201
16	2014	2014048087	4/9/14	Closed	City Of Arkansas City	Street	Strain or Injury By	\$124,830
17	2014	2014048340	6/16/14	Closed	City Of Valley Center	Maintenance	Fall or Slip	\$122,460
18	2016	2016073786	4/29/16	Re-Open	City Of Atchison	Public Works	Strain or Injury By	\$111,731
19	2013	2013047392	12/30/13	Closed	City Of Newton	Water	Fall or Slip	\$111,281
20	2016	2016072899	1/7/16	Closed	City Of La Cygne	Street	Strain or Injury By	\$105,289
Totals - Claims \$100,000 or Greater							(20 Claims)	\$5,728,166
					29		Average:	\$286,408



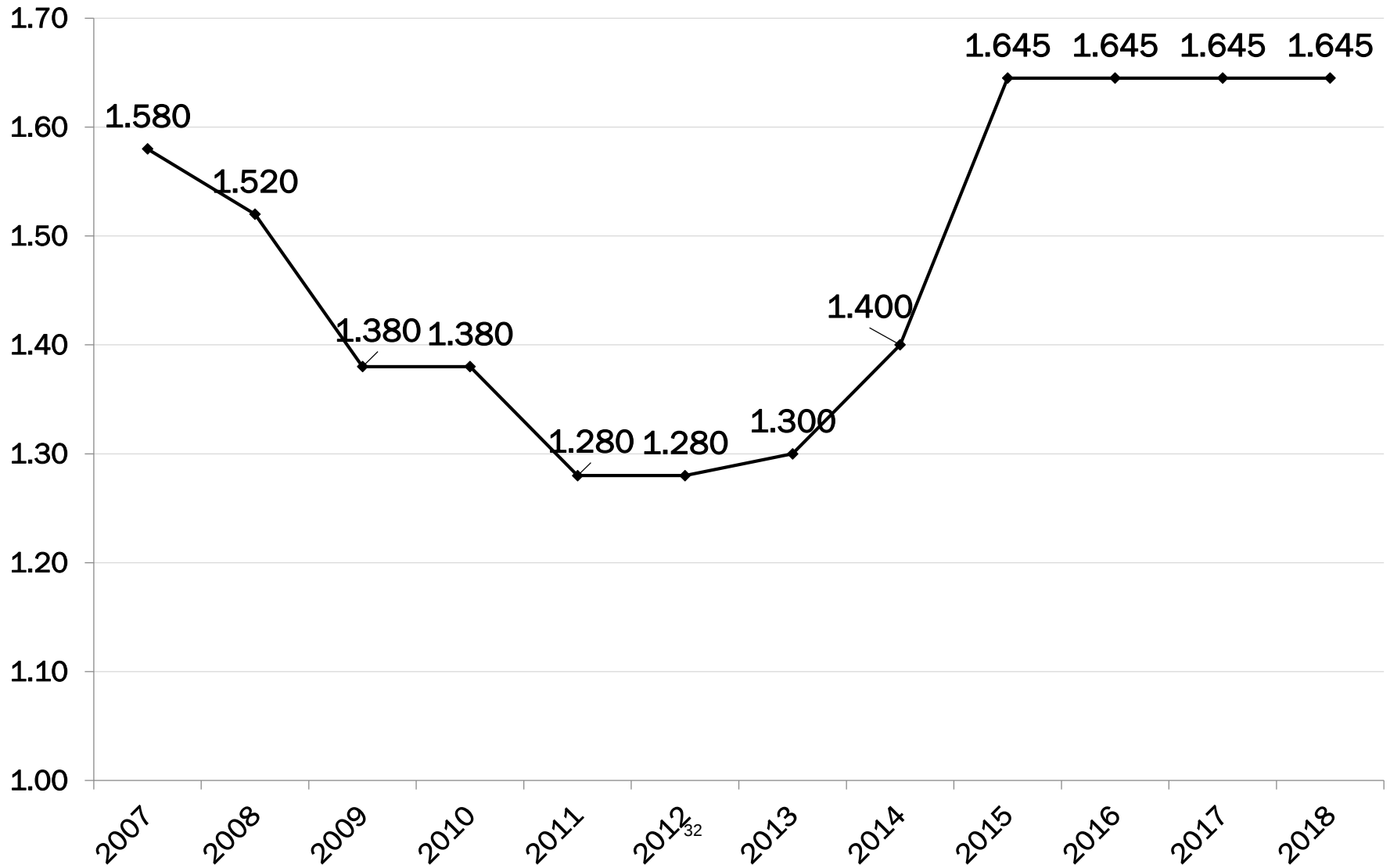
2019 Loss Cost Multiplier

What is a Loss Cost Multiplier?

- A loss cost multiplier (LCM) is one factor used by worker's compensation providers to set the premium rate, specifically the expense portion.
- LCMs on file with KID
- Applied to each NCCI loss cost rate by payroll class code.
- Goal when setting the LCM: Select a factor that enables the Pool to generate enough premium to cover projected losses, expenses, and provide underwriting gain (if any) required for stability.

KMIT

Historical Loss Cost Multipliers



Historical LCM Selections & Amount of Net Worth Put “At Risk”

- **2015:** Board decided to increase KMIT’s LCM from 1.400 to 1.645 in order to offset significant reduction in KS Loss Cost Rates (approx. 11%) and **breakeven (i.e., \$0 “at risk”)**.
- **2016:** State rates came down again (approx. 15%). Board decided to leave LCM flat (1.645) and put approx. **\$500K “at risk”**.
- **2017:** State rates again decreased (approx. 12%). Board decided to leave LCM flat (1.645) and put approx. **\$650K “at risk”**.
- **2018:** State rates again came down (approx. 11%). Board decided to keep LCM flat (1.645) and put approx. **\$650K “at risk”**.
- **2019:** **???**

2019 Premium Need

2019 Premium Need - 0% Underwriting Gain

1	Expenses (2018 Budget)	\$1,947,000	
	<i>Note: Includes additional \$200K for future Premium Audit Adjustment</i>		
2	2019 Est Payroll (00's)	\$2,239,000	
3	Loss Rate (12/31/17 Act Report)	\$1.70	
4	Losses (12/31/17 Act Report)	\$3,806,300	2x3
5	Losses and Expenses	\$5,753,300	1+4
6	Underwriting Gain	\$0	
7	Total Premium Need (Excluding Investment Income)	\$5,753,300	5+6
8	Projected Investment Income	\$225,000	
	Total Premium Need (Including Investment Income)	\$5,528,300	7-8

2019 Estimated Premium & Breakeven LCM Analysis

E-Mod Range	LCM	% Change	Premium	Accounts
0.80	1.645	0.00%	\$655,848	19
0.8 - 1.3	1.645		\$3,353,096	123
1.30	1.645	0.00%	\$953,243	20
Totals:			\$4,962,187	162

	Premium Need	Gain (Loss)	Breakeven LCM	% Change
0% Underwriting Gain	\$5,753,300	(\$791,113)	1.909	16.0%
0% Underwriting Gain (Incl. Investment Income)	\$5,528,300	(\$566,113)	1.834	11.5%

Assumptions:

1. Payroll based on 2017 audit + 2% (except if added in 2018, in which case use 2018 estimate +1%)
2. No state base rate change in 2019 (2018 rates will hold flat).
3. No change to LCM in 2019 (1.645)
4. Expiring experience mods applied
5. Premium Need includes 2018 Budget + \$200,000 for potential payroll audit premium adjustments
6. Premium Need & Corresponding Gain (Loss) shown with and without potential investment income

OPERATING POLICY #5

General Subject: Board Position for Community Colleges

Title of Policy: *Ad Hoc* (Non-Voting) Community College Position

Adoption Date: August 24, 2018

This policy establishes one *Ad Hoc* (non-voting) position specifically for the purpose of adding a Community College representative to the Board of Trustees. This *Ad Hoc* position on the Board of Trustees would carry full board status, except, that the person in the *Ad Hoc* position will not have a vote.

Background: From the beginning (January 1, 1994), and through December 31, 2017, the KMIT By-Laws limited membership in the pool to a municipality (city) which was a member of the League of Kansas Municipalities (LKM). That changed with the adoption of updated By-Laws in the fall of 2017, which became effective January 1, 2018, and which now allows for membership by any 'municipality' (as defined by statute) in Kansas.

In the spring of 2018, KMIT offered membership to several community colleges, which did result in the addition of two community colleges to the pool. Those two Community Colleges (Coffeyville and Independence) thus became the first *non-city* members of KMIT (other than the LKM).

Purpose: This change allows the Board to learn to better understand how community colleges operate, especially with regards to worker injury risk and finance, while also presenting an opportunity for community colleges to have a voice in KMIT policy, and in the overall management of the pool.

Process: This special *Ad Hoc* position will be appointed by the KMIT President, with consent of the Board, and not be subject to any term-limit restrictions.

Future: It could be anticipated that a future By-Laws change would add a provision for the purpose of making a *non-city* position on the Board of Trustees a permanent feature of KMIT.

It is also possible for additional *Ad Hoc* positions to be added, if and when any other non-city/non-community-college member is accepted for KMIT membership.

2018 KMIT Nominating Committee* Report

The following KMIT member-city officials have been selected by the Nominating Committee to appear on the ballot as nominees for KMIT Board of Trustees positions, before the General Membership of KMIT, at the 2018 KMIT Annual Meeting, on October 7, in Topeka:

Position #1: David Dillner, El Dorado (2-year term)

Position #3: Andrew Finzen, Goodland (2-year term)

Position #6: Jonathan Mitchell, Hoisington (2-year term)

Position #7: Hardy Howard, WaKeeney (2-year term)

Position #8: Kelly McElroy, Newton (2-year term)

* Ty Lasher (Bel Aire), Chair; Janie Cox (Haysville); and Greg DuMars (Lindsborg).

KMIT Trustee Terms, 2001 - Present

pos	Name	City	Title	Appointed	Elect 1	Elect 2	Elect 3	Elect 4	term limit date	End Date
1	Gary Meagher	Lindsborg	City Administrator	Jun-98						Aug-98
1	Ron Pickman	Goodland	City Manager	N/A	Oct-98	Oct-00	Oct-02			Oct-04
1	Cheryl Beatty [3]	Eudora	City Manager	N/A	Oct-04	Oct-06	Oct-08			Apr-09
1	Herb Llewellyn	El Dorado	City Manager	Jun-09	Oct-09 ¹	Oct-10	Oct-12			Oct-14
1	David Dillner	El Dorado⁵	City Manager	N/A	Oct-14	Oct-16	Oct-18		Oct-20	May-01
2	Nancy Calkins	Ft. Scott	City Clerk	N/A	Oct-00					Jun-07
2	Keith DeHaven	Sedgwick	Mayor	Jun-01	Oct-01	Oct-03	Oct-05			Oct-13
2	Sasha Stiles	Andover	City Administrator	N/A	Oct-07	Oct-09	Oct-11			Mar-14
2	Kathy Axelson	Rose Hill	City Administrator	N/A	Oct-13					
2	Randy Frazer	Moundridge	City Adm/City Clerk	May-14	Oct-14¹	Oct-15	Oct-17	Oct-19	Oct-21	Oct-01
3	Cherise Tieben	Dodge City	HR Director	Jun-99	Oct-00					Apr-02
3	Larry Kenton	Dodge City	Risk Mgr	Oct-01 ²	Oct-01 ²					Oct-08
3	Howard Partington	Great Bend	City Administrator	Apr-02	Oct-02	Oct-04	Oct-06			Dec-08
3	Jane Longmeyer	Dodge City	HR Officer	N/A	Oct-08					Mar-12
3	Daron Hall	Ulysses	City Administrator	Jun-09	Oct-09 ¹	Oct-10				
3	Tim Hardy	Elkhart	City Administrator	Jun-12	Oct-12	Oct-14	Oct-16		Oct-18	Oct-01
4	Mark Arbuthnot	Abilene	City Manager	?	?					Oct-07
4	Carol Eddington	Oswego	Deputy City Clerk	N/A	Oct-01	Oct-03	Oct-05			Oct-13
4	Bobby Busch	Neodesha	City Clerk	N/A	Oct-07	Oct-09	Oct-11			May-15
4	Tim Vandall	Ellsworth	City Administrator	N/A	Oct-13					
4	Janie Cox	Haysville	City Clerk	N/A	Oct-15	Oct-17	Oct-19		Oct-21	Oct-01
5	Paul Sasse	Independence	City Manager	?	?					Aug-06
5	Cheryl Lanoue	Concordia	City Clerk	N/A	Oct-01	Oct-03	Oct-05			Apr-11
5	Sharon Brown	Clay Center	Mayor	N/A	Oct-06 ¹	Oct-07	Oct-09			Oct-17
5	Debbie Price	Marysville	City Clerk	Apr-10	Oct-11	Oct-13	Oct-15			
5	Greg DuMars	Lindsborg	City Administrator	N/A	Oct-17	Oct-19	Oct-21		Oct-23	May-00
6	Jane Henry	Derby	Environ/Safety Dir	N/A	Oct-96	Oct-98				Oct-02
6	Shawne Boyd	Derby	HR Coord	?-00	Oct-00					Apr-06
6	David Alfaro	Augusta	Assist. City Mgr.	N/A	Oct-02	Oct-04				Dec-10
6	Steve Archer	Arkansas City	City Manager	Apr-06	Oct-06	Oct-08	Oct-10			Aug-14
6	Debra Mootz	Roeland Park	City Clerk/DOF	Dec-10	Oct-11 ¹	Oct-12				Oct-16
6	Nathan McCommon	Tonganoxie	City Manager	N/A	Oct-14					May-18
6	Mike Webb	Edwardsville	City Manager	N/A	Oct-16					
6	VACANT				Oct-18	Oct-20	Oct-22		Oct-24	Apr-01
7	Max Mize	Kingman	Mayor	N/A	Oct-96	Oct-98	Oct-00			Oct-07
7	Gary Hobbie	Russell	City Manager	Jun-01	Oct-01 ¹	Oct-02	Oct-04	Oct-06		Oct-14
7	Larry Paine	Hillsboro	City Administrator	N/A	Oct-07 ¹	Oct-08	Oct-10	Oct-12		June-18
7	Kerry Rozman	Clay Center	City Clerk	N/A	Oct-14	Oct-16				
7	VACANT				Oct-18	Oct-20	Oct-22		Oct-24	Apr-01
8	Ted Stolfus	Bonner Spgs	Mayor	May-97	Oct-99					Oct-04
8	Nancy Calkins	Mission	City Clerk	Jun-01	Oct-01 ⁴	Oct-02				Jun-07
8	Ty Lasher	Cheney	City Administrator	N/A	Oct-04	Oct-06				Oct-11
8	Toby Dougherty	Hays	City Manager	Jun-07	Oct-07 ¹	Oct-08	Oct-10			
8	Keith Schlaegel	Stockton	City Manager	N/A	Oct-11¹	Oct-12	Oct-14	Oct-16	Oct-18	Oct-01
9	Carl Myers	Wellington	City Manager	Jul-97	Oct-97	Oct-99				Sep-04
9	Rhonda Schuetz	Hiawatha	City Clerk	N/A	Oct-01	Oct-03				Oct-11
9	Lana McPherson	De Soto	City Clerk	N/A	Oct-04 ¹	Oct-05	Oct-07	Oct-09		Apr-13
9	Clausie Smith	Bonner Spgs	Mayor	N/A	Oct-11					Aug-14
9	Fred Gress	Parsons	City Manager	Apr-13	Oct-13					
9	Ty Lasher	Bel Aire	City Manager	N/A	Oct-14¹	Oct-15	Oct-17	Oct-19	Oct-21	Apr-99
10	Tim Richards	Newton	Commissioner	Jul-97	Oct-97					Oct-03
10	Willis Heck	Newton	Mayor	May-99	Oct-99	Oct-01				Oct-09
10	Linda Jones	Osage City	City Clerk	N/A	Oct-03	Oct-05	Oct-07			Apr-14
10	Doug Gerber	Goodland	City Manager	Oct-09	Oct-11	Oct-13				Jan-15
10	Megan Fry	Pittsburg	HR Director	Mar-14	Oct-14 ¹					Mar-16
10	Jay Byers	Pittsburg	Assist. City Mgr.	Mar-15	Oct-15					
10	Carey Simons	Pittsburg	Rec Dept	Mar-16	Oct-17	Oct-17	Oct-19		Oct-21	Jan-97
11	Jim Beadle	De Soto	Mayor	Jan-94	?					Oct-03
11	Kelly DeMeritt	Atchison	Assist. City Mgr	May-97	Oct-97	Oct-99	Oct-01			Jan-04
11	Bill Powers	Ulysses	City Administrator	N/A	Oct-03					Oct-09
11	Bud Newberry [2]	Derby	City Planner	Jan-04	Oct-04	Oct-05	Oct-07			Dec-12
11	Mac Manning	Peabody	City Adm/Clerk	Oct-09	Oct-11					Apr-15
11	Michelle Stegman	Garden City	HR Director	Jan-13	Oct-13					
11	Michael Reagel	Garden City	Police Captain	May-15	Oct-15	Oct-17			Oct-19	

¹ One-year term

² Appointed to Board while at Elkhart; moved on to Ulysses in June '04; moved on to Derby in Dec '07

³ First elected to the Board while in Kingman; moved on to Eudora in July '05

⁴ First elected to the Board while in Ft. Scott; moved on to Mission in ?



KMIT-Bardavon POET Program 2018 Review



KMIT-Bardavon Project Setup: Entity Responsibilities



KMIT Pool Administrator

- KMIT Safety Program Meetings
- Individual KMIT Member Meetings regarding program
- Member expresses interest
- Don Osenbaugh Pool Administrator submits contact form to Bardavon

Bardavon Program Coordinator

- Receives KMIT Member contact form
- Completes Member outreach discovery call
- Supplies Member contact with necessary information for board approval
- Monitors and assists Members through program setup
- Subcontracts certified providers to complete the Job Analysis and POET creation
- Sets up a local WorkSTEPS provider for new hire testing
- Arranges testing processes between Member and testing provider
- Completes billing monthly for all individual Members and the trust



2018 Program Improvements



- Increased efficiency and time for all steps/aspects of the program
- Improved the ability for rural providers to become WorkSTEPS certified
- Streamline POET validation phase



KMIT program statistics



	# of JA/POETs Created	JA/POET Creation Spend	POETs Performed	# of KMIT Members	% of KMIT Members	% of KMIT Worker Population
2015	78	\$23,876	48	19	11%	20%
2016	106	\$24,247	127	21		
2017	91	\$19,457	234	27		
2018	147	\$16,237	175	29 (17 active)	18%	41%
Totals	421 JAs/POETs created	\$83,817	584			
Market Value of existing JA/POET		\$505, 200				



What is Next?



Integrated Employee Health Solution



Preventative

Job Analysis

Post Offer
Employment
Test

Injury Management

Patient
Specific Care
Coordination

Initial
Medical
Assessment

Return to Work

PT / OT

Validity of
Effort & FCE

Safety & Wellness



Program Point of Contact

Taylor Ediger

Program Manager

913-839-0663

tediger@Bardavon.com



Bardavon Thanks You

Non-Agenda Information and Background Material

KANSAS MUNICIPAL INSURANCE TRUST

Board of Trustees Minutes from April 27, 2018

Approved in McPherson on June 29, 2018

Meeting Convened: Friday, April 27, 2018, at the Garden City Administration Building, in Garden City, KS. The meeting was called to order by KMIT President Randy Frazer at 9:03 A.M.

Welcome: Frazer welcomed all.

Members Present: *Board Members Present:* President Frazer (Moundridge), Vice President David Dillner (El Dorado), Treasurer Kerry Rozman (Clay Center), Past President Tim Hardy (Elkhart), Janie Cox (Haysville), Carey Simons (Pittsburg), Greg DuMars (Lindsborg), Keith Schlacgel (Stockton). *Staff:* Barbie Kifer (CORnerstone), Kyle Johnston (CORnerstone), Jess Cornejo (CORnerstone), Renee Rhodes (IMA), Gene Miller (TRISTAR), and Don Osenbaugh (KMIT Pool Administrator). *Guest:* Ryan Box (Commerce Bank).

Trustee Absences/Quorum Declaration: Michael Reagle (Garden City), Michael Webb (Edwardsville) and Ty Lasher (Bel Aire) were absent. A quorum was declared by Frazer.

Minutes Approval: The minutes from the Bel Aire meeting of February 23, 2018 were unanimously approved as written, following a motion by Dillner and a second by Rozman.

Financial Reports:

- a. February 28, 2018 Financials
- b. March 31, 2018 Financials (revised version distributed at meeting)
- c. First Quarter (1/31) 2018 KID Financial Report
- d. March 31, 2018 Cash/Investments Summary

Motion to approve the above reports made by Dillner; second by DuMars. Approved unanimously.

Reserve Advisory and Settlement Authority: Miller presented the following claims--

1. Claim #18710922 (Larned)--Reserve Advisory only.
2. Claim #18712165 (Fredonia)--Reserve Advisory only.
3. Claim #18714294 (Halstead)--Reserve Advisory only.
4. Claim #18716650 (Goodland)--Reserve Advisory only.
5. Claim #17685275 (Fort Scott)--Reserve Advisory only.
6. Claim #18702074 (Wamego)--Reported that the final settlement was in the total amount of \$205,000.

Miller also gave an overview of recently-passed Kansas legislation (KSH 2184), which increased the amounts of certain work comp benefits.

Loss Control Activities: Rhodes gave a report and presented several charts and graphs about loss history. Rhodes also gave a short summary of the recent trenching/excavating training sessions, held in Hays and Fort Scott.

Ad Hoc Committee: Dillner reported that the Committee had asked for, received and reviewed proposals from WSU and IMA for certain administrative services. The Board decided to take no action on anything to do with this subject, by consensus. The discussion is now closed.

New Member: Garden Plain will become a member of KMIT on May 1, 2018. (Spring Hill exited KMIT on April 1.)

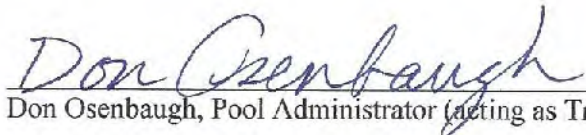
Annual Investment Review: KMIT's Investment Advisor, Ryan Box (of Commerce) gave a PowerPoint presentation and answered questions. Osenbaugh reviewed the KMIT Investment Matrix.

Annual Marketing Review: Osenbaugh presented the annual marketing review.

Admitting Community Colleges: Osenbaugh informed the Board that there was some interest in KMIT by certain community colleges, via several IMA producers. Following a motion by Hardy and a second by Dillner, the Board voted unanimously to approve extending quotes and pool membership to community colleges. Following that vote, the Board also approved unanimously to offer quotes to K-12 school districts (motion by Dillner and second by Rozman).

Other Business: Osenbaugh gave a brief update concerning a number of issues related to the operation of KMIT.

Adjournment: Motion to adjourn by Dillner; second by Rozman. Unanimous. Adjourned at 12:08 P.M.

 7/7/18
Don Osenbaugh, Pool Administrator (acting as Trustee-Designated Secretary)

KANSAS MUNICIPAL INSURANCE TRUST
Statements of Revenues, Expenses and Changes in Fund Balance
Statutory Basis

YEARS ENDED DECEMBER 31, 2004 AND 2003

	<u>2004</u>	<u>2003</u>
Underwriting income:		
Direct premiums earned	\$ 3,256,648	\$ 3,291,878
Less: excess insurance premium	<u>235,850</u>	<u>295,658</u>
Net underwriting income	<u>3,020,798</u>	<u>2,996,220</u>
Deductions:		
Workers' compensation claims incurred	1,582,673	2,012,002
Claims adjustment expenses incurred	136,178	162,002
Other administrative expenses incurred	<u>772,107</u>	<u>651,196</u>
Total underwriting deductions	<u>2,490,958</u>	<u>2,825,200</u>
Net underwriting income	529,840	171,020
Investment income / Other income		
Interest earned	<u>59,068</u>	<u>52,492</u>
Net income	<u>\$ 588,908</u>	<u>\$ 223,512</u>

ANALYSIS OF FUND BALANCE

Fund balance, beginning of year	\$ 413,601	\$ 190,089
Net income	<u>588,908</u>	<u>223,512</u>
Fund balance, end of year	<u>\$ 1,002,509</u>	<u>\$ 413,601</u>

The accompanying notes are an integral part of these statements.

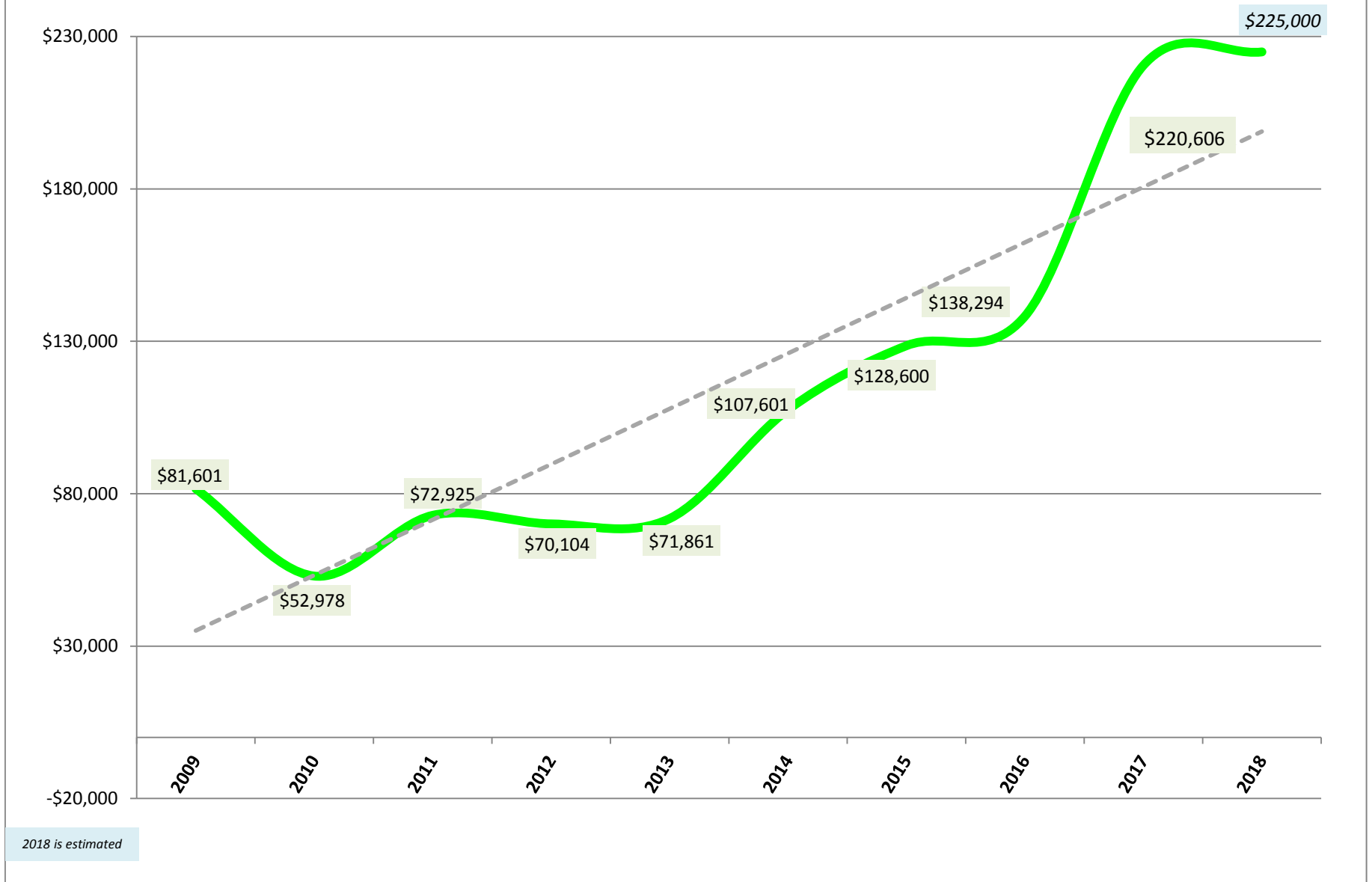
KANSAS MUNICIPAL INSURANCE TRUST

STATEMENTS OF REVENUE, EXPENSES, AND CHANGES IN FUND BALANCE – STATUTORY BASIS

For the years ended December 31,	2017	2016
Underwriting income		
Direct premiums earned	\$ 4,984,618	\$ 4,829,526
Less: excess insurance premium	476,604	451,042
Net underwriting income	4,508,014	4,378,484
Deductions		
Workers' compensation claims incurred	3,308,274	3,009,276
Claims adjustment expenses incurred	297,888	227,388
Other administrative expenses incurred	1,164,966	1,003,526
Total underwriting deductions	4,771,128	4,240,190
Net underwriting gain (loss)	(263,114)	138,294
Investment income / Other income		
Interest earned	220,606	160,374
Net income (loss)	(42,508)	298,668
Fund balance, beginning of year	5,975,000	5,676,332
Change in non - admitted assets	(1,045)	-
Fund balance, end of year	\$ 5,931,447	\$ 5,975,000

The accompanying notes are an integral part of the financial statements.

KMIT Investment Income 2009-2018



KMIT Investments, 2017-2022

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Remaining Total	#
2017									\$ 750 re-invested	\$ 576 cashed out	\$ 400 re-invested	\$ 248 cashed out	\$ -	0
2018	\$ 248 cashed out	\$ 1,000 cashed out	\$ 248 cashed out	\$ -	\$ 494 re-invested	\$ 900 re-invested	\$ 493 7/9+7/16	\$ 737 8/9+8/14+8/27	\$ 260 9/1	\$ 327 10/1+10/15	\$ 747 11/12+11/27	\$ 250 12/3	\$ 2,321,000	9
2019	\$ -	\$ -	\$ 743 3/11+3/21+3/26	\$ 248 4/15	\$ 250 5/24	\$ 400 6/19	\$ 250 7/16	\$ 248 8/2	\$ 760 9/12 + 9/27	\$ 327 10/1+10/2+10/28	\$ 100 11/15	\$ 250 12/2	\$ 3,576,000	15
2020	\$ 248 1/22	\$ 498 2/10+2/19	\$ 248 3/26	\$ 315 4/1+4/6	\$ 747 5/12+5/31	\$ - OK	\$ 249 7/13	\$ 313 8/12	\$ 740 9/1+9/11+9/29	\$ - OK	\$ 500 11/13	\$ 130 12/1	\$ 3,988,000	15
2021	\$ 247 1/20	\$ -	\$ 249 3/24	\$ 498 4/6+4/8	\$ 300 5/17	\$ 400 6/11	\$ 494 7/19+7/20	\$ -	\$ 100 9/1	\$ -	\$ -		\$ 2,288,000	9
2022	\$ 249 1/13	\$ 496 2/17+2/28	\$ 247 3/1	\$ 741 4/1+4/5+4/14	\$ 644 5/3+5/5+5/23	\$ -	\$ -	\$ 500 8/9	\$ -	\$ -	\$ -		\$ 2,877,000	11
2023													\$ -	
2024													\$ -	
9/15/17 orig	NONE	NONE	monthly numbers are shown in 1,000s									NONE	\$ 15,050,000	59

7/16/18 update

11/12 was moved from 5/12/19

2018 Annualized Premium**New Members**

Rozel	\$2,381
Garden Plain	\$5,328
COFFEYVILLE COMM COLLEGE	\$66,544
INDEPENDENCE COMM COLLEGE	\$32,534
Total Added	\$106,787

Withdrawing Ex-Members

Spring Hill	(\$38,544)
Grainfield	(\$1,753)
Total Lost	(\$40,297)

Difference (expected change in 2019)	\$66,490
---	-----------------

KMIT Glossary

Work Comp Terms/Acronyms

ALJ. Administrative Law Judge. Claims term. ALJs hear work comp claim cases when there is a settlement disagreement. The ruling of an ALJ carries, basically, the same weight as does a District Court Judge in civil and criminal cases, and can be appealed to a higher court.

AWW. Average Weekly Wage. Claims term. The gross wages of the employee earned during the 26 calendar weeks immediately preceding the date of injury

Cash Balance. The actual cash on hand (checking and investments) at any given point in time. Typically, Cash Balance far exceeds Net Worth (often over a 4:1 ratio)

'Division' (also 'DWC'). Workers Compensation Division, Kansas Department of Labor. The KDOL-DWC regulates all *non-insurance* aspects of work comp (safety, volunteers, etc.).

Equity, Total. See Net Worth.

Excess Insurance. Excess Coverage. Excess Insurance is a layer of insurance that pays for a loss only after all other applicable insurance has been exhausted. For KMIT, the fund currently pays the first \$750,000 of every occurrence, and then, after that has been exhausted, the excess insurance carrier (currently Safety National [SNCC]) pays for the remainder of the covered loss.

Experience Modifier. See MOD.

Hard Market. Business term. When the private market (insurance industry) for work comp is expensive, and work comp insurance may actually be dropped as a product by most companies in many cases.

'Hardening' Market. Business term. When the private insurance market pricing is pricing higher than it has been for work comp insurance, and the trend seems to be in that same direction.

IBNR. Incurred But Not Reported. Financial/Accounting term. IBNR reflects the total amount owed by the insurer to all valid claimants who have had a covered loss, but have not yet reported it, or a major turn of events in a current reported claim. IBNR is a mathematical estimate set by an actuary. Insurers track IBNR by policy periods (in KMIT, annually by calendar year). The characteristics of IBNR makes it look more like a reserve or provision for the particular types of losses not reported, hence gives a better estimation of profits for the insurer's current business period.

IME. Independent Medical Exam (or Examiner). Claims term. A medical exam provided by an independent physician, and usually ordered by a judge when there is a significant difference in opinions of two separate treating physicians.

Indemnity. Claims term. One of the two benefits provided under Worker's Compensation (the other is the payment of approved medical costs associated with a work-related injury). This benefit compensates the injured employee for loss of wages due to the work-related accident.

KID. Kansas Insurance Department. Regulates all *insurance* aspects of work comp.

'LCM'. Loss Cost Multiplier. Also known as 'Filed Rate'. Pricing term. The 'cost of doing business' rate filed with the Kansas Insurance Department (KID) by each insurance company and pool doing business in Kansas. (KMIT's 2014 LCM will be filed as 1.40.)

MMI. Maximum Medical Improvement. Claims term. The injured worker has 'plateaued' in medical care and no further medical treatment will provide any improvement in his medical status.

'MOD'. Experience Modifier. Pricing term. Experience Modifier is a factor used to make adjustments of annual premium based on insured's previous loss experience. Usually three years of loss experience are used to determine the experience modifier for a workers' compensation policy. The three-year period typically includes not the immediate past year, but the three prior.

NCCI. National Council for Compensation Insurance. All work comp claims costs and reserves data are continuously fed to NCCI (by KMIT and all other KS carriers and pools, and by most other states, as well). NCCI computes the loss rates, and establishes the ongoing Mods for each individual client (city), and also calculates class code loss rates for the use by the regulatory agencies (in KS, that is KID).

Net Worth. (AKA: Total Equity or Fund Balance) Accounting term. The total of all assets less all current and future liabilities, including Reserve and IBNR.

PPD. Permanently Partially Disabled. Claims term. Able to work, but will have some permanent limitation(s).

PPI. Permanent Partial Impairment. Claims term. A rating provided by the treating physician which is the extent, expressed as a percentage, of the loss of use of the injured body part and based on the 4th edition of the AMA guides.

PTD. Permanently Totally Disabled. Claims term. Unable to return to work on a permanent basis.

Reserve. Claims and Accounting term. Claims Term. An estimate of the total cost of the claim based on experience and current exposure to include medical, indemnity, and other expenses. This is a dollar amount that is set on the claim and can change as the status of the claim changes.

Reserve Advisory. Claims Term. Claim summary report presented at the KMIT Board Meeting by the adjuster that provides information on a claim which has exceeded \$25,000 in reserves.

Retention. A dollar amount specified in a insurance policy that must be paid by the insured before the insurance policy will respond to a loss. Currently, KMIT is directly accountable for a 'retention' amount of the first \$300,000 on each incident. The excess carrier would pick up the cost of the claim for anything above the \$300,000.

RUE. Right Upper Extremity. Claims term.

Settlement. Claims Term. An agreement between the injured employee and the employer/insurance carrier that concludes the claim and usually includes a lump sum payment. A settlement can be full and final which closes out ALL issues or a settlement can be a joint award that gives the injured worker rights to future benefits.

Soft Market. Business term. When prices are very low in the private market for work comp. In a very soft market, private carriers sometimes have actually sold work comp at an underwriting loss.

'Softening' Market. Business term. When the private insurance market is pricing lower than recently for work comp insurance, and that trend is expected to continue.

Subrogation. Claims term. The right to file a lien and/or lawsuit against a third party who was responsible for the accident, in order to recover expenses paid on the workers' compensation claim.

TTD. Temporary Total Disability. Claims term. Unable to return to work on a temporary basis.

TPD. Temporary Partial Disability. Claims term. Able to return to work, but with temporary restrictions.

2019 KMIT Trustee Meeting Schedule

Friday, February 22--Lindsborg

Friday, April 26--Pittsburg¹

Friday, June 28--McPherson²

Friday, August 23--El Dorado²

Sunday, October 6--Overland Park (immediately after annual meeting)

Friday, December 6--Moundridge

¹Supervisor Seminar in Independence on Thursday, April 25

²Supervisor Seminar in same city the day before

2019 KMIT Supervisor Seminar Schedule

Thursday, April 25, Independence

Thursday, June 27, McPherson

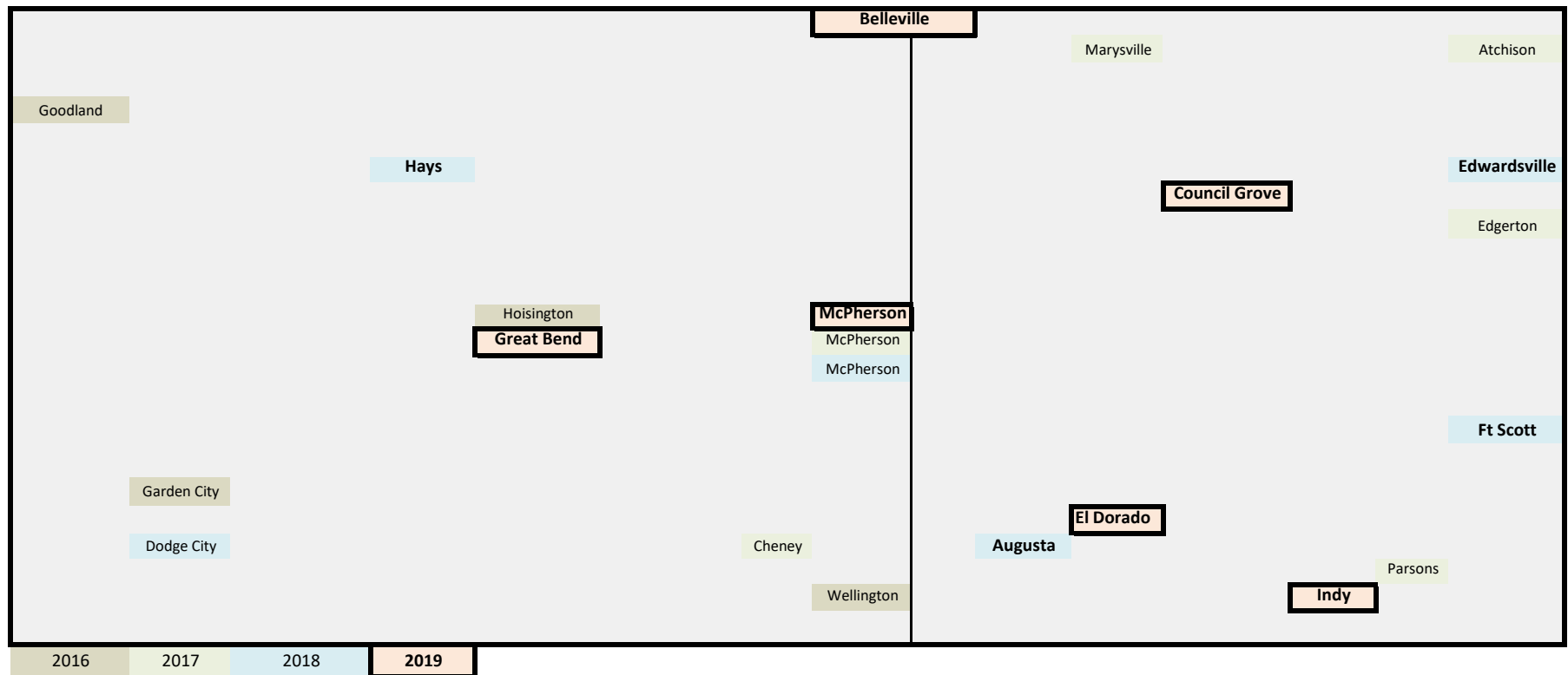
Thursday, August 22, El Dorado

Great Bend (TBD--mid-September)

Council Grove (TBD--mid-September)

Belleville (TBD--mid-September)

KMIT Supervisor Seminar Map, 2016-2019



Don Osenbaugh

From: KMIT [kyle.johnston=corisksol.com@mail250.suw101.mcdlv.net] on behalf of KMIT [kyle.johnston@corisksol.com]
Sent: Monday, July 16, 2018 10:01 AM
To: Don Osenbaugh
Subject: **KMIT Notes: Vol. 1, Issue 3**



KMIT Notes

Volume 1, Issue 3

July 16, 2018

Coffeyville and Independence Community Colleges Join KMIT

KMIT is extremely proud to formally announce that both **Coffeyville** and **Independence Community College(s)** officially became members of the KMIT pool on July 1.

'CCC' and 'ICC' thus became the **first non-city members of KMIT.**

The general membership of KMIT approved a By-Laws change just last October, at the 2017 KMIT Annual Meeting, which opened the way for KMIT to be able to serve any 'municipality' in Kansas, and that included community colleges. [Previously, membership in KMIT was limited to LKM-member cities.]

Cities and Community Colleges share Kansas community values. And, their work comp needs are very similar as well. This is a very good 'fit' for KMIT, as well as for our new community college partners.

Look for more in this publication in the months to come about both new KMIT member entities.

Why KMIT?

Why do Kansas Public Entities choose to join the KMIT workers compensation pool?

First of all, KMIT is **KANSAS**. It is Kansas-based (home office: Wichita), and it is all about Kansas. Our Board is comprised entirely of Kansas local public officials. The KMIT Pool Administrator, Don Osenbaugh, is a lifelong resident of Kansas (born in Hutchinson), and has many years of direct public service experience, all in KANSAS. He, and KMIT, THINKS like a Kansan, and feels like a Kansan.

There will always be Non-Kansas options for all kinds of insurance and other services available for Kansas public entities, but work comp is a very personal thing. KMIT knows Kansas and it knows how Kansas works. We know how KANSAS public entity budgets work; we know and understand Kansas people. Our values are Kansas. Our ethics are Kansas. Our culture is Kansas. We 'GET' Kansas.

KMIT's track record over its 25-Year existence speaks volumes, and speaks for itself. We are extremely proud of what we have accomplished and continue to accomplish. And, our success has not been by chance; we know what we are doing. KMIT **IS** KANSAS!!

Send Us Your Email Addresses, Please...

If you are reading **KMIT Notes**, we obviously have your email address. We collect email addresses absolutely every chance we get...at trainings, at our annual meeting, etc.

But, there are people associated with every KMIT member entity who might like (and need) to know more about what we do, and are doing, for whom we still do not have an email address. **Elected Officials** and supervisors top this list. People come and go. We work hard to try to keep up with those changes.

So, PLEASE, **send us your email addresses!** Email is the ONE best way to communicate with large groups of people in the 21st century, and we are now well into its 18th year.

KMIT Supervisor 2018 Training Tour Continues

This year's six-city Supervisor Training Seminar Tour made its second stop at the KMU Training Facility, in McPherson, on June 28. Over 30 supervisors attended the 3-hour afternoon session.

The next stop on The Tour is scheduled for **Edwardsville, on Thursday, August 23.**

In September, the final three stops will happen over a two-week period: **Hays (Wed, 9/19), Augusta (Thu, 9/20), and Fort Scott (Thu, 9/22)**. All three sessions are 1-4.

Contact KMIT Administrative Manager Kyle Johnston to sign up.



KMIT's 25th Annual Meeting

KMIT's first-ever Annual Meeting was in October of 1994. **The 25th Annual KMIT General Membership Meeting will be held on Sunday, October 7, in Topeka** (as always, during the League of Kansas Municipalities Annual Conference). KMIT completes its 25th year of operation on December 31, 2018.

Please make plans now to attend the KMIT Annual Meeting. The late afternoon event will last only about an hour, and will include a reception with great food and drinks, along with a short, but important, business agenda.

Best Safety Practice: Using Compressed Air Safely

"Compressed air is extremely forceful, with pressures used in the workplace typically ranging from 80 to 120 pounds per square inch (psi). The primary concern associated with using air at this pressure is the potential to "dead-end" or block the tip of an air gun. If the gun is "dead-ended" against the skin, compressed air can enter the body through small cuts or punctures. Results can range from soft tissue damage to an embolism (air bubble in the bloodstream). Compressed air can also rupture internal organs if introduced into a body cavity, such as a nostril or ear. Compressed Air - used for cleaning purposes should not exceed 30 PSI and then only with effective chip guarding and personal protective equipment.

In order to protect employees, the static pressure at the tip of a blocked gun must be limited to less than 30 psi. Pressures below this level are not considered to represent a health hazard to employees. One option for meeting this requirement is to limit the line pressure flowing into the gun to less than 30 psi, but this pressure level is normally not practical for most applications.

The other option is to use an air gun with a specially designed safety tip. These guns are equipped with relief ports that reduce the pressure at the nozzle to less than 30 psi if blockage occurs. Use of the safety tips is usually the preferred option since it allows work to be efficiently completed while also affording the proper level of protection.

Under normal conditions of use, air is discharged through the nozzle opening.

If the tip of the gun is blocked, air is discharged through the relief ports thereby reducing pressure at the tip to a safe level."

2 Chip Guarding

When blowing off debris with an air gun in close quarters, workers are subject to "chip fly-back". This term refers to the tendency of loose particles or chips to fly back into the operator's face, eyes or skin. For operations that require close-in work, OSHA mandates that "effective chip guarding" be incorporated into the workplace. One way to accomplish this is through innovative nozzle design.

Air Gun Nozzle with Chip Fly-Back Safety Feature

A portion of the main air flow is diverted through slots around the periphery of the nozzle to form a protective air cone. The protective air cone helps prevent chips and other debris from "flying back" towards the operator. This nozzle design, if dead-ended, allows 100% of the air flow to be diverted out the slots thus preventing blockage, thereby satisfying the OSHA Standards pertaining to both Chip Guarding and Output Pressure. (See photo)



Relevant OSHA Standard:

29CFR Part 1910.242 (b) Hand and portable powered tools and equipment, general.

OSHA Instruction SDT 1-13.1

(OSHA Program Directive #100-1)

Helpful links related to this safety topic:

- [OSHA Regulation Standards](#)
- [Purchase safety equipment \(Jet Guard Safety Air Gun 74SK\)](#)

Watch and share the following employee training video on Compressed Air Safety, courtesy of the KMIT Safety Video Library:

VIDEO: Compressed Air Safety - KMIT



WANT MORE SAFETY TRAINING VIDEOS?

Safety videos, provided in both English and Spanish, are available for online streaming at **NO COST** for **KMIT member cities** through the following website (administered by Aurora Pictures): <https://trainingvideonow.com>.

If you cannot locate your login information or want to add new users, please contact KMIT Administrative Manager Kyle Johnston by phone at (316) 266-6233 or email him at Kyle.Johnston@corisksol.com.

LINKS TO WORK COMP ARTICLES & RESOURCES

What are some of the best ways to reduce work comp costs?

KMIT Pool Administrator Don Osenbaugh addresses that question in an article which appeared in the Kansas Government Journal in April (2018), entitled, "4 Major Work Comp Cost Drivers". [Click here to read the article.](#)

Addressing Municipalities Biggest Workers' Compensation Challenges

This article provides a recap of the "Out Front Ideas" live panel discussion at the 2018 PRIMA (Public Risk Management Association) Annual Conference. The panel, consisting of several public entity risk managers from across the U.S., shared their biggest workers' compensation challenges, including fire cancer claims, mental illness, return to work, and opioids. [Click here to learn more about how the panelists are overcoming the biggest work comp challenges they face today.](#)

ANALYSIS: Top Causes of High-Dollar Workers' Comp Claims

"High dollar workers' compensation claims are rare, but they can be extremely costly and have a significant impact on an employer's workers' compensation costs. The rarity of these claims makes studying them challenging." Safety National, one of the largest providers of excess workers' comp coverage for self-insured public entities in the U.S., recently completed a

review of their large claims and uncovered several trends employers should be aware of. ([Read the full article....](#))

For updated information on KMIT's financial performance, please see the following link:

[KMIT Balance Sheet as of May 31, 2018](#)

CONTACT KMIT:

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Kyle Johnston

KMIT Administrative Manager

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Gene Miller

KMIT Claims Manager

Phone: (844) 702-2353, ext. 4711

Email: Gene.Miller@tristargroup.net

Renee Rhodes

KMIT Risk Control Manager

Mobile: (316) 250-2121

Office: (316) 266-6345

Email: renee.rhodes@imacorp.com

UPCOMING EVENTS

AUGUST 23

**KMIT Supervisor
Seminar**
Edwardsville

AUGUST 24

**KMIT Board of
Trustees Meeting**
Overland Park

SEPTEMBER 19

**KMIT Supervisor
Seminar**
Hays

SEPTEMBER

20

**KMIT Supervisor
Seminar**
Augusta

SEPTEMBER 27

**KMIT Supervisor
Seminar**
Fort Scott

OCTOBER 7

**KMIT 25th
Annual Meeting**
Topeka
(during LKM
Conference)

**Questions about a potential claim?
Call KMIT Claims Manager
Gene Miller at:
(844) 702-2353 (Ext. 4711)**



KMIT Notes is the bi-monthly newsletter of the Kansas Municipal Insurance Trust.

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MailChimp

Don Osenbaugh

From: KMIT [kyle.johnston@corisksol.com@mail122.sea41.rsgsv.net] on behalf of KMIT [kyle.johnston@corisksol.com]
Sent: Thursday, August 9, 2018 11:22 AM
To: dosenbaugh@cox.net
Subject: [Test] KMIT (TRISTAR) Prescription Network Card for Work Comp



KMIT Group,

Several months ago, KMIT's contracted claims-adjusting partner, TRISTAR, made a change in its prescription network. This change did result in claimants needing a new drug card, etc.

For those claimants, and others, who might not have been aware of this change, and need to provide information to drug providers, there is a form to do that, which is accessible [here](#).

Please feel free to contact your KMIT Claims Manager, Gene Miller (Gene.Miller@tristargroup.com) or Don Osenbaugh, with any further questions or clarifications.

Thanks.

CONTACT KMIT:

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Kyle Johnston
KMIT Administrative Manager
Phone: (316) 266-6233
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Gene Miller
KMIT Claims Manager

Renee Rhodes



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Contact: Don Osenbaugh, KMIT Pool Administrator

dosenbaugh@cox.net or 316-259-3847

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Don Osenbaugh

From: Don Osenbaugh [dosenbaugh@cox.net]
Sent: Saturday, August 4, 2018 5:14 PM
To: Andrew Finzen (Goodland); Carey Simons (Pittsburg); David Dillner (El Dorado); Greg DuMars (Lindsborg); Hardy Howard (WaKeeney); Janie Cox (Haysville); Jonathan Mitchell; Keith Schlaegel (Stockton); Kelly McElroy (Newton); Michael Reagle (Garden City); Randy Frazer (Moundridge); Tim Hardy (Elkhart); Ty Lasher (Bel Aire); Bobby Busch (Neodesha); Carol Eddington (Oswego); Daron Hall (Pittsburg); Debbie Price (Marysville); 'Herb Llewellyn'; Jay Byers (Pittsburg); Larry Paine (Hillsboro); Mac Manning; Steve Archer; Toby Dougherty (Hays)
Cc: 'Gene Miller'; 'Cornejo, Jess'; 'Davis, Paul'; 'Johnston, Kyle'; Don Cawby (Osawatomie); 'Matt Allen'; 'Jennifer McCausland'; Jon Quinday (Russell); 'Ethan Reimer'; Shane Shields (Wellington); Jeff Porter (Medicine Lodge); Ernestor DeLaRosa; Nick Hernandez (Ark City); 'Mike Shook'; 'Jeff Morris'; Dave Martin (Ft. Scott); Becky Bouska (Maize); Becky Berger (Atchison)
Subject: Kansas Court of Appeals find use of AMA 6th is unconstitutional KMIT IMPORTANT
Attachments: Johnson v. US Food Service.pdf
Importance: High

KMIT Board, Advisory Board, Staff and Others,

This is a pretty big deal for the entire work comp industry (across all businesses) in Kansas, and will have an effect on how claims are settled.

AMA 6 was adopted by the KS St Legislature several years ago.

The AMA guides are what doctors use to establish functional loss (impairment) ratings.

The AMA 6 was considered to be much more conservative, rational and realistic than 4, by most in our industry.

Some claims already settled in the past may even be affected.

It is too early to have any real clue how all of this will settle out, but an 'Unconstitutional' ruling by the KS Court of Appeals carries a lot of weight, and will be the standard unless/until it is over-turned, I think.

I assume this will go on up to the KS Supreme Court at some point...

PS...Tony Andersen is probably the foremost legal expert in work comp in Kansas. I serve along with him on the KSIA Board.

DonO

Don Osenbaugh

KMIT Pool Administrator

www.kmit.net

dosenbaugh@cox.net

316-259-3847

From: Andersen, Tony C [mailto:TCANDERS@travelers.com]

Sent: Friday, August 3, 2018 12:27 PM

To: 'Payne, Marcia (TP7)'; 'Cox, Tina'; 'Jamie Klausmeyer'; 'Doug Hamilton'; 'dosenbaugh@cox.net'; 'ereasoner@thomasmcgee.com'; 'Janeen McWilliams (jmcwilliams@ccmsi.com)'; 'kevin@leadingagekansas.org'; 'michelle.roush@westarenergy.com'; 'steven.r.graham@spiritaero.com'

Cc: Scott Heidner (scott@bhlandassociates.com)

Subject: Kansas Court of Appeals find use of AMA 6th is unconstitutional

All:

Attached is a decision handed down this AM by the Kansas Court of Appeals. Johnson v. U.S. Food Service. A copy is attached.

In short, a panel of the Kansas Court of Appeals found the use of the AMA Guides 6th edition is unconstitutional. The panel ordered reversion to the AMA Guides 4th as the basis for determining impairment ratings.

As background, in 2011, Kansas made extensive changes to the Workers Compensation Act. Two years later, in 2013, the Kansas Legislature adopted the AMA 6th as the guide to determine impairment. The effective date for the use of the 6th was January 1, 2015. Injuries occurring between July 1, 1993 and December 31, 2014 used the 4th edition to determine impairment.

Johnson injured his neck at work on 10/16/15. He underwent a 2 level fusion with hardware. Under the 6th, Johnson's rating was 6%. If he had been rated under the 4th, the impairment would have been 25%. A 6% rating was worth \$14,810.80. A 25% rating was worth \$61,713.70.

The COA looked at the history of the Kansas Workers Compensation Act. It applied a two part test to determine whether legislative changes were constitutionally sound. First, is the legislative change reasonable necessary in the public interest to promote the general welfare of the state? Second, has the Legislature provided an adequate substitute remedy to replace the remedy that was restricted?

The Court concentrated on part two of the test. It went through and analysis of the changes in 2011 and 2013, noting these changes constricted the ability of an injured worker to collect benefits under the Workers Compensation Act. It questioned whether the "quid pro quo" of the Grand Bargain still existed. The Court wrote:

"The gradual erosion of the fair exchange between rights under the Act and common-law rights to tort recovery have, for the injured worker, amounted to death by a thousand paper cuts. What is the last slice that tips the balance from a

fair exchange of the rights and remedies to one that is unconstitutionally inadequate from the injured workers point of view? "

Looking at the 1993, 2011 and 2013 changes, the panel held the adequate substitute remedy no longer remained after the adoption of the Sixth Edition of the AMA Guides. The 6th Edition shifted the focus from functional impairment that affects job performance to basic standards of health. Specifically, the Kansas Workers Compensation Act looks at disability as the effect of impairment on the ability to perform a job or task. The Sixth Edition measures the ability to perform activities of daily living. This does not take into account the physical demands of work such as standing, walking, bending, squatting, twisting, climbing, carrying or lifting. Conversely, the Fourth Edition included the activities of daily living and work activities.

The Court also took issue with the narrowing of the goalposts required by the AMA 6th. "The Sixth Edition provides concrete impairment ratings that leave no room for the knowledge and expertise of the evaluating physician. In contrast, the Fourth Edition allowed physicians to use their experience, training, skill and thoroughness in examining the patient in applying the Guides."

The Court also noted, without citation to evidence, that the AMA 6th ratings are 40% to 70% lower than those provided in the Fourth Edition. It also cited Dr. P. Brent Koprivica's testimony that there is no scientific support for the reduced ratings in the 6th. Finally, the legislative changes adopting the 6th eliminated any reliance on competent medical evidence to measure impairment according to the panel.

In the end, the Court severed that portion of the Act providing for use of the 6th Edition. The remaining language then reverted to the use of the Fourth. Thus, impairment is to be determined based on the AMA Fourth.

I would imagine there will be much pressure on the employer/carrier to appeal this decision. I may reach out to the employer's attorney in a few weeks to find out their plans. If appealed, one question will be whether some action will be taken to stay the enforcement of the decision pending determination of any appeal.

If the decision stands, my take is:

1. This reverts the Act to its state after the 2011 amendments;
2. The decision may add fuel to litigation to challenge the 2011 amendments as to whether they pass constitutional muster;
3. We will see more litigation in Kansas due to the widening of the goalposts under the AMA 4th as to ratings;
4. More Court Ordered IME's will be scheduled because of the wider goalposts.
5. We will also see more work disability cases since it will be easier for Claimant's to meet the 7.5% functional threshold;
6. This in turn will likely increase the number of voc assessments in cases;
7. More attorneys will get back into workers compensation since the financial recoveries will be greater under the 4th in carpal tunnel cases, etc.

Those are the things I can think of off the top of my head.

Tony

**Effective 1/15/2018 – Our mailing address has changed. Please address all correspondence sent by mail to:
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No. 117,725

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

HOWARD JOHNSON III,
Appellant,

v.

U.S. FOOD SERVICE,

and

AMERICAN ZURICH INSURANCE CO.,
Appellees.

SYLLABUS BY THE COURT

1.

Section 18 of the Kansas Constitution Bill of Rights guarantees an individual's right to a remedy: "All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law."

2.

Under the Fourteenth Amendment of the United States Constitution, no State shall "deprive any person of life, liberty, or property without due process of law."

3.

The Legislature may substitute a statutory remedy for one available at common law. But due process requires that the substitute provides an adequate remedy for the common-law remedy that has been abolished.

4.

Once the Legislature has established a substitute remedy, it cannot constitutionally proceed to emasculate the remedy by amendments to the point that it is no longer a viable substitute remedy.

5.

The Kansas Workers Compensation Act provides an administrative procedure for providing compensation to injured workers in exchange for the relinquishment of the injured worker's common-law right to sue a negligent employer in tort for damages.

6.

When our Legislature enacts changes in our Workers Compensation Act, for the changes to satisfy the constitutional requirement of due process (1) the changes must be reasonably necessary in the public interest to promote the general welfare of the people of Kansas, and (2) the Act in its currently modified form must continue to provide an adequate substitute remedy for an injured worker's right to bring a common-law action for the recovery of damages.

7.

After the adoption in K.S.A. 2015 Supp. 44-510d(b)(23) and (b)(24) and K.S.A. 2015 Supp. 44-510e(a)(2)(B) of the Sixth Edition of the American Medical Association Guides to the Evaluation of Permanent Impairment (6th ed. 2008) as the Guide to be used for measuring the permanent impairment of injured workers, our Kansas Workers Compensation Act no longer provides an adequate substitute remedy for injured workers who suffer a permanent impairment on or after January 1, 2015, and K.S.A. 2015 Supp. 44-510d(b)(23) and (b)(24) and K.S.A. 2015 Supp. 44-510e(a)(2)(B) violate the constitutional requirement for due process.

8.

Because K.S.A. 44-574(b) provides for the severability of a provision in the Kansas Workers Compensation Act which is found to be unconstitutional, the appropriate remedy in this case is to strike from K.S.A. 2015 Supp. 44-510d(b)(23) and (b)(24) and K.S.A. 2015 Supp. 44-510e(a)(2)(B), the provisions requiring the use of the Sixth Edition of the AMA Guides, thereby leaving the Fourth Edition of the AMA Guides as the applicable Guide in the evaluation of an injured worker's permanent impairment.

Appeal from Workers Compensation Board. Opinion filed August 3, 2018. Reversed and remanded with directions.

Mark E. Kolich, of Lenexa, for appellant.

Michelle Daum Huskins, of Constangy, Brooks, Smith & Prophete, LLP, of Kansas City, Missouri, for appellees.

Jeffrey A. Chanay, chief deputy attorney general, *Toby Crouse*, solicitor general, and *Dwight R. Carswell* and *Bryan C. Clark*, assistant solicitors general, for amicus curiae State of Kansas.

Before MCANANY, P.J., LEBEN and SCHROEDER, JJ.

MCANANY, J.: Our opinion in this workers compensation appeal follows on the heels of the recent opinion in *Pardo v. United Parcel Services*, 56 Kan. App. 2d 1, ___ P.3d ___ (No. 116,842 filed June 1, 2018). In *Pardo*, a panel of our court determined that the use of the Sixth Edition of the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (6th ed. 2008) as mandated by K.S.A. 2015 Supp. 44-510d(b)(23) was unconstitutional as applied to *Pardo*, an injured worker. 56 Kan. App. 2d at 25. Today, we are asked to declare that the use of the Sixth Edition of the AMA Guides is unconstitutional on its face.

FACTUAL AND PROCEDURAL HISTORY OF JOHNSON'S INJURY CLAIM

On October 16, 2015, Howard Johnson, who had been employed by U.S. Food Service since 2002 as a delivery driver, suffered an on-the-job injury to his neck when he tried to dislodge a partially frozen trailer door at work.

Later that month, Dr. Harold Hess, a neurosurgeon, examined Johnson for the first time. Johnson complained of neck and left arm pain along with numbness and weakness in his left arm. Dr. Hess ordered an MRI scan of Johnson's neck which disclosed a spinal cord compression due to disc herniations at levels C5-C6 and C6-C7. Physical findings confirmed this injury. Dr. Hess diagnosed Johnson with cervical myeloradiculopathy.

On November 17, 2015, Johnson filed a claim for workers compensation benefits.

In January 2016, Dr. Hess operated on Johnson's neck. He removed the disc material at C5-C6 and C6-C7 and replaced it with bone from a cadaver in order to "create a fusion across the two vertebral bodies, across the disc space." He also screwed a metal plate into the vertebrae as a temporary stabilizer.

On April 15, 2016, Johnson was released to return to work, but he continued to experience symptoms from the injury to his neck and has modified the way he performs his duties to accommodate his injury.

Dr. Hess used the Sixth Edition of the AMA Guides in rating Johnson's permanent impairment at 6% of the whole person. Dr. Hess noted that if he had used the Fourth Edition of the American Medical Association Guides to the Evaluation of Permanent Impairment (4th ed. 1995), which had been in effect until January 1, 2015, Johnson's rating would have been 25%. Dr. Hess testified that he believed that the 25% impairment

rating was representative of Johnson's true impairment considering his loss of range of motion and his potential need for future surgery. He explained that 20% to 30% of fusion patients experience accelerated degeneration of adjacent discs in the neck within 10 years and require additional surgery.

Dr. Hess has been performing cervical fusions since 1988. He testified that other than the use of cervical plates that began in the 1990s, there has been no change in the surgical technique for cervical fusions, and the expected surgical outcome remains the same. According to Dr. Hess, there have been no advancements in medical treatment or science that would warrant the lower impairment ratings provided in the Sixth Edition of the AMA Guides.

Dr. Preston Brent Koprivica, a physician with an expertise in occupational medicine, testified that he has been performing independent medical evaluations for more than 30 years using the Third, Third Revised, Fourth, and Sixth Editions of the AMA Guides. He stated that all versions of the AMA Guides before the Sixth Edition specify a minimum of 25% impairment rating for an injury similar to Johnson's. He agreed with Dr. Hess that Johnson's impairment rating would have been a minimum of 25% under the Fourth Edition. Dr. Koprivica testified:

"[I]n his case he's had damage to his spinal cord. That's what the myelopathy part that Dr. Hess was talking about in his treatment record and deposition testimony is referring to. So structurally there's been damage to his spinal cord. Now, he's recovered neurologically, which is what you hope for, but there's still some permanent damage there. That's of significance.

"The second thing that I think is of great significance is the spine has been permanently structurally changed. In order to do your treatment you've changed the original anatomic makeup of the spine. Two motion segments no longer move. That's what a fusion is. You prevent movement at those motion segment levels.

"The problem with that is that what's observed in that patient population is that adjacent segments to the fused segments break down. They have an accelerated degeneration that occurs and those structural changes are of significance. They get changes in their facet joints, get greater arthritis, they get ligament changes in terms of hypertrophy of those ligaments trying to absorb forces.

"That's what your body does whenever you're put under unusual stresses. You try to adapt and your body will adapt for that by increasing the size of the ligament. But that has an implication. It takes up space in the spinal canal area. It causes narrowing. The discs at those motion segments adjacent degenerate and part of that degeneration process is there's a much greater propensity to herniate."

Dr. Koprivica opined that there is a 25% to 30% probability that Johnson will need further surgery within 10 years. He concluded that 25% is representative of Johnson's true impairment rating given the severity of his injury. According to Dr. Koprivica, there is no scientific support for the reduced ratings in the Sixth Edition of the AMA Guides, as there has been no progression of medical knowledge, technology, or skill which would account for or justify the lower ratings. Dr. Koprivica stated that the ratings represent a consensus of opinion of a small committee of physicians.

If Johnson's impairment had been calculated under the Fourth Edition of the AMA Guides, his award for a 25% impairment would have been \$61,713.70. But under the Sixth Edition of the AMA Guides, Johnson's impairment rating was only 6%, for an award of \$14,810.80. Had Johnson been injured before January 1, 2015, rather than nine months later, the award for his impairment would have been nearly \$47,000 greater.

Attorney Jeff Cooper, a workers compensation practitioner, testified about major proposed changes to the Workers Compensation Act (Act) before 2011:

"Well, for the last I would say eight years before 2011, there had been a series of bills proposed in the legislature, all of which were designed to reduce benefits to injured workers. It was Senate Bill 418 and Senate Bill 181, I believe were the numbers in corresponding years. We had been able on behalf of injured workers, and I testified on behalf of KTLA, we'd been able to avoid some of those draconian measures against injured workers because we had some moderate Republicans in the Senate that generally were not real eager to disadvantage injured workers in the state of Kansas, so we'd been able to basically avoid those changes being made.

"As you may recall, in 2010 there was an election in Kansas and the Kansas Chamber of Commerce made an organized effort to get all those moderates replaced on the Senate and with the exception of maybe one moderate senator out of Topeka, they were successful in all those endeavors.

"So the landscape had changed from the standpoint of what we perceived to be a worker friendly or at least a worker neutral Senate to one that was no longer friendly to workers, and also we had large Republican majorities in the House that were similarly situated and had campaigned on changing workers' compensation benefits.

"So the meeting was held because there were proposed major changes to the Workers' Compensation Act in Kansas. There were rumors of going to a Texas system and those kind of things, and the informal meeting was had basically to try to work out something that would be at least fair to injured workers."

According to Cooper, an agreement was reached during the 2011 negotiations among a number of groups with an interest in workers compensation—a group that drafted the proposed 2011 changes—that any changes to the Act would not include a change in the method for determining the extent of impairment, and both sides agreed that the Fourth Edition of the AMA Guides would continue to be used. Of course, the final decisions remained the prerogative of the Legislature and the Governor, not these groups. And two years later, the Legislature amended K.S.A. 44-510e and adopted the Sixth Edition of the AMA Guides for all injuries sustained after January 1, 2015.

Following the final hearing on Johnson's claim, the administrative law judge (ALJ) awarded \$14,804.70 for Johnson's 6% impairment rating under the Sixth Edition of the AMA Guides. The Board affirmed. Neither the ALJ nor the Board addressed Johnson's constitutional issue because they lacked the jurisdiction to do so.

Johnson's appeal brings the matter to us. The sole issue on appeal is the constitutionality of the requirement in the 2013 amendment to K.S.A. 44-510e that permanent impairment ratings for workers injured on or after January 1, 2015, be calculated using the Sixth Edition of the AMA Guides.

JOHNSON'S CLAIM ON APPEAL AND OUR STANDARDS FOR APPELLATE REVIEW

Johnson contends that the change in K.S.A. 2015 Supp. 44-510e which requires the use of the Sixth Edition of the AMA Guides violates § 18 of the Kansas Constitution Bill of Rights and the Fourteenth Amendment of the United States Constitution. He claims that the reduction in workers compensation awards diminishes or abrogates a remedy protected by due process without promoting the general welfare and without providing an adequate substitute remedy.

Determining a statute's constitutionality is a question of law over which we have unlimited review. We presume statutes are constitutional and resolve all doubts in favor of a statute's validity. We interpret a statute in a way that makes it constitutional if there is any reasonable construction that would maintain the Legislature's apparent intent. Before striking down a statute as unconstitutional, the violation must be clear. *Solomon v. State*, 303 Kan. 512, 523, 364 P.3d 536 (2015).

THE HISTORY OF THE WORKERS COMPENSATION SCHEME
IN KANSAS AND ITS CONSTITUTIONAL FOUNDATIONS

The statutory provision at issue in this case is found in K.S.A. 2015 Supp. 44-510c, which provides:

"(a) In case of whole body injury resulting in temporary or permanent partial general disability not covered by the schedule in K.S.A. 44-510d, and amendments thereto, the employee shall receive weekly compensation as determined in this subsection during the period of temporary or permanent partial general disability not exceeding a maximum of 415 weeks.

. . . .

(2)(B) The extent of permanent partial general disability shall be the percentage of functional impairment the employee sustained on account of the injury as established by competent medical evidence and based on the fourth edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein, until January 1, 2015, but for injuries occurring on and after January 1, 2015, based on the sixth edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein."

The constitutional provisions at play are found in § 18 of the Kansas Constitution Bill of Rights and the Fourteenth Amendment of the United States Constitution.

Section 18 of the Kansas Constitution Bill of Rights states: "All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay." Remedy by due course of law as used in § 18 means "reparation for injury, ordered by a tribunal having jurisdiction, in due course of procedure and after a fair hearing." *Hanson v. Krehbiel*, 68 Kan. 670, Syl. ¶ 2, 75 Pac. 1041 (1904).

In *Samsel v. Wheeler Transport Services, Inc.*, 246 Kan. 336, 353, 789 P.2d 541 (1990), in which our Supreme Court considered the statutory cap on noneconomic tort damages, the court determined that § 18 provides "an injured party . . . a constitutional right to be made whole." As stated in *Miller v. Johnson*, 295 Kan. 636, 655, 289 P.3d 1098 (2012): "The purpose of economic and noneconomic damages is to make the injured party whole by restoring the person to the position he or she was in prior to the injury. [Citations omitted.]"

Section 18 guarantees the right to a remedy, and it is satisfied when the Legislature provides an adequate substitute remedy, or quid pro quo (Latin for "something for something"), for the abolition of a common-law remedy. See *Injured Workers of Kansas v. Franklin*, 262 Kan. 840, 855, 942 P.2d 591 (1997).

Finally, § 18 is a fundamental constitutional right. See *Ernest v. Faler*, 237 Kan. 125, 131, 697 P.2d 870 (1985); *Bourne v. Atchison, T. & S. F. Rly. Co.*, 209 Kan. 511, 515, 497 P.2d 110 (1972); *State v. Larraco*, 32 Kan. App. 2d 996, 999, 93 P.3d 725 (2004).

The Fourteenth Amendment of the United States Constitution prohibits the deprivation "of life, liberty, or property without due process of law." Johnson argues that he had a property interest in receiving adequate workers compensation benefits sufficient to invoke Fourteenth Amendment due process protections.

Against this constitutional backdrop we examine the various iterations of our workers compensation laws, which we collectively refer to as the Act, along with related decisions from our Supreme Court and the United States Supreme Court.

In 1911, the Kansas Legislature first adopted workers compensation legislation. On March 14 of that year, Kansas and Washington became the first two states in the nation to establish a scheme of workers compensation for work-related injuries in exchange for relinquishment of the common-law rights of workers to bring civil tort actions against their employers for injuries caused by the negligence of their employers. Several other states quickly followed suit. Domenico Gagliardo, *The First Kansas Workmen's Compensation Law*, 9 Kan. Hist. Q. 384 (1940).

In *Howard Delivery Service, Inc. v. Zurich American Ins. Co.*, 547 U.S. 651, 662-63, 126 S. Ct. 2105, 165 L. Ed. 2d 110 (2006) (quoting P. Lencsis, *Workers Compensation: A Reference and Guide* 9 [1998]), the United States Supreme Court explained:

"[W]orkers compensation . . . involves a classic social trade-off or, to use a Latin term, a *quid pro quo*. . . . What is given to the injured employee is the right to receive certain limited benefits regardless of fault. . . . What is taken away is the employee's right to recover full tort damages, including damages for pain and suffering, in cases in which there is fault on the employer's part."

In 1914 our Supreme Court, in *Shade v. Cement Co.*, 93 Kan. 257, 260, 144 Pac. 249 (1914), found the Act to be constitutional, primarily because it was elective in nature.

In 1917, the United States Supreme Court considered in *New York Cent. R. Co. v. White*, 243 U.S. 188, 205, 37 S. Ct. 247, 61 L. Ed. 667 (1917), the trade-off between benefits under New York's workers compensation law and the loss of the common-law right to sue. In upholding the constitutionality of the New York act, the Court stated: "This, of course, is not to say that any scale of compensation, however insignificant on the one hand or onerous on the other, would be supportable." 243 U.S. at 205. It would

do "violence to the constitutional guaranty of 'due process of law'" if the Legislature set aside common-law tort liability "without providing a reasonably just substitute." 243 U.S. at 201.

In 1967, the Legislature changed the Act to provide immunity from suit for negligent fellow employees when the injured employee receives compensation under the Act. Sec L. 1967, ch. 280.

In 1974, the Legislature substantially revised the Act. Coverage under the Act became mandatory for employees working for an employer with an annual payroll over \$10,000. See L. 1974, ch. 203.

In 1983, our Supreme Court upheld as constitutional the 1967 amendments to the Act in *Rajala v. Doresky*, 233 Kan. 440, 441-43, 661 P.2d 1251 (1983).

In 1987, the Act was amended to include compensation for functional impairment which had to be established by competent medical evidence. These amendments did not include a requirement to use any AMA Guides. See L. 1987, ch. 187.

In 1991 our Supreme Court decided *Bair v. Peck*, 248 Kan. 824, 811 P.2d 1176 (1991), which indirectly applies to the Act. There, the court considered the constitutionality of a provision in the Health Care Provider Insurance Availability Act, K.S.A. 40-3401 *et seq.* enacted in 1976, which abrogated the common-law vicarious liability of an employer health care provider under certain circumstances. The court stated: "No one has a vested right in common-law rules governing negligence actions which would preclude substituting a viable statutory remedy for one available at common law. The legislature can modify the common law so long as it provides an adequate substitute remedy for the right infringed or abolished." 248 Kan. 824, Syl. ¶ 11. But the

Legislature is restricted as to how much it may reduce an individual's right to obtain a remedy:

"We recognize that there is a limit which the legislature may not exceed in altering the statutory remedy previously provided when a common-law remedy was statutorily abolished. The legislature, once having established a substitute remedy, cannot constitutionally proceed to emasculate the remedy, by amendments, to a point where it is no longer a viable and sufficient substitute remedy." 248 Kan. at 844.

In 1997, the court revisited the Health Care Provider Insurance Availability Act in *Lemuz v. Fieser*, 261 Kan. 936, 959, 933 P.2d 134 (1997), and, while again upholding the enactment, observed:

"In summary, this court struggles with the bottom line figure as to how much a quid pro quo can be amended and still remain an adequate quid pro quo. As in *Bair*, 248 Kan. at 844, this court realizes that an original quid pro quo cannot be emasculated to a point where it is no longer a viable and sufficient substitute remedy."

In 1993, the Legislature adopted sweeping changes to the Act.

- Before 1993, an injured worker's failure to give timely notice of an accident did not bar a claim unless the employer showed prejudice. Under the 1993 change, the lack of timely notice barred a claim even if the lack of timely notice did not prejudice the employer.
- Before 1993, shoulder injuries were treated as permanent partial general disabilities. Under the 1993 changes, a shoulder injury became a scheduled injury for which compensation amounted to 2/3 of the worker's average weekly wage for 225 weeks, regardless of the worker's lost earning capacity due to the inability to perform the type of work performed before the accident. Such an award is

typically less than what an injured worker would have received under the pre-1993 law.

- Before 1993, an injured worker's Social Security retirement benefits were an offset against workers compensation benefits received. Under the 1993 changes, the offset was expanded to include the employer's contribution (and apparently the earnings thereon) to any private retirement plan.
- The 1993 changes disallowed recovery for a preexisting injury even though the aggravation of the injury was caused by work-related activity.
- The 1993 changes repealed an injured worker's right to vocational rehabilitation.
- The 1993 changes limited the healing period for scheduled injuries solely to those involving amputations.
- The 1993 changes set the top wage rate for computing an injured worker's wage at \$450 per week, regardless of the worker's actual wages.
- The 1993 changes set a \$50,000 cap on compensation for a functional impairment regardless of the severity of the worker's impairment.
- The 1993 changes made conclusive the prior presumption against work disability when the injured worker earns a comparable wage. See L. 1993, ch. 286.

In 1997, our Supreme Court decided *Injured Workers*, in which the court reviewed the 1993 legislative changes. In analyzing the due process claim, the court applied a two-step test in determining whether the legislative changes were constitutionally sound. For the legislation to stand, both of the following two questions must be answered in the affirmative: (1) Is the legislative change reasonably necessary in the public interest to promote the general welfare of the state? (2) Has the Legislature provided an adequate substitute remedy to replace the remedy that was restricted? 262 Kan. at 854. The court drew extensively on its decision in *Bair* and quoted the above cited language from *Bair* and from *Lemuz*. The court concluded:

"While several of the amendments at issue do restrict an employee's right to receive workers compensation benefits, several other amendments have been enacted with the intent to expand an employee's rights. (However, the expansion pales in comparison to what was taken away.)

"With these rights still available to injured workers under the amended Act, it cannot be said that the Act, which originally provided an adequate substitute remedy for the abrogation of an employee's common-law right to sue an employer for negligence, has been emasculated to the point where it is no longer an adequate quid pro quo."

Injured Workers, 262 Kan. at 888.

In his dissent, Justice Allegrucci observed: "I am unable to determine at what point, if any, the majority would conclude the legislature went too far in altering a substitute remedy." 262 Kan. at 889 (Allegrucci, J., dissenting).

In 2011, the Legislature again enacted major revisions to the Act which reduced the employer's liability to pay compensation to injured workers.

- The revision to the Act effectively reversed our Supreme Court's holding in *Bergstrom v. Spears Manufacturing Co.*, 289 Kan. 605, 610, 214 P.3d 676 (2009), and imposed on injured workers the duty to mitigate the employer's liability to pay compensation for a work disability by seeking post-injury employment.
- K.S.A. 44-501 shifted its focus from compensation for injured workers to disallowances and reductions predicated on fault-based concepts familiar to tort law.
- K.S.A. 44-508(f)(2) was changed to adopt the prevailing factor standard for causation. More on this later. Injured workers now have the burden of proving that a work-related accident or repetitive trauma was the primary factor in causing their injury.

- Under the 2011 version of K.S.A. 44-508(f)(2), "An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic." Under this provision, workers are not entitled to benefits when a work accident causes a dormant condition to become symptomatic and disabling. The work accident must be the prevailing factor in causing the injury or the medical condition and the resulting disability or impairment.
- Under the 2011 version of K.S.A. 44-508(f)(3)(A), injuries arising out of neutral risks, personal risks, and idiopathic causes are not compensable. This nullifies previous cases allowing compensation in those instances if the nature of employment enhanced the risk of harm. See *Hensley v. Carl Graham Glass*, 226 Kan. 256, 597 P.2d 641 (1979).
- As noted earlier, under the 1993 amendments, the lack of timely notice of an accident barred a claim even if the employer was not prejudiced by the tardy notice. Further, notice had to be provided within 10 days of an accident. But under the 1993 amendments, the 10-day notice requirement could be extended if the claimant showed good cause. The 2011 amendments eliminate the good cause extension and compel the absolute denial of a claim unless notice is given within 30 days after the accident or 20 days from the date medical treatment is sought, whichever date is *earlier*. Under the 2011 version, if the worker is no longer employed by the employer from whom benefits are sought, notice must be given within 20 days after the last day of actual work for the employer.
- Before 2011, K.S.A. 44-525 provided that an employer's right to medical treatment reasonably necessary to cure and relieve the effects of an injury was not limited by time or amount. But the amended K.S.A. 44-525 prohibits an award for

future medical care unless it is proven that the need is probable, which is difficult for many medical experts to predict.

- The 2011 version of K.S.A. 44-510k(a)(3) created a presumption that medical care is no longer needed as a result of a work injury if no treatment is received within two years from the date of an award for future medical care. This allowed the employer to obtain a postaward order terminating the worker's future medical rights. The burden is now on the injured worker to come forward with competent medical evidence to overcome the presumption.
- The 2011 version of K.S.A. 44-510c measured work disability by calculating the difference between the average weekly wage the employee was earning at the time of the injury and the average weekly wage the employee was capable of earning after the injury. Under the prior law, the comparison was to the injured worker's actual post-injury wage. Moreover, an injured worker must now demonstrate a functional impairment in excess of 7.5% to the whole person before a work disability claim can be made. Combining this threshold with the lower ratings provided in the Sixth Edition to the AMA Guides makes recovery for a work disability rare. For someone like Johnson, a work disability claim would not be possible if the worker is unable to return to work because a 6% functional impairment rating is below the work disability threshold.
- The 2011 version of K.S.A. 44-523(f)(1) allows dismissal with prejudice of claims for lack of prosecution that do not reach trial or settlement within three years of the filing date, even if the injured worker has not reached maximum medical recovery within that period.
- The 2011 version of the Act provided several amendments that favored employees: (1) temporary partial disability benefits can now be collected for scheduled injuries; (2) the maximum recovery for permanent partial disability was increased from \$100,000 to \$130,000; and (3) the cap for permanent total disability was raised from \$125,000 to \$155,000. But Johnson argues that these

changes are meaningless for those workers who no longer have viable claims because of the new limits on compensability.

- Under the 2011 version of the Act, the Fourth Edition of the AMA Guides continued in effect. See L. 2011, ch. 55.

In 2013, the Legislature further amended the Act by adopting the Sixth Edition of the AMA Guides for measuring permanent impairment from injuries occurring on or after January 1, 2015. See L. 2013, ch. 104, §§ 8, 9.

In 2015, SB167 was introduced in an effort to reverse the 2013 adoption of the Sixth Edition of the AMA Guides. The Senate Commerce Committee conducted hearings on the bill, which attracted considerable attention. Secretary of State Kris W. Kobach, a former law school professor who taught constitutional law for 15 years, supported the bill to discontinue use of the Sixth Edition of the AMA Guides. His written submission to the committee included the following points:

- "[A]ny fair constitutional analysis of the [shift from the Fourth Edition to the Sixth Edition of the AMA Guides] will yield the conclusion that employees are denied due process for certain injuries." If the quid pro quo justifying an injured worker's denial of access to the courts for relief "disappears or becomes inadequate, then the exclusive remedy rule dissolves. Due process requires that the employee must have some avenue to seek a meaningful remedy."
- The Sixth Edition "reduces some classes of injuries to zero compensation" and "reduces other injuries to pathetically inadequate compensation levels, by anyone's reckoning."
- The Sixth Edition materially changed compensation awards over what was awarded under the Fourth Edition for certain injuries even though "nothing

changed in this area of medicine between the publications of the 4th and 6th Editions."

- "Kansas is now the only state in the union that combines the 6th Edition with the prevailing-factor rule. That puts Kansas in a class by itself, and it results in a denial of due process to Kansas workers."
- "[T]he 6th Edition takes away from the administrative judge the ability to tailor a remedy to the specific circumstances of a particular case. It replaces a range of values with a one-size-fits-all approach. If the employee loses the ability to have the decision-maker consider the specific facts of his case and modify the remedy accordingly, he has been denied due process."

Professor Bill Rich, James R. Ahrens Chair in Torts and Constitutional Law and Professor of Law at the Washburn University School of Law, also provided testimony in support of the restoration of the Fourth Edition. He stated:

"Because of changes made in the new edition of the AMA Guides, some injured workers no longer receive a *'quid pro quo'* (or adequate substitute) for their traditional right of recovery when they experience certain work-related injuries. As a result, the Kansas Workers Compensation Act no longer provides an adequate substitute for the lost right to a jury trial. Because no valid remedy at law remains for this category of injured workers, they will not receive the protection that the Kansas Bill of Rights guarantees."

Litigators on both sides—representing claimants and representing employers—testified in support of the bill. Support came from the Mayor/CEO of the Wyandotte County/Kansas City Unified Government, as well as numerous employers from around the state. Opposition to the bill came from other business owners and business groups around the state, including the Kansas Chamber which suggested that the committee "not succumb to the argument over constitutionality. Constitutionality arguments are a dime a dozen." Opposition was also voiced by the American Medical Association and the Kansas

Medical Society. Larry G. Karns, the Director of the Division of Workers Compensation of the Kansas Department of Labor, stated that the Department "does not have concerns with reverting to the use of the 4th Edition." He noted:

"The current issue before the legislature is the edition of the AMA Guides to use for impairment ratings. Which Guide to use impacts the level of benefits awarded to the employee. The use of the 6th Edition in place of the 4th Edition will result in lower impairment ratings and an even greater reduction in workers benefits. The 2011 Amendments did not include adoption of the 6th Edition. The 6th Edition was adopted in 2012 legislation. Reverting back to the 4th Edition will return the formula back to where it was when the 2011 amendments were negotiated and enacted."

The Legislature failed to adopt S.B.167.

On January 1, 2015, the Sixth Edition of the AMA Guides came into effect. Johnson's accident occurred about nine months later on October 16, 2015.

ANALYSIS

In considering Johnson's constitutional argument, we apply the two-part test from *Injured Workers*: (1) Is the change in the Act reasonably necessary in the public interest to promote the general welfare of the people of Kansas? (2) Does the Act in its current form provide an adequate substitute remedy for an injured worker's right to bring a common-law action for the recovery of injuries and damages? For the Act in its present form to pass constitutional muster, both questions must be answered in the affirmative.

In the first part of the test we determine "whether the legislative means selected . . . has a real and substantial relation to the objective sought." *Injured Workers*, 262 Kan. at 854. Here, the "legislative means selected" is the adoption of the Sixth Edition of the

AMA Guides. As stated in *Bonin v. Vannaman*, 261 Kan. 199, 217, 929 P.2d 754 (1996): "The first question in a due process analysis is whether there is a significant public interest to justify [the statutory amendment] and whether this [amendment] has a real and substantial relation to the objective sought." Our Supreme Court has explained that this step in the analysis "is similar to a rational basis test." *Lemuz*, 261 Kan. at 949. To supply a rationalization for the adoption of the Sixth Edition of the AMA Guides, "[a]ll the State [has] to do [is] offer 'any state of facts [which] reasonably may be conceived to justify'" the change, which in our case is the change from the Fourth Edition to the Sixth Edition of the AMA Guides. *Injured Workers*, 262 Kan. at 863 (quoting *Peden v. Kansas Dept. of Revenue*, 261 Kan. 239, 252-53, 930 P.2d 1 [1996]).

This test was applied to the adoption of the Sixth Edition of the AMA Guides in our recent decision in *Pardo*. There, the court determined: "The State satisfied this low burden by showing that the amendment to the Act was justified by offering parts of the legislative history supporting that the Sixth Edition was more medically sound than the Fourth Edition." 56 Kan. App. 2d at 17. We need not rehash that analysis here because the main thrust of Johnson's argument is directed at the second test under *Injured Workers*: that the Act in its present form does not provide an adequate substitute remedy for the rights at common law that were set aside with the initial adoption of the Act.

The second step in the analysis is more stringent than the first. Even if the modification of a remedy within the Act is consistent with public policy needs under the first *Injured Workers* test, this does not satisfy due process concerns. There still must be an adequate substitute remedy conferred on those individuals whose rights are adversely affected. *Miller*, 295 Kan. at 657. If a legislative amendment to the Act reduces the remedy or makes it more difficult to obtain a remedy, it is the task of the courts to determine if the revised Act still provides an adequate remedy. If not, the quid pro quo is

inadequate and the legislative amendment violates due process. *Injured Workers*, 262 Kan. at 856.

This notion of an adequate quid pro quo is fundamental to the constitutionality of the Act. The Act created a system in which an injured worker trades the right to a common-law tort recovery for a work-related injury for a fixed and relatively prompt payment for such injuries after an administrative hearing and without the need to show the employer's negligence, albeit also without compensation for any pain and suffering or punitive damages for willful or wanton conduct. As recognized in *New York Cent. R. Co.*, it would do "violence to the constitutional guaranty of 'due process of law'" if the Legislature set aside common-law tort liability "without providing a reasonably just substitute." 243 U.S. at 201.

The changes to the Act over the years have been found constitutional by our Supreme Court, but its most recent decision doing so came in 1997 in *Injured Workers*, in which the court upheld the 1993 amendments. Since then there were substantial amendments to the Act in 2011 and again in 2013 when the Sixth Edition of the AMA Guides was adopted, effective January 1, 2015.

When our Supreme Court last considered the constitutionality of the Act, it observed that "the expansion [of workers' rights under the Act] pales in comparison to what was taken away." 262 Kan. at 888. Nevertheless, the court concluded that "it cannot be said that the Act, which originally provided an adequate substitute remedy for the abrogation of an employee's common-law right to sue an employer for negligence, has been emasculated to the point where it is no longer an adequate quid pro quo." *Injured Workers*, 262 Kan. at 888. To this, Justice Allegrucci wondered what it would take for the court to conclude that "the legislature went too far." 262 Kan. at 889 (Allegrucci, J., dissenting).

The gradual erosion of the fair exchange between rights under the Act and common-law rights to tort recovery have, for the injured worker, amounted to death by a thousand paper cuts. What is the last slice that tips the balance from a fair exchange of rights and remedies to one that is unconstitutionally inadequate from the injured worker's point of view?

While our Supreme Court declared that the tipping point had not been reached with the 1993 amendments, we conclude that the tipping point has now been reached with the adoption of the Sixth Edition of the AMA Guides. We do not opine on the constitutionality of the Act as amended in 2011, though it is clear that those amendments at least moved the Act closer to the tipping point. But adoption of the Sixth Edition of the AMA Guides leaves the injured worker who suffers a permanent impairment in a situation not unlike that of Monty Python's Black Knight.

As noted earlier, with the 2011 amendments claimants' rights to recovery were diminished in a number of ways:

Claimants are now required to mitigate the employer's liability for compensation payments, an obligation that the Act had not specifically imposed before 2011. See L. 2011, ch. 55.

Under the 2011 amendments, the focus of the Act, as expressed in its first provision, shifted from the right of claimants to compensation for work-related injuries to the various fault-based provisions available to the employer for denying compensation. For example, injuries from horseplay among coworkers formerly was compensable in some circumstances. See *Jordan v. Pyle, Inc.*, 33 Kan. App. 2d 258, 101 P.3d 239 (2004). Now, injuries resulting from horseplay are not compensable under any circumstances. Previously, an employee's refusal to submit to a drug test was grounds for refusing

benefits if the employer had probable cause to believe the employee was under the influence of drugs. See the Board's decision in *Anderson v. Custom Cleaning Solutions*, No. 1,070,269, 2016 WL 5886183 (Kan. WCAB September 19, 2016). Now, an employer can deny benefits regardless of whether the employer has probable cause to believe the employee was actually under the influence of drugs when the work accident occurred so long as the employer has a policy requiring testing and the employee refuses the test.

The 2011 amendments adopted the prevailing factor rule for determining causation. The work-related injury must now be the prevailing factor in the injury. This narrowed the concept of causation from the pre-2011 Act. See *Nam Le v. Armour Eckrich Meats*, 52 Kan. App. 2d 189, 364 P.3d 571 (2015). The pre-2011 standard required a showing of "some causal connection between the accidental injury and the employment." *Siebert v. Hoch*, 199 Kan. 299, 303, 428 P.2d 825 (1967).

A claim for aggravation of a preexisting condition is no longer compensable. Nor is a claim for injuries arising out of a neutral risk, a personal risk, or an idiopathic cause. The Act previously allowed compensation for the aggravation of a preexisting condition. See *Demars v. Rickel Mfg. Corp.*, 223 Kan. 374, 573 P.2d 1036 (1978). Injuries cause by neutral risks had been compensable in the past. See *McCready v. Payless*, 41 Kan. App. 2d 79, 200 P.3d 479 (2009). Likewise, injuries from idiopathic causes had been compensable before this amendment. See *Graber v. Dillon Companies*, 52 Kan. App. 2d 786, 377 P.3d 1183 (2016), *rev. granted* 306 Kan. 1317 (2017).

The time for providing a notice of accident can no longer be extended for good cause shown. A claim will be denied if the Act's strict notice deadlines are not met.

An award for future medical treatment is not permitted under the 2011 amendments absent a showing that future medical care will probably be needed. See *Woods v. Farmers Insurance Group, Inc.*, No. 116,184, 2017 WL 1296136, at *7 (Kan. App. 2017) (unpublished opinion). In *Woods*, the court observed:

"The 2011 amendments to the Workers Compensation Act were significant in many ways, and these provisions represented a departure from prior law. Before the 2011 amendments, claims for future medical benefits were left open as a matter of right—meaning an award for compensation always included the possibility of future medical benefits. [Citations omitted.] . . . Here, the legislature reversed the general policy that future medical benefits be left open to a general policy in which further medical benefits would not be available after maximum medical improvement unless the employee proved that the need for future treatment was probable."

Moreover, it is now presumed that medical care is no longer needed if no treatment is received within two years from the date of an award for future medical care.

In calculating an entitlement to work disability, the threshold for such a claim has been raised. Now, a claimant's functional impairment must be in excess of 7.5% to the whole person to allow a work disability claim. K.S.A. 2015 Supp. 44-510e(a)(2)(C).

A claim can now be dismissed with prejudice for lack of prosecution if it is not tried or settled within three years of the filing date, even though the claimant had not been dilatory in pursuing the claim, had not abandoned the claim, and has not reached maximum medical recovery. See *Glaze v. J.K. Williams, LLC*, 53 Kan. App. 2d 712, 390 P.3d 116, rev. granted 306 Kan. 1317 (2017).

An injured worker is entitled to medical care "reasonably necessary to cure and relieve the effects of the injury." K.S.A. 2015 Supp. 44-510h. But the employer has the

right to designate the treating physician and the injured employee must wait for the employer to authorize treatment, which delays the receipt of prompt care.

Economic loss is compensated, but only partially. Temporary total disability compensation is paid for 2/3 of the average weekly wage with a cap of 75% of the state's average weekly wage. See K.S.A. 2015 Supp. 44-510c(a)(1). Here, the applicable maximum claim was \$610 per week. Taking Johnson's circumstances as an example, he earned considerably more than the state's average weekly wage. Thus, his recovery was less than the 2/3 of his actual wage loss for the six months he was unable to work.

When one considers the Act as a whole, including the major amendments made in 1993 and in 2011, we conclude that an adequate substitute remedy no longer remained after the adoption of the Sixth Edition of the AMA Guides.

There is a significant difference between the Fourth Edition and the Sixth Edition of the AMA Guides. The Sixth Edition shifts the focus from functional impairment that affects job performance to basic standards of health. As noted by the authors, the Sixth Edition "introduces a paradigm shift in the assessment of impairment" by introducing a new definition of functional impairment. AMA Guides Sixth Edition, p. 3. The model introduced in the Sixth Edition is not geared specifically to measuring functional impairment of an injured worker, but rather it is designed as a multipurpose classification intended for a wide range of uses. AMA Guides Sixth Edition, p. 5. The assessment of functional impairment in the Sixth Edition is no longer tied to the ability to do activities associated with work. Instead, when it comes to functional impairment the focus is on life-care activities. A disability evaluation "must be further integrated with contextual information typically provided by nonphysician sources regarding psychological, social, vocational, and avocational issues." AMA Guides Sixth Edition, p. 6.

The new definition of functional impairment is inconsistent with the Act, specifically in the assessment of permanent partial disability. Under the Act, compensation is based on the worker's disability. Disability refers to the effect of impairment on the ability to perform a job or task. A disability under the Act may be temporary or permanent, partial or total. Permanent total disability—defined in K.S.A. 2015 Supp. 44-510c(a)(2)—exists when the injury has rendered the worker completely and permanently incapable of engaging in any type of substantial gainful employment. See *Casco v. Armour-Swift-Eckrich*, 283 Kan. 508, 526, 154 P.3d 494 (2007). When permanent total disability follows permanent partial disability, compensation is paid as provided in K.S.A. 2015 Supp. 44-510d and K.S.A. 2015 Supp. 44-510e. See K.S.A. 2015 Supp. 44-510c(c). This method of compensation is consistent with the Act's overall purpose of compensating the injured worker for the loss of earning power.

But the use of the Sixth Edition conflicts with this principle by measuring disability in terms of the ability to perform activities of daily living rather than measuring an impairment in terms of the inability to do a job at work. Rather than focusing on the impairment in terms of the ability to work, the Sixth Edition describes an impairment rating as a "consensus-derived percentage estimate of loss of activity reflecting severity for a given health condition, and the degree of associated limitations in terms of [activities of daily living]." AMA Guides Sixth Edition, p. 5. Activities of daily living are described in the Sixth Edition as basic self-care activities such as bathing, showering, dressing, eating, functional mobility, personal hygiene, toilet hygiene and management, sleep, and sexual activity. AMA Guides Sixth Edition, p. 7. None of the listed activities measures tasks with physical demands associated with work such as standing, walking, bending, squatting, twisting, climbing, carrying, or lifting.

The Fourth Edition also described activities of daily living, and in doing so, it specifically included "work activities." AMA Guides Fourth Edition, p. 1. It identified

activities that required physical demands often associated with a work setting such as standing, walking, stooping, squatting, lifting, pushing, lifting, and carrying. AMA Guides Fourth Edition, p. 317. By including specific functional and intrinsic physical activities into the description of activities of daily living, the Fourth Edition provided a tool to measure impairment and disability in terms related to the ability to do work. With the adoption of the Sixth Edition, the focus has shifted to measuring impairment in terms of activities of daily living. Any reference to work or work-related physical activities has been eliminated from the examples of activities of daily living provided in the Sixth Edition.

The Sixth Edition provides concrete impairment ratings that leave no room for the knowledge and expertise of the evaluating physician. In contrast, the Fourth Edition allowed physicians to use their experience, training, skill, and thoroughness in examining the patient in applying the Guides. AMA Guides Fourth Edition, p. 3. The Fourth Edition explained that using these attributes and involving the physician in the evaluation process "compose part of the 'art' of medicine, which, together with a foundation in science, constitute the essence of medical practice." AMA Guides Fourth Edition, p. 3.

With the legislation adopting the Sixth Edition, K.S.A. 2015 Supp. 44-510e(a)(2)(B) specifically provides:

"The extent of permanent partial general disability shall be the percentage of functional impairment the employee sustained on account of the injury as *established by competent medical evidence and based on the fourth edition* of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein, until January 1, 2015, *but for injuries occurring on and after January 1, 2015, based on the sixth edition* of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein." (Emphases added.)

The previous versions of the Guides deferred to the physician's discretion in providing an impairment rating. They left room for adjustments needed to meet the evolving demands of medical science. See *Milpitas United School District v. Workers Compensation Appeals Board*, 187 Cal. App. 4th 808, 823, 115 Cal. Rptr. 3d 112 (2010) (physician discretion was an integral part of past versions of the AMA Guides). The statute no longer refers to "competent medical evidence" when dealing with injuries after January 1, 2015. This discretion has been removed from the Sixth Edition.

The Guides should measure the extent of permanent impairment, which directly relates to the ability to continue working—a driving factor behind the Act.

"[R]ecover for loss of earning power is a basic purpose of the act. In accordance with this principle we conclude a workman is entitled to recover an award equal to the percentage of his physiological capabilities lost by reason of an injury occurring within the scope of his employment. Stated more distinctly, he should recover his functional disability." *Anderson v. Kinsley Sand & Gravel, Inc.*, 221 Kan. 191, 196, 558 P.2d 146 (1976).

But under the Sixth Edition of the AMA Guides, impairment ratings are 40% to 70% lower than those provided in the Fourth Edition. According to Dr. Koprivica, there is no scientific support for the reduced ratings in the Sixth Edition. In amending K.S.A. 2015 Supp. 44-510c(a)(2)(B), the Legislature also eliminated any reliance on competent medical evidence to measure impairment and instead refers exclusively to establishing impairment based on the Sixth Edition of the AMA Guides. The Legislature's decision to adopt the Sixth Edition and slash the amount of permanent partial disability compensation through lower impairment ratings has deprived the injured worker of a basic purpose of the Act, which is to restore lost earning capacity.

When enacting the Act, "[w]hat the Legislature had in mind was compensation for loss of earning power as a workman as a result of injury." *Gorrell v. Battelle*, 93 Kan. 370, 375, 144 P. 244 (1914). Because compensation for permanent partial impairment is a necessary and essential component of the Act's quid pro quo, the drastic reduction of compensation for permanent partial impairment for injured Kansas workers has tipped the Act over the constitutional edge.

In his amicus brief, the Kansas Attorney General directs us to two letters and testimony provided to the Legislature by Dr. J. Mark Melhorn and Dr. Peter Bieri who supported the use of the Sixth Edition. They testified before the Committee on Commerce in opposition to S.B.167, which called for the reinstatement of the Fourth Edition. Their testimony supports the rather easily met first constitutional test under *Injured Workers*: whether the change in the Act is reasonably necessary in the public interest to promote the general welfare of the people of Kansas. Their testimony does not address the adequacy of the quid pro quo necessary to sustain the constitutionality of the enactment.

The Attorney General also asserts that Johnson failed to show that the quid pro quo is constitutionally insufficient because he has not demonstrated that he would have recovered more compensation in a common-law tort action than he received under the current version of the Act using the Sixth Edition. We are not persuaded by this assertion.

The challenge here is not an as-applied challenge. Johnson claims the adoption of the Sixth Edition of the AMA Guides is facially unconstitutional and merely uses his situation as an example of the unconstitutional scheme.

Besides, the Attorney General's argument presents an insurmountable barrier for any injured worker. The Act establishes an administrative procedure that makes no provision for calculating the comparative fault of the injured worker, the employer, and

third parties who may have contributed to cause the accident and resulting injuries. There is no provision for developing and documenting evidence of conduct on the part of the employer or a third party that could be the basis for a claim of punitive damages in a common-law tort action. There is no provision for documenting evidence of noneconomic damages that otherwise would be recoverable in a tort action. There is no discovery available to a claimant on these issues, so there could be nothing in the administrative record with which to measure an actual award against a hypothetical common-law recovery.

As a final point on this issue, what our injured workers have given up in exchange for our administrative process under the Act is the *right to seek* recovery in a common-law tort action presented in a public trial to a jury of their peers. We have traditionally viewed this exchange of rights strictly in economic terms. The economic outcome of the administrative process is certainly the key element in measuring the value of the administrative side of the bargain. But in measuring the value of the other side of the bargain, those who have participated in trials of tort actions, either as lawyers or as judges, know that justice involves more than the ca-ching of a cash register.

In a public trial, plaintiffs seek the recognition of their peers of the propriety of their conduct and a recognition of the misconduct of their adversaries. They want their community to know the consequences of that misconduct on their lives and their fortunes. They want a public answer to the common question from friends and neighbors when they learn of the accident: "So what happened, and who's at fault?" In short, they want to be heard. As Linda Loman said of her husband in Act I of Arthur Miller's *Death of a Salesman*:

"I don't say he's a great man. Willy Loman never made a lot of money. His name was never in the paper. He's not the finest character that ever lived. But he's a human being,

and a terrible thing is happening to him. So attention must be paid. . . . Attention, attention must finally be paid to such a person."

Answers must not only be uncovered but publicly expressed. For an injured plaintiff the value of a public trial of a common-law tort action encompasses all these things. Wrongdoing must be uncovered and its consequences laid bare. Attention must be paid.

The Sixth Edition of the AMA Guides significantly reduced the amount of benefits an injured worker with a permanent impairment is entitled to receive and resulted in a drastic change to the Act. We hold that with the adoption of the Sixth Edition of the AMA Guides, the Act has been emasculated to the point that it is no longer an adequate quid pro quo for injured workers who suffer a permanent impairment as a result of an injury occurring on or after January 1, 2015. The Act no longer provides an adequate substitute remedy for the abrogation of an injured worker's common-law right to sue an employer for negligence. The Legislature went too far with the adoption of the Sixth Edition, and we agree that the Act no longer comports with due process for injured workers who sustain a permanent impairment as a result of an injury occurring on or after January 1, 2015.

THE APPROPRIATE RELIEF

The issue before us involves only a challenge to the adoption of the Sixth Edition of the AMA Guides as of January 1, 2015. In devising a remedy, we are guided by a provision set forth in the Act. In K.S.A. 44-574(b), the Legislature provided a severability clause. This clause provides a remedy in the event that provisions of the Act are found to be invalid. K.S.A. 44-574(b) provides:

"If any provision or clause of this act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable."

Our Supreme Court has considered whether it is proper to sever a provision from a statute to uphold the remaining statutory provisions as constitutional. Each time, this court has emphasized that the determination of whether the provision may be severed "depends on the intent of the legislature." [Citations omitted.]" *State v. Limon*, 280 Kan. 275, 302, 122 P.3d 22 (2005); see *State v. Carpenter*, 231 Kan. 235, 240-41, 642 P.2d 998 (1982); *Gumbhir v. Kansas State Board of Pharmacy*, 228 Kan. 579, 588, 618 P.2d 837 (1980). And although the decision to strike language from a statute does not depend on the presence of a severance provision, "[t]he enactment of a severability clause in a statute or series of statutes evidences the intent of the legislature that if some portion or phrase in the statute is unconstitutional, the balance shall be deemed valid." [Citation omitted.]" *Limon*, 280 Kan. at 304.

Here, the Legislature unequivocally expressed its intent that if a portion of the Act is found to be invalid, the remaining provisions of the Act should stand and be applied. Accordingly, the proper remedy is to strike the provisions in K.S.A. 2015 Supp. 44-510d(b)(23) and (b)(24) and K.S.A. 2015 Supp. 44-510e(a)(2)(B) that mandate the use of the Sixth Edition. Such a remedy will effectively reinstate the use of the Fourth Edition as the basis for determining impairment ratings. In oral arguments before us all parties agreed that this would be the appropriate remedy.

The Board's decision is reversed, and the case is remanded to the ALJ for further proceedings on Johnson's claim using the Fourth Edition of the AMA Guides.

2018 KSIA Conference
Legislative and Case Law Update
July 13, 2018

1) Legislative Changes

a) Senate Substitute for House Bill 2184

i) Modifies K.S.A. 44-510b - Death Benefits

(1) Payments

(a) Payable at \$60,000 lump sum;

(i) This is a \$20,000 increase;

(b) Payments to dependent children:

(i) Weekly payments continue until child reaches 18 years of age EXCEPT

1. Benefits continue until May 30th of child's senior year in high school OR

2. Child becomes 19 years of age, whichever is earlier.

(c) If employee leaves no legal spouse or dependent children but leaves other dependents, weekly payments made until:

(i) cap of \$100,000 is reached;

(ii) More than 50% of dependent's support comes from another source;

(iii) Marriage

(iv) Death.

(d) If no legal spouse, dependent children or dependents, then

(i) Payment of \$100,000 to legal heirs

1. If employer provided life insurance policy of not less than \$50,000.00 with beneficiaries designated by the employee, then amount due above may be reduced up to the maximum of \$100,000.00.

(2) Funeral Expenses

(a) Increased to \$10,000

(3) Conservator Expenses

(a) Increased to \$2,500.

b) Bills that failed

i) Workers Compensation

(1) Employee choice of physician;

(2) Reversion to AMA 4th;

- (3) Mandating accident prevention programs be provided by insurers;
- (4) Replacement of “Prevailing Factor” with “Substantial Factor”;
- (5) Reducing drug use restrictions, removing preexisting condition credits, work disability threshold.
- ii) HB 2487
 - (1) Pushed by Kansas Association of Independent Agents
 - (2) Required Insurance Department to provide for changes to experience modifiers where a work-related injury occurs in a MVA that is no fault of the injured worker.
- iii) HB 2789
 - (1) Expanded use of “conceal and carry” in public schools.
 - (2) Prohibited an insurer from refusing to insure a school solely because employees exercised their “conceal and carry” rights.
 - (3) Created a presumption of liability for schools that do not authorize the carrying of weapons by teachers and staff.

2) Supreme Court Decisions

- a) **Heimerman v Rose & Payless Concrete Products**, No. 114890 Decided April 6, 2018
 - i) Facts:
 - (1) 2013 MVA wherein Rose, as employee of Payless, rear-ended vehicle driven by Daniel Heimerman. Heimerman was killed. Heimerman survived by spouse Pamela Heimerman and son Lucas Heimerman.
 - (2) Pamela received death benefits and comp carrier retained subrogation lien.
 - (3) Pamela sued in Allen County. Lucas, a Florida resident, filed federal court action in Kansas. Pamela joined federal court case. Cases settled and Federal court approved settlement of \$450,000, apportioned settlement between Pamela and Lucas, and entered journal entry. It did not attempt to categorize any party’s damages.
 - (4) Pamela then asked Allen County court to apportion her part of settlement between loss of consortium and loss of spousal services, thus exempt from WC lien.
 - ii) Decisions:
 - (1) District Court dismissed Pamela’s motion and dismissed case, ruling that to do otherwise would be equivalent to relitigating the federal court’s judgement.
 - (2) Court of Appeals affirmed
 - (3) Supreme Court affirmed for slightly different reasons.
 - (a) Both parties ask Court to resolve whether Pamela was required to have federal court categorize damages.
 - (b) Supreme Court declines saying there can only be one action based on the wrongful death of a person which was the federal court case.

- (c) Once judgment entered in federal court case, there was not longer a case or controversy in state court
- (d) State Court case dismissed.
- (e) Parties are free to fight it out on other issues in another action or another forum.

b) **Atkins v. Webcon**, 113,117 (June 8, 2018)

i) Facts:

- (1) June 16, 2009, Atkins worked for Webcon, a commercial roofing company. Working on crew in Enid, Oklahoma on a grain elevator.
- (2) Webcon crew left Hutchinson Monday, traveled to Enid, worked all week, and returned to Hutchinson on Friday. Company put workers up at Baymont Inn. Crew received \$25 per diem. Workday started between 6-7 a.m. and ended between 6-7 p.m. Crew paid from start of work in AM until arrived back at Baymont.
- (3) Across street from Baymont was Ramada Inn which had bar. Atkins and co-worker went over to have drinks and play darts. Co-worker returned to hotel at 11:30 p.m. Atkins started walking back to hotel at 2:20 p.m. when he was struck by a drunk driver and suffered catastrophic injuries.

ii) Decisions

- (1) In 2009, Preliminary Hearing ruling found case compensable and ordered payment of medical and TTD.
- (2) Board affirmed.
- (3) In 2014, case went to Regular Hearing. ALJ found travel intrinsic part of Atkins' job and thus work related.
- (4) Board reversed finding Atkins was a fixed situs employee who was not working at the time of his injuries.
- (5) Court of Appeals affirmed.
- (6) Supreme Court affirmed.
 - (a) Focused not on whether travel was an intrinsic to Atkins work.
 - (b) Instead, "Did Atkins' injuries arise out of and in the course of employment."
 - (c) Atkins was not going to or coming from work when injured. Atkins was not fulfilling a work duty when he was at the bar drinking. Nor was he fulfilling a work duty when walking back to the hotel from the bar.
 - (d) Staying at the Baymont may have been incidental to work duties, but the activity here was too far removed from Atkins' work duties. May have been different if Atkins' been injured in hotel fire.

iii) Takeaway

- (1) Recovery to employer and carrier from Fund will be in excess of \$1 million.

3) Court of Appeals Decisions

a) EagleMed, LLC v. Travelers Insurance, 117,903, 117,904, 117,905, 117,906 (June 15, 2018)

i) Facts:

- (1) Air ambulance charges dispute. Plaintiff invoiced Travelers for four injured workers in amounts ranging from \$21,597.27 to \$33,042.95.
- (2) Travelers challenged amount billed and offered to pay based on Medicare fee schedule for air ambulance services.
- (3) EagleMed rejected and initiated fee dispute with Director of W.C.

ii) Decisions:

- (1) Hearing officer determined Division of WC had authority to resolve disputed under theory of reverse preemption.
- (2) WC Appeals Board reversed concluding Kansas Fee Schedule is preempted by Airline Deregulation Act and McCarran-Ferguson Act does not reverse-preempt the Airline Deregulation Act. Case remanded to hearing officer.
- (3) Hearing officer found Division is without authority to set rate of payment due to Airline Deregulation Act.
- (4) Appeals Board found it had no jurisdiction to determine if Medicare fee schedule was applicable and does not have authority to determine reasonableness of air ambulance charges.
- (5) COA affirmed in part, reversed in part and remanded.
 - (a) ADA preemption is sweeping in nature.
 - (b) Congress intended to leave air ambulance charges not at all to the States but to the air carriers themselves or the federal government.
 - (c) Division of WC has no authority under the express preemption provision of the ADA to take any action to resolve the fee dispute between EagleMed and Travelers.
 - (d) Remanded to Board to dismiss the fee dispute proceeding.

b) Endres v. Young, 117,352, (April 20, 2018)

i) Facts:

- (1) Widow appeals tort claim against company nurse and employer for misdiagnosing deceased husband's heart condition at work. Claimant worked at Creekstone Farms when he developed chest pains. He sought treatment with company nurse who noted mildly elevated blood pressure, low pulse and mild dehydration. She diagnosed Claimant with gastroesophageal reflux disease and Claimant went back to work.

- (2) After work, Claimant at golf course, has heart attack, and dies.
- (3) Widow sues based on medical negligence of Young and Creekstone.

ii) Decisions

- (1) District Court dismissed petition for failure to state a claim under K.S.A. 2016 Sup 60-212(b)(6)
- (2) Reversed and remanded by COA.
 - (a) When considering motion to dismiss, must view pled facts in light most favorable to plaintiff and assume as true those facts and any inferences that can be drawn from them.
 - (b) Cannot resolve factual disputes in ruling on Motion to Dismiss for failure to state a claim.
 - (c) Employer argues widow's only remedy is benefits under WC Act.
 - (i) COA finds Petition leaves a factual question as to whether Claimant had an accident arising out of an in the course of employment. The COA was skeptical it was.
 - (ii) Also, there must be a finding the accident (i.e. the misdiagnosis) was the prevailing factor causing the injury, medical condition and resulting disability or impairment.
 - 1. The primary factor causing Claimant's cardiac arrest, acute myocardial infarction or death may have been the preexisting coronary condition.
 - (iii) COA also found a factual issue of whether Claimant's heart attack was solely an aggravation, acceleration or exacerbation of a preexisting coronary condition.
 - (iv) COA also finds that Heart amendment in WC likely would exclude recovery by Claimant.
 - (v) The four corners of the Petition state a claim for which relief can be granted and it is not clear Claimant's claims are compensable under the WC Act.

c) **Knoll v. Olathe School District, No. 233**, 54 Kan.App.2d 335, 398 P.3d 223 (June 23, 2017), review granted (October 27, 2017)

i) Facts:

- (1) 2009 work-related injury followed by a November 14, 2011 Application for Hearing. The employer's motion to dismiss the claim for lack of prosecution was filed in February 2015, more than three years after the Application for Hearing, but less than five years after such Application was filed.
- (2) Prior to a 2011 amendment, K.S.A. 44-523(f) directed the administrative law judge to dismiss any pending claim that had not proceeded to final hearing, settlement hearing, or an agreed award within five years from the date the Application for Hearing was filed. The ALJ was permitted to grant an extension of this time

limitation for good cause shown provided that a motion for extension was filed before the five year limitation period expired.

- (3) Effective May 15, 2011, this statutory provision was amended to reduce from five years to three years the deadline before which the claimant must proceed to final hearing. The ALJ is still permitted to grant an extension of the three-year limitation, also for good cause shown, provided that a motion for extension is filed before the three-year limitation expires.

ii) Decisions:

- (1) The ALJ granted claimant's motion to extend the time limitation, holding that the earlier version of K.S.A. 44-523(f) applied because the date of accident was before the effective date of the 2011 statutory amendment.
- (2) The Appeals Board affirmed
- (3) Court of Appeals reversed
 - (a) 2011 amendment to K.S.A 44-523(f) should be applied retroactively to an injury occurring before the effective date of the amendment because such amendment was procedural or remedial in nature only. The court held that such retroactive application would not affect the claimant's substantive or vested rights. Specifically, the 2011 amendment did not alter the already existing statutory duty of the Division of Workers Compensation to dismiss a claim for lack of prosecution in the absence of a timely-filed motion for extension for good cause shown. The 2011 amendment did not affect claimant's substantive right to file her Application for Hearing or to pursue her claim for compensation. Her claim was subject to dismissal for lack of prosecution, both before and after the 2011 amendment. "Instead, the legislature's decision to shorten the time period from five to three years merely changed the manner in which Knoll could proceed in enforcing those substantive rights. That change is procedural, not substantive." Accordingly, Claimant's motion to extend the deadline for proceeding to final award was untimely under the applicable version of K.S.A. 44-523(f) and the claim was subject to dismissal for lack of prosecution.

iii) Case is scheduled for oral argument to Supreme Court in September.

- d) **Via Christi Hospitals Wichita, Inc. v. Kan-Pak LLC**, 54 Kan.App.2d 624, 402 P.3d 602 (August 25, 2017)

i) Facts:

- (1) Hospital challenged a 2011 revision to the Fee Schedule, which had inadvertently and accidentally included a provision that would have reduced the hospital's reimbursement for a catastrophic injury (burn victim) by more than \$600,000.00.
- (2) In 2010, the Fee Schedule had been amended for catastrophic claims above \$60,000.00 in hospital bills, allowing the hospital to charge the workers' compensation insurance carrier 70% of the billed charges under a "stop-loss" method. The 2011 revision removed the stop-loss method under certain circumstances. K.S.A. 44-510(a)(1) and 44-510(i)(c) require the Director to adopt

rules and regulations establishing a Medical Fee Schedule – that is, a schedule of maximum fees that health care providers can charge for treatment of injured workers under the Workers’ Compensation Act. The maximum fees established must be reasonable; must promote health care cost containment and efficiency with respect to the workers’ compensation health care delivery system; shall be sufficient to ensure availability of such reasonably and necessary treatment, care, and attendance to each injured employee to cure and relieve the employee from the effects of the injury; and shall include provisions and review procedures for exceptional cases involving extraordinary medical procedures or circumstances. A medical care administrator is to be appointed to assist the Director in preparing the Fee Schedule. The schedule is incorporated into K.A.R. 51-9-7. By law, the Fee Schedule must be updated at least every two years to ensure that it is “current, reasonable, and fair.” K.S.A. 44-510i(c)(2).

ii) Decisions

- (1) Both the hearing officer and the Appeals Board declined to review the legality of the 2011 modification to the Fee Schedule, holding that they lacked jurisdiction to decide whether the rule change was void or arbitrary and capricious.
- (2) The Court of Appeals reversed, holding that the 2011 revision did not comply with applicable law. In particular, K.S.A 77-416(b) requires that there be prepared an economic impact statement whenever an administrative agency amends or adopts a rule or regulation. The proposed amended rule must be then approved by the Department of Administration, followed by the Attorney General. Then it is set for a public hearing. Administrative rule making is a careful process and rules or regulations that do not follow such process shall not be given effect. One of the specific requirements for a new or amended administrative rule/regulation is that the agency must describe the costs of the proposed rule and who shall bear those costs. In this case, that determination of costs by the Division of Workers Compensation was not done as to the challenged language in the 2011 amendment to the Fee Schedule. The court also noted that the 2011 amendment “clearly contravenes the stated purpose of the stop-loss method” that was adopted a year earlier. This further demonstrates that the 2011 amendment was an “accidental insertion of one small phrase in a 232-page regulation.” The court held that it would be unreasonable, arbitrary, or capricious under the Judicial Review Act to enforce this accidentally adopted amendment to the Fee Schedule.

e) **Gilkey v. Frederick Waterproofing**, (No. 117,259) (April 20, 2018)

i) Facts:

- (1) Virgil Gilkey was a high school dropout with a GED. He worked most of his life in construction performing manual labor. In 2000, he was injured in a work-

related MVA, suffering right trochanteric bursitis, lumbar discopathy without evidence of myelopathy or radiculopathy but with pain in the right hip, leg and buttocks. Dr. George Flutter rated Claimant with an 8% PPD and limited Gilkey to light level of physical activity. Gilkey settled his WC case for \$45,000 based on a 38% PPD.

- (2) After the 2000 injury, Gilkey returned to construction work including roofing, cement work, pipe-laying, remodeling and driveway work. Much of the time he was required to lift 80 lbs. as well as repetitively bend, climb, crouch, reach and carry. He continued this work until August 2014 without difficulty. Gilkey later testified he was unaware he was supposed to be limited to light work.
- (3) While working for Frederick Waterproofing in August 2014, Gilkey fell 35' from a ladder to the pavement below. He sustained injuries to his right hip, back, wrists and legs. After treatment including back surgery, Dr. Flutter reexamined Gilkey, finding work-related injury to the back and right iliotibial band. Flutter assigned 12% PPD and permanent restrictions of light/medium work. Frederick was unable to accommodate so Gilkey pursued work disability. Gilkey had not returned to work despite a job search at the time of the WC Board's ruling.
- (4) At trial, Gilkey argued no reduction of tasks should be taken by the ALJ due to the 2000 injury restrictions because: a) he did not know about those restrictions; and b) he did not follow them before the 2014 accident. The employer argued to the contrary, stating there should be no task loss because all of the tasks eliminated by the 2014 restrictions would have been eliminated by the 2000 restrictions as well.

ii) Decisions:

- (1) The trial Court sided with Gilkey and awarded work disability based on 31.255 wage loss and 74% task loss.
- (2) The Board reversed, finding 0% task loss due to the 2000 injury restrictions. Gilkey appealed.
- (3) The COA carefully reviewed the language of K.S.A. 44-510e(a)(2)(D) which states:
(a) (D) "Task loss" shall mean the percentage to which the employee, in the opinion of a licensed physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the five-year period preceding the injury. The permanent restrictions imposed by a licensed physician as a result of the work injury shall be used to determine those work tasks which the employee has lost the ability to perform. If the employee has preexisting permanent restrictions, any work tasks which the employee would have been deemed to have lost the ability to perform, had a task loss analysis been completed prior to the injury at issue, shall be

excluded for the purposes of calculating the task loss which is directly attributable to the current injury. (Emphasis added)

- (b) The Court found no precedent interpreting this section after it was revised in the 2011 reforms. Looking at the first seven words of the last sentence of the section, the justices queried
 - (i) “What is the meaning of the phrase “If the employee has preexisting permanent restrictions”? It consulted Webster’s dictionary which defined “permanent” as meaning “*continuing or enduring (as in the same state, status, place) without fundamental or marked change: not subject to fluctuation or alteration: fixed or intended to be fixed.*”
- (c) The language of the statute, the Court note, is in the present tense (“if the employee has preexisting permanent restrictions,). This phrase requires the Court to determine what work tasks the employee would have been deemed unable to perform had the task analysis been completed immediately prior to the injury. This language “makes the most sense if we interpret it to apply only when the employee has a restriction that is truly permanent immediately prior to the new injury.” The statute requires the “exclusion of theoretical work tasks for purposes of calculating task loss only if, immediately prior to the new injury, the employee has preexisting restrictions that are continuing or enduring without fundamental or marked change and not subject to fluctuation or alteration.”
- (d) Gilkey never knew of the preexisting restrictions and never followed them before the 2014 accident. If a task loss analysis had been performed between 2002 and 2014, Claimant would have had no task loss. Because of this, the COA found the preexisting restrictions were not permanent and thus, should not be considered when determining work task loss. The Board of Appeals decision was reversed and remanded with instructions that the task loss calculation should not consider preexisting restrictions or theoretical task loss attributed to the 2000 work injury.

f) **Jones v. U.S.D. 259**, (No. 117,915) May 4, 2018

i) Facts:

- (1) Two weeks after Gilkey was decided, a separate panel of the COA came to a similar conclusion albeit for slightly different reasons. In Jones, the Claimant was middle school janitor who hurt his cervical spine and upper back lifting and carrying boxes in 2011. In 2014, Claimant hurt his low back shoveling snow. The school district contested both claims.
- (2) After the first injury to the neck and shoulder, Claimant worked for over a year performing all of the tasks required of him even though he experienced pain,

tingling and numbness in his arms, hands and neck. Claimant then underwent surgery and, after postoperative care, returned to work without permanent restrictions.

- (3) Later, Claimant was evaluated by Dr. Chris Fevurly at the employer's request. The doctor did not believe the neck issues were related to a work accident but felt Claimant should have permanent restrictions to his shoulders regardless of causation.
- (4) In 2014, Claimant injured his low back and eventually underwent surgery by Dr. Matt Henry. Claimant's recovery took more than 180 days such that by district policy, his position was not held open. When Dr. Henry released Claimant with no restrictions, no job at the District was available to Claimant.
- (5) The District and Claimant litigated both the 2011 and 2014 injuries. A court-ordered IME was performed by Dr. Terrence Pratt who determined impairment of 25% PPD to the neck, 6% to each shoulder, and 15% to the low back. Dr. Pratt found causation due to the work for both injuries. He also felt Claimant should have had restrictions after the 2011 injury.

ii) Decisions:

- (1) The ALJ followed Dr. Pratt's recommendations as to causation and functional but determined Claimant did not have preexisting task loss due to the 2011 injury. Work disability was awarded.
- (2) The District appealed and the Board reversed on the ALJ's determination of task loss.
- (3) Court of Appeals reached a similar outcome as *Gilkey* with a slightly different rationale. Looking at the language of K.S.A. 44-510e(a)(2)(D), the COA panel noted the Board essentially rewrote the statute to state "if the employee has or should have had preexisting permanent restrictions," This rewrite of the law allowed task loss reductions for phantom work restrictions created retroactively by medical testimony. The Legislature did not write this language in the law and thus, the COA will not find it. The case was remanded for determination of Jones' award for the 2014 injury without consideration of any preexisting work restrictions attributed to the 2011 injury.

iii) Takeaway

- (1) *The maxim of Gilkey and Jones appears to be: If restrictions are not in place and being followed before an accident, you can't take them into account in post-injury task loss calculations. This is true even if restrictions should have been in place or were in place but not followed.*

g) Hamilton v. Walmart, 2018 WL 1123648 (March 2, 2018)(Unreported)

i) Facts:

(1) Court of Appeals rejected a constitutional challenge to K.S.A. 2017 Supp. 44-501(f), the section of the Workers Compensation Act requiring that an award of permanent total disability benefits be offset by a claimant's receipt of Social Security retirement benefits. Claimant raised equal protection and due process objections to the offset provision, arguing that low wage earners are disproportionately harmed because weekly equivalent of Social Security benefits may exceed average weekly wage. The court held, however, that the disparate impact of the offset provision between low wage and higher wage earners does not violate equal protection because of lack of evidence that the Legislature enacted it "with discriminatory intent." The court also rejected the contention that the offset provision denied Claimant an adequate remedy for his work-related injury, holding that such provision passed rational basis analysis and that the quid pro quo requirement is satisfied.

h) **Pardo v. UPS** (No. 116,842). June 1, 2018.

i) Facts:

- (1) Mr. Pardo was a 13 year employee of UPS operating tractor-trailers, picking up and delivering loads, and working in the yard with a spotter. On March 18, 2015, while climbing on a piece of equipment, Mr. Pardo slipped on oil and grease buildup, jerking his left arm. He felt a pop and pull in the shoulder.
- (2) In July 2013, Pardo suffered another left shoulder injury at UPS. He underwent surgery by Dr. Rasmussen for a rotator cuff tear. Later, Dr. Rasmussen rated Pardo with a 10% impairment. The workers compensation case was then settled for 15% to the shoulder.
- (3) After the March 18, 2015 injury, Pardo returned to Dr. Rasmussen. A repeat surgery was performed on June 4, 2015 wherein the doctor found pathology related to Pardo's 2013 surgery. He also found and repaired a new partial thickness rotator cuff tear. This tear was attributed to the March 18, 2015 work accident.
- (4) Both Dr. Rasmussen and Dr. P. Brent Koprivica weighed in on Pardo's impairment. Koprivica opined the impairment rating for the rotator cuff injury under the 6th would be 0-2%. However, the Guides specify this impairment can only be given once in an individual's lifetime. Since Pardo had previously received 15% for the prior injury, no impairment could be given for the 2015 injury per the 6th's mandate.
- (5) Dr. Rasmussen found a 5% impairment, but admitted in testimony that a strict interpretation of the 6th resulted in a 0% impairment for Pardo because of the prior rating.

ii) Decisions:

- (1) The trial court found Claimant had 0% PPI under the 6th edition.

- (2) The Board affirmed. Pardo challenged the constitutionality of providing no award of impairment at the Board level. However, since the Board does not have jurisdiction to determine constitutional questions, the Board could not address Pardo's challenge.
- (a) Pardo appealed the Board's opinion to the Kansas Court of Appeals. He argued his lack of a PPD award was unconstitutional as it denied him
- (i) due process;
 - (ii) violated equal protection;
 - (iii) violated the separation of powers;
 - (iv) was an unlawful delegation of the State's legislative powers.
- (b) Pardo asked the Court of Appeals to find the entire act unconstitutional and allow employees to sue in civil court.
- (3) The Court of Appeals reversed.
- (a) COA found that as applied to Mr. Pardo, the use of the 6th edition was unconstitutional since it did not provide an adequate remedy, and remanded the case back for a determination of impairment under the 4th edition.
- (b) The COA focused on the "quid pro quo" of the Act. The Act requires Claimant's give up the right to trial in a civil court in exchange for a set sum of money for a work injury, regardless of the fault of the employer. "It would do 'violence to the constitutional guaranty of 'due process of law' if the Legislature set aside common-law tort liability (as it has done here) 'without providing a reasonably just substitute.'" P. 21, Pardo v. UPS, citing New York Central R.R. Co. v. White, 243 U.S. 188, 201 (1917).
- (i) UPS argued Pardo received in excess of \$27,000 in TTD and medical compensation which UPS asserted was an adequate remedy. The COA specifically determined "Pardo's collection of temporary total disability and medical expenses for his current injury is not adequate substitute compensation." Pardo at p. 26.
 - (ii) UPS argued the prior 15% award encompassed the current impairment and thus, was an adequate remedy. The COA rejected this argument as well finding Pardo had not been compensated for the current injury. The prior settlement was for the prior injury only.
 - (iii) UPS also argued Pardo set up this case to challenge the constitutionality of the statute, declining to have Dr. Koprivica assess neck and head pain. It also argued Pardo had no wage loss since he returned to work earning the same amount as before the injury. Finally, UPS argued that even the 4th Edition had injuries that resulted in no impairment. The COA rejected each of these defenses.

(4) COA determined that since Pardo had no remedy by the 6th edition, an alternative must be found. It rejected Pardo's recommendation he be allowed to pursue civil damages. It also declined to merely remand the matter without further instructions, fearing unforeseen issues in administrative proceedings as to how the Pardo case should be applied.

(a) Court severed that part of K.S. A. 510d(b)(23) as applied to Mr. Pardo's claim wherein the statute mandated the use of the AMA Guides 6th edition. After rewriting the statute and applying it to Mr. Pardo case, the COA remanded the case back for a determination of Pardo's impairment under the AMA Guides 4th.

iii) Takeaway

- (1) If not appealed or modified, it will have limited impact. The COA was clearly not inclined to throw open the floodgates to civil litigation. It also did not throw out the AMA Guides 6th in all cases. The COA limited its case to Pardo's situation alone, finding he should receive a remedy/impairment under the AMA Guides 4th.
- (2) Looking forward, it appears the Pardo decision will allow a Claimant to argue the Act is unconstitutional if the 6th edition gives an inadequate remedy. To make that claim the Claimant will need to litigate the issue to the Court of Appeals since neither the ALJ's nor the Board have authority to determine the constitutional question of whether a remedy is constitutionally adequate. The lengthy path to get to the COA will likely be a significant barrier for most claimants.
- (3) One final note. While the COA remanded the case back for determination of permanency under the 4th Edition. Dr. Koprivica wrote that under the 4th, the typical rating for Pardo's injury, excluding the prior 15% PPD, would be an additional 10% PPD. Dr. Rasmussen opined at the outset Claimant's PPD from this accident was 5%. It is my understanding the 5% PPD was offered to Pardo at the outset but was rejected. Thus, it seems this case was litigated over \$6,682.50 (225 x 5% x \$594/wk.), the maximum amount an additional 5% PPD to the shoulder would be worth.

Don Osenbaugh

From: Mike O'Neal [mike.oneal@onealconsulting.org]
Sent: Monday, August 6, 2018 9:28 PM
To: Don Osenbaugh
Cc: Mike O'Neal
Subject: Re: Fee Sweep case

Don

The swept funds have been returned to the Insurance Department. They propose to refund the money to all entities who paid assessments for FY 2010 on a pro rata basis. We are claiming we should receive 100% of our FY 2010, FY 2011 and FY 2012 assessments. I had arranged back then to have you pay those 3 years "under protest". I have appealed the Department's decision to refund on a pro rata basis to District Court and am asking for full refunds for the 3 years in question.

Mike

Sent from my iPhone

On Aug 6, 2018, at 8:58 PM, Don Osenbaugh <dosenbaugh@cox.net> wrote:

Mike,

Refresh my memory, please. What is the 'lay' version of the current status of our Sweeps case, which, I think I recall, we won...?

Thanks.

Don
KMIT

From: Mike O'Neal [<mailto:mike.oneal@onealconsulting.org>]
Sent: Monday, August 6, 2018 2:46 PM
To: Mike O'Neal
Cc: Cindy Luxem; Don Osenbaugh; Don McNeely; Dorothy Pope; Doug Hamilton; Reasoner, Ed; Administrator Kworcc; Kevin McFarland; lance.cowell@yahoo.com; tcov@krha.org; Kayron Ronni Anderson; Paul Davis; Jeff Siler; Lance Cowell; John Crowley; Adam Mills
Subject: Re: Fee Sweep case

Fee Sweep case participants

I have filed our brief with the court and have attached a copy for your files. The Department's brief is due Sept. 10. I can file a reply by Sept. 24, after which time the case is submitted for decision. I'll keep you posted. Let me know if you have questions in the meantime.

Mike O'Neal
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620-727-0003

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<mike.oneal@onealconsulting.org> wrote:

Don Osenbaugh

From: Mike O'Neal [mike.oneal@onealconsulting.org]
Sent: Monday, August 6, 2018 2:46 PM
To: Mike O'Neal
Cc: Cindy Luxem; Don Osenbaugh; Don McNeely; Dorothy Pope; Doug Hamilton; Reasoner, Ed; Administrator Kworcc; Kevin McFarland; lance.cowell@yahoo.com; tcov@krha.org; Kayron Ronni Anderson; Paul Davis; Jeff Siler; Lance Cowell; John Crowley; Adam Mills
Subject: Re: Fee Sweep case
Attachments: KBIG v. KID brief.pdf; ATT00025.htm

Fee Sweep case participants

I have filed our brief with the court and have attached a copy for your files. The Department's brief is due Sept. 10. I can file a reply by Sept. 24, after which time the case is submitted for decision. I'll keep you posted. Let me know if you have questions in the meantime.

Mike O'Neal
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This message, as well as any attached document, contains information that is confidential and privileged, or may contain attorney work product. The information is intended only for the use of the addressee named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, or distribution of this email or attached documents, or taking any action in reliance on the contents of this message or its attachments is strictly prohibited, and may be unlawful. If you have received this message in error, please (1) immediately notify me by reply email, (2) do not review, copy, save, forward, or print this email or any of its attachments, and (3) immediately delete and destroy this email, its attachments and all copies thereof. Unintended transmission does not constitute waiver of the attorney-client privilege or any other privilege. On May 23, 2018, at 1:59 PM, Mike O'Neal <mike.oneal@onealconsulting.org> wrote:

Michael R. O'Neal, #8830
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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
Div. 3

KANSAS BUILDERS INSURANCE GROUP; <i>et al</i>	)	
	)	
Petitioners,	)	
	)	
v.	)	Case # 18-cv-395
	)	
KANSAS INSURANCE DEPARTMENT,	)	
KEN SELTZER, COMMISSIONER	)	
	)	
Agency/Respondent.	)	

PETITIONERS' BRIEF IN SUPPORT OF PETITION FOR JUDICIAL REVIEW

COME NOW Petitioners, by their attorney, and submit the following brief in support of their Petition For Judicial Review:

PROCEDURAL BACKGROUND

This matter comes in the wake of Petitioners' successful challenge of legislatively enacted and governor approved sweeps of the Workers Compensation Fee Fund, administered by the Respondent. The fee sweeps, amounting to \$2.355M, were a part of a proposed systemic fee sweep of over \$29M in 2009 by the then Governor. The Legislature approved a reduced amount of sweeps of over \$22M and Petitioners, through their counsel, filed suit challenging the legality of the some of the sweeps. Joining in the action were the Kansas Bankers Association and the Kansas Realtors Association, whose regulatory authorities had also been swept.

After protracted litigation, including appeals to the Kansas Court of Appeals (*Kansas Building Industry Workers Compensation Fund, et al v. State*, 49 Kan. App. 2d 354, 310 P. 3d 404) and Kansas Supreme Court (302 Kan. 656, 359 P. 3d 33), the matter was settled in 2017 with the State agreeing to refund to Respondent Kansas Insurance Department the entire \$2.355M sweep. The Order Approving Settlement signed by Judge Theis in *Kansas Building Industry Workers Compensation Fund et al v. State*, (now Kansas Builders Insurance Group) Shawnee Co. Dist. Ct. Case #10 CV 83 stated, *inter alia*, that the sweeps “were wrongful transfers to the State General Fund of Kansas and an improper use of the Kansas Legislature’s authority to transfer monies held in state agency fee funds to the State General Fund.” [Agency Record p. 114-115]

At the time of the sweep, in 2009, Respondent Kansas Insurance Department, under then Commissioner of Insurance Sandy Praeger, responded by sending out assessment notices to all entities required to pay into the Workers Compensation Fund. The assessment was for FY 2010 payable by July 1, 2009. The sole stated basis for the assessment was the action by the 2009 Legislature that swept funds from the Workers Compensation Fee Fund.

Petitioners paid this assessment under protest to preserve their right to reimbursement/refund. In a series of communications between Respondent Kansas Insurance Department and Petitioners’ attorney it was agreed that the Department would consider payments to have been made under protest pending the outcome of Petitioners’ suit against the State.

Although there were no further legislative sweeps of funds from the Workers’ Compensation Fee Fund, entities were assessed again in 2010 and 2011 for FY 2011 and FY 2012. In both subsequent years the Kansas Insurance Department cited the fee sweeps as the reason for the subsequent assessments. For FY 2012 the Department also cited the potential for having to pay claims from the Center for Medicare and Medicaid Services but

there is no evidence that those claims ever materialized. [R. p. 7-8, 11-12] With regard to these subsequent years' assessments the Department again agreed to consider Petitioners' payments as being made "under protest" pending the outcome of Petitioners' litigation against the State. [R. p. 9-10, 13-15]

In particular, in correspondence to Petitioners' counsel dated June 29, 2011, then General Counsel Anshutz acknowledged the agreement regarding Petitioners' payments for the 3 years in question as being paid "under protest" and further stated that "the Department agrees that if the previous moneys removed from the Fund by the Legislature were returned the Department would support a refund of assessments assuming that the Fund balance would not be jeopardized." [R. p.15]

With that assurance, Petitioners continued their pursuit of the litigation for the next several years in an effort to reverse the sweeps and restore funds to the Workers Compensation Fund. Accordingly, once the settlement of the underlying litigation against the State was finalized and the Funds were appropriated by the Legislature and returned to the Kansas Insurance Department, Petitioners reasserted their claim for refund of their assessments paid under protest pursuant to the Department's assurance that if the funds were restored, the Department would support a refund of assessments assuming Fund balances would not be jeopardized. A review of the financial status of the Fund revealed that the Fund balances were more than sufficient to accommodate a refund of the assessments paid under protest.

However, the current Commissioner of Insurance issued a decision that ordered a pro rata refund of the returned swept funds to all entities, even those who had not preserved their administrative rights by payment under protest and limited the refunds to FY 2010 collected assessments only. Petitioners then filed this Petition For Review of Final Agency Action.

STIPULATED FACTS

A review of Petitioners' Petition For Review of Final Agency Action and the Department's Answer produces the following stipulated facts:

1. Petitioners are group-funded workers compensation pools authorized and operating pursuant to the provisions of K.S.A. 44-581 *et seq*, hold certificates of authority from the Kansas Insurance Department to provide mandated workers compensation coverage on behalf of their member employers and at the addresses listed. (Petition and Answer, para #1-2)
2. Respondent agency is covered by the Kansas Judicial Review Act, with address as listed and the parties to the matter for which review has been requested are properly identified. (Petition and Answer, para # 3-4)
3. Petitioners are seeking refunds of assessments paid to the Kansas Insurance Department for FY 2010, FY 2011 and FY 2012. (Petition and Answer, para. #5)
4. Petitioners are required by law to pay assessments ordered by the Kansas Insurance Department to fund the operations of the Kansas Workers Compensation Fund. (Petition and Answer, para. 6)
5. The Kansas Workers Compensation Fund is a statutory fee fund administered by the Commissioner of Insurance of Kansas and is liable for payment of awards to certain handicapped employees for claims arising before July 1, 1994,; for payment of workers compensation benefits to an employee who is unable to receive benefits from such employer under certain circumstances; reimbursement of an employer or insurance carrier pursuant to the provisions of K.S.A. 44-534(a); subsection (d) of K.S.A. 44-556; subsection (c) of K.S.A. 44-559; K.S.A. 44-559(a); the payment of the actual expenses to the Commissioner of Insurance which are incurred in

administering the Workers Compensation Fund; and any other payments or disbursements provided by law. (Petition and Answer, para # 7-8)

6. By law, and on June 1 of each year, the Commissioner of Insurance may impose an assessment against all insurance carriers, self-insurers and group-funded workers compensation pools insuring payment of compensation under the Kansas Workers Compensation Act, in an amount sufficient, in the opinion of the Commissioner, to pay all amounts, including attorney fees and costs which may be required to be paid from such fund during the current fiscal year, less the amount of the estimated unencumbered balance in the Workers Compensation Fund as of June 30 immediately preceding the date the assessment is due and payable. (Petition and Answer, para. #9)
7. The collection of assessments by the Kansas Commissioner of Insurance, and the expenditure thereof, is limited to those expenditures related to the administration of the Kansas Workers Compensation Fund. (Petition and Answer, para. #10)
8. On or about June 1, 2009, the Kansas Insurance Department sent out notices for the FY 2010 Workers Compensation Fund assessment. The Notice of Assessment stated, *inter alia*: "Action by the 2009 Kansas Legislature included a sweep of monies from the Workers Compensation Fee Fund into the State General Fund. This action was part of the Legislature's proposal to remedy a revenue shortage in the State General Fund. The Legislative sweep makes it necessary that the Kansas Insurance Department levy an assessment this year of 1.0%." (Petition and Answer, para. # 11)
9. On or about June 1, 2010, the Kansas Insurance Department sent out notices for a FY 2011 assessment. The FY 2011 Notice of Assessment stated, *inter alia*: "Actions by the Kansas Legislature continue to negatively impact available cash balances in the

Workers Compensation Fee Fund." Once again, entities, including Petitioners, were assessed. (Petition and Answer, para. #12)

10. On or about June 1, 2011, the Kansas Insurance Department sent out assessment notices for FY 2012. The Notice of Assessment stated, *inter alia*: "Actions by the Kansas Legislature that continue to negatively impact available cash balances in the Workers Compensation Fee Fund, as well as potential claims from the Center for Medicare and Medicaid Services (CMS) for repayment under 43 U.S.C. 1395(b)(7), require that we again assess Workers Compensation insurers." (Petition and Answer, para. #13)
11. Petitioners, through current counsel, filed suit in January 2010 against the State of Kansas, alleging that the sweep of funds by the 2009 Kansas Legislature was wrongful and unconstitutional. (Shawnee Co. Dist. Ct. Case #10 C 83) (Petition and Answer, para. #15)
12. Petitioners put the Kansas Insurance Department on notice that they were paying their FY 2010, FY 2011 and FY 2012 assessments, respectively, under protest pending the outcome of their litigation against the State. The Kansas Insurance Department acknowledged and agreed that payments were made under protest pending the outcome of the fee sweep litigation against the State. (Petition and Answer, para. #16)
13. On June 29, 2011, then Kansas Insurance Department General Counsel, Zach Anshutz, wrote Petitioners' counsel agreeing "that if the previous moneys removed from the Fund by the Legislature were returned the Department would support a refund of assessments assuming that the Fund balance would not be jeopardized." (Petition and Answer, para. #17)

14. After lengthy litigation, including an appeal to the Kansas Court of Appeals (49 Kan. App. 2d 354) and review by the Kansas Supreme Court (*KBIWCF, et al, v. State*, 302 Kan. 656, 2015), both favorable to Petitioners, Shawnee Co. Dist. Ct. Case # 10 C 83 was settled and an Order Approving Settlement was signed and filed by Judge Theis Sept. 28, 2017. The settlement included return to the Kansas Insurance Department of the entire \$2.355M sweep. Action by the 2017 Kansas Legislature appropriated the funds and directed payment to the Kansas Insurance Department, which funds have been received by the Kansas insurance Department pending distribution to affected entities, including Petitioners. (Petition and Answer, para. #18)
15. Petitioners, through their counsel, negotiated with the Kansas Insurance Department on two issues, to wit: (1) the amount Petitioners (and other entities) are entitled to receive from the litigation settlement proceeds of \$2.355M, and (2) refunds of the assessments paid under protest by these Petitioners only in FY 2010, FY 2011 and FY 2012. (Petition and Answer, para. #19)
16. According to the Kansas Workers Compensation Fund Year End Report (FY 2016), published by the Commissioner of Insurance, Ken Selzer, the Kansas Workers Compensation Fund started FY 2010 with \$6,406,717.68, collected assessments of \$2,913,157.56, and had total expenditures of \$4,505,012.60. For FY 2011, the Fund started with a carryover balance from FY 2010 of \$5,154,857.39, collected assessments of \$8,768,448.24, and had total expenditures of \$5,149,063.41. For FY 2012, the Fund started with the carryover balance from FY 2011 of \$9,072,223.97, collected assessments of \$4,749,672.29, and had total expenditures of \$4,645,403.17. The Fund ended FY 2012 with a balance of \$9,448,671.30. The Fund ended FY 2016 with a balance of \$10,030,389.47 (Petition and Answer, para. #20, 29)

17. Total assessments paid collectively by the Petitioners for the three years in question were \$1,205,224.30. (Petition and Answer, para. #28)
18. Petitioners seek Judicial Review of the decision of the Kansas Insurance Department by unsigned letter dated April 18, 2018 from Staff Attorney Grace Lancaster entitled “Final Agency Decision – 2009 Sweep Reimbursement”. The letter advises that the Commissioner decided to refund the settlement proceeds of \$2.355M pro-rata based on total FY 2010 collected assessments. (Petition and Answer, para. #22)
19. On April 23, Petitioners’ counsel communicated with Staff Attorney Lancaster seeking clarification of the decision given the two distinct issues involved and the appearance that the letter decision only addressed the proposed distribution of settlement proceeds (refunded swept funds). Petitioners’ counsel also requested that Petitioners be informed of the figure the Department was using to make the refund calculation. (Petition and Answer, para. #24)
20. On April 24, Staff Attorney Lancaster responded, stating, *inter alia*, that the Department considers the issue of reimbursement to be a singular issue. (Petition and Answer, para. # 25)
21. In that same communication, Staff Attorney Lancaster stated that the Department has no statutory authority to hold an administrative hearing, there is no provision for an administrative review of the decision and that the request for review would have to be brought under the Kansas Judicial Review Act. Accordingly, Petitioners have exhausted their administrative remedies and this matter is ripe for Judicial Review. (Petition and Answer, para. #26)

AGENCY DENIALS

Respondent denies that the subject assessments were levied entirely due to the impact of legislative fee sweeps of the Workers Compensation Fund. (Answer, para. #5) However, with regard to the FY 2010 and FY 2011 assessments, legislative fee sweeps were the only reason given for the assessments. [R. p. 3-4, 7-8] In FY 2012 the Department again referenced the sweep but also added the potential for CMS claims. [R. p. 11-12] There is nothing in the record or public reports of the status of the Workers Compensation Fund indicating any claims from CMS ever materialized or were paid.

Of greater relevance is the fact that for the years in question, far more funds were available, from assessments and prior year's balances, than were necessary to pay costs and expenditures associated with administering the Fund. Petitioners' claims for refund of assessments are not tied exclusively to the return of the \$2.355M in swept funds, but are also based on the status of the Workers Compensation Fund balances and their argument that no assessments should have been necessary. In addition, without regard to whether the assessments were ordered entirely because of the legislative fee sweeps, Kansas Insurance Department counsel agreed that if the swept funds were returned to the Department, the Petitioners' assessment for the years in question would be refunded provided Fund balances would not be jeopardized.

Petitioners have filed a request to supplement the Record with the Kansas Workers Compensation Fund Year End Report (FY 2016). Since that request was filed, the FY 2017 Report is now available online. A review of the latest information available with regard to the financial status of the Workers Compensation Fund (FY 2017) reveals an ending balance of \$10,615,364.55, in a year where total expenditures were only \$3,369,567.18. <http://www.ksinsurance.org/documents/other-services/workers-comp/wc-2017report.pdf>. Fund balances would not be jeopardized by refund of the assessments.

Petitioners request that the Court take judicial notice of the Workers Compensation Fund Year End Reports available on Respondent's web site, pursuant to K.S.A. 60-409. The Report is referenced by Respondent in the Record. [R. p. 30] Fund finances are available from FY 2009 to FY 2017 and provide the Court with a relevant history of assessments, expenditures and balances both before, during and after the subject assessment years at issue herein.

With regard to Respondent's denial in paragraph 9 of its Answer, to the extent Respondent argues that the language "...in the opinion of the Commissioner..." in K.S.A. 44-566a(b)(1) gives the Commissioner carte blanche to assess in any amount without being subject to review, Respondent would be mistaken. The act of determining the amount of assessment is itself agency action such that KJRA is applicable. See *Cimarex Energy Co. v. Seward Co. Board of Co. Commissioners*, 38 Kan. App. 2d 298, 164 P. 3d 833.

In addition, the statute, K.S.A. 44-566(b)(1) provides legislative parameters regarding the amount of the assessment even in the face of allowing agency discretion with regard to estimating the amount of funds needed. Essentially, the formula for an assessment, if any, is the amount of funds the Commissioner estimates will be needed to fund the total costs of the Fund, less amounts on hand at the beginning of the year. Here, a review of the historical numbers associated with the Fund is relevant in determining whether the Commissioners' estimate was reasonable. For the reasons outlined later in the brief, Petitioners claim that assessments for the years in question were far greater than amounts contemplated by the legislative grant of authority and were more than sufficient to justify return of the assessments for those years to these Petitioners based on General Counsels' agreement in 2011 to support refunds if they would not otherwise jeopardize Fund balances. [R. p. 15]

In paragraph 20 of Respondent's Answer the Department admitted the information contained in its Workers Compensation Annual Report but claims that the calculations for

the agency Decision were made on a “billed basis” rather than a “collected basis” as shown in the report. However, this claim is contrary to the language in Respondent’s decision and their factual stipulation. [Petition and Answer, para. #22] The letter “Decision” of April 18, 2018, entitled “Final Agency Decision – 2009 Sweep Reimbursement”, stated that the decision was to reimburse all assessed entities based on a pro rata share of the settlement proceeds and that the “pro rata share is based on FY 2010 collected assessments only and does not include assessments paid in FY 2011 or FY 2012 (emphasis added) [R. p. 56]

This is significant since the letter opinion does not set out what the Commissioner determined each of the individual Petitioners would receive. Rather, the decision simply gives one illustration, that of Petitioner Kansas Automobile Dealers Workers Compensation Fund. Respondent claims this Fund paid an assessment in FY 2010 equal to .3% of the total amount collected from all assessed entities and that, therefore, this fund would receive .3% of the \$2.355M. The problem with that is that this fund, the Kansas Automobile Dealers Workers Compensation Fund, paid a FY 2010 assessment of \$13,134.77. [R. p. 54] According to the stipulated numbers from the Kansas Insurance Department’s Kansas Workers Compensation Fund Year End Report, collected assessments were \$2,913,157.56. The Kansas Automobile Dealer’s WCF pro rata share would be .45%, not .3%. To be clear, Petitioners do not agree to receiving only a pro rata reimbursement of the 2009 fee sweep refund. Petitioners make this point to illustrate the error in Respondent’s own decision calculation/rationale.

Respondent has denied the factual allegations in Paragraph 21 of the Petition. Petitioners claim, based on a simple review of the Kansas Workers Compensation Fund Year End Report published on the Kansas Insurance Department web site and stipulated to by Respondent, that in each of the years in question the Workers Compensation Fund collected millions of dollars more in assessments than were needed to pay anticipated expenditures

from the Fund. In FY 2010 the Fund ended up with \$5.155M more than was needed. In FY 2011 the Fund ended the year with \$9.072M more than was needed. In FY 2012 the Fund ended the year with \$9.449M more than was needed, for an average surplus over those years of some \$7.892M per year. While Respondent has denied these factual allegations in a signed pleading, there is no legal or factual basis for the denial. There are no facts in the Agency record supporting or even explaining the Commissioners' rationale for ordering assessments in these years which were far greater than the reasonable estimate of anticipated expenses less the prior year's carry-over, as contemplated by the statute granting assessment authority to the Commissioner.

Respondent's Affirmative Defenses

Respondent has raised two affirmative defenses. First, Respondent alleges that Petitioners have failed to allege sufficient reasons and facts for which relief may be granted. K.S.A. 2017 Supp. 77-614 sets forth the requirements for the Petition in a Judicial Review proceeding. As stated in *Rebel v. Kansas Dept. of Revenue*, 288 Kan. 419, 204, P. 3d 551, the "plain statutory language of the KJRA requires that a petitioner provide facts that demonstrate the petitioner has standing, has exhausted administrative remedies, and is filing a timely petition for judicial review." 288 Kan. at 423-424. The Court went on to hold that the statute does not require a petition to set forth the factual bases for the issues to be presented on review. It only requires that the petition set forth the petitioners' reasons for believing that relief should be granted from the administrative action. 288 Kan. at 426.

Petitioners' Petition, while not required to set forth factual bases for the issues, did so with particularity and included specific, separately stated grounds and requests for relief. The Petition gives "sufficient notice to the court and agency of the specific issues to be raised." 288 Kan. at 426.

Second, Respondent claims this Court lacks subject matter jurisdiction to hear Petitioners' contractual claim, i.e., the promise outlined in General Counsel Anshutz's letter of June 29, 2011. (R. p. 15) Respondent raises this defense notwithstanding Kansas caselaw which clearly establishes that a breach of contract claim against the State of Kansas, or one of its agencies, must be brought in a Kansas Judicial Review Act proceeding. Indeed, if agency action is involved, the Judicial Review Act is the exclusive remedy for Petitioners. See *10th Street Medical, Inc. v State*, 42 Kan. App.2d 249, 210 P. 3d 670 (2009) Accordingly, not only does this Court have subject matter jurisdiction over this claim, Petitioners would be barred from bringing the claim in any other manner. See also, *Schall v. Wichita State University*, 269 Kan. 456, 7 P. 3d 1144.

SCOPE OF REVIEW

The scope of review is as set forth in K.S.A. 2017 Supp. 77-621. Petitioners' claims are covered by K.S.A. 2017 Supp. 77-621(c)(3,4,7&8). Specifically, Petitioners claim that the Agency has not decided an issue(s) requiring resolution, has erroneously interpreted or applied the law, has failed to follow prescribed procedure, took action based on a determination of fact not supported to the appropriate standard of proof by evidence that is substantial when viewed in light of the record as a whole and the Agency action is otherwise unreasonable, arbitrary or capricious.

The Agency has not decided an issue(s) requiring resolution.

The parties have stipulated that Petitioners, through their counsel, negotiated with the Kansas Insurance Department on two issues, to wit: (1) the amount Petitioners (and other entities) are entitled to receive from the litigation settlement proceeds of \$2.355M, and (2) refunds of the assessments paid under protest by these Petitioners only in FY 2010, FY 2011 and FY 2012. (Petition and Answer, para. #19)

However, the Respondent's April 18, 2018 Decision letter [R. p. 56] refers only to the issue of the 2009 sweep reimbursement. Accordingly, Petitioners' counsel sought clarification and made a specific request by e-mail for a determination of the second issue, to wit, refunds of assessments paid under protest for the three subject fiscal years. [R. p. 64-65] Petitioners pointed out that the two issues, while related, are separate, since Petitioners were the only entities who paid assessments under protest. A decision on how to refund the proceeds of the settlement of *KBIWCF, et al. v. State* would only involve entities who paid assessments in 2010 and even then, would have to take into account that other entities did not pay assessments under protest for that year. Unless Respondent was willing to refund Petitioners' assessments for the three years in question out of the settlement proceeds, as suggested in the e-mail, Petitioners were entitled to a separate consideration and decision with regard to their specific claim for refund of assessments paid in the years they paid under protest. These claims are unique to them.

Instead, Respondent's counsel answered by e-mail on April 24, 2018 [R. p. 64] that the Department considered the issue to be a "singular" issue and would not be remitting any funds other than the funds received as settlement proceeds.

In addition, the Decision did not address the issue of General Counsel Anshutz's letter of June 29, 2011 wherein he stated that "the Department agrees that if the previous moneys removed from the Fund by the Legislature were returned the Department would support refund of assessments assuming that the Fund balance would not be jeopardized." [R. p. 15] Petitioners' counsel raised this issue again by e-mail correspondence to Respondents' staff attorney Feb. 15, 2018. [R. p. 43] Indeed, the letter decision and Respondent's response to a request for clarification and determination totally ignores this issue. Respondents' position on Review is that this Court lacks jurisdiction to consider the claim. For the reasons set forth previously herein, Respondent is in error and the issue is

ripe for determination. Respondent's failure to consider this issue is grounds for relief pursuant to K.S.A. 2017 Supp. 77-621(c)(3).

The Agency has erroneously interpreted or applied the law.

K.S.A. 2017 Supp. 44-566a(b)(1) sets out the procedure the Commissioner of Insurance is to follow in determining the amount of an annual assessment levied on entities required to pay into the Workers Compensation Fund. The amount is to be equal to the amount the Commissioner estimates will be sufficient to pay all amounts, including attorney fees and costs, which may be required to be paid from the Fund during the current fiscal year, less the amount of the estimated unencumbered balance in the Fund as of June 30 immediately preceding the date the assessment is due. By definition, the statute calls for a calculation. Other than seeing what the carry-over balance was in the Fund for the start of FY 2010, for example, along with the amount of assessments collected and the expenditures for the year, there is nothing in the record or Decision showing the rationale for the amount assessed.

What is clear from the record, however, is the fact that the assessment ordered by the Commissioner for FY 2010, even given the loss of \$2.355M in legislatively swept funds in FY 2009, was far greater than the cost of administering the Fund when the carry-over balance is factored in, as required by the statute. The Kansas Workers Compensation Fund Year End Report (FY 2017) shows that in FY 2009 there was a \$9,122,783.87 carry-over to start the year. Receipts, including \$3,781,389.04 in assessments that year, totaled \$4,078,141.67. The \$2.355M legislative fee sweep reduced total funds available that year to \$10,865,925.54. But, total expenditures amounted to only \$4,429,852.60, leaving a balance at FY end of \$6,406,717.68.

For FY 2010 the Commissioner, citing the legislative fee sweep of 2009 as justification for an assessment, [R. p. 3-4] ordered a 1.0% assessment. Again, referring to

the Report, the Fund collected \$2,913,157.56 in assessments that fiscal year. With receipts and carry-over funds the total available to the Fund in FY 2010 was \$9,661,173.99. Yet, the Fund had only \$4,505,012.60 in total expenditures, ending the year with a balance of \$5,154,857.39. The Fund started the year with more funds than were needed to pay expenditures for the year without the need for an assessment. To comply with the statute, the Commissioner would need to show a basis for her/his opinion that Fund liabilities would exceed available carry-over funds such that an assessment was necessary. The statute does not necessarily give the Commissioner the authority to assess merely because of a reduction in funds.

Respondent, therefore, either erroneously interpreted or applied the statutory law. Accordingly, Petitioners are entitled to relief from the Decision pursuant to K.S.A. 2017 Supp. 77-621(c)(4).

The Agency action was based on facts not supported by the evidence.

It is difficult to determine from the Record what facts, exactly, were relied upon in Respondents' determination. However, what is clear from the Record is that, while Respondent has stipulated herein and in his Decision that the pro rata calculation of what has been ordered refunded to entities who paid assessments in FY 2010, the example given in the written Decision is based on an erroneous calculation. Instead of using the "collected" total of assessments (\$2,913,157.56 – R. p. 29), Respondent used the figure \$4,289,231.12. But, as Respondent's internal e-mail from their Comptroller indicates, the latter number represents what was assessed, not what was collected. [R. p. 77] The Decision states and the parties have stipulated that Respondent based the decision on "collected" amounts. Therefore, the "example" given in the Decision is in error. For that particular Petitioner (Kansas Automobile Dealers Workers Comp. Fund) the difference between the .3% in the

example and the correct figure of .45% amounts to an error of some \$3,532.50 (\$10,597.50 vs. \$7,065) or a difference of some 50%.

The Decision did not address the remaining 13 Petitioners specifically. Respondent left it to Petitioners to perform their own calculations based on the example given in the Decision. However, that formula has been shown to be in error, for the reasons stated. All remaining Petitioners' calculations would be off by the same percentage.

To be clear, Petitioners do not agree with the decision to award them only a pro rata share of the settlement proceeds. The reasons therefor will be addressed in the next section. But having established through the plain language of the Decision and the parties' stipulated facts that the formula in the Decision is in error and was not based on facts supported by the evidence, Petitioners are entitled to relief from the Decision pursuant to K.S.A. 2017 Supp. 77-621(c)(7).

The Agency action is otherwise unreasonable, arbitrary or capricious.

In support of this claim, Petitioners incorporate their arguments set forth above. The facts and Petitioners' arguments with regard to the facts, paint a picture of a rather shoddy consideration of the claims made by the very parties whose diligence from January 2010, when suit was filed against the State for sweeping Respondent's funds, through appellate review and finally settlement in 2017, resulted in all of Respondents' funds being returned. Indeed, so much time elapsed in litigation that there was a change in the position of Kansas Insurance Commissioner. Respondents had been dealing with the prior Commissioner and her staff and had agreed to pursue this litigation, for the benefit of the Department and entities that pay into the Fund. Why? They pursued the litigation because they had been ordered to pay assessments based on the representation that assessments were necessary as a result of funds being swept by the State. Their interest in going to the time and expense of litigation was the prospect of winning and having their assessments,

paid under protest, returned. They were assured in this endeavor that if they were successful in getting the sweep reversed and funds returned to the Kansas Insurance Department, their assessments, paid under protest in FY 2010, FY 2011 and FY 2012, would be repaid. The only condition placed on this promise was that repayment would be made if doing so would not jeopardize the Fund balance. The facts have clearly shown that the Fund balance would not be remotely jeopardized by return of the assessments.

The current Commissioner has gladly accepted return of the funds swept under the prior Commissioner, but has totally ignored Petitioners' claim pursuant to the agreement Petitioners had with the prior Commissioner, through her General Counsel. Other than a terse response that Petitioners would not be receiving anything more than a pro rata share of the settlement proceeds, the claim with regard to General Counsel Anshutz' promise and the issue of the three years of assessments paid under protest were not even addressed. No explanation or analysis was provided. The Decision was, in short, arbitrary.

In terms of reasonableness, it is important to review the Workers Compensation Fund over the years before the current Commissioner took office and after. To be fair, while Petitioners challenge the current Commissioner's Decision herein, the assessments in question were ordered under the prior Commissioner. The Insurance Department's website provides a link to the financial picture of the Fund. The FY 2017 Report contains data going back to FY 2009, the year of the sweep.

In analyzing those years, the average annual expenditure from FY 2009 through FY 2012 was \$4,682,332. The average annual expenditure for FY 2009 through FY 2017 was \$4,404,810.

Carry-over balances for those years, the second prong of the statutory formula for determining assessments, show that the average annual carry-over balance for FY 2009

through FY 2012 was \$7,439,145. The average annual carry-over for FY 2009 through FY 2017 was \$8,128,363, or nearly twice the average annual expenditures for the Fund.

The average of assessments from FY 2009 through FY 2012 was \$5,053,166. The average annual assessment from FY 2009 through FY 2017 was \$4,518,265. The Report also tracks Total Funds Available during the fiscal year. Carry-over balances, plus assessments and other receipts, represents total funds available to pay claims and other costs and expenditures. The average total funds available for FY 2009 through FY 2012 was \$12,214,740. The average for FY 2009 through FY 2017 was \$12,705,685.

The carry-over balance at the end of FY 2017, going into FY 2018 was \$10,615,364.55. This balance, as well as the average carry-over balances in prior fiscal years, stands in sharp contrast to a history of expenditures that averages only around \$4.5M.

This analysis calls into question the reasonableness of assessments in FY 2010, FY 2011 and FY 2012, if not other years. K.S.A. 2017 Supp. 44-566a(b)(1) does give the Commissioner some discretion in determining the amount of an assessment, but requires that the amount bear some relationship to expected expenditures and account for carry-over balances. The discretion is not unlimited. If an assessment so exceeds the cost of regulation that it is apparent it is being used as a revenue raising measure, the excess cannot stand on police power authority and should be reimbursed. See *Kansas Attorney General Opinion 2002-45*.

In *A.G. Opinion 2002-45*, Attorney General Stovall stated:

Kansas cases have recognized this distinction between police power and revenue raising measures and that the analysis of the State's authority depends on which power is being exercised.

"At the outset, it is clear that under its police power the state may reimburse itself for the costs of otherwise valid regulation and supervision by charging the necessary expenses to

the businesses or persons regulated. (*State, ex rel., v. Cumiskey*, 97, Kan. 343, 352, 155 Pac. 47; *Gt Northern Ry. v. Washington*, 300 U.S. 154, 160, 57 S. Ct. 397, 81 L. Ed 573.) A statute, however, is void if it shows on its face that some part of the exaction is to be used for a purpose other than the legitimate one of supervision and regulation (*citation omitted*), or if more than adequate remuneration is secured. (*State, ex rel., v. Cumiskey*, supra; *State, ex rel., v. Ross*, 101 Kan. 377, 166 Pac. 505)" (emphasis added) A.G. Opinion 2002-45, p. 3

The same rationale that protects funds from being swept into the State General Fund also protects regulated entities from having to pay more in assessments than the cost of regulation. Whether the Commissioner is assessing more than is needed out of fear of future legislative sweeps or based on an unrealistic and unreasonable assessment of true exposure of the Fund is irrelevant. Once "adequate remuneration has been secured the police power is exhausted." *State, ex rel., v. Cumiskey*, 97 Kan. 343, 352.

Respondent admits in the Record to having had a number of options available in considering Petitioners' claims. In the Transcript of Official Record, Respondent included a spreadsheet [R. p. 54] listing each of the Petitioner Funds and the amounts each had paid in assessments for FY 2010, FY 2011 and FY 2012, respectively. Respondent then outlined four "Options":

"Option 1: Reimb. Companies who paid under protest on 2010 assessment + pro rata share for all other companies.

Option 2: Reimb. Companies who paid under protest only 2010-2011 assessment + pro rata share for all other companies.

Option 3: Reimb. Companies who paid under protest 2010-2012 assessment + pro rata share for all other companies.

Option 4: Pay pro rata share to all companies." [R. p. 54]

Respondent ultimately elected the option that provided Petitioners with the least amount of relief. (Option 4) In so doing, Respondent treated Petitioners no differently than entities that had not preserved their rights to refunds by paying assessments under protest. In electing this option, Respondent did not provide any explanation, analysis or rationale for the decision.

During the administrative process, Petitioners' counsel pointed out the distinction between Petitioners' claims and the standing of other entities who paid into the Fund. On April 23, in response to the Respondents' Decision of April 18, 2018, Petitioners' counsel e-mailed Staff Attorney Lancaster seeking clarification, articulating the two separate issues for determination and reminding Respondent that Petitioners were the only entities who had paid under protest and, therefore, the only parties with standing to contest the assessments. In addition, Petitioners' counsel noted:

"If it is KID's [Kansas Insurance Department] desire to avoid paying out more than \$2.355M, then this can be accomplished by returning the 3 year's (sic) of assessments to my clients out of that amount and prorate the balance among other entities. None would have standing to complain about the manner of refund payment. This would take care of issue #2, the assessments paid under protest. If, however, KID wants to handle this as 2 separate issues, then we will be claiming the balance of the 2010 assessments, after distribution of the \$2.355M, plus the assessments for the next two years." [R. p. 64-65]

The fee sweep lawsuit, *KBIWCF, et al v. State, supra*, was not a class action. Petitioners, herein, did not represent, as a class, all other entities that had paid into the Fund in FY 2010. Petitioners were found to have standing to challenge the sweep of the Kansas Workers Compensation Fund, but this is not the same as having been certified as representing an approved class of litigants. There has never been any evidence presented that any entities, other than Petitioners, paid assessments under protest, either in FY 2010 or either of the two subsequent years. Accordingly, the only entities with standing to seek

refunds of amounts paid in FY 2010 and the two subsequent fiscal years, are Petitioners. That said, Petitioners agree that the amount of funds swept, and ultimately returned, should be refunded, particularly given the healthy financial status of the Fund. Further, it is appropriate that all entities that paid into the Fund in FY 2010 should benefit. What Petitioners object to is a formula that ignores their superior legal claims to assessment refunds, particularly given the agreement they had with the prior Commissioner of Insurance.

The Decision language suggests that Respondent was under the mistaken belief that the universe of funds available or under consideration was limited to the \$2.355M Petitioners were successful in getting returned to the Kansas Insurance Department and its Workers Compensation Fund. While this may be true with regard to consideration of how those funds should be distributed to entities that paid assessments in FY 2010, it ignores Petitioners' separate claims for assessments paid in FY 2011 and FY 2012. This second issue would not involve any of the funds returned by virtue of the suit challenging the 2009 fee sweep. General Counsel Anshutz's letter agreement does not limit refund of assessments paid for the three years in question to the amount returned pursuant to the litigation. It is conditioned only on there being sufficient balances in the Fund, at the appropriate time, to refund the assessments. With the passage of time since suit was filed and the case settled, the funds would come from unencumbered balances currently in the Fund.

An administrative decision that ignores uncontroverted facts and is not substantially supported by evidence in the record is tantamount to arbitrary, oppressive or capricious conduct. See *Neeley v. Bd. of Trustees, Policemen's and Firemen's Retirement System*, 212 Kan. 137, 510 P. 2d 160. It is an unreasonable and arbitrary act when uncontroverted evidence is not considered by the agency. See *Hudson v. Bd. of Dir. of Kansas Public Employees Retirement System*, 53 Kan. App. 2d 309, 388 P. 3d 597.

RELIEF SOUGHT

K.S.A. 77-622(b) provides that the court has broad discretion in fashioning a remedy, including mandatory or declaratory, equitable or legal. The court "may order agency action required by law, order agency exercise of discretion required by law, set aside or modify agency action, enjoin or stay the effectiveness of agency action, remand the matter for further proceedings, render a declaratory judgment or take any other action that is authorized and appropriate." See *Manzano v. Kansas Department of Revenue*, 324 P. 3d 321 (Kan. App. 2014).

Petitioners respectively submit that the conditions precedent outlined in Kansas Insurance Department General Counsel Anshutz's letter of June 29, 2011 have been met. Petitioners were successful in their litigation against the State and, as a result, the entire amount of the 2009 sweep of funds from the Kansas Workers Compensation Fund has been restored. There are sufficient current Fund balances available such that refund of Petitioners' assessments paid in FY 2010, FY 2011 and FY 2012 can be made without jeopardizing those Fund balances.

The failure and refusal to consider Petitioners' claim regarding the Anshutz letter constitute unreasonable, arbitrary or capricious action. The Decision ignores uncontroverted facts and represents a failure to address an issue requiring resolution. Respondent breached the agreement contained in the subject letter. In the alternative, Respondent should be estopped from denying Petitioners the benefit of the promise. See *Bouton v. Byers*, 50 Kan. App. 2d 34, 321 P. 3d 780. Promissory estoppel is an equitable doctrine designed to promote a measure of basic fairness when one party makes a representation or promise in a manner reasonably inducing another party to undertake some obligation or incur some detriment as a result. It may be applicable when "(1) a promisor reasonably expects a promisee to act in reliance on the promise; (2) the promisee,

in turn, reasonably so acts; and (3) a court's refusal to enforce the promise would countenance a substantial injustice." *Bouton*, supra at p. 41.

Given that the only parties with legal standing to claim refunds are Petitioners, refund of all assessments claimed could be accomplished by refunding the collective total of Petitioners' assessments of \$1,205,224.30 and refunding the balance of the settlement proceeds from the \$2.355M restoration of funds on a pro rata basis to all other entities that paid into the Fund in FY 2010. This method would address both issues on review in one step and would limit the Kansas Insurance Department's payout to the amount of the settlement proceeds from 2009.

Alternatively, if entirely separate consideration of the two issues on review is deemed warranted, a pro rata distribution of the \$2.355M settlement proceeds to the entities who paid assessment in FY 2010 could be made but should be based on "collected" assessments and recalculated to produce correct amounts. This would address the issue of refund of the \$2.355M in settlement proceeds.

Then, Petitioners should be refunded the balance of their 2010 assessments and 100% of their FY 2011 and FY 2012 assessments paid under protest, pursuant to the prior agreement with the Kansas Insurance Department and in view of the fact that they have met their burden of showing that their assessments in those fiscal years were far in excess of the amounts reasonably necessary to fund the costs of administering the Workers Compensation Fund.

Respectfully submitted,

/s/Michael R. O'Neal
Michael R. O'Neal #8830
Attorney for Petitioners

Certificate of Service

The undersigned hereby certifies that the forgoing Brief in Support of Petition for Judicial Review was electronically filed with the Clerk of the District Court. A copy was deposited in the U.S. Mail, postage prepaid, on August 6, 2018, addressed to the following:

Grace Lancaster
Kansas insurance Department
420 SW 9th St.
Topeka, KS. 66612
Grace.Lancaster@ks.gov

/s/ Michael R. O'Neal
Michael R. O'Neal #8830

Don Osenbaugh

From: Don Osenbaugh [dosenbaugh@cox.net]
Sent: Monday, July 23, 2018 9:38 AM
To: 'Mike ONeal'
Cc: 'Scott Heidner'
Subject: 2018 and Beyond 'Sweeps'?

Mike,

What do you know about this year's apparent 'sweeps' legislation?

This is new to me, today.

Is this a re-run?

If so, how?

Confused...and concerned...

'Consumers will be harmed': Kansas governor sued by GOP rival over insurance fund
<https://www.kansas.com/news/politics-government/article215225830.html>

Don Osenbaugh

7/23/18
Wichita Eagle

‘Consumers will be harmed’: Kansas governor sued by GOP rival over insurance fund

By Jonathan Shorman

TOPEKA

Consumers will be harmed if Gov. Jeff Colyer wins a lawsuit over whether he can take \$8 million this year from a state insurance fund, the Kansas insurance commissioner warns in a new court filing.

The commissioner, Ken Selzer, is running against Colyer in the Republican race for governor.

Selzer seeks a court order to block Colyer from transferring \$8 million from an insurance-specific fund into a general fund that pays for the overall operation of state government.

“We don’t know why he did it. It doesn’t make any sense why he did it,” Selzer said in an interview Friday.

If the \$8 million transfer proceeds, Selzer’s attorney said in a court filing, his department would be forced to collect additional fees on insurance companies to make up the lost revenue. But the filing also says the additional fees probably would be unconstitutional because they would be an unauthorized tax and that insurance companies would sue to stop them.

“Consumers will be harmed if insurance companies are forced to pass additional assessments on to them in increased premiums,” Selzer warns through an attorney in a court filing.

The court filing also says the transfer would create uncertainty in the insurance market because companies depend on the fee structure to build their business model.

But Colyer’s office said Selzer actually agreed to the transfers at a meeting with budget officials in the Brownback administration in late 2016. Shawn Sullivan, the state’s chief operating officer, said the transfers have taken place for several years.

“Ken agreed that the fund could be transferred to the state general fund,” Sullivan said, adding that the budget office agreed the transfers would stop after the 2018 and 2019 fiscal years.

“It was going to be transferred two more years, which would allow them to work on a plan for fees. That’s, to my recollection, what was agreed to at that time,” Sullivan said.

Bob Hanson, a spokesman for Selzer, said the department does not recall a meeting, “and certainly there was no formal agreement.” He said that in any case, the Legislature passed a law in May 2017 intended to prevent such sweeps of funds.

In an interview before Sullivan’s comments, Selzer said the lawsuit had nothing to do with the campaign.

“This is not a political issue. This is a protection-for-(the)-Kansas-insurance-consumer issue,” Selzer said.

The sweep would drastically reduce services provided by the Kansas Insurance Department, Selzer contends in a court filing. The Service Regulation Fund helps pay for salaries, contractual services and building maintenance at the agency that regulates insurance in the state.

The amount sought by Colyer represents nearly half of the fund’s value, according to court filings.

In 2017, lawmakers approved the transfer of \$16 million from the Service Regulation Fund — \$8 million in the 2018 fiscal year and \$8 million in the 2019 fiscal year, which started July 1.

The fiscal year 2018 transfer already happened. Selzer is suing to prevent the fiscal year 2019 transfer from happening in full.

This spring, the Legislature eliminated the \$8 million transfer for 2019. But Colyer line-item vetoed that when he signed the budget in May. Selzer said \$2 million is being transferred out of the fund each quarter over the next year.

“The governor made it a political issue when he vetoed it” without approaching the Insurance Department first, Selzer said.

Colyer’s veto message didn’t explain the decision. Sullivan said the line-item veto was in line with the agreement that was made to sweep the fund for two years and then stop.

The lawsuit also comes amid the race to become the next insurance commissioner.

Assistant Insurance Commissioner Clark Shultz, who is running in the Republican primary, said he supported the lawsuit. Topeka Sen. Vicki Schmidt, who is also in the Republican race, said she voted against transferring the funds as a member of the budget committee.

Democratic candidate Nathaniel McLaughlin said he supported the lawsuit as well.

The Kansas Association of Insurance Agents didn't respond to a request for comment on Friday.

Read more here: <https://www.kansas.com/news/politics-government/article215225830.html#storylink=cpy>

Don Osenbaugh

From: Mike O'Neal [mike.oneal@onealconsulting.org]
Sent: Tuesday, July 24, 2018 10:01 AM
To: Don Osenbaugh
Cc: Scott Heidner
Subject: Re: 2018 and Beyond 'Sweeps'?

Don

Yes, I have the scoop. I'm out this a.m. but will get a group e-mail out this afternoon as I'm getting questions from several of you.

Mike

Sent from my iPhone

> On Jul 23, 2018, at 9:38 AM, Don Osenbaugh <dosenbaugh@cox.net> wrote:
>
> Mike,
>
> What do you know about this year's apparent 'sweeps' legislation?
>
> This is new to me, today.
>
> Is this a re-run?
>
> If so, how?
>
> Confused...and concerned...
>
> 'Consumers will be harmed': Kansas governor sued by GOP rival over
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From: Mike O'Neal [mike.oneal@onealconsulting.org]
Sent: Tuesday, July 24, 2018 1:30 PM
To: Mike O'Neal
Cc: Cindy Luxem; Don Osenbaugh; Don McNeely; Dorothy Pope; Doug Hamilton; Reasoner, Ed; Administrator Kworcc; Kevin McFarland; lance.cowell@yahoo.com; tcox@krha.org; Kayron Ronni Anderson; Paul Davis; Jeff Siler; Lance Cowell; John Crowley; Adam Mills
Subject: Re: Fee Sweep case

Fee sweep case participants

As many of you have seen or heard, the Kansas Insurance Department recently filed suit in Shawnee Co. Dist. Court to reverse fee sweeps of their service regulation fee fund for FY '18 and '19. The sweeps stem from an appropriations bill from the 2017 Session that included sweeps for two consecutive fiscal years. The sweeps are for approx. \$8M per year. Ironically, the sweeps were approved in the same session as the Legislature approved the bill Rep. Finch and I worked on that beefed up the anti-sweep statute that played a prominent role in your successful litigation and settlement.

I found out about the sweep while representing some multi-line carriers beginning last fall. Our issue had to do with agent appointments and calculation of retaliatory taxes. Ultimately, we determined that we should pursue legislation to strike a provision in the law that caused retaliatory taxes to be inflated when carriers appointed agencies and not individual agents. The fiscal note prepared by the Administration showed passage would result in a reduction in agent fees and also retaliatory tax collections. The Insurance Department voiced concern over the reduction in fees since the Administration was consistently sweeping funds from their service regulation fund. This was when I found out about the latest sweep. I told them then that the sweep was unlawful.

In order to help with the matter I was handling for the carriers, I briefed Chairman Waymaster, House Appropriations Chair, Jill Wolters with the Revisors of Statutes Office and Larry Campbell, the Governor's new Budget Director. Larry remembered well the fee sweep case I handled and the legislation from 2017. He was still a Representative then and supported it. As a result, when the budget amendment bill was considered, the House reversed the FY '19 sweep (the FY '18 sweep had already happened). The Senate agreed and the appropriations bill went to the Governor, who vetoed the provision reversing the sweep. I am positive he did so at the behest of Shawn Sullivan, the former Budget Director and now COO.

At first the Insurance Department did nothing, primarily because they felt queasy about going after the Administration. In visiting with Clark Shultz, Deputy Comm. and candidate for Commissioner I told him that doing nothing would send a signal to those who pay into that fund that the KID is fine with collecting too much in fees and handing it over to the State and that such acquiescence would probably result in assessments being challenged. And, of course, he is keenly aware of how assessments get challenged!

Ultimately, the KID filed suit and they have asked for a refund of the FY '18 sweep and an injunction halting the FY '19 sweep. These sweeps are paid over quarterly for approx. \$2M per. I'm not sure if the first \$2M FY '19 transfer has been made yet. I predict that the KID will win easily. The Administration seems to be arguing that the KID "agreed" to these sweeps and so it was ok. Of course, the KID has no authority to agree and, in fact, I'm quite sure they didn't agree. They may have wimped out but they didn't overtly agree.

Long story short, I think this is self limited. The Governor's Office seems to acknowledge that they can't do any future sweeps. They are arguing this one was already "baked in the cake" and should be approved. As I said, I think they lose that argument, in which case we will have yet another case striking down sweeps. Long term however, I think the battleground switches to watching agencies who have the power to assess fees. The KID

has been collecting far more than they need to operate, in my opinion. This is true with regard to the Workers Comp Fund and the Service Regulation Fee Fund. I have not checked the Dept. of Labor's Work Comp fund balances, incidentally. The problem may be somewhat systemic.

In our pending case where we are seeking return of assessments paid in FY '10, '11 & '12, we can show that in those years and subsequent years, the KID collected millions of dollars more than was needed to fund the WCF operations. Without regard to how our case turns out, we/you need to continue to be vigilant about the fees currently being assessed with relationship to what the Department actually needs. The only real remedy for excessive assessments is payment under protest or some type of legislative intervention to reduce fees. By way of example, the legislature has historically watched the Unemployment Security Trust Fund balances. When I was with the Kansas Chamber we were successful in getting a moratorium on tax collections because the balances were too high. We will have a new Insurance Commissioner in January and it would be good to have a discussion about fees going forward.

This is probably more info than you needed but several of you had questions about what you were seeing in the media about the latest fee sweep controversy. if you have additional questions, let me know.

On our pending case, the Court has sent out a briefing schedule. Our brief is due Aug. 10, the KID's is due Sept. 10 and my Reply is due Sept. 24, after which date the Court considers the matter submitted for decision. With this in mind, I hope to have a decision by year end, but you all know how that has played out before!

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620-727-0003

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Don Osenbaugh

From: James Parrish [jwp@parrishhotels.com]
Sent: Tuesday, July 24, 2018 1:47 PM
To: Mike O'Neal
Cc: Cindy Luxem; Don Osenbaugh; Don McNeely; Dorothy Pope; Doug Hamilton; Reasoner, Ed; Kevin McFarland; lance.cowell@yahoo.com; tcox@krha.org; Kayron Ronni Anderson; Paul Davis; Jeff Siler; Lance Cowell; John Crowley; Adam Mills; Dortha Bird
Subject: RE: Fee Sweep case

Mike,

Thanks for this update and your analysis. It is most interesting to see how so many dollars can be collected and how unaccountable the agencies are until the State begins to sweep them away.

James W. Parrish
President & CEO
Parrish Hotel Corporation
jwp@parrishhotels.com



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Subject: Re: Fee Sweep case

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My first thought on seeing all this is to question exactly what it is we accomplished over our 9+years 'successful' adventure.

My second thought is 'How did this happen this past year without any of us knowing'?

My current conclusion is that Topeka does whatever it wants to do.

Sent from my iPad

On Jul 24, 2018, at 1:47 PM, James Parrish <jwp@parrishhotels.com> wrote:

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<image001.jpg>

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Subject: Re: Fee Sweep case

Don

I'm hard pressed to disagree with much of what you've said. This latest sweep was under the radar primarily because the Insurance Department "ate" the sweep and did not go back and assess again as they did in our case. These are the ones I'll start watching for, i.e., the ones where the agency is simply collecting too much, whether the Administration sweeps or not. The legislator education process has been a slow process and there is much turnover. I have been trying to educate the Revisor of Statutes Office since they are the first line of defense and are the lawyers in the building. Still, we may not have seen the last of the attempts.

I do think we've made progress, even if it's two steps forward and one step back!

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<image001.jpg>

Work Comp Connection

August 2018 Newsletter




Kansas
Department of Labor

Workers Compensation Division
Serving Kansas for more than 100 years

OSCAR Account Enrollment & Training is Filled!

Registration to attend the Free OSCAR Account Enrollment and Training session at the Overland Park Convention Center on Sept. 26 is filled. We apologize for any inconvenience this may have caused. We will continue to accept a limited number of registrations for standby attendance should anyone cancel.

The OSCAR team is in the process of establishing future training dates and times specific by occupation. Training will be held at locations throughout the state.

Workers Compensation Division has spent the past three years undergoing a comprehensive digitization project. The implementation phase of the Online System for Claims Administration Research/Regulation (OSCAR) began in January 2017 and the system is scheduled to launch in November. OSCAR has been built to improve customer service; reduce administrative costs; increase efficiency and effectiveness and improve data quality and integrity.

You will use OSCAR to complete everyday functions such as accessing and viewing forms, submitting applications, filing motions, petitions and appeals, uploading exhibits and transcripts, voting on common dates and times for hearings using the calendar functions, extracting documents and more.

Employers, carrier representatives and third-party administrators will use various functions including viewing case information and dates for hearings, submitting records requests, submitting insurance elections, reporting paid-losses and processing assessment payments and interacting with the staff working in the Ombudsman/Claims Advisory Section, Fraud and Abuse Section, Coverage and Compliance Section and more.

We encourage you to follow the build process and monitor future training schedules at www.dol.ks.gov/WorkComp/Oscar/Oscar.aspx. This site will house interactive and self-directed Webinars, Web-based tutorials and an in-person training schedules. Training dates will also be reported in future *Work Comp Connection* newsletters.

Maximum Weekly Benefit July 1, 2018 to June 30, 2019 is \$645

The Kansas Department of Labor (KDOL), Labor Market Information Services, has reported that the state's average weekly wage for calendar year 2017, in accordance with Section 44-704 of the Kansas Employment Security Law, was \$859.76. Pursuant to K.S.A. 44-510c, the maximum workers compensation weekly benefit for the period of July 1, 2018 to June 30, 2019 will be \$645.00. This maximum will apply to those accidents occurring between July 1, 2018 and June 30, 2019. The minimum weekly benefit rate for fatalities for the same period, pursuant to K.S.A. 44-510b, will be \$430.00.

44th Annual WORKERS COMPENSATION SEMINAR

**Network with our
GOLD and SILVER Sponsors!**

Sept. 25 & 26, 2018 - Overland Park Convention Center

KMIT Member List

August 1, 2018

	CITIES	Population ¹	Date Joined	FTE ²
1	Abilene	6,590	4/1/96	63.0
2	Admire	154	4/1/06	2.0
3	Allen	175	4/11/00	1.0
4	Altamont	1,049	4/1/94	12.0
5	Andale	981	5/1/94	4.0
6	Andover	12,509	4/1/95	72.0
7	Arkansas City	12,205	4/1/05	144.0
8	Arma	1,464	4/1/17	12.0 est
9	Atchison	10,771	4/1/94	109.0
10	Atlanta	194	4/1/04	1.0
11	Augusta	9,242	1/1/02	110.0
12	Baldwin City	4,585	4/1/94	40.0
13	Basehor	5,119	4/1/96	22.0
14	Bel Aire	7,284	4/1/09	60.0
15	Belle Plaine	1,627	4/1/12	10.0
16	Belleville	1,917	4/1/04	28.0
17	Bennington	665	4/1/06	2.0
18	Benton	872	4/1/12	6.0
19	Beverly	159	8/9/98	1.0
20	Bird City	439	1/15/94	3.0
21	Blue Mound	275	1/1/09	2.0
22	Blue Rapids	997	4/1/05	5.0
23	Bonner Springs	7,553	1/1/94	81.0
24	Brewster	304	4/1/94	1.0
25	Centralia	508	4/1/94	3.0
26	Chapman	1,417	4/1/12	13.0
27	Chautauqua	106	4/1/96	1.0
28	Cheney	2,153	1/1/94	18.0
29	Cherryvale	2,283	2/1/94	21.0
30	Clay Center	4,177	7/1/04	40.0
31	Clearwater	2,531	4/1/10	7.0
32	Columbus	3,186	4/1/02	34.0
33	Concordia	5,311	1/1/96	60.0
34	Conway Springs	1,239	4/1/94	8.0
35	Council Grove	2,106	4/1/94	26.0

KMIT Member List

August 1, 2018

36	Cullison	104	4/1/01	3.0	
37	Damar	132	3/1/05	1.0	
38	De Soto	6,038	4/1/94	30.0	
39	Dodge Ctiy	28,117	1/1/17	225.0	est
40	Douglass	1,692	4/1/03	7.0	
41	Eastborough	769	11/15/04	7.0	
42	Edgerton	1,703	12/11/00	9.0	
43	Edwardsville	4,380	4/1/07	41.5	
44	El Dorado	12,879	4/1/09	133.0	
45	Elkhart	2,113	1/1/94	13.0	
46	Ellsworth	3,076	4/1/06	24.0	
47	Esbon	98	4/1/94	3.0	
48	Eudora	6,303	4/1/03	39.0	
49	Florence	444	4/1/06	4.0	
50	Ford	220	4/1/01	2.0	
51	Fort Scott	7,874	1/1/94	82.0	
52	Fowler	560	6/8/95	2.0	
53	Frankfort	711	4/1/96	4.0	
54	Fredonia	2,372	4/1/03	35.0	
55	Galena	2,966	1/1/94	39.0	
56	Garden City	27,004	1/1/13	306.0	
57	Garden Plain	894	5/1/18	11.0	
58	Girard	2,773	1/1/04	35.0	
59	Glasco	487	4/1/94	3.0	
60	Glen Elder	435	4/1/95	4.0	
61	Goodland	4,554	1/1/94	57.0	
62	Goessel	514	4/1/16	7.5	
63	Grandview Plaza	1,670	4/1/04	10.0	
64	Great Bend	15,840	1/1/02	150.0	
65	Greeley	296	3/9/98	2.0	
66	Grenola	203	4/1/94	1.0	
67	Grinnell	258	8/14/06	1.5	
68	Halstead	2,084	1/1/94	22.0	
69	Hamilton	255	4/1/06	2.5	
70	Harper	1,398	4/1/17	15.0	est
71	Hartford	367	4/1/06	3.0	

KMIT Member List

August 1, 2018

72	Haven	1,225	4/1/17	12.0	est
73	Hays	21,044	4/1/13	181.0	
74	Haysville	11,112	4/1/01	76.0	
75	Herington	2,413	4/1/14	37.5	
76	Hiawatha	3,108	6/4/95	26.0	
77	Hill City	1,454	4/1/95	17.0	
78	Hillsboro	2,893	4/1/95	26.0	
79	Hoisington	2,664	1/1/94	40.0	
80	Horton	1,732	4/1/02	25.0	
81	Independence	9,162	3/1/94	144.0	
82	Jetmore	864	4/1/94	6.0	
83	Johnson City	1,413	4/1/94	14.0	
84	Kingman	3,094	4/1/95	37.0	
85	Kinsley	1,451	1/1/94	11.0	
86	La Cygne	1,116	4/1/09	9.0	
87	Lake Quivira	934	12/1/14	10.0	est
88	Larned	4,023	4/1/08	56.0	
89	LKM	NA	4/1/94	15.0	
90	Lecompton	637	4/1/07	2.0	
91	Lenora	240	4/1/97	2.0	
92	Leoti	1,496	4/1/02	8.0	
93	Lincoln Center	1,266	9/3/02	12.0	
94	Lindsborg	3,438	4/1/12	31.0	
95	Logan	569	4/1/13	4.0	
96	Lucas	393	6/1/94	4.0	
97	Madison	661	4/1/17	5.0	est
98	Maize	4,073	6/25/94	19.0	
99	Marion	1,861	4/1/15	32.0	
100	Marysville	3,295	10/1/94	36.0	
101	McFarland	257	4/1/94	1.0	
102	Medicine Lodge	2,021	4/11/95	19.0	
103	Melvorn	369	4/1/96	2.0	
104	Minneapolis	2,029	1/1/94	25.0	
105	Moline	344	4/1/94	3.0	
106	Montezuma	979	4/1/94	6.0	
107	Mound City	682	4/1/96	5.0	

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August 1, 2018

108	Moundridge	1,726	4/1/12	17.0
109	Neodesha	2,400	4/1/98	49.0
110	Neosho Rapids	262	4/1/06	2.5
111	Newton	19,120	1/1/94	176.0
112	North Newton	1,788	4/1/13	5.0
113	Oakley	2,075	4/1/13	27.5
114	Oberlin	1,749	1/15/94	15.0
115	Ogden	2,138	4/1/01	8.0
116	Olpe	537	4/1/94	2.0
117	Osage City	2,862	4/1/94	35.0
118	Osawatomie	4,357	4/1/08	75.0
119	Oskaloosa	1,086	4/1/94	5.0
120	Oswego	1,781	4/1/95	21.0
121	Palco	282	4/1/04	2.5
122	Paola	5,593	4/1/94	60.0
123	Parsons	10,174	4/1/05	133.0
124	Peabody	1,156	4/1/01	9.0
125	Pittsburg	20,394	1/1/14	250.0
126	Princeton	267	4/1/94	5.5
127	Ramona	181	4/1/06	1.0
128	Ransom	289	1/1/95	2.0
129	Reading	228	4/1/06	2.0
130	Roeland Park	6,840	12/31/00	31.0
131	Rose Hill	3,960	4/1/94	23.0
132	Rozel	152	2/1/18	4.0
133	Russell	4,484	1/1/94	75.0
134	Satanta	1,117	4/1/02	4.0
135	Scranton	693	4/1/12	6.0
136	Sedan	1,065	7/1/94	11.0
137	Sedgwick	1,701	4/1/94	9.0
138	Sharon Springs	756	4/1/06	8.5
139	Smith Center	1,641	4/1/13	21.5
140	Spearville	806	5/8/00	4.0
141	St. Francis	1,312	4/1/05	20.0
142	St. John	1,244	4/1/16	15.5
143	Stafford	1,002	4/1/03	14.0

KMIT Member List

August 1, 2018

144	Sterling	2,303	4/1/15	16.5
145	Stockton	1,315	4/1/02	50.0
146	Sylvan Grove	268	4/1/12	2.0
147	Tampa	108	4/1/06	1.0
148	Tescott	318	4/1/95	2.0
149	Tipton	207	7/27/01	2.0
150	Tonganoxie	5,192	4/1/97	28.0
151	Turon	378	9/10/95	2.0
152	Ulysses	6,160	3/31/95	40.0
153	Valley Center	7,057	4/15/94	45.0
154	WaKeeney	1,797	4/1/03	20.0
155	Wakefield	967	1/1/95	3.0
156	Walton	239	4/1/94	2.0
157	Wamego	4,578	1/1/94	40.0
158	Wellington	7,942	4/1/95	123.0
159	Wellsville	1,822	3/31/01	10.0
160	Westwood	1,534	7/1/12	13.0
Total		497,445	4,864	
Small		98	1	
Large		28,117	306	
Median		1,496	12	
Avg		3,129	30	
¹ most recent state estimate		City Pop.	FTE	
² full-time or equivalent				
	COMMUNITY COLLEGES	Pop	Date Joined	FTE ²
1	COFFEYVILLE COMM COLLEGE	NA	7/1/18	50.0
2	INDEPENDENCE COMM COLLEGE	NA	7/1/18	30.0
TOTAL KMIT MEMBERS		162	Total FTEs	
			4,944	
by Population				
1	Dodge City	28,117		
2	Garden City	27,004		
3	Hays	21,044		
4	Pittsburg	20,394		

KMIT Member List

August 1, 2018

5	Newton	19,120
6	Great Bend	15,840
7	El Dorado	12,879
8	Andover	12,509
9	Arkansas City	12,205
10	Haysville	11,112
11	Atchison	10,771
12	Parsons	10,174
13	Augusta	9,242
14	Independence	9,162
15	Wellington	7,942
16	Fort Scott	7,874
17	Bonner Springs	7,553
18	Bel Aire	7,284
19	Valley Center	7,057
20	Roeland Park	6,840
21	Abilene	6,590
22	Eudora	6,303
23	Ulysses	6,160
24	De Soto	6,038
25	Paola	5,593
26	Concordia	5,311
27	Tonganoxie	5,192
28	Basehor	5,119
29	Baldwin City	4,585
30	Wamego	4,578
31	Goodland	4,554
32	Russell	4,484
33	Edwardsville	4,380
34	Osawatomie	4,357
35	Clay Center	4,177
36	Maize	4,073
37	Larned	4,023
38	Rose Hill	3,960
39	Lindsborg	3,438
40	Marysville	3,295
41	Columbus	3,186
42	Hiawatha	3,108
43	Kingman	3,094
44	Ellsworth	3,076
45	Galena	2,966
46	Hillsboro	2,893

KMIT Member List

August 1, 2018

47	Osage City	2,862
48	Girard	2,773
49	Hoisington	2,664
50	Clearwater	2,531
51	Herington	2,413
52	Neodesha	2,400
53	Fredonia	2,372
54	Sterling	2,303
55	Cherryvale	2,283
56	Cheney	2,153
57	Ogden	2,138
58	Elkhart	2,113
59	Council Grove	2,106
60	Halstead	2,084
61	Oakley	2,075
62	Minneapolis	2,029
63	Medicine Lodge	2,021
64	Belleville	1,917
65	Marion	1,861
66	Wellsville	1,822
67	WaKeeney	1,797
68	North Newton	1,788
69	Oswego	1,781
70	Oberlin	1,749
71	Horton	1,732
72	Moundridge	1,726
73	Edgerton	1,703
74	Sedgwick	1,701
75	Douglass	1,692
76	Grandview Plaza	1,670
77	Smith Center	1,641
78	Belle Plaine	1,627
79	Westwood	1,534
80	Leoti	1,496
81	Arma	1,464
82	Hill City	1,454
83	Kinsley	1,451
84	Chapman	1,417
85	Johnson City	1,413
86	Harper	1,398
87	Stockton	1,315
88	St. Francis	1,312

KMIT Member List

August 1, 2018

89	Lincoln Center	1,266
90	St. John	1,244
91	Conway Springs	1,239
92	Haven	1,212
93	Peabody	1,156
94	Satanta	1,117
95	La Cygne	1,116
96	Oskaloosa	1,086
97	Sedan	1,065
98	Altamont	1,049
99	Stafford	1,002
100	Blue Rapids	997
101	Andale	981
102	Montezuma	979
103	Wakefield	967
104	Lake Quivira	934
105	Garden Plain	894
106	Benton	872
107	Jetmore	864
108	Spearville	806
109	Eastborough	769
110	Sharon Springs	756
111	Frankfort	711
112	Scranton	693
113	Mound City	682
114	Bennington	665
115	Madison	661
116	Lecompton	637
117	Logan	569
118	Fowler	560
119	Olpe	537
120	Goessel	514
121	Centralia	508
122	Glasco	487
123	Florence	444
124	Bird City	439
125	Glen Elder	435
126	Lucas	393
127	Turon	378
128	Melvern	369
129	Hartford	367
130	Moline	344

KMIT Member List

August 1, 2018

131	Tescott	318
132	Brewster	304
133	Greeley	296
134	Ransom	289
135	Palco	282
136	Blue Mound	275
137	Sylvan Grove	268
138	Princeton	267
139	Neosho Rapids	262
140	Grinnell	258
141	McFarland	257
142	Hamilton	255
143	Lenora	240
144	Walton	239
145	Reading	228
146	Ford	220
147	Tipton	207
148	Grenola	203
149	Atlanta	194
150	Ramona	181
151	Allen	175
152	Beverly	159
153	Admire	154
154	Rozel	152
155	Damar	132
156	Tampa	108
157	Chautauqua	106
158	Cullison	104
159	Esbon	98
160	LKM	NA
161	COFFEYVILLE COMM COLLEGE	NA
162	INDEPENDENCE COMM COLLEGE	NA
Current Board Member		
Past Board Member		
Ex-Officio Board Member		

KMIT Member History

August 1, 2018

	City	Date Joined	Date Left	FEIN #	Policy #	Risk ID #
1	Abilene	4/1/96		48-6017973	112ABI	150122619
2	Admire	4/1/06		48-0913740	112ADM	150513707
3	Allen	4/11/00		48-6163606	112ALL	150570093
4	Altamont	4/1/94		48-6039159	112ALT	150192048
5	Andale	5/1/94		48-6084036	112AND	150238951
6	Andover	4/1/95		48-0768791	112ANO	150210879
7	Arkansas City	4/1/05		48-6005477	112ARK	150112389
8	Arma	4/1/17		48-6041523	112ARM	150168287
9	Atchison	4/1/94		48-6025033	112ATC	150191076
10	Atlanta	4/1/04		48-0860014	112ATL	150570603
11	Augusta	1/1/02		48-6035719	112AUG	150135257
12	Baldwin City	4/1/94		48-6033049	112BAL	150110513
13	Basehor	4/1/96		48-0732879	112BAS	150451523
X	Baxter Springs	1/1/94	12/31/13	48-6041584	112BAX	150104211
X	Bel Aire	4/1/96	3/31/06	48-0681283	112BAR	150416388
14	Bel Aire	4/1/09		48-0681283	112BELA	150416388
15	Belleville	4/1/04		48-6020982	112BEL	150135648
16	Belle Plaine	4/1/12		48-9005794	112BPL	150138906
X	Beloit	1/1/95	1/1/97	x	x	x
17	Bennington	4/1/06		48-6018238	112BEN	150450071
18	Benton	4/1/12		48-6092183	112BNT	150511437
19	Beverly	8/9/98		48-0693266	112BEV	150570107
20	Bird City	1/15/94		48-6013474	112BIR	150209919
X	Bison	1/1/94	5/20/02	48-6011701	112BIS	N/A
21	Blue Mound	1/1/09		48-0722470	112BLM	150540429
22	Blue Rapids	4/1/05		48-6022978	112BLU	150175658
23	Bonner Springs	1/1/94		48-6033148	112BON	150104378
24	Brewster	4/1/94		48-6013534	112BRE	150450063
X	Caldwell	2/1/02	5/1/09	48-6005893	112CAL	150184045
25	Centralia	4/1/94		48-6025420	112CEN	150210682
26	Chapman	4/1/12		48-6018403	112CHP	150163447
27	Chautauqua	4/1/96		48-0971231	112CHA	150570662
28	Cheney	1/1/94		48-6002530	112CHE	150145678
29	Cherryvale	2/1/94		48-6043146	112CHR	150113652
30	Clay Center	7/1/04		48-6023059	112CLA	150193192
31	Clearwater	4/1/10		48-6003458	112CLE	150147891
X	Coffeyville	4/1/95	12/31/96	x	x	x
X	Coffeyville	5/1/05	12/31/12	x	x	x
32	COFFEYVILLE COMMUNITY COLLEGE	7/1/18		48-0698570	112CCC	150118115
33	Columbus	4/1/02		48-6041810	112COL	150115787

KMIT Member History

August 1, 2018

	City	Date Joined	Date Left	FEIN #	Policy #	Risk ID #
34	Concordia	1/1/96		48-6020606	112CONC	150128153
35	Conway Springs	4/1/94		48-6086704	112CON	150183278
X	Cottonwood Falls	4/1/10	12/31/12	x	x	x
36	Council Grove	4/1/94		48-6027477	112COU	150104874
37	Cullison	4/1/01		48-0900828	112CUL	150570069
38	Damar	3/1/05		48-1050260	112DAM	150570212
X	Derby	1/1/94	12/31/10	48-6086439	112DER	150105021
39	De Soto	4/1/94		48-6033211	112DES	150130158
X	Dodge City	1/1/94	12/31/08	48-6008416	112DOD	150120810
40	Dodge City	1/1/17		48-6008416	112DOD	150120810
41	Douglass	4/1/03		48-6035901	112DOU	150233526
42	Eastborough	11/15/04		48-6044356	112EAS	150199174
43	Edgerton	12/11/00		48-0734242	112EDG	150209617
44	Edwardsville	4/1/07		48-0800885	112EDW	150212375
45	El Dorado	4/1/09		48-6035394	112ELD	150105250
46	Elkhart	1/1/94		48-6008998	112ELK	150135451
47	Ellsworth	4/1/06		48-6018554	112ELL	150193281
48	Esbon	4/1/94		48-0683209	112ESB	150456029
49	Eudora	4/1/03		48-6033319	112EUD	150115035
X	Eureka	4/1/05	12/31/14	48-6035982	112EUR	150129389
50	Florence	4/1/06		48-6036169	112FLO	150198291
51	Ford	4/1/01		48-0898163	112FOR	150570581
52	Fort Scott	1/1/94		48-6036934	112FTS	150149886
53	Fowler	6/8/95		48-6009078	112FOW	150454514
54	Frankfort	4/1/96		48-6023348	112FRA	150195055
55	Fredonia	4/1/03		48-6039525	112FRE	150105722
56	Galena	1/1/94		48-6042035	112GAL	150118077
57	Garden City	1/1/13		48-6009982	112GAR	110104677
58	Garden Plain	5/1/18		48-0807924	112GPL	150450152
59	Girard	4/1/04		48-6042126	112GIR	150129230
60	Glasco	4/1/94		48-6021680	112GLA	150210771
61	Glen Elder	4/1/95		48-6021729	112GLE	150203007
62	Goodland	1/1/94		48-6013884	112GOO	150130603
63	Goessel	4/1/16		48-0725321	112GOE	150556759
X	Grainfield	7/9/01	7/31/18	48-6075794	112GRA	150520983
64	Grandview Plaza	4/1/04		48-0686913	112GRAN	150304261
65	Great Bend	1/1/02		48-6012082	112GTB	150126231
66	Greeley	3/9/98		48-6101278	112GREE	150570557
67	Grenola	4/1/94		48-0720550	112GRE	150450160
68	Grinnell	8/14/06		48-0786477	112GRI	150513723

KMIT Member History

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	City	Date Joined	Date Left	FEIN #	Policy #	Risk ID #
69	Halstead	1/1/94		48-6004032	112HAL	150162629
70	Hamilton	4/1/06		48-6036216	112HAM	150457688
71	Harper	4/4/17		48-6006119	112HRP	150154111
72	Hartford	4/1/06		48-6027764	112HAR	150081319
73	Haven	4/1/17		48-6016535	112HAV	150189314
X	Hays**	7/1/01	3/31/12	48-6011465	112HAY	150114233
74	Hays	4/1/13		48-6011465	112HAY	150114233
75	Haysville	4/1/01		48-6085168	112HYV	150106168
76	Herington	4/1/14		48-6018847	112HER	150193435
X	Hesston	4/1/03	6/30/08	48-6004090	112HES	150140129
77	Hiawatha	6/4/95		48-6025665	112HIA	150130166
78	Hill City	4/1/95		48-6014092	112HLC	150117631
79	Hillsboro	4/1/95		48-6036239	112HIL	150139260
80	Hoisington	1/1/94		48-6012386	112HOI	150125189
X	Holcomb	4/1/94	3/31/09	48-0765376	112HOL	150261767
81	Horton	4/1/02		48-6025865	112HOR	150123038
X	Hoxie	4/1/94	4/1/07	48-6014174	112HOX	150162033
82	Independence	3/1/94		48-6042582	112IND	150100615
83	INDEPENDENCE COMMUNITY COLLEGE	7/1/18		48-0720287	112ICC	150133262
84	Jetmore	4/1/94		48-6009224	112JET	150163099
85	Johnson City	4/1/94		48-6009285	112JOH	150190142
86	Kingman	4/1/95		48-6004147	112KIG	150128722
87	Kinsley	1/1/94		48-6007346	112KIN	150113253
88	Lake Quivira	12/1/14		48-0799017	112LAK	150327873
89	Larned	4/1/08		48-6007537	112LAR	150107008
90	La Cygne	4/1/09		48-6037640	112LAC	150177375
91	League	4/1/94		48-6029280	112LEA	150455243
92	Lecompton	4/1/07		48-6077082	112LEC	150081300
93	Lenora	4/1/97		48-6014313	112LEN	150511410
94	Leoti	4/1/02		48-6010592	112LEO	150109590
95	Lincoln Center	9/3/02		48-6019533	112LIN	150139902
X	Lindsborg	1/1/96	1/1/99	x	x	x
96	Lindsborg	4/1/12		48-6019638	112LBG	150182727
97	Logan	4/1/13		48-6014365	112LOG	150167698
98	Lucas	6/1/94		48-6012593	112LUC	150203198
99	Madison	4/1/17		13	112MAD	150154723
100	Maize	6/25/94		48-6100751	112MAI	150252296
X	Marion	1/1/94	12/31/97	x	x	x
101	Marion	4/1/15		48-6036493	112MAR	150124581
102	Marysville	10/1/94		48-6022693	112MYV	150130654

KMIT Member History

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	City	Date Joined	Date Left	FEIN #	Policy #	Risk ID #
103	McFarland	4/1/94		48-0821585	112MCF	150450128
X	Meade	4/1/05	3/31/07	48-6009560	112MEA	150112834
104	Medicine Lodge	4/11/95		48-6007792	112MED	150111633
105	Melvorn	4/1/96		48-0674502	112MEL	150570220
106	Minneapolis	1/1/94		48-6020121	112MIN	150135672
X	Mission	12/31/95	12/31/08	48-6077068	112MIS	150143012
107	Moline	4/1/94		48-6044011	112MOL	150274079
108	Montezuma	4/1/94		48-6009662	112MON	150195063
109	Mound City	4/1/96		48-6037776	112MOU	150228336
110	Moundridge	4/1/12		48-6020221	112MDR	150132339
111	Neodesha	4/1/98		48-6040117	112NEO	150107911
112	Neosho Rapids	4/1/06		48-0688169	112NEOS	150513731
113	Newton	1/1/94		48-6004391	112NEW	150107962
114	North Newton	4/1/13		48-0697939	112NNE	150290406
115	Oakley	4/1/13		48-6010757	112OAK	150119278
116	Oberlin	1/15/94		48-6014612	112OBE	150143578
117	Ogden	4/1/01		48-6087307	112OGD	150164583
118	Olpe	4/1/94		48-0721174	112OLP	150450039
119	Osage City	4/1/94		48-6030647	112OSG	150139600
120	Osawatomie	4/1/08		48-6037846	112OAS	150108152
121	Oskaloosa	4/1/94		48-6034904	112OSK	150201276
122	Oswego	4/1/95		48-6040259	112OSW	150108179
X	Ozawkie	12/19/95	12/31/10	48-0775977	112OZA	150570654
123	Palco	4/1/04		48-6038302	112PAL	150499348
124	Paola	4/1/94		48-6038302	112PAO	150108225
X	Park City	4/1/94	12/31/14	48-0926950	112PKC	150227615
125	Parsons	4/1/05		48-6040414	112PAR	150108276
126	Peabody	4/1/01		48-6036613	112PEA	150193966
127	Pittsburg	1/1/14		48-6041003	112PIT	150100887
128	Princeton	4/1/94		48-0694673	112PRI	150455251
129	Ramona	4/1/06		48-0900816	112RAM	150513758
130	Ransom	1/1/95		48-0684523	112RAN	150465214
131	Reading	4/1/06		48-6028036	112REA	150513693
132	Roeland Park	1/1/01		48-6077029	112ROE	150103606
133	Rose Hill	4/1/94		48-0782378	112ROS	150270774
134	Rozel	2/1/18		48-0769088	112ROZ	150573165
135	Russell	1/1/94		48-6012826	112RUS	150108837
136	Satanta	4/1/02		48-6009763	112SAT	150219299
137	Scranton	4/1/12		48-6030833	112SCR	150246814
138	Sedan	7/1/94		48-6044099	112SDN	150139791

KMIT Member History

August 1, 2018

	City	Date Joined	Date Left	FEIN #	Policy #	Risk ID #
139	Sedgwick	4/1/94		48-6004733	112SED	150157072
140	Sharon Springs	4/1/06		48-6011085	112SHA	150122007
141	Smith Center	4/1/13		48-6022532	112SMC	150137233
142	Spearville	5/8/00		48-6009800	112SPE	150308534
X	Spring Hill	4/1/01	3/31/18	48-6035103	112SPR	150186250
143	Stafford	3/31/03		48-6008209	112STA	150126045
144	St. Francis	4/1/05		48-6015044	112STF	150137217
145	St. John	4/16/16		48-6008055	112STJ	N/A
X	St. Marys	1/1/94	12/31/96	x	x	x
146	Sterling	4/1/15		48-6016934	112STE	150123658
147	Stockton	4/1/02		48-6015193	112STO	150180228
148	Sylvan Grove	4/1/12		48-0620368	112SYL	N/A
149	Tampa	4/1/06		48-0963951	112TAM	150513715
150	Tescott	4/1/95		48-0691795	112TES	150478828
151	Tipton	7/27/01		48-6022632	112TIP	150570077
152	Tonganoxie	4/1/97		48-6035159	112TON	150173922
X	Treece*	7/13/98	8/1/11	48-6042419	112TRE	150570085
153	Turon	9/10/95		48-6017057	112TUR	150458250
154	Ulysses	3/31/95		48-6009871	112ULY	150124018
155	Valley Center	4/15/94		48-6004786	112VAL	150143896
X	Valley Falls	5/1/13	4/1/15	48-6035234	112VAF	150184207
156	WaKeeney	4/1/03		48-6011299	112WKE	150182646
157	Wakefield	1/1/95		48-6024605	112WAK	150314984
158	Walton	4/1/94		48-0722471	112WAL	150457610
159	Wamego	1/1/94		48-6024658	112WAM	150120470
160	Wellington	4/1/95		48-6006451	112WEL	150124220
161	Wellsville	3/31/01		48-6038732	112WLV	150215462
162	Westwood	7/1/12		48-6084600	112WES	150145880

X=no longer a member

* no longer a city (un-incorporated in 2011)

**not in LKM for 15 months