

# KANSAS WORKERS COMPENSATION FUND

*FY 2022  
YEAR END REPORT*



KANSAS  
**INSURANCE**  
DEPARTMENT

***Vicki Schmidt***  
*Commissioner of Insurance*



# KANSAS INSURANCE DEPARTMENT

*Vicki Schmidt, Commissioner*

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Kansas State Capitol  
300 SW 10<sup>th</sup> Street  
Topeka, Kansas 66612

Members of the Committee:

I am pleased to present to you the FY 2022 Annual Report of the Kansas Workers Compensation Fund (“Fund”). This report summarizes the activities of the Fund for the last five fiscal years through the period ending June 30, 2022. Years prior to FY 2018 are available upon request.

Pursuant to K.S.A § 44-566a(h), this report includes recommendations about the advisability of continuation or termination of the Workers Compensation Fund, suggested changes to the Workers Compensation Act relating to the Fund, an analysis on any changes in the Federal Americans with Disabilities Act that would impact the Fund, and recommendations on ways to reduce the claim and operational costs of the Fund.

As an overview, I propose the following recommendations:

1. The Fund should continue to provide benefits as provided by law.
2. The Fund recommends the Workers Compensation Act should be reviewed to determine if the Fund should provide reimbursements to employers seeking dismissal under K.S.A. § 44-523(f) when there has been no finding of an overpayment of benefits.
3. There is no direct impact on the Fund this year from the Americans with Disabilities Act or the Amendments of 2009.
4. Partnerships with outside vendors should continue in order to realize efficiencies; and
5. New strategies with Fund attorneys should continue to be developed to decrease costs and overall liabilities.

A more detailed analysis of these recommendations is included in the following report. Upon further review, if you have questions or concerns, please do not hesitate to contact me personally at [KID.Commissioner@ks.gov](mailto:KID.Commissioner@ks.gov) or at 785-291-3299.

Sincerely,

Vicki Schmidt  
Commissioner of Insurance

## **I. General Overview**

The Kansas Workers Compensation Fund (“Fund”) was established in 1993 when the Legislature amended Kansas workers compensation laws. The 1993 changes abolished the Kansas Second Injury Fund. However, the Fund retained the liability for the existing Kansas Second Injury Fund cases. The Fund is also liable for cases in which an employer does not carry workers compensation insurance and is financially unable to pay for work injuries to its employees. The Fund is also liable for Director Certifications, which are reimbursements to insurance carriers or employers in cases when there has been an overpayment of benefits to a claimant for reasons such as fraud or mistake, or when a claim is found to be not compensable. An analysis of the liability for each of these claims is detailed below.

### **a. Second Injury Fund**

The purpose behind the now dissolved Second Injury Fund was to incentivize employers to hire people with previous injuries or disabilities. Employers were understandably hesitant to hire someone with a previous injury because of the risk that the employee will suffer a second injury.

The Second Injury Fund was held partially or fully liable for claims if the employer could establish that it knowingly hired or retained a previously injured employee with knowledge of the preexisting injury, or when the employee intentionally misrepresented the existence of a preexisting injury, and the employer hired them without knowledge of that condition. The Fund still maintains cases from this period.

### **b. Workers Compensation Fund**

The 1993 legislative changes represented a significant policy shift. The Fund is no longer used to incentivize employers to hire previously injured employees. Instead, the Fund is now brought into a case (impleaded) when an injured worker’s employer is uninsured and unable to pay for the medical and disability payments or, in some cases, cannot be located.

The Fund essentially steps into the shoes of the employer when impleaded. If an Administrative Law Judge (ALJ) finds the injury is compensable, the employer was uninsured at the time of the accident, and the employer is unable to pay expenses related to the injury, the ALJ will order the Fund to begin making payments to the claimant for disability payments (for lost wages and loss of function) and to medical providers for medical treatment. Pursuant to K.S.A. §44-532a(b) (2021), the Fund may seek reimbursement from the employer, in some cases, in a separate civil action with the District Court.

## **II. Federal Medicare and Americans with Disabilities Act Requirements affecting the Fund**

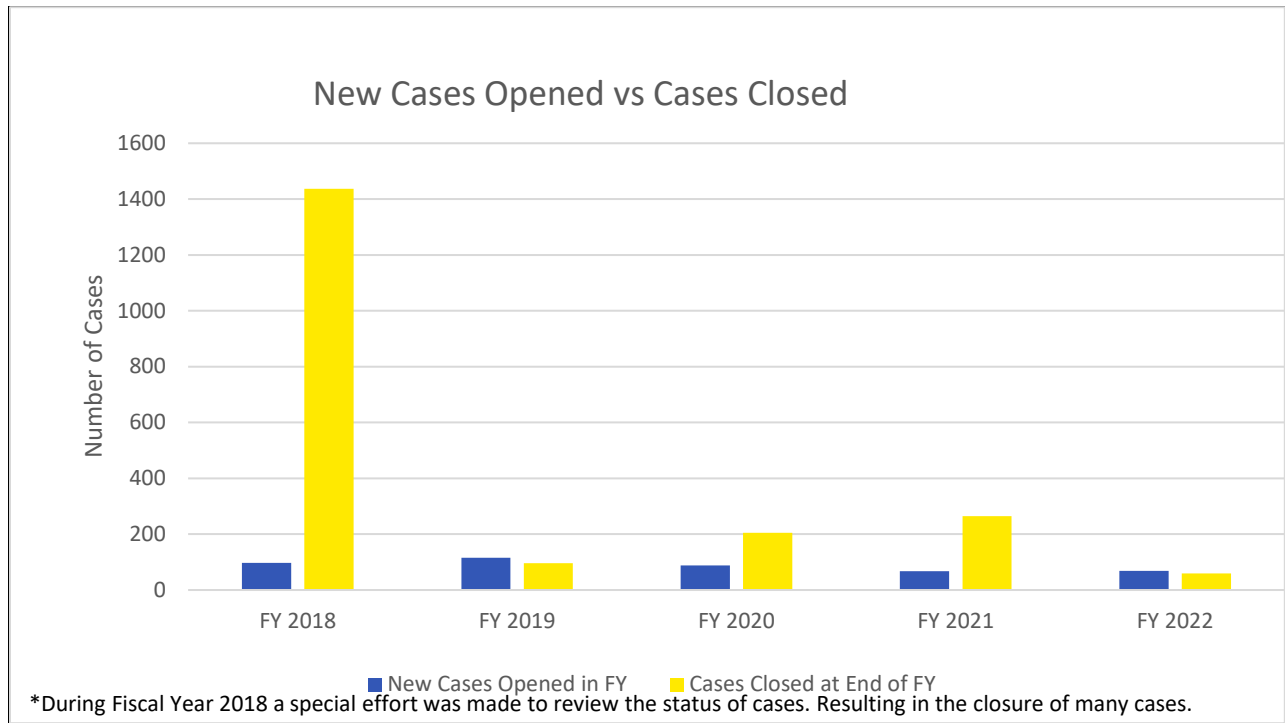
In instances where Medicare inadvertently pays for medical treatment related to an injury under the Workers Compensation Act, Medicare will seek reimbursement from the primary payer. The Fund is required by 42 U.S.C.A. 1395y to report claims where the injured employee is Medicare eligible to the Center for Medicare and Medicaid Services (CMS). The Fund met its reporting obligation and CMS has acknowledged receipt of the data. This year's data submission identified 221 Medicare beneficiaries for whom the Fund has either a current or a permanent obligation to provide medical services. Most of these cases are related to the old Second Injury Fund.

## **III. Case Information**

The Fund continues to work to close cases that have been dormant for more than 10 years. A total of 59 cases were closed in FY 2022 and open cases continue to be reviewed to identify inactive status to investigate possible closure. This continued focus on closing claims will decrease overall Fund liability in the coming years.

### **OPEN CASE STATISTICS**

<b>Fiscal Year</b>	<b>New Cases Opened in FY</b>	<b>% Change from prior FY</b>	<b>Cases Closed at End of FY</b>	<b>% Change from Prior FY</b>	<b>Open Cases at End of FY</b>	<b>% Change from prior FY</b>
FY 2018	97	+6.59%	1,437	+599.12%	1,920	-17.72%
FY 2019	116	+19.59%	96	+81.90%	1,948	1.46%
FY 2020	88	-24.14%	205	113.54%	1,837	-5.70%
FY 2021	67	-23.86%	264	28.78%	1,648	-10.29%
FY 2022	69	+2.99%	59	-77.65%	1,660	0.73%



#### IV. Financial

The Fund receives income from three sources: (1) assessments of workers compensation carriers, self-insurers, and group-funded pools (“carriers”); (2) reimbursements from uninsured employers and (3) fines levied against uninsured employers by the Kansas Department of Labor’s Division of Workers Compensation. Assessments are based on a carrier’s total paid losses for the prior year. Paid losses are the amount of money expended in the payment of claims for a carrier.

Fund liability results from three types of actions: 1) old second injury actions (pre-1993); 2) uninsured employer cases and 3) Director Certifications. These expenses are discussed in more detail below and listed in the following tables.

Receipt Analysis		Disbursement of Expenditures	
FY 2022 (July 2021-June 2022)		FY 2022	
Assessment Receipts	\$ 3,132,306.28	Court Costs	\$ 30,875.82
Gen. Fund Entitlement		Case Management	\$ 2,200.50
Fine & Penalties Receipts	\$ 198,416.29	Director's Certification	\$ 849,503.58
Misc. Reimbursements	<u>\$ 333,140.78</u>	Compensation Costs	\$ 1,136,739.09
TOTAL RECEIPTS	\$ 3,663,863.35	Medical Costs	\$ 506,569.71
LEGISLATIVE TRANSFER	\$	Other Operating Costs	\$ 205,893.23
Previous Year Carryover	\$ 6,118,298.72	Attorney Fee Expenses	\$ 233,836.86
LEGISLATIVE SWEEP		Accounts Payable	<u>\$</u>
TOTAL FUNDS AVAILABLE	\$ 9,782,162.07	TOTAL EXPENDITURES	\$ 2,965,618.79
<b>TOTAL END BALANCE</b>	<b>\$ 6,816,543.28</b>		

Receipt Analysis		Disbursement of Expenditures	
FY 2021 (July 2020 – June 2021)		FY 2021	
Assessment Receipts	\$ 2,931,249.24	Court Costs	\$ 88,110.32
Gen. Fund Entitlement		Case Management	\$ 3,190.00
Fine & Penalties Receipts	\$ 110,976.59	Director's Certification	\$ 1,008,432.85
Misc. Reimbursements	<u>\$ 251,125.05</u>	Compensation Costs	\$ 657,958.87
TOTAL RECEIPTS	\$ 3,293,350.88	Medical Costs	\$ 803,124.39
LEGISLATIVE TRANSFER		Other Operating Costs	\$ 277,727.56
Previous Year Carryover	\$ 5,987,626.85	Attorney Fee Expenses	\$ 324,144.09
LEGISLATIVE SWEEP		Accounts Payable	<u>\$ (9.07)</u>
TOTAL FUNDS AVAILABLE	\$ 9,280,977.73	TOTAL EXPENDITURES	\$ 3,162,679.01
<b>TOTAL END BALANCE</b>	<b>\$ 6,118,298.72</b>		

Receipt Analysis		Disbursement of Expenditures	
FY 2020 (July 2019-June 2020)		FY 2020	
Assessment Receipts	\$ 1,546,886.02	Court Costs	\$ 121,391.50
Gen. Fund Entitlement		Case Management	\$ 6,408.58
Fine & Penalties Receipts	\$ 96,929.15	Director's Certification	\$ 929,208.27
Misc. Reimbursements	<u>\$ 234,236.30</u>	Compensation Costs	\$ 868,702.24
TOTAL RECEIPTS	\$ 1,878,051.47	Medical Costs	\$ 1,130,251.02
LEGISLATIVE TRANSFER		Other Operating Costs	\$ 258,108.38
Previous Year Carryover	\$ 7,964,043.87	Attorney Fee Expenses	\$ 538,280.26
LEGISLATIVE SWEEP		Accounts Payable	<u>\$ 2,118.24</u>
TOTAL FUNDS AVAILABLE	\$ 9,842,095.34	TOTAL EXPENDITURES	\$ 3,854,468.49
<b>TOTAL END BALANCE</b>	<b>\$ 5,987,626.85</b>		

<b>Receipt Analysis</b>		<b>Disbursement of Expenditures</b>	
<b>FY 2019 (July 2018-June 2019)</b>		<b>FY 2019</b>	
Assessment Receipts	\$ 791,509.69	Court Costs	\$ 49,869.69
Gen. Fund Entitlement		Case Management	\$ 8,121.68
Fine & Penalties Receipts	\$ 113,632.33	Director's Certification	\$ 1,675,524.89
Misc. Reimbursements	\$ 103,389.63	Compensation Costs	\$ 721,531.90
<b>TOTAL RECEIPTS</b>	<b>\$ 1,008,531.65</b>	Medical Costs	\$ 530,235.49
LEGISLATIVE TRANSFER		Other Operating Costs	\$ 254,837.33
Previous Year Carryover	\$ 10,625,152.89	Attorney Fee Expenses	<u>\$ 429,519.69</u>
LEGISLATIVE SWEEP			
<b>TOTAL FUNDS AVAILABLE</b>	<b>\$ 11,633,684.54</b>	<b>TOTAL EXPENDITURES</b>	<b>\$ 3,669,640.67</b>
<b>TOTAL END BALANCE</b>	<b>\$ 7,964,043.87</b>		

<b>Receipt Analysis</b>		<b>Disbursement of Expenditures</b>	
<b>FY 2018 (July 2017-June 2018)</b>		<b>FY 2018</b>	
Assessment Receipts	\$ 2,653,115.81	Court Costs	\$ 48,108.83
Gen. Fund Entitlement		Vocational Rehabilitation	\$
Fine & Penalties Receipts	\$ 112,895.78	Director's Certification	\$ 3,304,859.68
Misc. Reimbursements	<u>\$ 190,975.30</u>	Compensation Costs	\$ 781,209.78
<b>TOTAL RECEIPTS</b>	<b>\$ 2,956,986.89</b>	Medical Costs	\$ 654,586.40
LEGISLATIVE TRANSFER	\$ 2,355,000.00	Other Operating Costs	\$ 203,672.96
Previous Year Carryover	\$ 10,615,364.55	Attorney Fee Expenses	<u>\$ 309,396.41</u>
LEGISLATIVE SWEEP			
<b>TOTAL FUNDS AVAILABLE</b>	<b>\$ 15,927,351.44</b>	<b>TOTAL EXPENDITURES</b>	<b>\$ 5,301,834.06</b>
<b>TOTAL END BALANCE</b>	<b>\$ 10,625,152.89</b>		

**a. Liabilities**

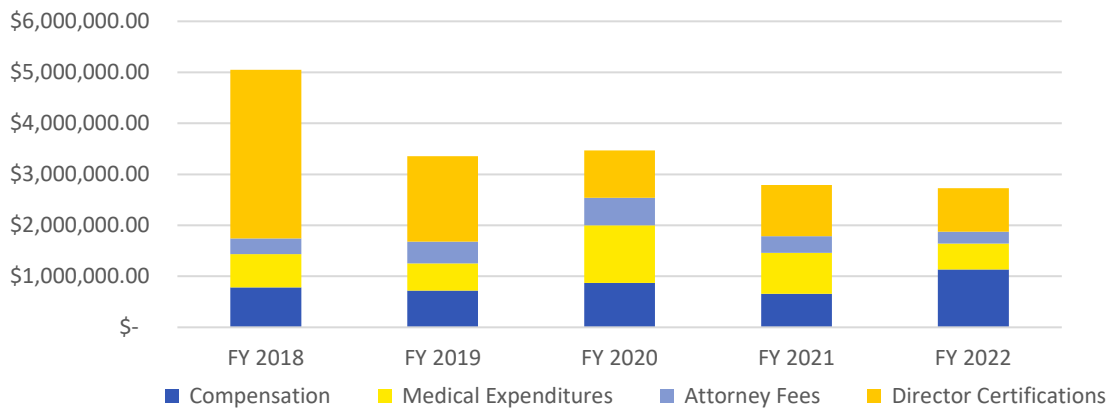
In FY 2022, there was a decrease of 24% in total liabilities over the prior fiscal year, stabilizing the overall liabilities. While expenditures in most categories decreased, including attorney fees, medical expenditures and Director Certification expenditures, compensation expenditures increased significantly due to an increase in Temporary Partial Disability and Temporary Permanent Disability payments. This trend will be discussed below in subparagraph i.

Director Certifications continue to be one of the largest Fund Expenditures yearly. Director Certifications represent the Fund’s statutory<sup>1</sup> obligation to reimburse an insurance carrier or employer for money expended during the case that is over the amount ultimately determined to be owed. This is discussed in further detail below in subparagraph iv.

TOTAL DIRECT LIABILITIES					
Fiscal Year	Compensation	Medical Expenditures	Attorney Fees	Director Certifications	Total
FY 2018	\$ 781,209.78	\$ 654,586.40	\$ 309,396.41	\$ 3,304,859.68	\$ 5,050,052.27
FY 2019	\$ 721,534.90	\$ 530,235.49	\$ 429,519.69	\$ 1,675,524.89	\$ 3,356,811.97
FY 2020	\$ 868,702.24	\$ 1,130,251.02	\$ 538,280.26	\$ 929,208.27	\$ 3,466,411.79
FY 2021	\$ 657,958.87	\$ 803,124.39	\$ 324,144.09	\$ 1,008,432.85	\$ 2,793,660.20
FY 2022	\$ 1,136,739.09	\$ 506,569.71	\$ 233,836.86	\$ 849,503.58	\$ 2,726,649.24

\*Note: These figures do not include court costs, case management, operating costs, and other accounts payable.

### Direct Expenditures



<sup>1</sup> See K.S.A. §44-534a(b), §K.S.A. 44-556(d), K.S.A. §44-566a and K.S.A. §44-569a.



**i. Disability Compensation**

The purpose of disability compensation is twofold. First, it aims to compensate a person for the loss in function of a body part or psychological trauma. Second, it compensates an injured person for his or her inability to work. In FY 2022, the Fund experienced a 36.49% increase in total disability compensation paid. The increase was due in part to an increase in both Temporary Partial Disability, Temporary Permanent Disability payments as well as higher lump sum payments made in FY 2022. Lump sum payments are generally made for settlements that limit future payment for medical expenses and attorney fees. Claims continue to be reviewed to identify possible settlement opportunities, thus, likely reducing the Fund’s expenditures in this area in the future.

In FY 2022, there was an increase in Temporary Partial Disability and Temporary Permanent Disability paid. This increase may be due in part to ongoing litigated claims from FY 2021 into FY 2022, as well as two major catastrophic claims being litigated into FY 2023 before a final award is approved.

<b>YEARLY COMPENSATION PAYMENTS</b>						
Payment Types						
Fiscal Year	Lump Sum	Permanent Partial Disability	Permanent Total Disability	Temporary Partial Disability	Temporary Total Disability	Total Compensation Paid
<b>2018</b>	\$ 345,791.07	\$ 48,066.49	\$ 40,895.51	\$ 697.73	\$ 772,155.93	\$ 1,207,606.73
<b>2019</b>	\$ 396,261.99	\$ 65,454.88	\$ 27,313.36	\$ 629.17	\$ 519,014.59	\$ 1,008,673.99
<b>2020</b>	\$ 596,354.41	\$ 101,439.12	\$ 23,318.21	\$ 9,757.63	\$ 352,066.45	\$ 1,082,935.82
<b>2021</b>	\$ 480,143.61	\$ 33,806.70	\$ 42,004.72	\$ -	\$ 413,354.49	\$ 969,309.52
<b>2022</b>	\$ 808,067.26	\$ 1,705.46	\$ 34,217.08	\$ 2,598.82	\$ 476,381.10	\$ 1,322,969.72

**ii. Medical Expenditures**

In FY 2022, the Fund decreased its medical expenditures by 23.82% from the previous year. The Fund utilizes a third-party administrator (TPA) in the oversight and management of claims. The TPA has assisted the Fund with bill review, ensuring submitted claims are related to the work-related injury, utilizing reductions per the 2019 Kansas Medical Fee Schedule, and implementing other best practices, such as use of: (1) a preferred provider network; (2) a pharmacy card program; and (3) nurse case managers. With the use of these tools, the Fund should be able to continue to stabilize medical expenditures in the coming years.

<i>Fiscal Year</i>	<i>Physicians</i>	<i>Hospitals</i>	<i>Prescriptions</i>	<i>Medical Supplies and Equipment</i>	<i>Medical Reimbursements</i>	<i>Total Medical Expenditures</i>	<i>% Change from Prior FY</i>
2018	\$ 189,988.47	\$ 164,691.88	\$ 76,785.62	\$ 20,738.97	\$ 3,080,844.19	\$ 3,533,049.13	+81.38%
2019	\$ 213,304.70	\$ 189,212.32	\$ 86,014.22	\$ 5,470.81	\$ 1,424,616.24	\$ 1,918,618.29	-45.70%
2020	\$ 387,073.44	\$ 450,177.14	\$ 95,576.77	\$ 37,834.67	\$ 882,017.70	\$ 1,852,679.72	-3.44%
2021	\$ 404,320.50	\$ 173,436.79	\$ 55,487.87	\$ 22.11	\$ 866,939.32	\$ 1,500,206.59	-5.96%
2022	\$ 257,794.24	\$ 118,219.18	\$ 78,278.75	\$ -	\$ 688,550.53	\$ 1,142,842.70	-23.82%

**iii. Litigation Costs**

This category includes attorney fees as well as court reporter and deposition fees. The Fund contracts with attorneys to manage costs and increase efficiency. Currently, the Fund has 12 attorneys accepting new assignments. In FY 2022, attorney fees decreased by 27.86%. This includes fees paid to claimant attorneys due to post-award motions and orders. While the Fund continued to litigate several complex claims in FY 2022, the overall fees decreased due to a majority of the courts being closed for at least half of FY 2022, and an increase in utilization of paralegals by the Fund attorneys. Many Hearings returned to in-person hearings, a hybrid of in-person and secure electronic video conferencing or by telephone, thus saving the Fund in billable

hours and fees paid for travel time to and from court.

The Courts continue to utilize a hybrid system to hear cases into FY 2023 and the trend for stabilization in litigation costs through the next FY is most likely to occur until all courts resume in-person hearings. In other areas of litigation costs, most Fund attorneys are utilizing paralegals to help reduce the billing costs for each case assigned. The Fund will continue to analyze billing and will work to find ways to increase efficiencies and to try to reduce the expenditures in this category.

<b>DOLLARS OF COMPENSATION PAID PER DOLLAR OF ATTORNEY FEES</b>				
<b>Fiscal Year</b>	<b>Fund Attorney Hours Paid</b>	<b>Fund Attorney Fees Paid</b>	<b>Claimant Attorney Fees Paid</b>	<b>Total Attorney Fees</b>
<b>FY 2018</b>	2,947	\$ 306,278.91	\$ 3,117.50	\$ 309,396.41
<b>FY 2019</b>	3,436	\$ 429,519.69	\$ -	\$ 429,519.69
<b>FY 2020</b>	4,280	\$ 535,060.26	\$ 3,220.00	\$ 538,280.26
<b>FY 2021</b>	2,566	\$ 320,735.96	\$ 3,408.13	\$ 324,144.09
<b>FY 2022</b>	1,545	\$ 231,810.63	\$ 2,026.23	\$ 233,836.86

**iv. Director Certifications**

Currently, Director Certifications represent 28.65% of the Fund’s overall expenses. As seen in the following table, the dollar amount reimbursed to employers and insurance carriers substantially decreased in FY 2019 from FY 2018 and is highly unpredictable from year to year as demonstrated by the table below. Director Certifications decreased significantly in FY 2020 but increased again in FY 2021. However, as discussed in the previous Annual Report for FY 2021, some certifications that were pended in FY 2020 due to ongoing litigation were not paid until FY 2021, causing these figures for FY 2021 to skew upwards indicating an increase for FY 2021. Director Certifications decreased in FY 2022 from FY 2021, but again, this may be due in part to the FY 2021 skewed figures and may actually indicate a stabilization for expenditures related to Director Certifications.

Director Certifications represent the Fund’s statutory obligation to reimburse an insurance carrier or

employer for money expended on the claim that is over the amount ultimately determined to be owed.

Typically, this occurs when an employer or insurance carrier pays benefits up front either voluntarily or pursuant to a preliminary hearing order, then months or in some cases years later it is determined that the claim was not compensable, there was an overpayment or that the employee failed to pursue the claim within the statutory timeframe. The Fund is then ordered to reimburse the employer or carrier.

Many times, the Fund is not a party to the underlying claim until later in the case and the money expended during the pendency of the case accumulates until the final order or dismissal. The Fund has not yet successfully asserted a right to appeal a Director Certification due to the language in K.S.A. §44-534a(b). However, the Fund has submitted a letter to the Director requesting a review of reimbursement costs associated with the carrier's investigations and was successful in having that cost removed.

Further, when a case is dismissed pursuant to K.S.A. §44-523(f)(1) it is considered a final disposition on the matter as required by K.S.A. §44-534a(b). Thus, the Fund is precluded from seeking reimbursement from the employer. The Fund is required to pay the full amount regardless of whether the claimant was entitled to the compensation initially by a preliminary hearing order. The Fund will continue to explore avenues to assert its right for reimbursement for Director Certification expenditures.

In the FY 2021 Annual report, the Fund discussed a major case, *Travelers Casualty Insurance v. Larry G. Karns*<sup>2</sup>, hereinafter referred to as *Travelers I*, that was being watched for the Fund's responsibility in reimbursement cases and for issues with the Fund being impleaded on nearly every new litigated case in which "it might possibly have to pay benefits". A brief synopsis of that discussion follows since the final litigation in this series of appeals concluded in FY 2022.

In October 2018, the Kansas Court of Appeals ruled in *Travelers I*, that "the Fund must be impleaded, as provided in K.S.A. 2017 Supp. 44-566a(c)(1) if it may be responsible for reimbursing benefits." The Court

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<sup>2</sup> *Travelers Casualty Insurance v. Larry G. Karns*, 56 Kan.App.2d 388,431 P.3d 301 (2018).

remanded the proceeding to the Kansas Workers Compensation Board<sup>3</sup> for a determination, among other issues, of whether “the Fund should be impleaded consistent with K.S.A. 2017 Supp. 44-566a(c)(1), given the various arguments that it might be liable for preliminary medical benefits.” The Board confirmed the Fund should be impleaded since the Director already impleaded the Fund and per K.S.A. 2017 Supp. 44-566a(c)(1). However, the Board also discussed its concern that *Travelers I* was being interpreted as requiring the Fund to be brought into all cases in which it might possibly have to pay benefits (emphasis added) and stated that should not be the case. The Board distinguished that K.S.A. 44-556(e) might be the sort of proceeding requiring the Fund to contest liability but if the Fund cannot litigate K.S.A. 44-534a(b) impleading into similar situations seems wholly unnecessary. The case was again appealed by Travelers Casualty Insurance to the Kansas Court of Appeals.

In the first quarter of FY 2022 a second decision was rendered by the Kansas Court of Appeals in *Travelers Casualty Insurance v. Larry G. Karns, et al.*<sup>4</sup>, hereinafter referred to as *Travelers II*.

In *Travelers II*, the Kansas Court of Appeals discussed the stages of the first appeal in detail and the first Kansas Court of Appeals panel’s decision remanding the case back to the Kansas Workers Compensation Board to determine reimbursement between the two insurance carriers and whether the Fund should be impleaded. Although the majority of *Travelers II* panel may not have agreed with each point in the previous panel’s decision in *Travelers I*, the second panel held it could not overturn a prior panel’s decision and dismissed *Travelers II* for lack of jurisdiction. Thus, essentially leaving the Kansas Workers Compensation Board’s decision from the *Travelers I* remand unchanged.

The Fund continues to monitor cases in which the Fund is impleaded where there is a solvent employer who can pay compensation and medical claims outright or through workers compensation insurance and the

<sup>3</sup> *Travelers Casualty Insurance v. Larry G. Karns, et al.*, Docket No. AP-00-0430-995, Kansas Workers Compensation Board, (2019).

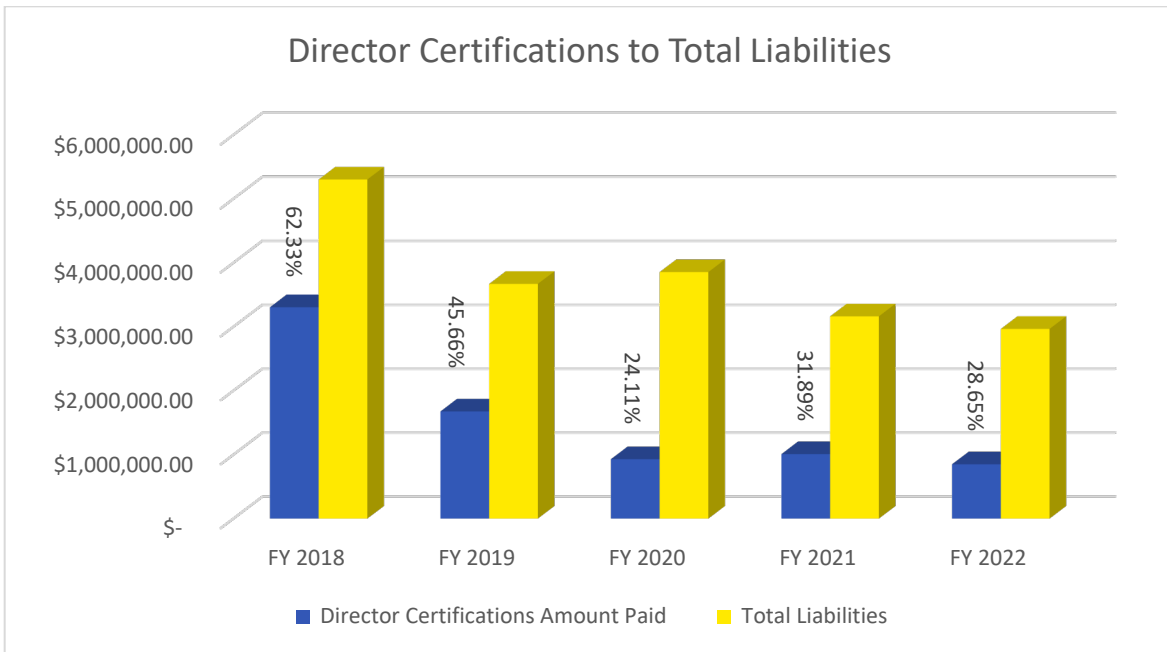
<sup>4</sup> *Travelers Casualty Insurance v. Larry G. Karns, et al.*, 61 Kan.App.2d 43, (2021), 499 P.3d 491 (2021).

trend appears to have decreased slightly with the Board’s expressed concerns in *Travelers I* as discussed above. This trend may also reflect the lower number of cases filed in FY 2022.

While the Fund generally monitors these cases in-house, an increase in resources and expenses may be seen if there is not clarifying case law or statutory changes in the future.

One of the largest concerns for the Fund is paying certifications issued when a case is dismissed pursuant to K.S.A. §44-523(f) when there is no finding of an overpayment of benefits and is due only to (1) not proceeding to a regular hearing, settlement hearing or agreed award within three years of filing an application for hearing; or (2) not proceeding to a regular hearing after one year of a preliminary hearing denial of compensation.

<b>Director Certifications</b>		
<b>Fiscal Year</b>	<b>Director Certifications Amount Paid</b>	<b>Number of Certifications</b>
<b>FY 2018</b>	\$ 3,304,859.68	47
<b>FY 2019</b>	\$ 1,675,524.89	26
<b>FY 2020</b>	\$ 929,208.27	20
<b>FY 2021</b>	\$ 1,008,432.85	29
<b>FY 2022</b>	\$ 849,503.58	15

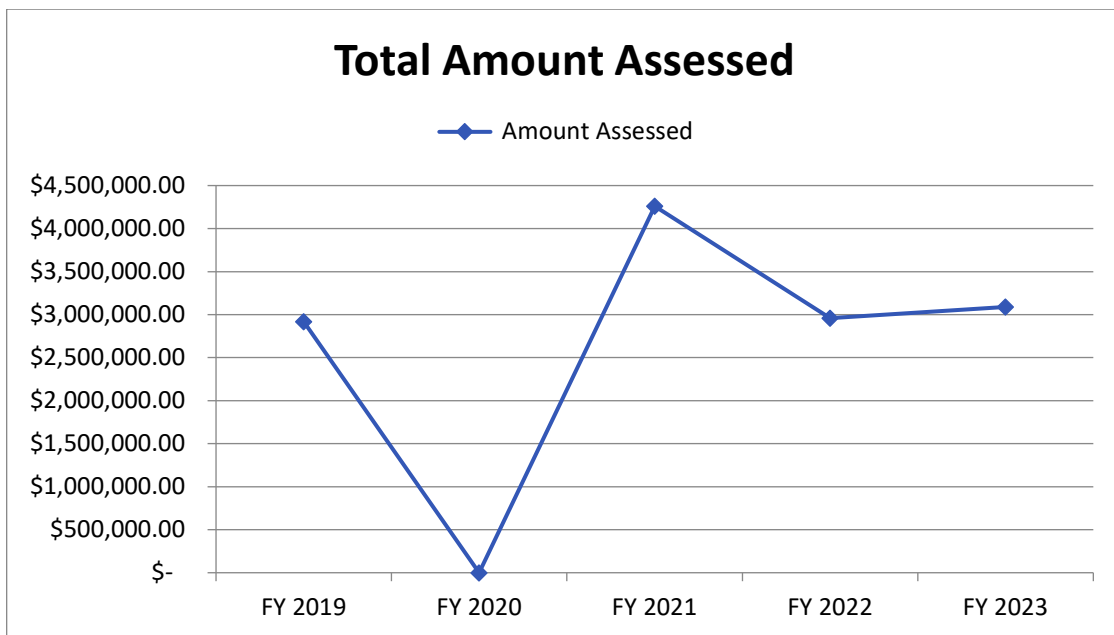


**b. Revenue Sources**

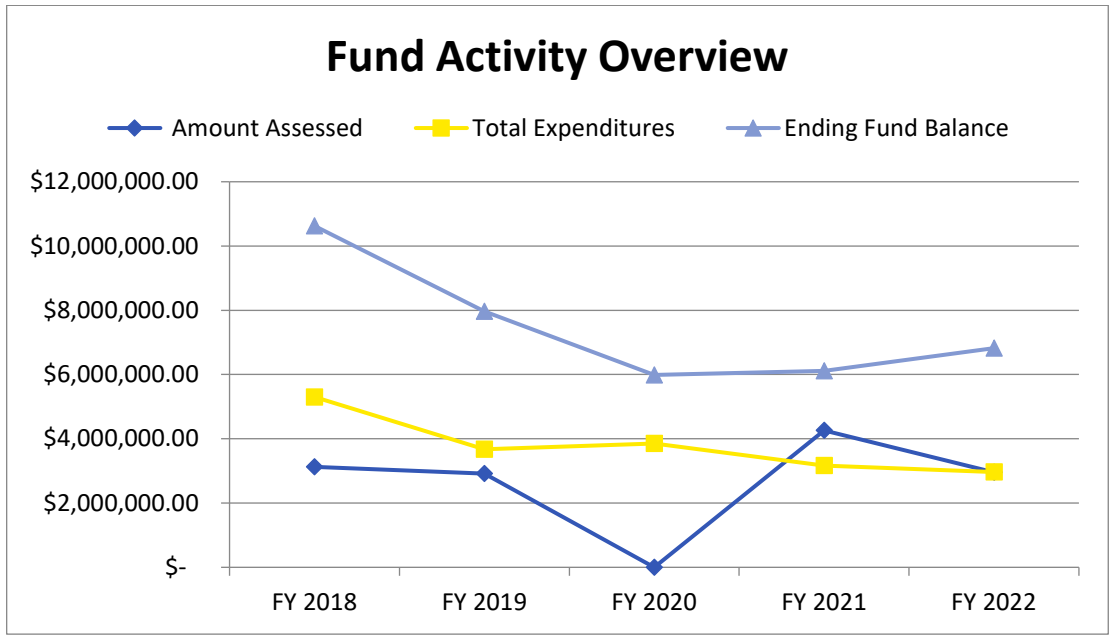
<i>Annual Workers' Compensations Assessments</i>			
Fiscal Year	Number of Assessed Entities	Assessment Rate	Amount Assessed
FY 2019	469	0.75%	\$2,917,645.55
FY 2020	0	0.00%	\$ 0.00
FY 2021	447	1.00%	\$4,259,791.63
FY 2022	441	0.75%	\$2,958,817.54
FY 2023	472	0.75%	\$3,087,439.70

**i. Annual Assessment**

Pursuant to K.S.A. §44-566a, the fees assessed from self-insurers, insurance carriers, and group funded pools are 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.” After analyzing the Fund balance and estimated liabilities, the Commissioner issued an assessment of 0.75%, that was due July 1, 2022 (for FY 2023), thus stabilizing the assessment amount for the last two fiscal years. The amount collected from the assessment totaled \$ 3,087,439.70.







**ii. Reimbursements from Employers**

The Fund has the right to reimbursement of all money paid on behalf of an uninsured employer during the ongoing litigation. The Fund continues to seek reimbursement from the uninsured employer. Fund attorneys attempt to enter into a voluntary reimbursement agreement with the employer during earlier stages 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 employers have entered bankruptcy proceedings or have taken other actions to make collection difficult. The Fund continues to work with employers to find ways to increase collections in this area. In FY 2022 there was an increase in collections over FY 2021 in the number of cases the Fund has been able to collect on and in the total amount collected. This is due in part to implementing payment agreements between the respondent and the Fund prior to resolution of the case.

During the calendar year 2022, two employers completed their reimbursement obligation to the Fund, while four additional employers entered into reimbursement agreements with the Fund. In addition

to reimbursement agreements, the Fund will continue to utilize additional tools for collections through the State Setoff Program or Federal offset Program. Once three attempts have been made to collect on the debt, through either a signed agreement between the uninsured employer and the Fund, demand letters or by filing a civil action in the District Court, the Fund will attempt to collect reimbursement through the State Setoff or Federal Offset Programs.

<b>Reimbursement Collected from Employers</b>		
<i>Fiscal Year</i>	<i>Amount of Reimbursement</i>	<i>Number of Cases</i>
<i>FY 2018</i>	\$ 190,975.30	23
<i>FY 2019</i>	\$ 103,389.63	18
<i>FY 2020</i>	\$ 234,236.30	29
<i>FY 2021</i>	\$ 251,125.05	26
<i>FY 2022</i>	\$ 333,140.78	28

**iii. Fraud and Abuse Fines**

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 compensation through one of these three methods, the Kansas Department of Labor’s (KDOL) 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 \$25,000.00, whichever amount is greater<sup>5</sup>. Civil penalties collected are credited to the Kansas Workers Compensation Fund. The Fund has and will continue to notify the KDOL Division of Workers Compensation about possible fraud and abuse and provide the assistance as the Division requires in their investigations.

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<sup>5</sup>See K.S.A. §44-532(d)

Section 44-532 Fines Deposited with Fund		
Fiscal Year	Amount of Deposited	Fined Employers
FY 2018	\$ 112,895.78	34
FY 2019	\$ 113,632.33	46
FY 2020	\$ 96,929.15	32
FY 2021	\$ 110,976.59	27
FY 2022	\$ 198,416.29	53

## **V. Claim and Operational Cost Efficiencies**

The Fund continues to utilize a revamped system for claims handling in an effort to reduce costs and increase the Fund’s reimbursement ratio. Under the previous claims-handling system, Fund attorneys were tasked with performing all aspects of claim management, including litigating the underlying workers compensation claim, and filing reimbursement cases. The Fund Attorneys were also tasked with negotiating fees for medical providers and reviewing medical invoices, etc. The latter tasks are now performed utilizing a contracted administrator for specialized medical review, use of PPO Network, pharmacy management, negotiated fees for bill payments, and case managers. This has helped the Fund continue to see a decrease in medical expenditures. In addition, the Fund continues to explore ways to improve the collection process to increase reimbursements from employers in cases where resources or assets are available.

To control claims and operational costs, Fund staff reviews all invoices for attorney fees and an annual audit of attorney fee billings is completed. The Fund pays a fee of \$150.00 per hour to outside counsel to handle its cases. To keep legal costs contained, the Fund Staff Attorney continues in-house representation in certain cases. The Fund continues to review cases that are inactive or can be dismissed. Those that are still pending but have not had any activity in 10 years managed by an outside Fund attorney, are brought in-house

to be monitored by the Fund Staff Attorney. In addition, the Fund continues to require the use of billing coding so that data can be analyzed and help identify possible inefficiencies. Case reporting continues to be streamlined to reduce unnecessary billing. The Fund Staff Attorney also reviews all medical invoices to ensure treatment received by claimants are related to the present injury and that the correct diagnosis codes are included in billings prior to submission to the contracted medical bill reviewer.

## **VI. Conclusion**

The data contained within this report illustrates the Kansas Workers Compensation Fund reforms continue to work and help reduce expenditures and increase efficiencies. In FY 2018 there were 1,920 open claims. That number has gradually declined to 1,660 open claims in FY 2022. As cases are further reviewed, there is a real possibility the number of open claims could reach less than 1,200 over the next three years which would be a significant accomplishment for the Fund. In addition, recent reforms have ensured medical claims are vetted and not erroneously paid – leading to a better financial position for the Fund and a stabilization in the Annual Assessments.

The Fund would like to see clarifying language in the Kansas Workers Compensation Act as to when the Fund shall be impleaded, as outlined by the Board’s concerns in the *Travelers I* remand. It appears that for FY 2022, the Fund is being impleaded in the spirit of the *Travelers I* Kansas Workers Compensation Board’s concerns, by impleading the Fund when the employer is insolvent, does not have workers compensation insurance, or cannot be found, thereby stabilizing the rate of new and open cases.

The Fund would also like to see K.S.A. §44-523(f)(1) amended to omit the last sentence that considers a dismissal under this section a final order for purposes of reimbursement to the employer or insurance carrier by the Fund and take into consideration whether compensation initially paid to claimant was authorized by order of the Court, but is later dismissed because the claimant chose not to pursue the claim further within the statutory timeframe.

The Commissioner of Insurance is committed to continued improvement and fiscally sound administration of the Kansas Workers Compensation Fund in all areas.