

# **KANSAS WORKERS COMPENSATION FUND**

*YEAR END REPORT*

*FY 2015*



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*Commissioner of Insurance*

I. **General Overview**

The Kansas Workers Compensation Fund (“Fund”) was established in 1993 when the legislature made sweeping changes to the workers compensation laws. The 1993 changes abolished the Kansas Second Injury Fund. The Kansas Workers Compensation Fund retained the liability for existing claims of the old Kansas Second Injury Fund. In addition to the old claims, the Kansas Workers Compensation Fund was and is made liable for cases in which an employer does not carry workers compensation insurance and is financially unable to pay these claims. Additionally, the Fund is liable for Director’s Certifications, which are reimbursements to insurance carriers or employers in cases in which there has been an over-payment of benefits to a claimant for one of a number of reasons such as fraud, mistake, or failure to prove a case.

**a. Second Injury Fund: Old Liability, Old Laws**

The purpose behind the now dissolved Second Injury Fund was to incentivize employers to hire people with previous injuries or disabilities. Employers were hesitant, and rationally so, to hire someone with a previous injury because that employee had a greater risk of a second injury.

The Second Injury Fund would be partially or fully liable for the claims of an injured employee if the employer could establish that it hired or retained a handicapped employee (a person who had a pre-existing injury) after acquiring knowledge of the preexisting handicap or upon a finding that the employee intentionally misrepresented the existence of the handicap and the employer hired them without knowledge of that handicap.

**b. Workers Compensation Fund: Insolvent/Uninsured Employer, Current Law**

In 1993, the Second Injury Fund was dissolved and the Workers Compensation Fund was put in its place. The new Fund assumed all the liability for the Second Injury Fund cases. This represented a significant policy shift. No longer would the Fund be used to incentivize employers to hire previously

injured employees, now the Fund is impleaded into a case where an injured workers employer is uninsured and unable to pay for the medical and disability payments or, in some cases, cannot be located.

Impleading the Fund into a case does not automatically require the Fund to begin making payments. The Fund will essentially step into the shoes of the employer. If an administrative law judge (ALJ) finds that the injury is compensable, that the employer was uninsured at the time of the accident, and that the employer is currently unable to pay for the medical care and compensation related to the injury, then the Fund, upon order from the court, will make payments as if they were the employer or insurance carrier. The Fund may then seek reimbursement from the employer in the form of a lump sum or payment plan.

**c. Reimbursement: Director Certifications**

Authority for Director Certifications is given pursuant to K.S.A. §44-556(d). This statute states, in pertinent part, that if compensation is paid by the employer or the employer's insurance carrier and after a full hearing it is determined that the amount of compensation paid was greater than the amount the employee is entitled the employer or the employer's insurance carrier shall be reimbursed by the Workers Compensation Fund.

The Director of Workers Compensation ("Director") must certify the amount of overpayment after a request has been made by the employer or employer's insurance carrier. The Director has discretion only to the amount of overpayment that will be certified, not to the validity of the certification request. Once a claim has been certified, the Director will send notice to the Fund that reimbursement should be issued and the Fund must immediately make payment. The Fund is not usually impleaded into the underlying case but retains liability for the overpayment.

II. **New Federal Medicare and ADA Requirements Affecting the Fund**

The federal Medicare program that pays for health care costs provided to individuals age 65 and older, disabled individuals, and individuals with permanent kidney failure is aggressively enforcing the Medicare as Secondary Payer (MSP) provisions of 42 U.S.C.A. 1395y by using Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA Section 111). The purpose of the MMSEA Section 111 reporting requirements is to enable the Center for Medicare and Medicaid services (CMS) to pay appropriate charges for Medicare covered items and services furnished to Medicare beneficiaries by determining primary versus secondary payer responsibility and requiring financial responsibility by primary payers as necessary.

In cases where Medicare has paid for medical services for workers injured on the job or suffering on occupational illness, Medicare will seek to charge back those expenses to compensable providers, including workers compensation plans such as the Fund.

The Kansas Workers Compensation Fund, as a Responsible Reporting Entity (RRE) under MMSEA Section 111, is subject to the reporting requirements specified by 42 U.S.C.A. 1395y. RRE's are required to electronically submit specific information on Medicare beneficiaries, that the Fund has a medical responsibility for, to the Secretary of Health and Human Services (HHS) in a form and frequency specified by the Secretary.

To date, the Department of Insurance has met the initial request for data by CMS in compliance with the MMSEA Section 111, 2007 Act. Receipt of the data has been acknowledged. This year's data submission identified 162 Medicare beneficiaries that the Fund has either a current or permanent obligation to provide medical services for work related accidents or injuries. Of these, only one was from a claim arising in 2015.

As stated above, there have been administrative and personnel costs associated with these reporting requirements. After the initial data mining and transfer of reportable data points there will be a continuing need to input data on each case as it comes in. Further, there will need to be a review of all remaining cases where there is permanent continuing medical care responsibility by the Fund and ensure that the data base contains the appropriate information so that when or if they become Medicare beneficiaries the case information can be reported. Failure to report accurately or timely may subject the Fund to fines of \$1,000 per day per case and double reimbursement of any funds Medicare has improperly paid out.

### III. **Financial**

The Kansas Workers Compensation Fund is fully funded by assessments to self-insurers, insurance carriers, and group funded pools. The yearly assessment is based on the carrier's paid losses in Kansas workers compensation cases from the prior year. Some additional money comes to the Fund from reimbursements from uninsured employers as well as fines collected by the Division of Workers Compensation against uninsured employers.

The Fund has three basic sources of liabilities under the Kansas Workers Compensation Act: 1) liability assumed by the Workers Compensation Fund for Second Injury Cases when the Second Injury Fund was eliminated in 1993; 2) Insolvent/uninsured employer cases; and 3) Reimbursement to employers on an overpayment of benefits. The following data provides financial information regarding the Fund since FY 2005.

## Financial Statistics

### Receipt Analysis

#### FY 2015 (July 2014-June 2015)

Assessment Receipts	\$ 7,169,682.03
Gen. Fund Entitlement	\$ -
Fine & Penalties Receipts	\$ 209,038.29
Misc. Reimbursements	\$ 411,632.56
<b>TOTAL RECEIPTS</b>	<b>\$ 7,790,352.88</b>
Previous Year Carryover	\$ 6,185,611.77
LEGISLATIVE SWEEP	\$ -
<b>TOTAL FUNDS AVAILABLE</b>	<b>\$ 13,975,964.65</b>
<b>TOTAL END BALANCE</b>	<b>\$ 10,360,511.77</b>

### Receipt Analysis

#### FY 2014 (July 2013-June 2014)

Assessment Receipts	\$ 5,053,571.42
Gen. Fund Entitlement	\$ -
Fine & Penalties Receipts	\$ 202,052.59
Misc. Reimbursements	\$ 166,453.29
<b>TOTAL RECEIPTS</b>	<b>\$ 5,422,077.30</b>
Previous Year Carryover	\$ 7,373,498.70
LEGISLATIVE SWEEP	\$ -
<b>TOTAL FUNDS AVAILABLE</b>	<b>\$ 12,795,576.00</b>
<b>TOTAL END BALANCE</b>	<b>\$ 6,185,611.77</b>

### Receipt Analysis

#### FY 2013 (July 2012-June 2013)

Assessment Receipts	\$ 1,434,289.17
Gen. Fund Entitlement	\$ -
Fine & Penalties Receipts	\$ 104,054.15
Misc. Reimbursements	\$ 31,075.71
<b>TOTAL RECEIPTS</b>	<b>\$ 1,569,419.03</b>
Previous Year Carryover	\$ 9,448,671.30
LEGISLATIVE SWEEP	\$ -
<b>TOTAL FUNDS AVAILABLE</b>	<b>\$ 11,018,090.33</b>
<b>TOTAL END BALANCE</b>	<b>\$ 7,373,498.70</b>

### Receipt Analysis

#### FY 2012 (July 2011-June 2012)

Assessment Receipts	\$ 4,749,672.29
Gen. Fund Entitlement	\$ -
Fine & Penalties Receipts	\$ 181,833.62
Misc. Reimbursements	\$ 103,412.30
<b>TOTAL RECEIPTS</b>	<b>\$ 5,034,918.21</b>
Previous Year Carryover	\$ 9,072,223.97
LEGISLATIVE SWEEP	\$ -
<b>TOTAL FUNDS AVAILABLE</b>	<b>\$ 14,107,142.18</b>
<b>TOTAL END BALANCE</b>	<b>\$ 9,448,671.30</b>

### Disbursement of Expenditures

#### FY 2015

Administrative Costs	\$ 29,235.91
Compensation Costs	\$ 997,289.88
Vocational Rehabilitation	\$ 7,700.58
Medical Costs	\$ 2,172,728.84
Other Operating Costs	\$ 187,672.87
Attorney Fee Expenses	\$ 220,809.94
<b>TOTAL EXPENDITURES</b>	<b>\$ 3,615,438.02</b>
Total New Insolvent Cases	62
Total New Reimbursement Cases	45
Total Open Cases	3,940

### Disbursement of Expenditures

#### FY 2014

Administrative Costs	\$ 38,537.17
Compensation Costs	\$ 1,755,540.58
Vocational Rehabilitation	\$ 8,047.33
Medical Costs	\$ 4,193,231.69
Other Operating Costs	\$ 374,596.72
Attorney Fee Expenses	\$ 248,200.61
<b>TOTAL EXPENDITURES</b>	<b>\$ 6,618,154.10</b>
Total New Insolvent Cases	59
Total New Reimbursement Cases	54
Total Open Cases	3,914

### Disbursement of Expenditures

#### FY 2013

Administrative Costs	\$ 38,661.29
Compensation Costs	\$ 1,246,438.22
Vocational Rehabilitation	\$ 7,705.86
Medical Costs	\$ 1,877,535.35
Other Operating Costs	\$ 176,853.79
Attorney Fee Expenses	\$ 276,162.88
<b>TOTAL EXPENDITURES</b>	<b>\$ 3,623,357.39</b>
Total New Insolvent Cases	75
Total New Reimbursement Cases	25
Total Open Cases	3,866

### Disbursement of Expenditures

#### FY 2012

Administrative Costs	\$ 42,610.75
Compensation Costs	\$ 1,296,657.62
Vocational Rehabilitation	\$ 18,129.43
Medical Costs	\$ 2,762,428.47
Other Operating Costs	\$ 231,213.74
Attorney Fee Expenses	\$ 294,363.16
<b>TOTAL EXPENDITURES</b>	<b>\$ 4,645,403.17</b>
Total New Insolvent Cases	74
Total New Reimbursement Cases	35
Total Open Cases	3,853

**Receipt Analysis****FY 2011 (July 2010-June 2011)**

Assessment Receipts	\$ 8,768,448.24
Gen. Fund Entitlement	\$ -
Fine & Penalties Receipts	\$ 236,023.02
Misc. Reimbursements	\$ 65,394.53
TOTAL RECEIPTS	\$ 9,069,865.79
Previous Year Carryover	\$ 5,154,857.39
LEGISLATIVE SWEEP	\$ -
TOTAL FUNDS AVAILABLE	\$ 14,224,723.18
TOTAL END BALANCE	\$ 9,072,223.97

**Receipt Analysis****FY 2010 (July 2009-June 2010)**

Assessment Receipts	\$ 2,913,157.56
Gen. Fund Entitlement	\$ -
Fine & Penalties Receipts	\$ 235,227.10
Misc. Reimbursements	\$ 106,071.65
TOTAL RECEIPTS	\$ 3,254,456.31
Previous Year Carryover	\$ 6,406,717.68
LEGISLATIVE SWEEP	\$ -
TOTAL FUNDS AVAILABLE	\$ 9,661,173.99
TOTAL END BALANCE	\$ 5,154,857.39

**FY 2009 (July 2008-June 2009)**

Assessment Receipts	\$ 3,781,389.04
Gen. Fund Entitlement	\$ -
Fine & Penalties Receipts	\$ 267,504.32
Misc. Reimbursements	\$ 29,248.28
TOTAL RECEIPTS	\$ 4,078,141.67
Previous Year Carryover	\$ 9,122,783.87
LEGISLATIVE SWEEP	\$ (2,355,000.00)
TOTAL FUNDS AVAILABLE	\$ 10,865,925.54
TOTAL END BALANCE	\$ 6,406,717.68

**FY 2008 (July 2007-June 2008)**

Assessment Receipts	\$ 5,259,038.44
Gen. Fund Entitlement	\$ -
Fine & Penalties Receipts	\$ 249,091.14
Misc. Reimbursements	\$ 124,250.09
TOTAL RECEIPTS	\$ 5,632,379.67
Previous Year Carryover & Canceled Checks	\$ 7,452,736.54
TOTAL FUNDS AVAILABLE	\$ 13,085,116.21
TOTAL END BALANCE	\$ 9,122,783.87

**Disbursement of Expenditures****FY 2011**

Administrative Costs	\$ 46,149.67
Compensation Costs	\$ 1,864,289.41
Vocational Rehabilitation	\$ 15,749.48
Medical Costs	\$ 2,697,007.59
Other Operating Costs	\$ 202,809.58
Attorney Fee Expenses	\$ 323,057.68
TOTAL EXPENDITURES	\$ 5,149,063.41
Total New Insolvent Cases	65
Total New Reimbursement Cases	35
Total Open Cases	3,809

**Disbursement of Expenditures****FY 2010**

Administrative Costs	\$ 36,715.19
Compensation Costs	\$ 1,574,469.76
Vocational Rehabilitation	\$ 24,466.46
Medical Costs	\$ 2,283,451.37
Other Operating Costs	\$ 287,796.15
Attorney Fee Expenses	\$ 298,113.67
TOTAL EXPENDITURES	\$ 4,505,012.60
Total New Insolvent Cases	57
Total New Reimbursement Cases	24
Total Open Cases	3,779

**FY 2009**

Administrative Costs	\$ 49,378.25
Compensation Costs	\$ 1,427,872.73
Vocational Rehabilitation	\$ 19,865.48
Medical Costs	\$ 2,333,303.00
Other Operating Costs	\$ 279,431.90
Attorney Fee Expenses	\$ 320,001.24
TOTAL EXPENDITURES	\$ 4,429,852.60
Total New Insolvent Cases	78
Total New Reimbursement Cases	15
Total Open Cases	3,991

**FY 2008**

Administrative Costs	\$ 59,807.36
Compensation Costs	\$ 1,842,295.56
Vocational Rehabilitation	\$ 6,712.26
Medical Costs	\$ 2,420,342.32
Other Operating Costs	\$ 279,968.91
Attorney Fee Expenses	\$ 353,101.68
TOTAL EXPENDITURES	\$ 4,962,228.09
Total New Insolvent Cases	77
Total New Reimbursement Cases	29
Total Open Cases	3,943

**FY 2007 (July 2006-June 2007)**

Assessment Receipts	\$ 7,252,927.46
Gen. Fund Entitlement	\$ -
Fine & Penalties Receipts	\$ 142,312.50
Misc. Reimbursements	\$ 28,812.48
TOTAL RECEIPTS	\$ 7,424,052.44
Previous Year Carryover & Canceled Checks	\$ 3,133,513.75
TOTAL FUNDS AVAILABLE	\$ 10,557,566.19
TOTAL END BALANCE	\$ 7,452,736.54

**FY 2006 (July 2005-June 2006)**

Assessment Receipts	\$ 1,002,540.02
Gen. Fund Entitlement	\$ -
Fine & Penalties Receipts	\$ 179,013.56
Misc. Reimbursements	\$ 29,095.97
TOTAL RECEIPTS	\$ 1,210,649.55
Previous Year Carryover & Canceled Checks	\$ 6,511,405.78
TOTAL FUNDS AVAILABLE	\$ 7,722,055.33
TOTAL END BALANCE	\$ 3,133,513.75

**FY 2005 (July 2004-June 2005)**

Assessment Receipts	\$ 3,333,049.45
Gen. Fund Entitlement	\$ -
Fine & Penalties Receipts	\$ 131,114.75
Misc. Reimbursements	\$ 62,906.49
TOTAL RECEIPTS	\$ 3,527,070.69
Previous Year Carryover & Canceled Checks	\$ 5,938,026.18
TOTAL FUNDS AVAILABLE	\$ 9,465,026.18
TOTAL END BALANCE	\$ 6,511,405.78

**FY 2007**

Administrative Costs	\$ 47,601.52
Compensation Costs	\$ 1,534,873.20
Vocational Rehabilitation	\$ 709.20
Medical Costs	\$ 1,964,288.77
Other Operating Costs	\$ 242,072.30
Attorney Fee Expenses	\$ 316,937.60
TOTAL EXPENDITURES	\$ 4,106,482.59
Total New Insolvent Cases	86
Total New Reimbursement Cases	29
Total Open Cases	3,893

**FY 2006**

Administrative Costs	\$ 45,284.24
Compensation Costs	\$ 1,663,575.37
Vocational Rehabilitation	\$ 2,981.19
Medical Costs	\$ 2,324,980.49
Other Operating Costs	\$ 258,716.64
Attorney Fee Expenses	\$ 301,517.71
TOTAL EXPENDITURES	\$ 4,597,055.64
Total New Insolvent Cases	99
Total New Reimbursement Cases	28
Total Open Cases	3,843

**FY 2005**

Administrative Costs	\$ 43,259.68
Compensation Costs	\$ 1,106,766.70
Vocational Rehabilitation	\$ 5,305.28
Medical Costs	\$ 1,225,488.76
Other Operating Costs	\$ 256,078.68
Attorney Fee Expenses	\$ 297,599.49
TOTAL EXPENDITURES	\$ 2,934,498.59
Total New Insolvent Cases	93
Total New Reimbursement Cases	23
Total Open Cases	3,763

**a. Liabilities****i. Insolvent Employer's Cases**

From FY 2005 to FY 2009 the Fund experienced a steady increase in the number of open cases. This is due to the fact that there are fewer old second injury cases that are being closed out by settlement as well as more complicated cases in the uninsured employer realm remaining open. These cases were not closing out quickly due to issues with bankruptcy courts and attempts to obtain



reimbursements from employers or third parties. By FY 2010 most of these cases were resolved and the Fund saw a significant decrease in the number of open cases.

**Open case statistics**

Fiscal Year	Open Cases at End of FY	% Change from prior YR	New Cases Opened in FY	% Change from prior YR	Cases Closed at End of FY	% Change from Prior YR
FY 2005	3763	+ .67%	116	-	65	-
FY 2006	3843	+2.08%	127	+ 9.48%	49	-24.62%
FY 2007	3893	+1.28%	115	- 9.45%	71	+44.90%
FY 2008	3943	+1.27%	106	-7.83%	55	-2.53%
FY 2009	3991	+1.22%	93	-12.26%	44	-20%
FY 2010	3779	-5.31%	82	11.83%	303	+588.63%
FY 2011	3809	+7.9%	100	21.95%	72	-76.24%
FY 2012	3853	+1.15%	109	+9%	74	+2.78%
FY 2013	3866	>+.01%	78	-28.44%	63	-14.86%
FY 2014	3914	>+0.013%	113	44.87%	68	+7.94%
FY 2015 <sup>1</sup>	3940	>+0.007%	107	-5.31%	85	+25%

**1. Compensation and Medical Expenditures**

Due to the unpredictable nature of workplace injuries no statistical trends can be gathered for total compensation and medical expenditures paid in the last ten years. Large spikes are usually attributable to one or more abnormally large claim(s) or Director Certification(s). However, the Fund is committed to weeding out dishonest and potentially costly claims in order to decrease total compensation and medical costs.

**Case Liabilities**

Fiscal Year	Total Compensation Paid	% Increase or Decrease from Prior FY	Total Medical Expenditures Paid	% Increase or Decrease from Prior FY
FY 2005	\$1,106,766.77	-25.21%	\$1,225,488.76	19.32%
FY 2006	\$ 1,663,575.37	+50.31%	\$2,324,980.49	90.03%
FY 2007	\$ 1,534,873.20	-7.74%	\$1,964,288.77	15.66%
FY 2008	\$ 1,842,295.56	+20.03%	\$2,420,342.32	23.22%
FY 2009	\$ 1,427,872.73	-22.49%	\$2,333,303.00	3.60%
FY 2010	\$ 1,574,469.76	+10.27%	\$2,283,451.37	2.14%
FY 2011	\$ 1,864,289.41	+18.4%	\$2,697,007.59	18.11%
FY 2012	\$ 1,296,657.62	-30.0%	\$2,762,428.47	+4.5%
FY 2013	\$ 1,246,438.22	-3.74%	\$1,880,585.35	-33.8%
FY 2014	\$ 1,755,540.58	+40.55%	\$4,193,231.69	+122.8%
FY 2015	\$997,289.88	-56.81%	\$2,172,728.84	-45.15%

<sup>1</sup> FY 2015 ran from July 1, 2014- June 30, 2015.

## 2. Attorney Fees

The Fund has steadily decreased the amount of money spent on attorney fees since its height in 2008. The Fund is dedicated to continuing this trend and has implemented new measures to increase oversight over attorney productivity and efficiency. (For more information see section (V)).

### *Dollars of compensation paid per dollar of attorney fees*

Fiscal Year	Attorney Hours Paid <sup>2</sup>	Fund Attorney Fees Paid	Claimant Attorney Fees Paid
FY 2005	3,501	\$ 297,599.49	\$ 0.00
FY 2006	3,532	\$ 300,255.21	\$ 1,262.50
FY 2007	3,605	\$ 312,114.05	\$ 4,823.55
FY 2008	4,119	\$ 350,151.68	\$ 2,950.00
FY 2009	3,606	\$ 306,533.60	\$ 13,467.64
FY 2010	3,492	\$ 296,820.32	\$ 1,293.35
FY 2011	3,710	\$ 315,343.59	\$ 7,714.09
FY 2012	3,217	\$ 273,517.35	\$ 20,845.81
FY 2013	3,248	\$ 265,442.78	\$ 10,720.10
FY 2014	2,920	\$ 242,601.98	\$ 5,598.63
FY 2015 <sup>3</sup>	2,598	\$ 212,714.94	\$ 8,095.00

### ii. Director Certifications

As stated above, Director Certifications represent the Fund's obligation to reimburse an insurance carrier/employer for money expended during a workers compensation case that should not have been paid for a variety of reasons. These reasons include fraud by the claimant, overpayment of benefits, and failure for a claim to be proven.

The number of Director Certifications has continued to rise since 2005, with one abnormal year occurring in 2009. In 2014 the Fund received a record 58 Director Certifications, which was a major contributing factor to the spike in 2014 expenditures seen on page 7. The Fund is currently conducting an investigation into how to curve this trend.

<sup>2</sup> Attorney hours paid includes not only attorney hours worked, but also paralegal assistants paid at a rate of \$30 per hour.

<sup>3</sup> FY 2015 ran from July 1, 2014- June 30, 2015.

<b>Director Certifications</b>
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<i>Fiscal Year</i>	<i>Amount Paid</i>	<i>Number of Certifications</i>
FY 2005	\$460,335.59	23
FY 2006	\$1,105,822.81	28
FY 2007	\$812,400.71	27
FY 2008	\$734,295.99	29
FY 2009	\$763,208.17	15
FY 2010	\$945,350.66	24
FY 2011	\$983,789.84*	35
FY 2012	\$1,053,223.15	35
FY 2013	\$906,437.06	30
FY 2014	\$2,820,111.93	58
FY 2015 <sup>4</sup>	\$1,288,238.71	45

**iii. Future Liabilities**

Pursuant to legislation enacted July 1, 1993, the Kansas Workers Compensation Fund has no liability for any dates of accident after July 1, 1994, in the second injury category of coverage. The Fund remains liable for uninsured/insolvent employers and reimbursement cases, and as previously noted, for continuing liability of pre-July 1, 1994 Second Injury Fund cases.

Madison Consulting Group, Inc. was retained by the Kansas Insurance Department during the spring of 2015 to conduct an audit of the Workers Compensation Fund, which is attached hereto. This audit updated the previous audit, which was performed in 2003. Essentially as of June 2015, the estimated unpaid loss of the Fund \$ 27,660,308<sup>5</sup>, with the estimated payouts of future incurred claims (through the year 2025) at 73,770,253.<sup>6</sup> However, it is impossible to exact a number which calculates the true liability of the Kansas Workers Compensation Fund. This is due to the unpredictable nature of work place injuries.

<sup>4</sup> FY 2015 ran from July 1, 2014- June 30, 2015.

<sup>5</sup> This number is the best estimate. Additional probability levels are located on page 17 of the Madison Consulting Group Actuarial Analysis conducted in June of 2015, attached hereto.

<sup>6</sup> This number is the best estimate. Additional probability levels can be located on pages 19-23 of the Madison Consulting Group Actuarial Analysis conducted in June of 2015, attached hereto.

**b. Sources to Replenish the Fund**

**i. Assessment (Insert Data on Assessments)**

Pursuant to K.S.A. § 44-566a, the assessment of self-insurers, insurance carriers, and group funded pools is due every year on July 1. The rate of the assessment should be “equal to the amount sufficient, in the opinion of the commissioner of insurance, to pay all amounts, including attorney fees and costs, which may be required to be paid from such fund during the current fiscal year.” K.S.A. § 44-566a. In FY 2015, the assessment was for .75% of all paid losses of the above mentioned groups. A paid loss is essentially the amount of money expended to pay claims by one of the aforementioned groups in a fiscal year.

<b>Assessments</b>			
<b>Fiscal Year</b>	<b>Number of Assessed Entities</b>	<b>Assessment Rate</b>	<b>Amount Assessed</b>
FY 2005	507	1.00%	\$3,985,504
FY 2006	495	1.00%	\$4,037,483
FY 2007	510	None	NONE
FY 2008	506	2.00%	\$8,118,886
FY 2009	501	1.15%	\$4,808,482
FY 2010	502	1.00%	\$4,290,288
FY 2011	503	.75%	\$3,308,576
FY 2012	468	2.00%	\$9,344,294
FY 2013	479	.75%	\$3,537,409
FY 2014	477	.25%	\$1,150,543
FY 2015	477	2.25%	\$9,657,729
FY 2016 <sup>7</sup>	471	.75%	\$3,184,806

**ii. Reimbursement from Employers**

The Fund has the right to be reimbursed for all of the money expended on behalf of an uninsured employer in the course of litigation of a case. The Fund always seeks to obtain reimbursement from the uninsured employer. Fund attorneys attempt to enter into voluntary

<sup>7</sup> FY 2016 runs from July 1, 2015- June 30, 2016. The Assessment was conducted May 1, 2015.

reimbursement agreements and promissory notes with the employers at any stage of the case. If by the end of the case an employer refuses to enter into an agreement, the Fund attorney will proceed with a civil action against the employer. Unfortunately at this stage, many of the employers have entered into bankruptcy proceedings and under existing law the Fund is barred from suing the employer for reimbursement of the monies expended on their behalf. Since FY 2005, the Fund has collected over \$1,153,578.64 in reimbursements. Going into the future, the Fund will double its efforts to seek reimbursement from employers.

<b><i>Reimbursement Collected from Employers</i></b>	
<b><i>Fiscal Year</i></b>	<b><i>Amount of Reimbursement</i></b>
FY 2005	\$62,906.49
FY 2006	\$29,095.97
FY 2007	\$28,812.48
FY 2008	\$124,250.09
FY 2009	\$29,248.28
FY 2010	\$101,296.94
FY 2011	\$65,394.53
FY 2012	\$103,412.30
FY 2013	\$31,075.71
FY 2014	\$166,453.29
FY 2015 <sup>8</sup>	\$411,632.56

**iii. Fraud and Abuse by Employers**

K.S.A. §44-505 provides that every employer with “a total gross annual payroll for the proceeding calendar year of not more than \$20,000 for all employees and wherein the employer reasonably estimates that such employer will not have a total gross annual payroll for the current calendar year of more than \$20,000”<sup>9</sup> is subject to the Workers Compensation Act. All employers who are subject to the act must obtain workers compensation insurance, qualify as self-insured or belong to a qualified group funded pool under K.S.A §44-532(b). If an employer knowingly fails to secure payment of workers

<sup>8</sup> FY 2015 ran from July 1, 2014- June 30, 2015.

<sup>9</sup> No wages paid to an employee who is a member of the employer’s family by marriage or consanguinity shall be included as part of the total gross annual payroll. Additionally, all employment in agricultural pursuits, all firemen who are members of any fireman’s relief association and qualified real estate agents as independent contractors fall under the Act.

compensation through one of these three methods the Director of the Division of Workers Compensation may assess a civil penalty in the amount equal to twice the annual premium the employer would have paid had such employer been insured or \$25,000, whichever amount is greater. See K.S.A §44-532(d). All moneys received shall be credited back to the Workers Compensation Fund. In order to assist in the fight against this type of abuse, the Fund has and will continue to notify the Division of Workers Compensation about possible fraud and abuse and provide whatever assistance the Division requires in their investigation of these claims.

<b><i>Section 44-532 Fines Deposited with Fund</i></b>	
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<b>Fiscal Year</b>	<b>Amount of Deposited</b>
FY 2005	\$131,144.75
FY 2006	\$179,013.56
FY 2007	\$142,312.50
FY 2008	\$249,091.14
FY 2009	\$267,504.35
FY 2010	\$235,627.10
FY 2011	\$236,023.02
FY 2012	\$181,833.62
FY 2013	\$104,054.15
FY 2014	\$202,052.59
FY 2015 <sup>10</sup>	\$209,038.29

**IV. Ways the WCF is Reducing Claim and Operational Costs**

- a. Reviewing Attorney Bills Closely.** In order to keep the claim and operational costs of the Fund low, all Attorney bills are systematically reviewed by fund staff at the Kansas Insurance Department and an annual audit is completed. The Fund pays a flat rate hourly fee of \$105.00 to all outside counsel to handle its cases.
- b. Increasing Electronic Communication.** The Department of Insurance is in the process of developing a website connected to its Intranet Website that is password controlled. This website will be used to easily exchange information such as billing guidelines, copies of

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<sup>10</sup> FY 2015 ran from July 1, 2014- June 30, 2015.

important forms and suggested medical providers in each geographical area. Increasing the ease of access to this information will improve our Fund Attorneys efficiency and decrease the number of billable hours. The attorneys are also encouraged to reduce mailing and communication costs by using e-mail. The use of email for communication speeds the resolution of issues as they arise, decreases mailing costs and reduces the processing times for medical billing.

**c. Reviewing Medical Bills Closely.** The Fund's staff, as well as each individual attorney carefully reviews all medical bills for accuracy and appropriateness to ensure that medical billings are for the provision of medical treatment related to the work related illness or injury.

**d. Increasing Attorney/Case Oversight.** The Fund recently implemented new monthly status update requirements has begun to attend periodic hearings so that the Fund is always advised of the case progress, the prospects for reimbursement, when settlements should be offered and when a case should be appealed. Increasing oversight over the Fund Attorneys should improve the efficiency and performance.

## V. **Conclusion**

It is the Fund's position that the Workers Compensation Fund should continue to operate within the State of Kansas and that the Workers Compensation Act should not be amended at this time.

The Commissioner of Insurance has been and will continue to be committed to improving the administration of the Kansas Workers Compensation Fund in all areas of concern.