

KWORCC Select Claims Report

Presented February 25, 2021



Claim Summary – Reserve Advisory

Employer:	Gove County	Date of Injury:	09/24/2020
Claim No.:	21837441	Job Description:	Sheriff
Employee Age:	63	Updated:	2/15/2021
AWW:	994.08	TTD Rate:	662.75
Attorneys:	Matthew Bretz	Employer:	Ron Laskowski
Adjuster:	Amanda Chamberland		

	Medical	Indemnity	Rehabilitation	Legal	Expense	Total
Reserves:	\$ 10,000.00	\$ 50,000.00	\$ 0.00	\$ 15,000.00	\$ 1,500.00	\$ 76,500.00
Amount Paid:	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 15.00	\$ 15.00
Outstanding:	\$ 10,000.00	\$ 50,000.00	\$ 0.00	\$ 15,000.00	\$ 1,485.00	\$ 76,485.00

Accident Description / Nature of Injury:

- The employee is deceased. The claim has been filed on his behalf posthumously as a COVID related death potentially resulting from work activities.

Investigation / Compensability:

- The claim is disputed considering the definition of everyday diseases of life per KS statute, the lack of timely reporting, and the possibility of his death being an aggravation of underlying and pre-existing health conditions.
 - 1) Per Kansas statute ordinary diseases of life to which the general public are exposed are not compensable. COVID is recognized at pandemic status making it indeed a disease of ordinary life. There is no way of knowing for certain that the employee did not contact COVID via other daily activities such as at the grocery store, gas station, etc.
 - 2) The report of COVID related illness was not filed by the employer until after the employee’s death, months after the original diagnosis. The Undersheriff, now the current Sheriff, reports they the county did believe that the claimant’s COVID diagnosis was work related and that they failed to report timely on his behalf. However, although the Clerk acknowledged that the claimant had COVID she denied acknowledgement that this was a reportable worker’s compensation related condition.
 - 3) The deceased reportedly suffered from chronic underlying respiratory health issues which could have contributed to the cause of his death. The death certificate cites the cause of death as Anoxic ischemic encephalopathy, acute and chronic hypoxemic respiratory failure with ARDS, COVID and pneumonia.

Medical Management:

- The sheriff tested positive in September, 2020 for COVID. After the Sheriff tested positive, he was isolated for ten days following the KDHE and CDC recommendations. On the 9th day he became increasingly ill with shortness of breath. He presented to Hays Medical Center and was placed in their COVID unit. He was there five days and then released to his home with significant improvement. The emergency director reported to the County Clerk around this time that he no longer had COVID. On 10/18 he had shortness of breath and was in reportedly severe respiratory distress. He was flown to the Swedish Medical Center where he was immediately placed on oxygen, sedated and on a ventilator. He was in a coma for 35 days. A tracheotomy was performed and the ventilator removed. He was backed off of sedation and sent to Colorado for rehabilitation. On 12/13/2020, he was found unresponsive at the rehabilitation

facility. He was taken to Denver Health Systems where he was placed in hyperbaric treatment. A CT performed which found no brain activity, only seizures. Lifesaving activities ceased as of 12/18/2020.

Periods of Disability:

- The employee was not paid for any time loss from work preceding his death.

Permanent Partial Impairment / Permanent Disability:

- This claim is being review on a doubtful and disputed basis. Before an official determination could be made the widow obtained legal representation. The file has been reserved not for potential PPI or death benefits, rather for a possible settlement in lieu of acceptance of the claim. A compensable death claim would result in benefits paid in excess of \$300,000.00 plus medical costs which could potentially surpass the excess threshold of \$750,000.

Subrogation / Other Issues:

- This case has the support for compensability by the Kansas Concerns for Police Officers agency. President Trump signed an executive order under which COVID deaths of emergency personnel could be considered in the line of duty under the Public Safety Officers' Benefits Program. The Kansas Concerns for Police Officers agency believes this supersedes the Kansas Worker's Compensation Statute, we disagree.
- The claim has been reported to Safety National, the excess carrier for KWORCC, in the event that this would be determined a compensable claim although the likelihood of this is minuscule.

Plan of Action:

- Counsel has located an infectious disease specialist that will be available as needed for expert medical analysis regarding the probability of identifying a single source of infection vs exposure from the public as a whole
- Depositions will be taken to determine the details of claimant's everyday life activities before the diagnosis to locate other potential sources of exposure.
- Full medical records will be requested and reviewed to determine the applicability of underlying health conditions to the claimant's severity of condition.
- Ultimately, the file will likely result in a confidential settlement to avoid a judge's order of compensability which could be unpredictable. The information obtained from the investigation of counsel and myself will be used as leverage in his final settlement determination.



Claim Summary – Settlement Request

Employer:	Jefferson County	Date of Injury:	04/20/2018
Claim No.:	18717783	Job Description:	Public Works Foreman
Employee Age:	52	Updated:	2/14/2021
AWW:	944.39	TTD Rate:	629.62
Attorneys:	Bruce Brumley	Employer:	Ron Laskowski
Adjuster:	Amanda Chamberland		

	Medical	Indemnity	Rehabilitation	Legal	Expense	Total
Reserves:	\$ 51,097.78	\$ 56,134.67	\$ 0.00	\$ 9,000.00	\$ 4,776.37	\$ 121,008.82
Amount Paid:	\$ 36,983.26	\$ 4,856.17	\$ 0.00	\$ 407.20	\$ 1,211.12	\$ 43,457.75
Outstanding:	\$ 14,114.52	\$ 51,278.50	\$ 0.00	\$ 8,592.80	\$ 3,565.25	\$ 77,551.07

Accident Description / Nature of Injury:

- As the employee used a tire jack to repair a flat tire on a gravel road, the jack slipped. The employee was pinned under the vehicle yet eventually able to lift it off of himself. He originally complained of injury to his left shoulder and left and right ribs.

Investigation / Compensability:

- The claimant was in the course and scope of his employment and the event has been accepted as compensable. His injuries asserted as a result of the event, however, are questionable. The claimant has alleged injury to his bilateral lower legs, neck, upper back, right shoulder, left hip and the need for psych care at varying points after the original incident. These have not been accepted as authorized injuries or conditions as a result of this claim.

Medical Management:

- Emergency treatment was sought at Stormont Vail Hospital. He was released the following day and placed at MMI less than two months post event. Approximately four months later he began asking for treatment to varying other body parts. His lower extremities were denied as related. The authorized treating physician found his complaints more consistent with achilles tendonitis and pre-existing in nature. His left shoulder complaints were found to be a continuation of the work claim and a left shoulder rotator cuff was repaired by Dr. Wilkinson on 10/17/2019. Subsequent other body parts and treatment requests were denied as unrelated to the original work event. The claimant was placed at MMI for his left shoulder injury in April 2020. A PPI rating offer was extended to the claimant and he responded by obtaining counsel.

Periods of Disability:

- The claimant missed a total of 7.71 weeks of work throughout the entirety of his claim.

Permanent Partial Impairment / Permanent Disability:

- The employee received an impairment of 7% to the left shoulder from Dr. Wilkinson. An FCE was performed showing he could essentially perform 100% of his job tasks even with a 75lb permanent restriction given.

Subrogation / Other Issues:

- N/A

Plan of Action:

- There is potential that a judge could find that the claimant is not a candidate for psychiatric care and any further physical medical care in this case. However, allowing the case to be litigated until order of the judge would increase the claim exposure.

- The exposures in this case and their corresponding values are as follows:
 1. Additional medical care and treatment = **\$5,000.00 - \$7,500.00**
 2. Physical court-ordered IME = **\$1,500.00**
 3. Respondent's psychiatric IME = **\$2,000.00 - \$3,000.00**
 4. Psychiatric court-ordered IME = **\$4,500.00**
 5. Additional psychiatric treatment = **\$5,000.00**
 6. **10.5%** general bodily disability for physical injuries = **\$26,582.50**
 7. **5%** general bodily disability for psych impairment = **\$13,291.25**
 8. Future medical = **\$2,500.00**
 9. Litigation expense = **\$2,500.00**

- Counsel has requested settlement authority of up to \$51, 278.50 to close the file, full and final. He will make every attempt to settle the file for a lesser amount than the authority requested.



Claim Summary – Reserve Advisory

Employer:	Pottawatomie County	Date of Injury:	10/13/2020
Claim No.:	20832055	Job Description:	EMT
Employee Age:	35	Updated:	2/16/2021
AWW:	755.63	TTD Rate:	503.77
Attorneys:	N/A	Employer:	N/A

Adjuster: Amanda Chamberland

	Medical	Indemnity	Rehabilitation	Legal	Expense	Total
Reserves:	\$ 29,050.00	\$ 10,667.41	\$ 0.00	\$ 550.00	\$ 4,482.50	\$ 44,749.91
Amount Paid:	\$ 1,884.08	\$ 2,368.87	\$ 0.00	\$ 0.00	\$ 125.01	\$ 4,377.96
Outstanding:	\$ 27,165.92	\$ 8,298.54	\$ 0.00	\$ 550.00	\$ 4,357.49	\$ 40,371.95

Accident Description / Nature of Injury:

- While performing chest compressions on a drowning victim the employee experienced pain in her right shoulder.

Investigation / Compensability:

- The employee was in the course and scope of her employment and no pre-existing defenses are identified. The claim is accepted as compensable.

Medical Management:

- Initially the claimant received conservative care to include physical therapy and light duty. She failed to progress and a referral was made to an orthopedic specialist. Dr. McAtee found that the claimant was in need of a right shoulder arthroscopy with posterior labral tear and removal of cyst. This was performed and she is now in post-operative physical therapy care.

Periods of Disability:

- The employee returned to work post injury at reduced pay and hours resulting in TPD payments of \$2,368.87. She is now off of work and anticipated to be off an additional 6-8 weeks in entirety. This is partially due to a no driving order that the orthopedic specialist deems necessary based on the type of sling she is wearing.

Permanent Partial Impairment / Permanent Disability:

- A rating is anticipated of 5% to the right shoulder and the file is reserved for the same.

Subrogation / Other Issues:

- N/A

Plan of Action:

- The claimant’s ability to return to work in a modified duty capacity will be monitored and I will work with her employer on accommodating the same as she is able to drive again.
- Once the claimant is at MMI I will request a rating
- Once rating is received I will attempt to settle her file full and final and close the claim