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Business and Labor Committee
October 01, 2015

[LR246]

The Committee on Business and Labor met at 10:00 a.m. on Thursday, October 1, 2015, in Room 1525 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR246. Senators present: Burke Harr, Chairperson; Dave Bloomfield, Vice Chairperson; Sue Crawford; Laura Ebke; and Sara Howard. Senators absent: Ernie Chambers and Jerry Johnson.

SENATOR HARR: I want to thank everyone for coming here today on LR246. This is a little bit of a unique LR in that I don't know if we have...it isn't a dry run for a bill so it's more of an informational gathering. So because of that, I'll probably do this a little different than most LRs in that I'm the introducer of the LR, but I will also come back and chair unless anyone has an objection. So thank you for coming today. A couple of the ground rules here...do I have them? When you come to testify--I see a lot of the regulars, but I see some new fresh faces, which I'm excited about--please introduce yourself and identify yourself. We need you to sign in with a green sheet which is at the entry over there by the doors. Print your name, provide all the information required. And then when you come, give the note to Lauren Williams, our committee clerk over here. I should probably introduce everybody. So Lauren Williams over here is committee clerk. She is new to the Business and Labor and we're very excited to have her. We have legal staff, Meghan Chaffee here. And I will...we have a new member. This is her first time, Sara Howard. I'll let you introduce yourself. [LR246]

SENATOR HOWARD: I'm Senator Sara Howard. I represent District 9 in the true midtown Omaha. [LR246]

SENATOR CRAWFORD: Good morning. I'm Senator Sue Crawford and I represent District 45, which is eastern Bellevue, eastern Sarpy County. [LR246]

SENATOR BLOOMFIELD: Senator Dave Bloomfield, District 17, northeast Nebraska: Wayne, Thurston, and Dakota Counties. [LR246]

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SENATOR HARR: And I am...forgetting to introduce myself, I am Burke Harr and I represent the businesses in midtown Omaha where the money is made. And then we also have Brandon over here who is our page so if you have any questions, go ahead and grab...oh, if you don't have enough copies, he can make you copies. We need ten copies if you have exhibits. He'll go ahead and do that for you. We are using the light system today which means each person will be given five minutes and then senators can ask you questions. Green means that you can go; yellow means start wrapping up your thoughts; and red means end the sentence. We don't want you to start speaking on for much longer than that. I think that's about it. With that, my book is already up there. I will walk around. Senator Bloomfield, do you want to take over? [LR246]

SENATOR BLOOMFIELD: Thank you. The one thing I don't think he did mention, kill these things if you have them with you, quiet them down. [LR246]

SENATOR HARR: Thank you. [LR246]

SENATOR BLOOMFIELD: Please proceed, Senator Harr. [LR246]

SENATOR HARR: Thank you, Mr. Vice Chairman. My name is Senator Burke Harr, H-a-r-r. I am here on LR246, which is a voc...to do some analysis on vocational rehabilitation. This past session our Business and Labor Committee, as you all know, focused heavily on workers' compensation, especially the insurance component. Now is an excellent time to focus on the workplace safety and how to prevent injuries from occurring in the first place and then what to do once injuries have occurred. Recently our committee was invited to tour Tyson Food facilities in Dakota City. We were able to see the many improvements Tyson has made to enhance safety and account for their workers' health. The question is, how do we continue this momentum? Essentially under workers' compensation when an employee is unable to perform suitable work for which he or she has previous training or experience due to an injury, the employer is entitled to vocational rehabilitative services, including job placement and retraining as may be necessary to return the employee to suitable employment. The goal of vocational rehabilitation is to assist the employee in returning to work as soon as possible. Ideally, the employee would return to the previous job with the same employer. Otherwise, the voc rehab plan looks for the following outcomes: modification of the previous job with the same employer; a new job with the same

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employer; a job with a new employer; or a period of formal training designed to lead to the employment in another career field. The goal of workers' compensation is to make the injured worker whole in all aspects at a reasonable rate, and I think that's important. This LR provides an opportunity to examine vocational rehabilitation and ask how we are able to make it better and return employees to work quickly. Thank you. [LR246]

SENATOR BLOOMFIELD: Thank you, Senator Harr. Are there any questions for the senator on his opening? [LR246]

SENATOR HARR: Thank you. [LR246]

SENATOR BLOOMFIELD: Thank you and please return to your chair. [LR246]

SENATOR HARR: Thank you, Mr. Vice Chair. I think the way I'm going to do this is I'm going to ask Glenn Morton to come up first and then maybe...I see we have a work comp judge here, Judge Brown, and will probably go second and then we can open the floor from there. Glenn, you want to come on up. Mr. Morton, thank you for coming here today. [LR246]

GLENN MORTON: (Exhibits 1 and 2) And thank you very much. My name is Glenn Morton. I'm administrator of the Workers' Compensation Court and good morning, Senator Harr, members of the committee. Getting injured workers and injured employees back to work is a primary goal of every workers' compensation system in the whole country. That's central and that's true for ours as well. There is simply no better way of controlling the cost of workers' compensation short of preventing the injury in the first place. I think that's where emphasis should be as well. But once they're injured, getting them back to work quickly, efficiently and that includes reducing costs not only to the employer and the insurance company in paying the claims, but the cost to the employee economically and otherwise, cost to society and so on. So again, there's no better panacea in terms of controlling work comp cost and making the system work and getting them back to work. That's the point. Our vocational rehabilitation program, as Senator Harr has just said, was designed for that specific set of employees who are unable to return to work with previous training or experience as a result of that work-related injury. That's the point. They are unable without this training or assistance to get back to work. Without that

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assistance, the burden of that injury and the related costs are shifted from the employer, where I think it should be, either to the employee or to society in general. That's one thing I think is critical with the whole thing to keep in mind. So I strongly believe that some form of vocational rehabilitation or return-to-work assistance is necessary for this set of people as a matter of sound public policy. At the same time, I do...and I don't disagree with others who have said there are significant problems with our current system as it currently operates that really need to be addressed. I think I see and you'll probably hear today people will today emphasize some of these points as well. There are two main problems as I see it. The first is that our counselors are not getting involved with the injured workers quickly enough in the process. Testimony I think you'll hear from others is that--and it's supported by the court's own data--that shows the average time from the date of injury to the date a workers' compensation case is opened in our system, which means when the counselors first become involved, is 27.22 months, over 2 years. At that point, the counselor is fighting an uphill battle. The employee often has emotional problems, economic problems, as well as the physical problems they may be experiencing. Studies have shown and there are a number of studies around the country and internationally that have shown that the longer an employee is off work the more likely it is that he or she will never get back to work. And I'll quote one of those studies if you would. The evidence suggests that structured vocational rehabilitation interventions are most effective between about one and six-plus months' absence from work. The best evidence on the upper limit for effective interventions is between three to six months. There is progressively less evidence for effectiveness between 6 to 12 months and very little for interventions after 12 months. Again, we're looking at two-plus years. With that in mind, I think it's somewhat surprising and even commendable that our program has worked as well as it has over the years. The problem that I see as a result of the delay, this delay has resulted in large part because of appellate court cases that have held an entitlement to vocational rehabilitation can't be determined until the employee has reached max medical improvement. Now that's the point at which the permanent impairment, permanent restrictions, permanent disability can be determined. I think there's some rationale for that. There was some good rationale in the court cases. I think the idea was that without permanent impairment or restrictions you really can't tell what voc rehab is appropriate or is needed. So there is some rationale. The problem with that is it doesn't take into account that many of these employees are medically capable of going through training or return to work experience or assistance, if you would, even though they haven't reached max medical improvement. So that I believe is one of

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the primary snags and one of the primary reasons for the two years-plus delay in getting voc rehab services. I think the Legislature can address that. I think there's some statutory changes that could be put in place to essentially overturn those cases quite frankly. I also understand the state of Washington has had some success in getting their counselors involved earlier in the process prior to MMI. They have a process they call early ability to work assessments. [LR246]

SENATOR HARR: Let me interrupt you there. The light turned red so I guess I will ask the question. Do you have more you would like to state? [LR246]

GLENN MORTON: I'm sorry. I... [LR246]

SENATOR HARR: No, do you have more you want to talk about? [LR246]

GLENN MORTON: I do. I do. [LR246]

SENATOR HARR: Okay, please continue. [LR246]

GLENN MORTON: And I'll be very quick if I could. [LR246]

SENATOR HARR: Yeah, please. [LR246]

GLENN MORTON: The state of Washington there I think has a program that they think is working and it actually gets the assessments going after 60 to 70 days of lost time, paid lost time. The second problem I see, and I will speed it up, is that vocational rehabilitation benefits are being bought out in favor of lump sum settlements. They're getting a lump of cash sum money in lieu of the training. The problem with that in connection with also with the delays in the system is that by the time the employee gets to that point down the line they often have emotional problems, they have unpaid bills that they have to take care of. Often they feel pressured to settle for that reason. They're settled, the money is gone, they have no job, little or no money, and no way, no training to get another job. I think that was an unintended consequence of a bill back in 2009, LB630. And prior to LB630, every lump sum settlement in a work comp case had to be reviewed and approved by the Compensation Court. And the court's rules prohibited buyouts of

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vocational rehabilitation benefits. We will not approve a settlement that's reviewed by the court if we suspect or if there's evidence or information to show that they're trying to buy out the voc rehab benefits. LB630 changed that by allowing many cases to be settled simply by filing a release of liability. And there's no prohibition from buying out voc rehab benefits under release of liability. One of the handouts I've given you shows the increase in the releases of...settlement by releases of liability since 2009, corresponding decrease in the lump sum settlements reviewed and approved by the court, and more importantly at the bottom of the page, the decline in the voc rehab plans over that period of time. I think I'll leave it to you to interpret that as well. But at this point, I think that's a huge problem. As I said, the employees have settled these cases. They have no wherewithal. It effectively, again, shifts the burden from the employer to society in general or to that employee. So with that, thank you for the extra time. [LR246]

SENATOR HARR: Thank you. Any questions? Senator Howard. [LR246]

SENATOR HOWARD: Thank you, Senator Harr. [LR246]

SENATOR HARR: If I may, sorry. We have been joined by Senator Ebke as well so thank you for joining us. Senator Howard. [LR246]

SENATOR HOWARD: Thank you, Senator Harr. And my apologies. This is my first hearing so I'm still learning. But I have a question about the lump sum payments. What would be the incentive for taking a lump sum payment? [LR246]

GLENN MORTON: Well, I think the incentive is to get the money instead of having the benefits drag out over a period of time where there would be wage loss benefits or, as I said, get a chunk of money in lieu of the training that they would have been entitled to. [LR246]

SENATOR HOWARD: And as a follow-up, is your suggestion to fix this problem to reinstate the review process? [LR246]

GLENN MORTON: I think the best solution would be to reinstate the...and from a public policy point of view would be to reinstate review of all settlements in work comp cases. These are not

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personal injury cases. They're not auto accidents. I think the supporters of the bill back in 2009 tried to say, well, we can settle all these personal injury cases without any oversight. Workers' compensation is just a personal injury case so why can't we do that? That's not true. The primary interest in an auto case is the injured driver, the injured person and their insurance company basically. That doesn't take into account the huge public interest there is in workers' compensation. The public has an interest that needs to be protected, and it's not being protected now without some review of the settlements. That's right. [LR246]

SENATOR HOWARD: Thank you. [LR246]

GLENN MORTON: As a minimum, as a minimum and I know that would be a hard sell politically, as a minimum there needs to be a prohibition against buyouts of voc rehab in any settlement, regardless of whether it's a release or approved by the court. [LR246]

SENATOR HOWARD: Thank you. [LR246]

SENATOR HARR: Senator Crawford. [LR246]

SENATOR CRAWFORD: Thank you. So I'm just going to follow up on that (inaudible). So you mentioned that one of the challenges that creates that pressure for the lump sum settlement is the condition that the worker finds themselves in because of this delay and so they don't have a job and they don't have income and so this looks like a way to...a very attractive option. [LR246]

GLENN MORTON: Exactly. I think they're related. [LR246]

SENATOR CRAWFORD: Right. So have you seen examples of policies or programs in other states to try to address that problem? So one is that you already mentioned is let's try to reduce the delay. [LR246]

GLENN MORTON: Um-hum. [LR246]

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SENATOR CRAWFORD: But are there other ways that a workers' comp system can provide assistance in that time period to try to make it easier for the worker to make it through that period and get to the job? [LR246]

GLENN MORTON: I think there are and I think there are other states who may have had some success. I mentioned the state of Washington. There was a legislative report recently that I really haven't been able to absorb completely, but I did run...did meet some of the Washington people at a recent conference. And they were pretty excited about the things they've been doing, as I said, with what they're calling early return to work assessments. They're getting...they have private counselors as well involved in their system, and they're making referrals to those private counselors, like I said, within 60 to 70 days of lost time. And so they have some pretty good statistics to show that it's working. I think we should look at that. I think there are possibly other states we could look at as well, although the primary activity is in the northeast or, yeah, excuse me, the northwest area right now. Wrong part of the country. [LR246]

SENATOR HARR: Senator Bloomfield. [LR246]

SENATOR BLOOMFIELD: Thank you, Mr. Chairman. I've been involved with the trucking industry most of my life. In most companies, the truck driver is one of the better paid employees... [LR246]

GLENN MORTON: Um-hum, um-hum. [LR246]

SENATOR BLOOMFIELD: ...unless you're in management somewhere along the line. I know of a case where a driver was sitting at a construction stop zone, was rear-ended by another truck and has not been able to drive since due to his injuries. He has worked very well with the company and they with him, and they have returned him to full-time employment in another position but it only pays about half. What can be done in your mind in there to make up for that difference because it's a lifelong thing? You know, it's not something he's ever going to return to. [LR246]

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GLENN MORTON: Oh, yeah. That issue is one that has been...the system has been struggling with for the 20, 30, almost 30 years I've been involved. The statute, as Senator Harr quoted earlier, talks about return to suitable employment. What is suitable employment? And the counselors struggle with that all the time. And quite frankly, if you have a truck driver, for example, or other highway worker, truck drivers are a great example because they often don't have any other skills. You know, once they're not able to drive that truck, they're pretty much dead in the water without some training. And to answer your question, I guess, is there is no...I haven't found a good way to do that. Most often the counselors do their best to get the employee, get the truck driver back to as close to the working wage as they could. Very, very often it's not possible. So I don't know that there's a good answer for that. If we could come up with a good answer, that should be put in this bill. I agree. [LR246]

SENATOR BLOOMFIELD: Thank you. [LR246]

GLENN MORTON: Or if there is a bill, yeah. [LR246]

SENATOR HARR: So I guess I have a couple questions. I guess my first question is we have a stat on voc rehab plans closed in a fiscal year. How many are open in a fiscal year and generally what's the scope or how long are those cases open? [LR246]

GLENN MORTON: I have a...I can get you the numbers for open cases too. We do report that in our annual report. There is a...it's about the same. It could be maybe...right now there were, as I said, 334 cases closed or some other information is circulating. I think in the same year there were 400-some cases open. The cases are pending at the end of the year as you could say. We could couch the numbers in many different ways. We can give you the same numbers for open cases. But it's about...it's around four...300, 400, 500 cases a year. Now just to explain before I get to your other point of the question which I'm not sure I remember... [LR246]

SENATOR HARR: How long are they generally open? [LR246]

GLENN MORTON: They are open, can be open for a significant period of time. Now it depends on whether it's...there are different types of plans. There are job placement plans and that means

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simply the employee is getting...given assistance in looking for and obtaining employment. Now quite frankly over the years, I've had some policy questions about that. If they can't return to work for which they've had prior training experience, why is the job placement plan...why is that out there? But that's...the job placement plans have been a key part of our system for years. The court cases have seemed to accept that. So one type of plan is simply a short-term plan to get them assistance in getting back to work. That could be 90 days. That's a typical period. But then there can be multiple plans in one case. If that doesn't work, there could be a second job placement plan. The other types of plans are formal training plans. That's a community college or some sort of actual schooling. There can be formal training plans. There are...most often they're community college plans, two-year plans. Sometimes there are shorter computer classes which would be for a shorter period of time if that employee just needs a few, you know, computer class upgrades to their skills. There are a few that are four-year or more, very few, but that does happen sometimes in a case where you really have a high wage earner. Those plans can go on for years quite frankly. We had a problem and I think this...I don't know if you'll year about it today, but there's also the struggle with what to do with English language deficiencies. You know, many of the meat packing plants, people who are injured are low skilled and they have no English proficiency and so on. So up to about 2010 there were ESL plans and those plans could drag on for years and years and years trying to get someone up to proficiency. We stopped approving standalone ESL plans in 2010, early 2011. Now we allow that but they have to be supportive services in connection with a formal training plan with a goal and so on. So we've tried to control that a bit. But I don't have a good answer for you. [LR246]

SENATOR HARR: Okay. [LR246]

GLENN MORTON: The plans can be short. They can be as short as 90 days if that's all the employee needs to get back to work, get a job. They could go on for years if there are multiple plans involved. Sometimes they're a formal training plan followed by a job placement plan. [LR246]

SENATOR HARR: And how many counselors are there? [LR246]

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GLENN MORTON: There are...didn't bring my...there are 100-and-some counselors nationwide that we certify because we have truck drivers all over the country. We have people all over the country. There about 50-some I believe certified in Nebraska. [LR246]

SENATOR HARR: Okay. And what is the cost per case generally if you know? Is there an average? [LR246]

GLENN MORTON: I don't have those costs, no, I don't. [LR246]

SENATOR HARR: Okay. [LR246]

GLENN MORTON: There are costs... [LR246]

SENATOR HARR: Is there a way you can get that for us? [LR246]

GLENN MORTON: I can get you the cost per case from the payments the court makes. In a voc rehab case, the court...there's a trust fund. All right? And from that trust fund the training expenses are paid, you know, school, the tuition, fees, books. The employers during that same period are obligated to pay for the expenses of a voc rehab counselor as well as the temporary disability wage loss benefits. I can get you the costs per case from the court. [LR246]

SENATOR HARR: Yeah, if you could get that for us, that would be great. And I guess that leads to my next question is how is this paid for? Is it paid based on the number of employees you have or is it based on when an employee is injured? How is the payment into the trust fund made? [LR246]

GLENN MORTON: The payments...the payments into the trust fund are funded by assessments against...self-insurance companies, self-insured employers, and risk management pools that we have, intergovernment risk management pools. [LR246]

SENATOR HARR: Is the assessment based on a per employee basis or is it based on claims?
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GLENN MORTON: No. It's based on a percentage of the benefits paid in the previous year by that insurance company or the self-insured employer or the risk management pool, 2 percent of the benefits paid when an assessment is necessary. [LR246]

SENATOR HARR: Okay. And how do they send that back to their client? We don't know. [LR246]

GLENN MORTON: I don't know, no. [LR246]

SENATOR HARR: Okay. Senator Crawford. [LR246]

SENATOR CRAWFORD: Thank you. Just for our information, can you explain how someone reaches maximum medical improvement? What does that mean? [LR246]

GLENN MORTON: It's physical, maximum physical improvement after a work-related injury, and that's always a decision the doctor makes. The physician makes that decision whether the employee is as good as...has recovered from that injury as well as they're going to recover. Now in many cases they're recovered fully and at that point things go on fine. Often they have a residual impairment or residual disability which legally those concepts are different, but it's kind of the idea; and then they're entitled to a certain amount of benefits for that residual impairment or disability under the Work Comp Act. [LR246]

SENATOR CRAWFORD: And so if I understand your discussing one of the challenges you see is that we can't get the voc rehab discussion started or interventions until you've reached that maximum medical improvement. [LR246]

GLENN MORTON: Yes. So the system is waiting around for the doctor to make that finding. [LR246]

SENATOR CRAWFORD: And that's based on court precedent? [LR246]

GLENN MORTON: Based on court cases. [LR246]

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SENATOR CRAWFORD: Okay. [LR246]

GLENN MORTON: Court cases basically said you can't have entitlement...you can't determine whether there's entitlement to voc rehab benefits until maximum medical improvement. [LR246]

SENATOR CRAWFORD: Thank you. [LR246]

SENATOR HARR: Okay. Thank you. And I guess I'm going to follow up on you...in your stat you show voc rehab plans closed in a fiscal year. [LR246]

GLENN MORTON: Um-hum. [LR246]

SENATOR HARR: How do you determine if a case is closed? [LR246]

GLENN MORTON: That's a determination made by the counselor, all right, and it could be for a whole variety of reasons. It could be that...well, let me step back without getting too much into the weeds. But we have...there are voc rehab cases and there are voc rehab plans. [LR246]

SENATOR HARR: Voc rehab what? [LR246]

GLENN MORTON: Voc rehab plans... [LR246]

SENATOR HARR: Okay. [LR246]

GLENN MORTON: Voc rehab cases and voc rehab plans. Those aren't the same thing. Under the statute that you quoted originally, the statute creating voc rehab system, it says when entitlement is claimed then the process kicks off. So...and under that statute if...when entitlement is claimed by the worker or his or her attorney, then the parties either have to try to agree upon a certified counselor, private counselor certified by the court, or if they can't agree they come to the court and we appoint one. That counselor is then charged with evaluating that employee to determine, first of all, whether there is entitlement...whether they're able to return to work for which they've had previous training or experience. If the counselor decides that, then it doesn't go any further.

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The case is closed for that reason. If the counselor decides that entitlement is appropriate, that counselor then develops a plan, a vocational rehabilitation plan, either for job placement or formal training of various types. And that plan has to come to our specialist at the court for a review and approval. And at that point then if the employer/insurer doesn't agree, they can take it to court and challenge that finding. So that's kind of how it works. A case can be closed because the employee didn't follow up, because the...like I said, there was no entitlement; it can be closed because you couldn't reach the employee; it can be closed for a variety of reasons at that point...withdrawn sometimes, settled. That's where I showed you the large number of cases. Of those 334 cases that were closed in FY '15, 137 of them were closed because of a settlement or release of liability. That's compared of those cases, 132 cases closed because a plan was completed, again, stressing the problem I see with that, with the settlements. So it can be closed for a whole variety...we've got a whole list of case closed reasons that the counselor can check off. They file a case closure form. [LR246]

SENATOR HARR: Is that information available? [LR246]

GLENN MORTON: Yes, I can get you that. It's a...quite frankly, it's not as clean and not as well laid out or logical as I would like to say, but I can get you that. [LR246]

SENATOR HARR: Do you know what percentage of these people who have voc rehab plans, do we have how many get jobs within six months of...well, first of all let's start with how many complete their plan if you know? [LR246]

GLENN MORTON: I do and I left it in my materials at my seat. There were...we do have those figures. I can get them to you right away. [LR246]

SENATOR HARR: Okay. [LR246]

GLENN MORTON: Like I said, I have them back on my chair and I've given them to the business side. [LR246]

SENATOR HARR: Do you have an approximate you know? [LR246]

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GLENN MORTON: There were some...okay. Of those 132 cases closed because of a plan, that involved 160-some, 161 plans. Remember I said that can be multiple plans. Of those 161, I think we have--and this is a bit embarrassing--I think there are reasons for it, but there were like 50-some return to work at the time of case closure, 50-some. There were another 50 or 60 or so that had not returned to work, and then there were a large chunk of unknowns. I wish there wasn't. [LR246]

SENATOR HARR: And do you track like, let's say, six months out? [LR246]

GLENN MORTON: We don't and that's a very, very good point and one point that I appreciate the opportunity to respond to. We only know and the numbers that are circulating, the numbers I just gave you and the numbers that I gave the business side, that's at case closure. It's only a snapshot. Right? We don't know if that case closes a week after. And frequently, quite frankly, when there's a settlement anecdotally I know that's the case. These employees are often kept off work until the case is settled in order to increase the amount of the settlement. And there are some real perverse incentives in the system as far as I'm concerned. And so we don't know. And the only...and I'm not even sure if the attorneys know because once they settle the case, you know, they don't have any more incentive to look into that. The counselors, and you will hear testimony I think from one of the counselors who has really made an effort to track employees over time. The problem with counselors, we've talked to them over the years, the private counselors who have a direct contract with employees, about having better information. They say there's a lot of reasons why they can't reach these employees. Again, talking about the delay, after a two-year delay or more delay, these employees sometimes are mobile. They aren't living in the same place they lived in. They don't have often sometimes...well, anyway, you understand. [LR246]

SENATOR HARR: Well, how many, I guess, because we want to see if this is working or not, right? We need data to prove what is or what we can do better... [LR246]

GLENN MORTON: Of course. [LR246]

SENATOR HARR: ...because we're all about the worker. [LR246]

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GLENN MORTON: Right. [LR246]

SENATOR HARR: You know, cheaper, faster, better--that's the basis of American society.
[LR246]

GLENN MORTON: Certainly. [LR246]

SENATOR HARR: Do you have employees within Work Comp Court for voc rehab? [LR246]

GLENN MORTON: Yes, we do. [LR246]

SENATOR HARR: Okay. How many? [LR246]

GLENN MORTON: We have six. [LR246]

SENATOR HARR: Six, okay. [LR246]

GLENN MORTON: Right. Well, and we've just lost one of them and I can explain that to you,
but we have five or six. [LR246]

SENATOR HARR: Well, yes, but there...okay. And I guess my question is, is there a way one of
those employees could work to track down this? Is one employee dedicated to data collection or
something? [LR246]

GLENN MORTON: No, we have no employee. And I've thought about that but quite frankly the
reason we haven't tried is because I'm not convinced that the data we would get would be
meaningful or complete enough for the same reasons the counselors haven't been able to get the
data. Now that doesn't mean we can't and shouldn't try, and then we certainly would. [LR246]

SENATOR HARR: (Inaudible). You understand the frustration is where you say there are some
perverse incentives within this? [LR246]

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GLENN MORTON: Um-hum, um-hum. [LR246]

SENATOR HARR: And I think we're going to hear today from employers who aren't happy with the system and injured employees and/or their representatives who are not happy with the system. And in order for us as policymakers to make that decision how to in some cases split the baby, in other cases...how do we do this in a way that's better for both? We're part-time employees and paid that way. And so we don't have the time to necessarily... [LR246]

GLENN MORTON: Sure. [LR246]

SENATOR HARR: ...go get the data collected. And so what we'd like to see is, you know, someone who has the knowledge and expertise to help provide that for...and to be honest with you, I would argue, a neutral party to collect that data for us so that we can make that decision on how to do this in a better manner so that both sides are probably happier with the outcomes. [LR246]

GLENN MORTON: Um-hum. I can commit to you that we would do that. [LR246]

SENATOR HARR: Okay. [LR246]

GLENN MORTON: We'll do our best to do it before the legislative session starts and be able to get you some information. But it will be working with a lot of other parties, not just the employee. [LR246]

SENATOR HARR: Fair. [LR246]

GLENN MORTON: We'll have to deal with the counselors and even perhaps the attorneys and so on. [LR246]

SENATOR HARR: Well, and that needs to be the question, is, do you need more planning for that then? I mean, if we're going to make good policy, we're...you know, it's an indirect tax on

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business if we're doing something that's inefficient. You know, maybe we need to get you more money so you can do this in a better manner. [LR246]

GLENN MORTON: That may...and that could be true. I think, quite frankly, I don't know. Right now, the staff we have is a manager, and we have...who had three positions that actually agree to the plans, you know, oversaw those plans to make sure they were appropriate. We've lost one of those persons recently. And because of the plans are so down, I'm not filling that. But then we have just two staff assistant people. Quite frankly, those three specialists were very, very busy just a few years ago when the number of plans were high. All right? So whether...if you fix the delay, then that's going to impact the staff, and as well as whether you continue the same oversight. I mean that...we may need more money, but it will depend on what kind of fix you want put in. [LR246]

SENATOR HARR: And if we did get you the services earlier, or for the employer, do you think the amount of time the case is open would remain the same or would it shrink? [LR246]

GLENN MORTON: Oh, I think it would shrink significantly. Again, I don't have solid numbers. I think the state of Washington might have some. They're showing improved return to work and so on. [LR246]

SENATOR HARR: And are the number of cases open greater once they've moved that period closer to the incident, date of incident, or does it pretty much remain the same, if you know? [LR246]

GLENN MORTON: I don't know. And it may depend on what you want to do. Do you want to have a full-fledged voc rehab system? Do you want just an early return to work system? It may depend on what kind of intervention that you decide and we decide,... [LR246]

SENATOR HARR: Okay. [LR246]

GLENN MORTON: ...the Legislature decides. It may depend on what kind of system it comes up with. So if we had a...once we get a better idea of what kind of things we're looking at as

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solutions, then we can come up with a better estimate on that, just like any fiscal note kind of situation. [LR246]

SENATOR HARR: Okay. Well, any follow-up questions? Senator Bloomfield. [LR246]

SENATOR BLOOMFIELD: Thank you, Senator Harr. Mr. Morton, over my working career, I've been on workmen's comp three times. I was never made aware that there was a counselor available even. How long has that been in effect? [LR246]

GLENN MORTON: Well, quite frankly, it's... [LR246]

SENATOR BLOOMFIELD: How long does it take until somebody tells the injured employee that there is counseling that would work with them? [LR246]

GLENN MORTON: That's a good point. That's a very good question. The voc rehab program was created in 1967. The way it functions now, it was part of LB757 in 1993. So there should...it's pretty inexcusable that you weren't informed, you know. [LR246]

SENATOR BLOOMFIELD: No. [LR246]

GLENN MORTON: That's just all our...we do...now we have a letter. Whenever we receive a first report of injury at the court--all first reports of injury have to be filed with the court--we do have a letter that goes out now to the address of the employee on that first report advising them basically of their rights and so on and a number they can call and where they can call for further information. So we're doing a much better job of getting information out now. [LR246]

SENATOR BLOOMFIELD: Okay. In defense of our people here, the first two times were in '68 and '70. [LR246]

GLENN MORTON: (Laugh) Okay. [LR246]

SENATOR BLOOMFIELD: I was working in Iowa and living in Nebraska. [LR246]

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GLENN MORTON: Okay. [LR246]

SENATOR BLOOMFIELD: So I don't know how Iowa does it. But the last time was in '94 and I was never informed and... [LR246]

GLENN MORTON: Um-hum. Yeah. You should have been. Somebody should have informed you. Part of the problem...well, we need...employers need to do a better job I think of working with the injured workers, directly with them. I mean the supervisors and so on. Part of the reason that employees turn to attorneys is just because of that reason: they're not getting what they need directly from the employer. [LR246]

SENATOR BLOOMFIELD: Okay. Thank you. [LR246]

SENATOR HARR: Seeing no other questions, thank you. I appreciate we kept you a little longer than you expected, I'm sure, but I appreciate it. And I'm going to see if Judge Brown...retired, right? You want to come up? [LR246]

RONALD BROWN: Thank you, Senator Harr. I am retired from the Workers' Compensation Court. I was on the Workers' Compensation Court for about 18.5 years and I served four years as presiding judge of the Workers' Compensation Court. I... [LR246]

SENATOR HARR: Can you state your name and...for the record. Sorry. Yeah. [LR246]

RONALD BROWN: I'm sorry. I'm sorry. Ronald Brown, B-r-o-w-n, Omaha, Nebraska. [LR246]

SENATOR HARR: Continue. Sorry. [LR246]

RONALD BROWN: And I've worked in the system, in the workers' compensation system as a practicing attorney and as a judge of the court for a total of 38 years. And I want to tell you I think that the vocational rehabilitation system is very important. I think it's well administered by competent people. It would be my opinion that there are no sweeping changes necessary in the

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system as it now exists. I want to talk to you I think first about the big picture. As Glenn said, when the rehabilitation system was created by statute in 1967, the first sentence of the first paragraph of that statute provides that one of the primary purposes of the Nebraska Workers' Compensation Act is restoration of injured employees to gainful employment. It's my belief that the cost and expense associated with returning an injured employee to suitable employment is rightfully placed on the employer. If it's not placed upon the employer, it's going to be shifted to the state of Nebraska generally. And how that happens is the people that cannot return to suitable employment may receive unemployment benefits. During the course they are on unemployment benefits, they may receive food stamps. During the time that they're on unemployment, they may become eligible for Medicaid. So all these kinds of costs get shifted to the taxpayers, rather than the employer. It's my belief that vocation...workers' compensation generally and vocational rehabilitation incentivize employers to provide a safe workplace. If an employer is liable for the cost of workers' compensation generally and vocational rehabilitation, they have the incentive to provide as safe a workplace as possible so people do not get injured in the first place. Tuesday I had a client in my office for a deposition who lives in Bellevue. She is a person who has worked for 14 years as an EMT for a private service provider. She was hurt about a year and a half ago when she and three coemployees were trying to transport a 600-pound bariatric patient from a hospital to an aftercare facility. She had a shoulder injury. She's had three surgeries on that shoulder now. She's not going to return to work as an EMT. The job description for her position requires that she lift 150 pounds regularly. The physician who placed her at maximum medical improvement said, you're as good as you're going to get and with your right arm, after three surgeries, you can lift a maximum of 20 pounds. This woman has a lot of medical knowledge, a lot of experience. With a proper vocational rehabilitation plan she can be moved from an EMT position to a related medical type of employment as maybe an MRI or CAT scan tech. She's going to need some training to go from EMT to that position. It may require that she goes to Metro Community College or Western Iowa, someplace, for a two-year program to obtain those skills necessary to move to that kind of a position. She testified during her deposition that her prior employment was Dairy Queen and Pizza Hut. If she does not have...if she does not acquire the skill to move to another position that pays relatively the same, she's going to return to work at Dairy Queen or Pizza Hut. Her family, her community, and the state of Nebraska is not benefited by that person going from an \$18 an hour position to an \$8 or \$9 an hour position. The community is benefited if she can be returned to semiskilled or skilled employment at a wage

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comparable to that that earned at the time she was hurt. Now, you know, I want to talk again about a point that Senator Bloomfield made: truck drivers: Truck drivers are often economic overachievers. You can...once you get your CDL...I represent a lot of truck drivers because we have large trucking firms that operate out of the state of Nebraska. You have a lot of truck drivers who are often high school graduates. They go to driving school. They obtain their CDL. They're out on the road. And a good truck driver after two or three years can make \$60,000 to \$70,000 a year. If that truck driver is hurt and has no other transferable job skills and is limited to a high school degree, where is that worker going to go and obtain employment that's going to pay him a comparable wage without vocational training? In my mind, that truck driver is entitled to be evaluated to see what kinds of aptitudes he has so that he can be retrained to return to work at a comparable wage. [LR246]

SENATOR HARR: Great. Thank you. I'm going to let Senator Bloomfield start since that's where we... [LR246]

SENATOR BLOOMFIELD: I will make the same statement you did or question you did. Do you have further comments you would like to make? [LR246]

RONALD BROWN: Well, yeah. I... [LR246]

SENATOR BLOOMFIELD: And I want to follow up just a little bit. You may need to update a hair on the wages that a truck driver can me. It can now range between \$80,000 and \$100,000 if you're a good driver and you're not afraid to work. [LR246]

RONALD BROWN: I've represented several truck drivers who make \$80,000 to \$90,000 a year. I've represented several people who stay out on the road 50 weeks a year and live in that tractor. So if I could continue with...on the subject of, you know, the trucking industry, that is one industry where injuries are just a part of the employment. A 53-foot trailer, fully loaded, can weigh 40,000 pounds. Somebody has got to load and unload that trailer. Some of those loads are palletized and can be unloaded with a fork lift. Some can't. Some, in a lot of situations, that 40,000 pounds is unloaded manually when it gets to the distribution center or when it gets to the Family Dollar store or Walmart. And if 11 hours a day, 6 hours...11 hours a day, 6 days a week

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you're doing that kind of work, the odds are good that over time you're going to have some kind of injury. You're going to blow out a knee or a shoulder or you're going to have a back injury or you're going to fall off the back of the trailer and have a serious injury which is going to prevent you from returning to that type of employment earning that kind of wage. Those people especially need vocational rehabilitation services to acquire a skill that's going to allow them to return to work within the permanent physical restrictions they have, but earn a living wage. Any other questions? [LR246]

SENATOR HARR: I'll start on the right. Senator Bloomfield. [LR246]

SENATOR BLOOMFIELD: No, other than if you have some comments you would like to finish up with that you haven't already, I would encourage you to do so. [LR246]

RONALD BROWN: Well,... [LR246]

SENATOR BLOOMFIELD: (Inaudible) there, that's fine. [LR246]

RONALD BROWN: Okay. I just want to make the point again that I think that families, communities, and the state of Nebraska is incentivized...are benefited when employers are incentivized to provide safe workplaces. Now all these accidents are not always the fault of the employer. I've seen some people do some pretty stupid things and get hurt. But the person who can make the workplace safe and who should have the incentive to make the workplace safe is the employer. Everybody, including the employer, is benefited by that. [LR246]

SENATOR HARR: Thank you. Any...Senator Crawford. [LR246]

SENATOR CRAWFORD: Thank you, Senator Harr. And thank you, Judge Brown. I felt that the Bellevue case you were discussing was a very compelling one, not just because it was from Bellevue (laugh), but it was a good example of what role we would hope that the system would play in getting someone back to work after an injury when they can't go back to their previous employment. So you told us the setup, but are you free to tell us if it worked in that situation? Was he or she put in that training plan, and are they going to school to get a tech job? [LR246]

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RONALD BROWN: I have a trial in that case October 15. [LR246]

SENATOR CRAWFORD: Okay. [LR246]

RONALD BROWN: I think that the one real issue that remains in that case is, is this employee entitled to vocational rehabilitation benefits? After the deposition Tuesday when I talked to the counselor or talked to the council for the employer he said, I'm going to recommend to my client that we agree to vocational rehabilitation services. And what will happen is, if we're not able to agree on who that should be, we'll file an application with the Workers' Compensation Court. They will appoint a counselor from their list of certified counselors, and their evaluation process will start. And I think any counselor in this room would probably start with the fact that this lady has a lot of medical knowledge and training and the logical plan for her is to stay within that type of employment and not start from square one. There are a lot of medically related types of positions that she can perform with the lifting restriction she has if she gets the training to do that. [LR246]

SENATOR CRAWFORD: So the vocational counselor is the one that basically would be the gatekeeper for her to get access to tech training? It would need to be agreed upon between the vocational counselor and (inaudible)... [LR246]

RONALD BROWN: Yeah. The counselors generally will start by sending these people to Metro Community College and have some aptitude testing done. And, you know, they want to know that this person is academically able to complete a vocational rehabilitation plan. Then they look at the permanent physical restrictions. There might be 100 positions that someone without restrictions could perform, but a person with a 20 pound weight restriction on their right arm may only be able to perform 20 of those. Does that person have the academic ability to train for one of those 20 types of positions to reenter the job market? [LR246]

SENATOR CRAWFORD: Thank you. [LR246]

SENATOR HARR: Senator Howard. [LR246]

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SENATOR HOWARD: Thank you, Senator Harr. Thank you for your testimony today. You opened your testimony by saying that you don't feel as though there are any sweeping changes needed to vocational rehabilitation. However, Mr. Morton pointed out two significant problems with the system and suggestions for improvement that we could make here. What are your thoughts on those problems and suggestions? [LR246]

RONALD BROWN: Okay. Let me start with the early involvement of vocational rehabilitation counselors. In a lot of cases--I'm not going to tell you that it's the majority, but then in a significant number of cases--it's obvious as medical care goes along that this employee is not going to be able to return to work as a truck driver, for example. You know, if you've had a three-level fusion in your neck or back, you're not going to go back to unloading trucks. That person I think would be benefited by contact early on. Oftentimes, counsel for both parties, the employee and the employer, agree this guy is not going back to his former employment. Let's get this vocational rehabilitation process started. I think it benefits the employee to start thinking about, what am I going to do when I am released by the doctor to return to work? There are some cases, for example. Let me give you an extreme case where you've got an amputation. Obviously, a person who lost an arm or a leg is...if they're doing physical labor, is not going to go back to that same employment. That person should early on be encouraged to start the vocational process and start thinking about what type of work they're going to do when the doctor releases them to return. It'll shorten the time, the...you know, and a lot of employers are in favor of that because the employer is paying temporary total disability while the person is recovering from the surgery. If they can't start vocational rehabilitation until they receive maximum...achieve maximum medical improvement, you know, then they can't even begin to be evaluated for the process until then. A lot of times, the person can start this evaluation process so that when they reach maximum medical improvement they have a plan in place that they can start. And a lot of the groundwork, the preliminary work has been completed. [LR246]

SENATOR HOWARD: And then his second suggestion was to prohibit buyouts for benefits. [LR246]

RONALD BROWN: Employees, I think, are benefited by vocational rehabilitation. If you have an employee who has been away from work and may have not received any workers'

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compensation benefits until they can get into court and that's eight or nine months after the date of injury or after the filing of a petition, those people are on the verge...you know, they've probably lost a car if they had one that they had financed. They may be in the process of losing their house. That money disappears quick if it's paid to them in a lump sum, and they still have no skill to return to suitable employment. So, you know, the buyout of vocational rehabilitation is a problem for the system. [LR246]

SENATOR HOWARD: Thank you. [LR246]

RONALD BROWN: Yeah. [LR246]

SENATOR HARR: Thank you. Senator Bloomfield. [LR246]

SENATOR BLOOMFIELD: Thank you. I want to just follow up on Senator Howard's question though a little bit. Say an individual was 60 years old, 62 years old, approaching retirement anyway, and if he can get a nice buyout, why would you go back? [LR246]

RONALD BROWN: Well,... [LR246]

SENATOR BLOOMFIELD: Or why would we prohibit that from happening? Why would we take away that individual's right to decide what's best for him, a law that says he can't do something that he thinks is best for him? [LR246]

RONALD BROWN: A 62-year-old person with significant permanent physical injuries is probably permanently totally disabled as that's defined by the Workers' Compensation Court, by our case law. And that person is entitled to weekly payments for the remainder of their life if they are determined to be permanently totally disabled. That person may want to take a lump sum in that case because if...and this is a situation we deal with all time. You have an older worker who may be entitled to weekly indemnity benefits for the remainder of their life. They may have some other medical conditions not related to the workers' compensation claim that probably will...they will not see their statistical life expectancy. If the worker dies, the benefit payments stop. They do not continue on to the family. The worker may want to take a lump sum

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so that if something happens to that person a year or three or five years later, the family has the benefit of the lump sum payment. There's give-and-take in this system, and there are, you know, multiple considerations that go into the decision to settle a claim. [LR246]

SENATOR BLOOMFIELD: So outlawing the lump sum payment, as I read you, would not necessarily be a good idea. [LR246]

RONALD BROWN: There are pluses and minuses. There are pluses and minuses to it. And your example is a perfect example of why someone should be allowed to lump sum their client. [LR246]

SENATOR BLOOMFIELD: Okay. Thank you. [LR246]

SENATOR HARR: I just have one question. I want to, first of all, thank you for coming down here. Based on your experience as a judge and practice, what do you see as, on voc rehab, percentage of success of getting a person back in the job and, when they're in voc rehab with a plan, getting them back into their prior employment or to the next levels that are required under the statute? [LR246]

RONALD BROWN: Well, as you know, there are priorities within the... [LR246]

SENATOR HARR: Yeah. [LR246]

RONALD BROWN: ...within the vocational rehabilitation statute. The one which becomes most problematic is the last priority, and that is in situations where someone needs a formal vocational rehabilitation plan in order to return to work. Those tend to last longer. They tend to be in cases where you have high wage earners who are not able to return to their former employment. They need to attend a formal plan to obtain the skill. They don't have a strong back anymore. So you have to put...if you don't have a strong back anymore and you can't do that kind of employment, you have to acquire a skill to substitute for that so you can return to the marketplace and obtain, you know, employment comparable to what you had. I don't know that I can give you good numbers. You know, if you have a 50-year-old truck driver who has been out of school for

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20...for over 30 years and the plan is for him to, you know, go attend college for four years to obtain a bachelor's degree in order to earn \$80,000 again, that's probably not going to happen. That's not going to happen with most 50-year-olds. They've been away from the educational system for too long. They're...you know, if they're going to be in a plan for four years, if they're 50, that then makes them 54 or 55. They're trying to compete against 25-year-olds with the same degree. It doesn't work out in most cases. [LR246]

SENATOR HARR: Do you...but success rate, where do you see that? Or how can we do it better, I guess, is the better question because of the situation you laid out. [LR246]

RONALD BROWN: You can have every employee who is injured be 22, very bright, and have a lot of transferable job skills. [LR246]

SENATOR HARR: Short of that though? [LR246]

RONALD BROWN: I think the one thing that could be done to improve the system and benefit everybody is to allow vocational counselors to be involved in the process sooner rather than later. I think it's important an employee start to think about what I'm going to do when I reach maximum medical improvement, as soon as possible, instead of having them sit home for two years doing nothing and getting to the point where they think, I'm screwed, there's nothing more I can do. [LR246]

SENATOR HARR: Okay. All right. Well, I appreciate your testimony here today. [LR246]

RONALD BROWN: Okay. [LR246]

SENATOR HARR: Thank you. And with that, I would open the floor to anyone else who wants to come up and testify. Come on up. Bring your green sheet and give it to Lauren, Ms. Williams, our AA over here--yeah, great, thank you--committee clerk. [LR246]

KAREN STRICKLETT: And I do have some... [LR246]

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SENATOR HARR: Yeah. Thank you. We seem to be short a page. But thank you. Take a seat.
[LR246]

KAREN STRICKLETT: Thank you. Welcome. That's right. [LR246]

SENATOR HARR: State your name and go ahead and begin. [LR246]

KAREN STRICKLETT: (Exhibit 3) I'm Karen Stricklett, S-t-r-i-c-k-l-e-t-t. I've been a vocational rehabilitation counselor in Nebraska since 1979. I worked for the state vocational rehabilitation agency for one year before I was hired by a private rehabilitation company. And after working for a private rehab company for one year, I started my own business, and I've been self-employed as a rehabilitation counselor since 1981. Today we've...you'll probably hear some testimony in favor of eliminating vocational rehabilitation services from the Nebraska Workers' Compensation Court system. And in support of this you may hear some stories about us--overbilling on behalf of private rehabilitation counselors or data indicating that we are not effective and we have poor return-to-work outcomes. We agree that there are problems with the system, and you've already heard some testimony in that regard. But we also feel that there are solutions to those problems. And I'd like to start out by sharing a history of our services. We've kind of come full circle here since I've been around for so long. In the late 1970s, private rehabilitation companies were becoming more actively involved in Nebraska workers' compensation cases. This involvement was driven by the insurance industry. Insurance carriers were dissatisfied with the length of time it was taking for injured workers to get back to work, for them to complete plans, and the ongoing indemnity benefits were increasing. There were significant differences between public and private sector rehabilitation. Prior to private rehabilitation coming on the scene, the only services available, primary services available, were through the state rehabilitation agency. This agency is funded primarily by public money. Counselors have a wide variety of caseloads and they're very large, often over 100. The individual must meet specific eligibility requirements in order to qualify for services. Those identified as having the most severe disabilities are given priority, and the focus is upon restoring the individual to maximum potential rather than returning them to preinjury wage level. Private rehabilitation counselors were able to maintain much smaller caseloads and could provide more comprehensive and focused rehabilitation efforts. At that time, when I started, early referral was

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a key component in the success of vocational rehabilitation services. We originally, typically, would meet with the injured worker for the first time 60 to 90 days after the injury date. Following that initial meeting, we began to explore return-to-work options immediately and with the employers and medical providers included in that process. Efforts focused upon coordinating a return to work with a previous employer in either the same job, a new job, or a modified job. And vocational counseling and testing began early in the process so that when training, if it became an option, that would be something that we could implement more quickly and enable the worker to return to suitable employment. Now over the years, as you've heard from Judge Brown and Glenn Morton, the length of time between date of injury and the date of referral has increased significantly. We are now at least two years. In some cases we've received recently, one individual we've received has been out of work for six years, and his doctor had said two years after his injury that he was ready for vocational rehabilitation services. He knew he would not go back to his same job. The fact that we're unable to initiate vocational services until the injured worker has reached maximum medical improvement--we've heard testimony about that today--is one development that has delayed our involvement and resulted in negative return-to-work outcomes. If vocational rehabilitation services are eliminated as a benefit to our injured workers, we've essentially come full circle. Once again, the only vocational services available to the injured workers will be those offered at the state agency level. If it's determined that an injured worker even qualifies for training once they've been accepted, he or she will not...will most likely not have a source of income while participating in a training program. Injured workers involved in the system through the Workers' Compensation Court are entitled to receive temporary total disability benefits while participating in a court-approved plan. And without a source of income, most injured workers would be unable to take advantage of any services that might be available to them through the state agency level. Today I brought along...over 25 of our clients have submitted letters explaining how important and life changing this benefit has been to them and their families. I've only been allowed to submit a few, so we picked eight of them and have provided you with copies. And I encourage you to read them. They're very compelling. In closing, we agree that changes need to be made to our current system. We're more than willing to work with all parties involved in this process to make certain that vocational rehabilitation is successful and cost effective so that the primary purpose of the act can be achieved. And I'd be happy to answer any questions or elaborate on any points that I've made that were quickly made.

[LR246]

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SENATOR HARR: Thank you, Ms. Stricklett. [LR246]

KAREN STRICKLETT: Thank you. [LR246]

SENATOR HARR: I want to first start out by clarifying the record. [LR246]

KAREN STRICKLETT: Yes. [LR246]

SENATOR HARR: People love to attack government, and so I want to be very careful, when people do, that they realize what they're doing and not doing. And so the first letter is from Windie Brown. And she says, I'm very disappointed that our Legislature has proposed a bill eliminating vocational rehabilitation services. If you could let her know we are not, okay? [LR246]

KAREN STRICKLETT: I didn't read the letters myself. [LR246]

SENATOR HARR: Not...yeah. [LR246]

KAREN STRICKLETT: Yes, I will. [LR246]

SENATOR HARR: Not that we...you know, I just wanted it... [LR246]

KAREN STRICKLETT: Exactly. [LR246]

SENATOR HARR: ...very clear that this is...that the purpose of this hearing today is not to hear a bill. [LR246]

KAREN STRICKLETT: Right. [LR246]

SENATOR HARR: It is to collect information so that we can then decide what policy route we want to take. But just...if you could clarify, we want to be very clear on that. So thank you. I apologize for it, but I just wanted to get that across. [LR246]

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KAREN STRICKLETT: Yes. [LR246]

SENATOR HARR: We are known to get attacked in the media for things we say. We are known to be out of touch, and we are not out of touch. We talk to our constituency very often. And so I just wanted to make that very clear. With that, I would open the floor to any questions. Senator Howard. [LR246]

SENATOR HOWARD: Thank you, Senator Harr. Thank you for your testimony today. I'm curious. You mentioned that you were a vocational rehabilitation counselor for the state. And then you shifted into private practice? [LR246]

KAREN STRICKLETT: Yes. [LR246]

SENATOR HOWARD: Can you tell me a little bit about the difference between services available from the state agency versus services available from a private entity? [LR246]

KAREN STRICKLETT: Yes, I'd be happy to. I only worked for the state for about a year. I was...I had another career prior to going back to school, getting my master's in counseling. And I began working for the state agency. The primary difference and the reason that I made the switch was I loved working with people with disabilities. I had a huge caseload with a variety of people, all sorts of disabilities. And I worked primarily with the hearing impaired, so that part was easy because those people were all pretty similar in similar circumstances. But I might have one workers' compensation client and I might have someone, a few people with brain injuries, learning disabilities, emotional/psychiatric disabilities. And it was so difficult for me to provide quality services to each and every one of those people because there were so many of them with so many different needs. And when I heard about private rehabilitation I loved the idea of being able to do what I loved to do on a smaller scale with a more specialized approach and having a much smaller caseload and being more accountable for the results and more accountable to my clients who were the disabled people. So the primary difference that I found over the years...and again, I was only there for about a year. I think there is someone else here who was there a little bit longer than I before they made the switch. But in private rehabilitation what was so appealing back then was we could get involved earlier. I was working with doctors and employers to

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basically help the individual understand what was going to happen next. Everybody was involved in the process and the outcome, as a result, was often very positive, especially for the injured worker who was so concerned about what's going to happen to me, will I go back, my employer hasn't spoken to me. And as a counselor we were able to coordinate all of that communication and provide those services and also access funds more quickly to get them into training if they needed it. And basically, things went along much more quickly and the results were more positive. [LR246]

SENATOR HOWARD: I apologize. As a follow-up, so are there any differences in the services that are provided? [LR246]

KAREN STRICKLETT: Oh, I apologize. I got...in the services, you know, in essence, basically, in private rehabilitation we're working essentially with the workers' compensation clients. The services that are available are...and then I'll talk about state. The primary services available through the private rehabilitation workers' compensation system would be funding available for tuition, fees, books, supplies, mileage, if they're in school, or for mileage if they're in a job placement plan. We're available to them as often as they need us to help them prepare their programs, monitor their progress in classes, provide job placement services, reach out to employers, meet with them on a weekly basis if they're in a job placement plan, help them with resumes, network with other employers; back on the training side, being more actively involved during the training phase and, when they're done, provide job placement, in some cases, afterward. With the state...and I think the biggest thing would be the fact that they will receive money while...or temporary total disability benefits while they're in a plan, whether it's job placement or training. At state rehabilitation, we had more hoops to jump through, and it was effective with certain populations. But we also had funding issues, so now and then we couldn't provide any services. It took much longer to get someone approved for services at all, and then they had to stand in line and wait for...to see how they fell in terms of the priority list. With training, the funding might...they would have to access additional funds, perhaps apply for student loans, Pell grants. And then it would be determined what help they were eligible for in terms of the tuition and fees. They also had to meet financial need. So if they had a family member who was working, that was taken into consideration, even if that person wasn't working. But the biggest issue, the biggest difference was the fact that there was nothing for them to live

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on while they were in school. So many of the people that I worked with then, because they weren't workers' compensation clients, were receiving some sort of Social Security Disability or SSI, so they had something to live on if they did go to school, but not the workers' compensation clients. They wouldn't have had any income other than a family member who might be working. [LR246]

SENATOR HOWARD: Perfect. Thank you. [LR246]

KAREN STRICKLETT: You're welcome. [LR246]

SENATOR HARR: Senator Crawford. [LR246]

SENATOR CRAWFORD: Thank you, Senator Harr. And thank you, Ms. Stricklett, for being here to share your experience. I would just appreciate hearing from your years of experience what you would like to see. Like, if you...if we were able to think about how do we improve voc rehab, what would you like to see that you think would be effective based on your experience? [LR246]

KAREN STRICKLETT: Thank you. I have several opinions about that, and some of them have already been stated. I think that the common theme is--I know for a fact studies show and I've experienced it over the last 35-36 years--that the sooner we become involved with the injured worker the better. And there's nothing that says we can't start meeting with the injured worker right away when it's...well, obviously not when they're in the hospital. But let's say they're at home now and they're beginning already to worry about...many of them start worrying the day after their injury, what's going to happen to me? And if they haven't heard from the employer, we can coordinate that communication. Early intervention to me is key. Sixty to 90 days, I think someone might talk about statistics, has been proven to be a very effective period of time. The other thing is I firmly believe that we can start vocational counseling right away, and we can even begin looking at possible training, because I know for a fact that many of the doctors that I used to meet with and some even to this day will say, I know that this person will not be able to go back to what they were doing, and can give us an estimate as to what they think their restrictions will be. Now that won't be the permanent restrictions. They won't be at maximum

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medical improvement. There won't be a permanent impairment rating yet. But we know for a fact that that person will not be able to go back to what he or she was doing. Let's start voc rehab now. So if we could somehow get it so that we could get a plan approved without that caveat that's normally one or two years out from the injury, especially if the doctor is on board and will give us guidelines to follow, that to me would be a huge assistance to all of us--employers and the injured workers and the Workers' Compensation Court. [LR246]

SENATOR CRAWFORD: Thank you. [LR246]

KAREN STRICKLETT: I think I had one other point. Oh, and one other thing I would like...may I jump in? About the vocational rehabilitation buyout, I didn't realize that that was happening again. And I think the point is they can still lump sum settle their cases, but what's happening is some of them or some of the parties are trying to say, well, what would it cost if I sent them to school? Oh, two years of TTD benefits, let's throw that in with the lump sum settlement. So my understanding is, and I apologize if I'm incorrect, is that that's how the buyout for voc rehab is being utilized, whereas the person is still entitled to a lump sum settlement based upon permanent impairment and other issues. [LR246]

SENATOR CRAWFORD: Just so I clarify, so what you're saying is someone could get a buyout and still have access to vocational rehab. [LR246]

KAREN STRICKLETT: No. [LR246]

SENATOR CRAWFORD: You're not saying that. [LR246]

KAREN STRICKLETT: No. That's correct. [LR246]

SENATOR CRAWFORD: Okay. [LR246]

KAREN STRICKLETT: So, and people...and clients have asked me, well, if I take the money for voc rehab, will you still work with me? No. If you close...if you settle your case and take that money, it's just money. You don't have access to the train...the tuition, fees, books, supplies, my

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services, mileage, all of those things that go along with that. So they would not be entitled if they lump sum settle their case and release liability. [LR246]

SENATOR CRAWFORD: Okay. I hear you. Thanks. [LR246]

SENATOR HARR: Senator Bloomfield. [LR246]

KAREN STRICKLETT: Any questions (inaudible)? [LR246]

SENATOR HARR: No? Okay. [LR246]

KAREN STRICKLETT: Okay. [LR246]

SENATOR HARR: Seeing no other questions, thank you for your time. [LR246]

KAREN STRICKLETT: Yeah. Thank you. [LR246]

SENATOR HARR: I appreciate it. [LR246]

KAREN STRICKLETT: Thank you very much. [LR246]

SENATOR HARR: Anyone else here to testify on LR246? Just come on up. [LR246]

JACK GREENE: My name is Jack Greene. I'm also a private vocational counselor. I had worked with the state... [LR246]

SENATOR HARR: Can you spell your last name for the record. [LR246]

JACK GREENE: Oh, G-r-e-e-n-e. Sorry. [LR246]

SENATOR HARR: Go ahead. [LR246]

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JACK GREENE: As Karen had testified, she had been a vocational counselor with state vocational services, and I was there for about eight years. So I had a pretty good experience between...the difference between the public and the private system. And then I worked for a private rehabilitation company for 15 years and then opened my own office about 15 years ago. As Karen had testified, the early referral of injured Nebraska workers used to be the norm, and we had a lot more options. Oftentimes there's a window of opportunity that tends to close. Glenn Morton had mentioned about the financial stresses. The relationship with the employer tends to deteriorate. So there are a lot of things that we used to be able to do years ago--go into the plant, try and make things work--whereas, once you get past a year or two, those options tend to have gone away. To assist the committee with understanding the benefits of early return to work, you've heard some testimony about Washington state. And they've done some significant reforms with their rehabilitation program. They now require that training plans and other return-to-work plans be developed within 90 days of being referred to a vocational counselor. And they're also referring much closer to the date of injury. They've increased the range of their rehabilitation options. They've also increased the accountability for faster implementation of the rehab services, which also reduced their cost. They've developed an innovative return-to-work program called their "Option 2," which is a self-directed rehabilitation program that also allows the case to be settled earlier. And I can talk about that in detail later on if you'd like. But overall the state of Washington has found that their increased percentage of claims are resolved earlier and the reforms have reduced the time necessary for plan development and lowered overall their cost. I spoke with Ryan Guppy who is the chief of return-to-work partnerships within the Washington Department of Labor and Industries this week. And he informed me that the overall cost of their disability expenses throughout the state have been reduced as a result of their vocational rehabilitation reforms. These reforms have reduced their cost shifting to their own state assistance programs and also to the federal Social Security Disability Insurance program. Their overall loss...time lost days for the workers' compensation claims were reduced by about 100 days. Mr. Guppy informed me that in 2008 they had instituted what they now consider a failed policy of not referring their injured workers to vocational rehabilitation services until after reaching maximum medical improvement, which they then quickly reversed. But he informed me that this mistaken policy had cost the Washington state millions of dollars and had substantially increased their time loss for their claims. They're just now beginning to dig themselves out of the hole they created by not allowing vocational services until maximum

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medical improvement. Mr. Guppy also estimated during my conversation with him that the overall state savings resulting from their vocational rehabilitation service reforms now comes close to covering the cost of their vocational rehabilitation services for their injured workers throughout the state. He had also pointed me towards the Equal Employment Opportunity Commission because last year they issued a policy that they consider using maximum medical improvement as a trigger for any disability-related services to be potentially illegal. And they do not recommend that as any kind of a trigger for vocational services. I think that probably covers most of what I wanted to go through. Same as Karen said, we would...as a group for the IARP rehabilitation organization we would be more than glad to work with you on any issues or reforms that will help the system work. The earlier return to work, eliminating the need to deal with maximum medical improvement before going back, as Washington found out, they saved a lot of money and a lot of lost time for their claims. Thank you. [LR246]

SENATOR HARR: Thank you. Any questions for Mr. Greene? Senator Crawford. [LR246]

SENATOR CRAWFORD: Thank you, Senator Harr. And thank you. I think I heard you say that before when you were able to have access to the clients earlier you would sometimes work with the plant or with their employer and in collaboration with them get them back to work in their previous...with their previous employer. Did I hear that correctly? [LR246]

JACK GREENE: Yes. Yes. [LR246]

SENATOR CRAWFORD: Can you just talk about one example or how well you felt that worked? Were...did you have good relations with the employers? Was that an effective way of getting the employee back to work? [LR246]

JACK GREENE: It was. If the person is injured and can't do their old job, a lot of times, particularly with the smaller employers...the larger employers have instituted some formal return-to-work efforts. Some of the packing plants have done this successfully, so they have some fenced-off jobs that are oftentimes actual jobs they would have to be performed anyway. And so they help the system by getting them into the lighter duty jobs that someone from the outside couldn't get into because typically they go to the senior people in the plants. And so the

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lighter duty jobs aren't accessible to somebody coming in with a disability from the outside. But some of the smaller employers were really open, particularly if it was soon after the injury--the relationship still stayed in touch, they talked to each other by phone now and then, they haven't learned to get angry with each other over the money that's being spent and the lost time and the disruption of the business--so I could go in and visit with the employer--can we modify the job? On one case where a person was an installer for the irrigation out in the fields...and so he couldn't do that anymore. He couldn't climb up and do the repair types of work but he could get involved in sales. Well, that involved learning the electrical systems and all kinds of things where we did a partnership through the Comp Court. We developed an on-the-job training. They covered some of these seminars that were in different parts of the country to learn these additional skills. The employer trained him on the customer contact, the sales, and so he successfully returned back to that same employer which, if we had waited several years, I don't know we would have had that relationship to work with. [LR246]

SENATOR CRAWFORD: Thank you. [LR246]

SENATOR HARR: Thank you. Any other questions? Seeing none, thank you. [LR246]

JACK GREENE: Thank you. [LR246]

KORBY GILBERTSON: (Exhibit 4) Good morning, Chairman Harr, members of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of Tyson Foods and the Property Casualty Insurers Association of America. I first of all want to thank Senator Harr for introducing this legislative resolution so that we can continue the discussion of vocational rehabilitation insofar as its use in the workers' compensation system. I want to go back to kind of the nuts and bolts of this whole discussion and talk about what the statute says, what the purpose of vocational rehabilitation is supposed to be and, kind of based on statistics, annual reports from the court, reports from vocational rehabilitation people that we've received in the past, talk about where we stand and maybe what needs to be looked at and considered as changes. If you look at the statute that I handed out to you, you'll see on the third page--and they're highlighted--that there are some goals of vocational rehabilitation and they are to be listed and it's a hierarchy. So the number-one

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goal is to return the employee to their previous job with the same employer; number two would be modification of the previous job with the same employer; number three, a new job with the same employer; and number four, a job with a new employer or a period of formal training which is designed to lead to employment in another career field. So the last one would be helping them go into another career field if everything else fails. When you look at the statistics provided by the court in their annual reports each year, you will see that these numbers, the numbers speak very loudly because it shows that there are major failures in the system as it stands right now. In 2007 we came and talked about this, and then again we came in 2012 and talked about it. I'm just going to give you big numbers, then I'll jump back and explain some of the details. We get in the weeds a little bit, I guess, as it's been said before. Big numbers when you look at the number of cases: In 2009, there were over 700 open cases; 125 people actually were returned to work. And I'll tell you the percentage that actually was returned to work to their actual employer was never reported by the court that year so we can't tell you what that was. But the job placement was 125 people, or a return-to-work ratio of 21 percent. In 2010 that number, the return-to-work number, dropped down to 9 percent. Eighty-eight people...79 people were only returned to an actual employment. Then, if we go to 2011, the number dropped even further to 8 percent. And when you look at these numbers, the number of people that were actually returned to work with their same employer was six. The number of people that were returned to work with a new employer was 37; 195 of those people were just given a loss of earning capacity ruling, which means that they can get continued benefits. Then there were a number of people, which I always find interesting, is we don't don't know what happened with them. Now, if I did a job for someone who hired me and I repeatedly told them I don't know what happened with these people...and this issue has been coming up since 2007. And every time we've been here we've been told, we will do our best to get you better data, we are going to figure out what's the problem and what we need to do to change it. None of that has happened. And then in 2015, when we...the most recent data that we got from the court didn't show us the total number of cases, so it's hard to extrapolate what the amount is. But throughout, if you look back from 2009 through 2014 and then the numbers we just received from the court for 2015, the highest amount was 21 percent. So even if we doubled that you are still looking at less than 50 percent success ratio. I want to touch on one other thing quickly too. We talked...when Mr. Morton was up, he talked about the expenses that are paid for by the court. Those expenses are all paid for by the employer. That money that goes into that trust fund is collected from the employer. So when you

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look at the over a million dollars just in administrative costs for this plan, this program, then you consider the fact that that's just a fraction of the TTD, or total temporary disability, payments, the education costs, the costs of the vocational rehabilitation counselors' fees, that is just a part of what the employer pays. And for what type of return? There's arguments been made--well, we can't get them any help because they can't go back to work until a doctor...I'll stop. If anybody has any questions... [LR246]

SENATOR EBKE: If there's something else you'd like to say, please do. [LR246]

KORBY GILBERTSON: Sure. Thank you, Senator. If the...one of the comments that I've heard multiple times up here is trying to do early return to work. There isn't an employer out there that wouldn't like to have that employee back at work. When you hire employees, you have to train them. You spend a lot of money training them, keeping them there, trying to work with them. The problem is, once a person is on a workers' comp claim, a lot of times they will have an attorney. And a lot of times that keeps the employer from being able to talk to that employee or try to work with them to get them back to work. Furthermore, you have to get the doctor to be able to approve them to then be able to say, okay, here's what they need insofar as changes for their current job or another job inside the same employer. That doctor must release them first. And to say that you can say, well, the doctor didn't say for sure he's not going to be able to do this but we don't really know what he'll be able to do, doesn't always work because you don't know what the end result is going to be until someone finishes their physical rehabilitation, which is very different from the vocational rehabilitation. [LR246]

SENATOR HARR: Any other questions? To follow up on that though, there might be some situations where you might know that ahead of time? [LR246]

KORBY GILBERTSON: Absolutely. [LR246]

SENATOR HARR: Is there...should we be working to improve it in those situations? Or can you currently, if you haven't received maximum medical...should we allow them when we know that they will not be able to return to their current line of work, allow them to go into a vocational plan earlier? [LR246]

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KORBY GILBERTSON: I think there is...that's a double-edged sword. I think for many cases that might be a good idea and work, your run-of-the-mill injury that you can statistically look at and say this is what's going to happen. But imagine the employer that says, okay, we'll get them back, we'll start doing training, helping, working with the vocational counselor, we'll start doing some training, try to see if we can get them another place, the training aggravates their injury, and now we've got another comp plan on top of what we were already doing. So it's a double-edged sword. You can't always assume that just because the doctor says, well, I think you'll be able to do this...you might run the risk of having someone be injured again. [LR246]

SENATOR HARR: Okay. I appreciate that. Senator Howard. [LR246]

SENATOR HOWARD: Thank you, Senator Harr. Thank you for your testimony today. What I'm hearing is sort of a challenge in transparency that you've been dealing with for several years. Can you tell me a little bit about how you got the numbers that you shared with us today and what we could do better to get some better numbers in the future. [LR246]

KORBY GILBERTSON: The numbers I gave you today are all from the Workers' Compensation Court's annual reports. And part of their annual report does a breakdown of the vocational rehabilitation plans as they stand. Now for the majority of the years, the report is pretty much verbatim, the same. They just changed the numbers inside the report. But you'll...and I can get you copies of all these if you'd like me to. I just didn't want to kill five trees today. If you look at them, some of they years they will just summarize and say, here is the return to work. They don't break it out by we actually got them a job back at their same employer or anything else. But it is very interesting to look through the entire list of what happens with those different plans. But if you look at the hierarchy in the statute of what we are trying to do through vocational rehabilitation, it is a clear failure because the vast majority of cases don't hit even the top four priorities. [LR246]

SENATOR HOWARD: Thank you. [LR246]

SENATOR HARR: Thank you, Ms. Gilbertson. [LR246]

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KORBY GILBERTSON: Thank you. [LR246]

RAYMOND ATWOOD: Good morning, ladies and gentlemen. I'm Raymond Atwood. I'm a trial attorney here in Lincoln, have been for 40 years. During the course of that time I've represented claimants and defendants in workers' compensation cases, substantial number of defendants. Previously I was agency legal counsel for the Nebraska Workers' Compensation Court. [LR246]

SENATOR HARR: Can I interrupt? Can you spell your last name for the record? [LR246]

RAYMOND ATWOOD: Oh, yes. I'm sorry. A-t-w-o-o-d. [LR246]

SENATOR HARR: Thank you. [LR246]

RAYMOND ATWOOD: So I was basically a predecessor to Glenn Morton. That was about 38 years ago, so a lot has changed since then. However, at the time that I was at the Workers' Compensation Court, I was under the tutelage of Judge Ben Novicoff, who had been a paragon of virtue here in workers' compensation here for 30 to 40 years. And he was instrumental in effectuating workers' compensation in Nebraska. It was part of an overall national plan to try and make do with what a bad situation was in workers' compensation. That is the obvious: people getting injured and then not returning to the work force. And so in that context, workers' compensation and vocational rehabilitation basically became hand in hand, and over the last 40 years I've noticed that. It's just a very important factor. I completely disagree with the last speaker with regard to it's a complete failure. You know, for a system to have lasted 40 years and be a complete failure I think would probably be something the Legislature would have dealt with a long time ago. Does it need tweaking? Well, first of all, I'd like to re-echo all the comments that Karen Stricklett made and Judge Brown made. There's no sense in really repeating them or reiterating them. The vocational system is absolutely essential to workers' compensation and statutorily embodied: 48-120 provides that it...the whole purpose of the act, as Judge Brown pointed out earlier, is the restoration of the injured worker to health and employment. It seems like a no-brainer. So the question is on tweaking. Two of the issues that seem to be raised, one is buyout of voc rehab and the other is trying to get vocational intervention sooner than MMI. I'll take the last one first. I couldn't agree more and kind of in a...arrived at this conclusion

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independently maybe, very time...many times frustrated either in a plaintiff or a defense case with the fact that we have to wait until maximum medical improvement before we can get much of the testing done, the record gathering done, things that aren't going to reinjure the employee. Now, of course, the reason why we don't allow people to begin vocational rehabilitation until MMI is because you really can't identify a plan until you know what the permanent physical restrictions are going to be. So I think everyone is a little reluctant to validate a plan that subsequently it turns out that the employee can't perform from a mental or physical standpoint. And so as a result, practically speaking, I think the earliest point at which you could legitimately effectuate a plan would be once maximum medical improvement arrives. But there is so much background stuff that can be done before that, before you actually go into a plan and that is, first of all, initiating the employee to the concept of we're going to return you to gainful employment. That's the objective here by statute, by common sense. So in that sense, let's get started, not...we're not going to wait two years and then have you sitting at home for two years. We're going to get started right away. So it seems to me that that idea of getting intervention early is a no-brainer and always has been and we run into this brick wall of, no, we can't do any testing until he's reached maximum medical improvement. Well, that makes no sense at all. As it relates to this buyout, I think it's grossly overstated. I do plaintiff and defense cases, as I've noted, and probably more defense than plaintiff historically. This is a negotiated item. These are damages that lawyers are negotiating. Nobody is required under the Workers' Compensation Act to settle a case. If a defendant doesn't want to buy out voc...or allow a plaintiff to buy out vocational rehabilitation, then don't; litigate the issue. Just don't settle the case. In fact, what frequently happens, however, is that it's beneficial to the employer to minimize the risk to settle the case for other reasons, so they will accommodate some kind of a buyout. And what is that buyout? It's not usually that much money. If it is involved, it would be two years of benefits at a maximum and frequently it's a negotiated item. So I think it's a tempest in a teapot. As it relates to the efficacy of the system, though, I think it's just vitally important to realize that--as I see I have a yellow light--vitally important to realize this is an important part of our system and really needs to be carefully scrutinized before any significant changes are made because it is something that allows people who are in great need to have some mechanism to get back into the game.

[LR246]

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SENATOR HARR: Thank you. Any questions? I guess I have one question. So...and I don't know. If an employee goes to voc rehab, which is a good thing, how are we as...how are you compensated? [LR246]

RAYMOND ATWOOD: Well, it kind of varies. It varies with each type of an agreement that you strike with an injured worker. Every case is different. But generally we're not compensated, actually, now that I think about that, because our contingency fee agreements are pay if you win, basically, are principally based on the permanency that an injured worker receives. We always offer hourly, but, you know, an injured worker really isn't in a position to pay that. In a defense case, it's hourly. So in most cases, in many cases, and I'm sure there are exceptions to this so bear that in mind, parenthetically, one might receive a percentage of the temporary total disability being paid during the course of the vocational rehabilitation plan. So that's customarily a third. So it's possible that the attorney would receive a third of whatever the weekly temporary total disability benefit they're paid. Under no circumstances would I imagine an attorney to receive any of the tuition, books, expenses, or any other types of benefits like that. Generally, there's no fee charged to any of those or reimbursements for things like that. [LR246]

SENATOR HARR: And if there's a settlement, do you receive a third of that, or does that still go all to the client or case by case? [LR246]

RAYMOND ATWOOD: I think that also depends based on that original fee agreement, so the same parameters would apply. If you originally agreed that you would receive a percentage of whatever the temporary total disability benefits were, or the permanent disability benefits, then you would receive a portion of that. One of the paramount considerations in the determination of what the attorney fee would be is, what are the real issues? So for instance, if I represent you today because you have a heart attack listening to too many people talk about something that, you know, really not necessarily something that's important to you and... [LR246]

SENATOR HARR: Well, I have narcolepsy, but go ahead. [LR246]

RAYMOND ATWOOD: Yeah,(laugh), and you go to the hospital this weekend and through their miraculous procedures, you know, they save your life. And lo and behold, Monday you are able

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to go back to work and the only issue in your case is that the state says, no, I'm sorry, Senator Harr, but this didn't really arise out of the course of your employment, it was a product of some other anomaly that you have or preexisting condition or the myriad of other things that defense lawyers talk about. You come to me and you say, I have a \$138,000 medical bill that isn't being paid. Now ordinarily I never charge a fee on medical expenses. But you don't have any permanency. You've got...made a miraculous recovery. You don't have any temporary disability. You were right back to work. The only issue is \$138,000 worth of medical. So I would have no other choice if I were to just not do it, other than gratis because you're a great guy, to just simply say, all right, I'm going to have to figure out some mechanism through which I can take a fee on a contingency fee basis if I'm able to get this \$138,000 wiped off the record, paid, paid in part, paid by somebody else, whatever, by the state of Nebraska. And then based on that we would have to adjust it. Now if vocational...parenthetically, in the same analogous way, if vocational rehabilitation is the only issue and you found that you can't be a state senator anymore, or whatever you do in your ordinary work life, maybe there would be a fee assessed. So it really goes on a case-by-case basis. [LR246]

SENATOR HARR: Okay. Thank you. Any questions based on that? Seeing none, thank you for your time; appreciate it. [LR246]

RAYMOND ATWOOD: Thank you so much for the opportunity. [LR246]

MICHAEL McKEEMAN: Thank you. My name is Mike McKeeman, and you probably noticed I have a disability called Tourette's syndrome. And so I hope you'll tolerate that. And if you hear profanities, it's because of the Tourette's, I assure you. I have a unique perspective on this. [LR246]

SENATOR HARR: I'm sorry. Can you spell your last name for the record. [LR246]

MICHAEL McKEEMAN: I'm sorry. McKeeman, M-c-K-e-e-m-a-n. [LR246]

SENATOR HARR: Thank you. Please proceed. [LR246]

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MICHAEL McKEEMAN: I have a unique perspective on this issue. I'm a product of voc rehab many years ago. I also have owned a company. We've employed 60 to 70 different individuals. And now I'm a vocational rehabilitation counselor. The thing that bothered me most when I was an employer is that a lot of my employees, if they would get hurt, I'd wonder, what's to become of them? They can't...and my particular one was a warehouse worker. He can't come back there. What's going to happen? And what happened, of course, is he got his temporary total for awhile, he got better, and then the insurance company pretty much took over. I couldn't talk to him anymore. And they settled the case and that was pretty much the end of it. And I thought, well, that didn't work out very well. And I thought there ought to be something we could do. There ought to be a way to intervene to help retrain these people to try to get something...get them back into something productive during that period of time. This poor guy was out of work for two years, you know, before he finally got some kind of a settlement. And I think that's typical. The thing that...when I finally sold the company and became a vocational rehabilitation counselor, this was...I looked at it from an employer's perspective. I thought, what do I have to keep track of here? The things that are important is: How much is this going to cost? And is it cost-effective? Those are important issues. And so in the last ten years I've kept track. I've had 33 cases that have been referred to me from voc rehab. Of those 33 cases, incidentally, I got them on the average of 22 days postinjury. So again, we're two years out. My statistics tend to confirm what you've heard already here today. I noticed that of these 33 people the beginning average, average weekly wage when they were hurt, was \$732. Out of those 33...and again, the cases and plans are different. There's a cost for running the cases. But I wrote nine plans. Otherwise, it was determined the other 24 cases did something else. You know, either they took off or settled or something else. But I tried to follow these people after I closed these cases, and I also kept track of some of the...oh, incidentally, I should point out that of those...yeah, when I kept track of these people and try...as best I could. Of the nine cases that were plans, all nine finished their program. At the end of the program, their average weekly wage was \$548, which, of course, is less than they were making at the time of injury. The average wage of the people without a plan when I closed their file was \$90. That's how much they made a week. After awhile, I followed up on as best I could after one year. After one year I found those individuals that after one...I was only able to contact seven of the nine that I had written. Of the seven, their average weekly wage was \$635. So \$635 was a step up but still less than what they were getting at the time of injury. I also contacted 14 of the 24 that did not. Their average weekly wage was \$269. After three years,

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and that's where I stopped it, three years out, I started losing enough people to contact. The...of those nine, I was able to contact six and their average weekly wage was \$874, so they've actually jumped above what they were making at the time of injury. And the...I was able to contact nine of those that did not do a plan. Their average weekly wage was \$352. Something else I'd like to point out. I'm a rehab counselor, and this is not my total caseload. I also do Social Security hearings. I'm amazed at how many people, when I'm testifying as an expert witness in Social Security, are coming into that room that are products of the workers' compensation system. Otherwise, they're coming in, they're applying for Social Security benefits because they don't know where else to go. And I find that ironic, you know, that we aren't taking care of the issue when the issue is there to be taken care of. And I go back to what the lady said, the lobbyist said, that we...you can't just take those numbers and interpret them however you want. Figures don't lie. Liars lie, and what liars figures (sic). You know, the things is you've got...the number of cases is not a reflection of what we're doing with the plans. We have to look at the plans. And the...I think early referral is the answer, one of the answers. And I do think we need to do a good job of tracking. [LR246]

SENATOR HARR: Thank you. Any questions? I guess I have a question. You collect data. Are you required to collect this data? [LR246]

MICHAEL McKEEMAN: No. My undergraduate degree was in statistics (laughter), so I took an interest in it. And also, having been an employer, I thought, you know, I wonder. And I only had 33 cases in the...the 33 cases (inaudible). I figured I could follow up on 33 people. So I did that. Admittedly, though, the numbers...they call the "n." The "n" is small because after three years I was only able to contact six. [LR246]

SENATOR HARR: Well, you have to have 33 cases, really, to have statistical significance? [LR246]

MICHAEL McKEEMAN: Well, I think you'd need more than I had. [LR246]

SENATOR HARR: Yeah. [LR246]

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MICHAEL McKEEMAN: Now that's not to disregard it. I'm saying that your standard error of measurement would be larger. So I still think it's pertinent because it...by my figures, the individuals that I've worked with are hitting the mark of date of injury average weekly wage at about one or two years. So it's unfair to say, well, as soon as you step out of school and you go to work, how much you making? Well, how much do any of us make when we came out of school? We probably could have made more if we would have gone to work somewhere else without an education and been there four years. So it takes time. [LR246]

SENATOR HARR: As a doctorate who makes \$12,000 a year, I get what you're saying (laughter). But I guess that's my question, is, how do we do a...do you think we need to do a better job collecting data? Is the issue here a data-collection issue? Is it a policy...does voc rehab not work? Do we need to do a better job collecting data? If so, how do we do that? I mean, I don't even know how we decide who is a good counselor versus who is not a good counselor if we're not collecting the data. [LR246]

MICHAEL McKEEMAN: Well, I'll answer them in reverse order. I think vocational rehabilitation does work. I'm a...like I said, I went through voc rehab. I'm a product of it. And in all honesty, with Tourette's, nobody was screaming to hire me, you know. So I had to do something else. And luckily the voc rehab system was there for me and did it. Now in terms of collecting the statistics, when this...this last year there's been a concentrated effort from the court to develop a system of doing that. And I talked to Mr. Morton a couple of times about what I was doing. He found it interesting and we thought, well, maybe, you know, we can do a better job of collecting that kind of information. [LR246]

SENATOR HARR: Okay. Senator Crawford. [LR246]

SENATOR CRAWFORD: Thank you, Senator Harr. And thank you for sharing this information about these plans. So it helps, I think, us understand or think about the overall results we were seeing earlier. You had 33 cases and really 9 that you had a chance to develop a plan for. [LR246]

MICHAEL McKEEMAN: Right. [LR246]

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SENATOR CRAWFORD: And then I think you said the rest did something else. [LR246]

MICHAEL McKEEMAN: Right. [LR246]

SENATOR CRAWFORD: So what was your role in those that did something else? I mean... [LR246]

MICHAEL McKEEMAN: Well, when we get the referral from the Workers' Comp Court or we're agreed to, the case is sent to me and it says, you know, they're interested in doing vocational rehabilitation. So I contact the person and I begin to develop, you know, what we're going to do. Well, during that interim lots of things can happen. Sometimes a person just isn't available, you know. Sometimes they're able to go back to work, you know. Sometimes they're...if they have an attorney or something, they've decide to go a different way financially. Maybe they've decided to settle. And I'm not totally against settlements. You know, I think sometimes it's appropriate. But at the same time, they've just decided...at some point they've been encouraged not to do the...maybe they need the money and they just don't want to do the voc rehab. Or maybe they don't think they like school or they don't...you know, they just have their very independent mind. But that's the key thing. And a lot of them are angry. After two years, a lot of them don't even want to be seeing me. [LR246]

SENATOR CRAWFORD: So it is correct then that really, of the people who are willing to work with you, that number is nine? [LR246]

MICHAEL McKEEMAN: Yes. [LR246]

SENATOR CRAWFORD: And 100 percent of those completed your program and were employed. [LR246]

MICHAEL McKEEMAN: Of mine, yes. [LR246]

SENATOR CRAWFORD: Right. So if you look at it that way, it's 100 percent. [LR246]

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MICHAEL McKEEMAN: Yes. [LR246]

SENATOR CRAWFORD: If someone looked at just the cases coming in, they would be 9 divided by 33. [LR246]

MICHAEL McKEEMAN: Well, that's right. We're... [LR246]

SENATOR CRAWFORD: Yeah. [LR246]

MICHAEL McKEEMAN: Of the cases that I got referred, what is it, 25 percent or a little higher? [LR246]

SENATOR CRAWFORD: Yeah. Yeah. Thank you. [LR246]

SENATOR HARR: Any other questions? Seeing none, thank you. How many people here do we have who want to still testify? So what do I see? One, two, three, four, five, six? Okay. Well, please feel free to come on up. If you're next to testify, if you can sit up here so we can waste...or prevent a little bit of that time in between testifiers, I would appreciate it. Thank you. Welcome. [LR246]

TODD BERESFORD: Thank you for having me. Todd Beresford, B-e-r-e-s-f-o-r-d, and I am the senior manager of workers' compensation for Tyson Foods. Obviously, Tyson has a large presence in Nebraska, and I manage the workers' compensation of all our Nebraska as well as our Iowa facilities. We've got approximately 10,000 Nebraska employees, so a big presence here, a number of work comp claims each year due to our sheer numbers. You know, I don't think there's any disagreement of...from anyone, including myself, the principle behind vocational rehab is a good principle. I mean that's what we want to do. That's our number-one goal as an employer is to get the person back to work. We invest a lot in our employees. It makes more sense after they're injured to try to get them back to work. We may be a little bit different than some of the other employers out there. We return probably 99 percent of our employees to light duty after an injury. That's our goal is to get them back in the work environment, keep them busy. You know, as I think Glenn said, there are several studies out there. The longer people are out of

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work the more likely they are not to return to productive employment in the future. And we would agree with that as well. So that certainly is our goal in what we do. So in terms of a few of the issues that were brought up earlier, MMI, you know, most of our cases our employees are working up until MMI. And then that's the first time we can really look at the voc services is because we don't know if we're going to have a permanent job for them until they get to that MMI. That's the point in time where we can establish, start looking--do we have a job that we can meet their restrictions? can we make accommodations on that job?--and get them back to work. And that's obviously our first goal. So that's, you know, pretty hard for us to, you know, get a voc plan started before MMI is obtained. In terms of your serious injuries, I know somebody mentioned an amputation. We've got an example. I had...about a year before I started--I've been here since 2000--I had an employee have an amputation above the...it was right below his shoulder, full-arm amputation. This guy is still with us 16 years later, still working a full-duty job in our plant. In that case, if we would have went out and spent all these money on voc services, it probably would have been wasted money. He's happy there. We've accommodated him. Obviously he's happy. He's been there another 16 years and still working, doing a productive job for us. So I think those situations, until you get to MMI and know whether you're going to have a job for them and whether they're going to want the...to, you know, return to work for you, you're not going to know until that point in the vast majority of times. Are there exceptions? Yeah, there's probably, you know, exceptions. In those cases I think it makes sense. At least in my perspective I knew we weren't going to bring them back. At that point, yeah, we're going to try to work with our attorneys and suggest that, you know, get them whatever services we can. If we're not going to be able to employ them, we're fine with starting at that point because it's ultimately going to lower our cost of the claim. So it makes financial sense from the company. In terms of vocational plans, I can say in the 16 or 15 years I've been here I think we've had two plans that have actually been completed that we can track down and find. And I don't know if I would call, you know, either of them a success. The one--I have an example Senator Bloomfield gave earlier--was...I think he was 62 at the time. He had a two-year plan. We put him through some schooling. He actually completed his plan, which was a rarity for us. And once he completed the plan, he retired. So really, was it successful? It probably was deemed in the stats as being a success. But what did we really accomplish? You know, we got him some education for somebody who was going to retire anyway. The second one we paid about three and a half years of TTD benefits while vocational rehabilitation services were given.

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Ultimately this individual was given a job or found a job at Walmart and I believe was making somewhere around \$6.85 an hour, which was \$4 or \$5 under what we were paying at the time of injury. Our vocational rehab bill for those services was just under \$29,000. So we paid \$29,000 to get somebody back to work at Walmart making \$4 or \$5 less an hour than she was making with us. So we just don't see the vocational plans typically working at all, at least in our industry or our company. I think it bears out with some of these statistics that we're...the court had shown earlier. I'd seen some that maybe...I think there was a 21 percent completion rate and whatever they were earlier, and that's been going steadily down over the years. And I would agree with that. I think...you know, I guess I go back to something that...when I just took over the work comp department, in 2006, we were having some financial troubles as a company, as everybody was around 2007. Don Tyson came back, who was the founder's son. I'll wrap this up real briefly. He came in and made a couple points. The first one he said, if what you're doing is not making money or adding value, stop it and treat it like you own it. And with that he said, if you're going to spend your own money, if you'd spend your own money on this, go ahead and do it, but if you wouldn't be willing to spend your own money on this, don't do it. And I think that applies to this situation. If you were spending your money as employer, putting all this money into these services, and you're getting at best a 15 percent return, are you going to continue to funnel your money into that system? I certainly wouldn't. Is there a better system out there? You know, I don't have all the answers, but I certainly think that right now the system is broken, not working. [LR246]

SENATOR HARR: Okay. Thank you. Any questions for...okay, why don't...if you want to continue briefly, did you have one more point? [LR246]

TODD BERESFORD: No. I think I said everything, so. [LR246]

SENATOR HARR: Okay. Well, I...so I'll ask a question then. So...and you start out by saying the faster you get them back to work the better. And then we get to...we want to make...we can't really do anything until we reach MMI, which conflicts with the first to a certain degree. And then you get to the third of, you know, if we accept the assumption that the current system isn't working, what do we do in the situation...I mean, first you have the conflict between the first two. And then you have the issue of, well, like what Senator Bloomfield talked about: If we just

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get rid of it, what about that trucker? I mean, do we just say, your back is hurt, hey, thanks for your hard work for the company and better luck next time? [LR246]

TODD BERESFORD: Well, I don't think there's a conflict, at least in our situation, between one and two. We are returning...99 percent of our employees are working during that time period. [LR246]

SENATOR HARR: Okay. [LR246]

TODD BERESFORD: So they are working restricted duty. We're keeping them in the labor market. Part of it is, too, psychological. You know, they're coming to work every day. We're keeping them in that routine so that when we get them to MMI and those permanent restrictions are given by the doctor, you know, they're not deconditioned and not used to being back in the work environment. And it's a little easier to get them (inaudible). [LR246]

SENATOR HARR: Oh, good. Well, that's good. Thank you. Okay. Then what about the second? If we say voc rehab doesn't work, what do we do for that injured worker who is legitimately injured on the job? [LR246]

TODD BERESFORD: Well, again, that's a million-dollar question. If it's not working right now, I think we need to come up with something else. Do I have all the answers? Probably not. I can say, like other states, you know, I think the incentive is, you know, we end up paying less money for that. We're incentivized to get them back to work because that's...like in Iowa, you're...got what they call industrial disability. If you get them back to work, your...their permanency or their final payout is going to be a lot less, so that is the, you know, the carrot there. [LR246]

SENATOR HARR: I mean, yeah, and I understand that, but...and, look, 15 percent is horrible. I'll concede that. But 15 percent is a hell of a lot better than zero. If we just say, voc rehab gone, we have nothing for that worker. I mean at least we have a carrot out there for them to do something to return to work. I don't know if we can just eliminate it. Now, if you have a suggestion of how to do it better, it's a million-dollar question, as you said. And I think that's where I want to see our energy focused on is, how do we get that, whatever that answer is, above 15 percent and not

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just say 15 percent is horrible and it's very expensive, let's go to zero? How do we make it better? I mean that's...I said it earlier and it's my old mantra: cheaper, faster, better. How do we get that worker back to work, you know, back to...you know, if they can't be a truck driver anymore, how do we get them back to another job, hopefully of the same salary equivalency, cheaper, faster, better? And that's where I would...I think we need to really push and have the emphasis. And I guess I would like you to respond to that. [LR246]

TODD BERESFORD: (Laugh) Again, you know, that's the goal for everybody: to bring them back to work. Part of it... [LR246]

SENATOR HARR: Yeah. And by the way, you're doing great work. Don't get me wrong. We were up there and you were...I had to leave early but my neighbor, we...I had two neighbors growing up that owned meat packing plants, and so we'd go there as kids. And the difference between what we did in the...what you...what the meat packing industry was like in the early '80s compared to now is night and day. So I mean I think you need to be congratulated for that and commended for that. And thank you. But at the same time, what do we do for that injured worker? [LR246]

TODD BERESFORD: And part of it comes down to the injured worker too. I think the last gentleman's comments about, you know, do they really want to be in the program, you know, most of them, my experience, no. It's an incentive to get you to that settlement finally or to use to leverage your settlement. From our perspective, too, you ask about the numbers. You say, yeah, these lump-sum settlements are going up the last few years. Well, from our perspective as employer, you know, why? Why would we pay for all these voc plans that our numbers bear out, the court's numbers bear out don't work? Why should we pay those extra costs when we can lump it out for a lot less money and be done with it rather than go through something, an exercise that we know is not going to work 90 percent of the time? So that's why I think those numbers are going up. Again, don't answer your question how to solve that. You know, if you're going to have some out there, vocational rehab, we do use it in other states. The...you know, I think the injured employees who truly want to get back to work and are truly going to participate in the program I think is a great thing, like anything else that you've got to want, you've got to be

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invested in it, and for the right reasons. And a lot of times, at least in my experience, I don't think they're in the voc rehab plan for the right reasons. [LR246]

SENATOR HARR: Thank you. Any...Senator Ebke. [LR246]

SENATOR EBKE: Yeah. I'm curious. You say that somebody gets hurt on the job and they...you bring them back on light duty. How is it determined that they're ready for light duty? Is it doctor note or something like that and you have some sort of an arrangement with physicians in the area or some determination that says, okay, you know, this person can go back to light duty, is in... [LR246]

TODD BERESFORD: It really depends on the individual physician. In Nebraska it is an employee choice, so the employee gets to choose. If they've got certain requirements met, they get to pick their doctor. Where we're located, a lot of our plants are in rural areas. We invite the primary care physicians out to our facilities. We tour, have them...if they accept, they'll come out and tour, see our jobs. We'll show them our...we've got specific light-duty jobs that we have. We'll demonstrate them to the physician. And typically the physician will give them some restrictions, some temporary restrictions, and we'll ask the doctor, does this job meet these restrictions, can they do it? So we've got to get doctor approval before we'll allow them to come in. Or, vice versa, we'll send a videotape, maybe, if they've not been to our facility. We'll videotape the job, send it to the doctor, and ask for the doctor to sign off and say, yeah, this isn't going to injure them, this is within their restrictions. [LR246]

SENATOR EBKE: And you find that most employees...most of your employees are eager to go back to some sort of light duty most of the time or...if they're able to? [LR246]

TODD BERESFORD: The greater percent, I would say, yes. I get a little cynical in my position. I forget sometimes. You know, 98 percent of our employees who are injured want to get back to work. You know, they're entitled to benefits. They go through the system without any issues. We never hear from them or I'm never involved. Unfortunately, I spend about 99.9 percent of my time on that other 2 percent, so it's easy to get...those are the ones I see, the ones that don't want to come back. Unfortunately, those are the ones I'm dealing with. But if you'd look at our overall

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numbers, yeah, the majority want to get back. You know, they're hurt. They don't understand what's going on. They're worried about, you know, losing their, you know, their job or their paycheck. And in our experience, or my experience, it helps to bring them back. We don't reduce their wages when they're on restricted duty. We pay them their preinjury wages still, don't reduce their hours or anything. So, you know, essentially, it's like they're still working full duty for us even though they're on a modified job, so. [LR246]

SENATOR EBKE: Thank you. [LR246]

SENATOR HARR: Senator Bloomfield. [LR246]

SENATOR BLOOMFIELD: Thank you. Given the size of your work force, you have learned that it is very beneficial to bring people back. A smaller work force that hasn't realized that, how many of those, if you can imagine a number, would simply cut the guy loose if he wasn't forced by the state or workmen's comp to give you some rehab education, would just say, ah, too bad for you? [LR246]

TODD BERESFORD: Obviously I can't speak for those. But if I'm a smaller company--we're obviously self-insured, so we see dollar for dollar--they're probably not self-insured. You know, the higher their claim costs are for that case, if they end up getting stuck then with probably two years of voc rehab, extra TTD, their claim costs are going to go up, which is going to increase their mods and increase their premiums. So even though they don't have as much control, they've still got that incentive, you know, to keep their claim cost down. [LR246]

SENATOR BLOOMFIELD: I understand that incentive. But what I'm trying to get to, and I think Senator Harr attempted to get to the same thing earlier: 15 percent is not a good number, but would that 15 percent even just be without a job if it weren't for the rehab requirements? [LR246]

TODD BERESFORD: You know, I don't know the answer to that question. [LR246]

SENATOR BLOOMFIELD: Okay, neither do we. Thank you. [LR246]

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TODD BERESFORD: You know, if I could just throw something on, you know, in our experience, too, we've had this come up. And last year it was an Iowa case. We found out somebody came back to work. They were on Social Security Disability and actually were adjudicated a perm total in the past. They commuted their award, which means they got it all lumped out, didn't tell us, and came back to work for us, alleged a new injury, and now the attorney was alleging perm total for us. We got this information. We were thinking, how can you be a perm total again? And it's, well, you hired him. You find them as you hire them. But it posed an interesting question. We had thought about, why don't we keep track, in terms of statistics, people who get commuted perm totals and find out how many actually go back? It'd be an interesting case study a few years later just to see how many come back in the work force later on. And I think voc rehab, we might find the same thing. After it's completed or settled out, you know, a lot more of these people probably eventually go back and find a job once, you know, the claim is settled, so. [LR246]

SENATOR BLOOMFIELD: Did you trace that down, find out what the percentage was? [LR246]

TODD BERESFORD: We're actually...that's in Iowa. We're actually proposing among a committee in Iowa where we award a scholarship each year to a law student. And that was something that's up for...what we were going to suggest is there a case study for next year for the recipient. That's got to get approved by the committee, but that's up for debate. We thought it would be an interesting study for them to do. [LR246]

SENATOR BLOOMFIELD: Okay. [LR246]

TODD BERESFORD: So we are trying to do it. Whether it gets done and gets the full committee's approval, I don't know. [LR246]

SENATOR BLOOMFIELD: Thank you. [LR246]

SENATOR HARR: Seeing no other questions, thank you. [LR246]

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TODD BERESFORD: Thank you. [LR246]

BOB HALLSTROM: Chairman Harr, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for both Nebraskans for Workers' Compensation Equity and Fairness and the National Federation of Independent Business. I appreciate, Senator Harr, that you've noted that this is not a hearing for a bill to eliminate vocational rehabilitation, and I have left my meat cleaver at the door accordingly. But we have heard from our members regarding concerns as to whether the costs associated with the voc rehab program are justified by the benefits provided or the results that we see. Clearly, the stated goal of returning the injured employee to work following a workplace injury is beneficial for both employers and employees alike. You've heard that. But based on the limited data that we have available, again, you've also heard that there are serious questions as to whether or not the program is successful in achieving that return-to-work objective. A couple of things that our members point out most frequently, and you've heard some of this: vocational rehabilitation being used as a leverage to extract additional funds for a lump sum settlement. I just had one member that provided an example of where the employer and employee had reached a tentative settlement for approximately \$11,000. The employee then took the settlement documents to an attorney to review. The settlement offer was withdrawn or rejected. It was indicated that they could possibly be eligible for two years of vocational rehabilitation. And by the way, the employee was aware of the availability of vocational rehabilitation and had expressed absolutely no desire or intent to go through that program but, nonetheless, the counter proposal became something in the neighborhood of \$40,000. In that case, I think it was \$46,000 was the additional temporary disability benefits that would accrue over a two-year voc rehab program. The case ultimately settled for an additional \$9,000 over the original offer or settlement that had been tentatively reached. The second issue with regard to the counseling fees that appear to be exorbitant in relation to the services provided and the value received, one issue in particular in today's technology which seems a little odd are hourly fees and mileage for repeated trips to Lexington or Scottsbluff. One would think that, again, in today's technological era, that we could probably avoid some of those personal visits and long trips that build up both mileage and hours. In closing, I think in order to properly analyze the voc rehab program from a cost-benefit analysis that we need complete data. We have data from the Workers' Compensation Court, and we appreciated receiving that, that there's about \$1.1 million in administrative expenses, salaries,

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benefits, and operating expenses, and about another \$450...that's \$614,000 and then another \$452,000 in educational reimbursable expenses. What we don't have are the aggregate counseling fees that are incurred, and we don't have the temporary disability benefits associated with those plans as well, so to the extent we could get that information. Another issue I'd point out for the committee is a lot of times when I've seen the reports from the Workers' Compensation Court they've suggested that we really don't know the rest of the story of how many people get placed after the case is closed. Well, it would seem to me that if people are benefiting from having the experience and ability to go through vocational rehabilitation that we ought to be able to tell them that they need to keep the court aware of where they're located and what their job status is so that we could better follow up on that type of information which I think is critically important in looking overall as to the successfulness or the benefits derived from the program. One last thing: There was a witness earlier that suggested that in...I think there was some connection, unless I misinterpreted it, that voc rehab somehow provides an incentive for employers to maintain a safe workplace. I'm not sure what that connection is. I think the data will...has borne out that employers do provide safe workplaces. The data provided by the court is that workplace injuries have reduced dramatically in recent years, over time. And I'm not sure what a costly program that's paid exclusively by the employers that doesn't seem to be terribly efficient has to do with maintaining a safe workplace. I think employers are doing that independently, and it's borne out by the statistics. So with that, I'd be happy to address any questions that the committee may have. [LR246]

SENATOR HARR: Any questions? Seeing none, thank you. [LR246]

BOB HALLSTROM: Thank you. [LR246]

MICHAEL J. DYER: My name is Mike Dyer, D-y-e-r. I'm an attorney in Omaha, Nebraska. I've been practicing for the last 25 years mainly helping people who have been injured at work. Sometimes these people are injured so bad they can't go back to the kind of work that they had done. They've got to go out and try to find a way to take care of themselves and their family. And when these people are injured, this is the fiber of their identity. This is how they identify themselves: I'm this type of employment. They're getting that taken away from them if they can't physically do the job. They've got to be able to learn to adapt to a physical limitation that they

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can't lift, bend, stoop, run with their kids, whatever the physical limitation is, and they have to adapt that to their whole life. And I've seen voc rehab plans change people's lives successfully. We had a guy who was a mechanic who traveled from farm to farm repairing ranch equipment. He got hit in the head on collision. Both of his legs were crushed. He was able to go back to a voc rehab plan after a year plus all kinds of surgeries. And he's now got an associate's degree. He's a project manager. He's successfully and gainfully employed. There are numbers of other people I've represented who have gone back: a phlebotomist who had a back injury who now is gainfully employed; a glazier who spent 25 years fixing glass, heavy. You know, and this is his identity; this is what he does for a living; can't do it anymore. He's got to find a way to be able to find a living. He's got to be able to get back to that income that he had before. The voc rehab plan is not used for a lot of my clients. Very few people really benefit from it. But the people who get the voc rehab actually get a benefit that's life changing and it gets them back to as close to their preaccident condition as they were. It makes a huge difference in their quality of life. It helps them get back on their feet, support themselves and their families, and it's a basic tool to get injured Nebraskans back to work that they should be able to count on. I've heard a couple of things about the knowledge that people have of the voc rehab plan, and the knowledge itself, the court does send a first report out and a list of information. But the court is specifically prohibited from giving any legal advice. So even though the information is there, most employers have never even heard of voc rehab. They have no idea that this is out there, and they have nobody they can really ask unless they even know this subject is out there. There is a financial disincentive for the employer to let the person, the injured person, know of all the benefits that they're entitled to. In that last example I heard about the guy who talked to an attorney who said, hey, you left this on the table because you didn't know about this, that, and the other thing, and he said he knew about the voc rehab plan, he knew of it but he didn't know what his benefits and rights were. And these are rights that I think that injured workers should continue to have. As far as the delays, it takes months and months to get to court. We had a case that was set for this morning for trial. Yesterday the defense attorney agreed to pay for the surgery. That was the reason we filed the lawsuit. The surgery was requested October of 2014. So instead of this person getting in front of a judge like they used to back in the '80s...if you go up to the Workers' Compensation Court you'll see the docket books. And you can pull any of them from the early '80s and take a look at the turnaround time on litigation. From the date a case was filed until a hearing was had was six weeks sometimes, eight weeks until a court order was issued giving a

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determination of benefits, and now it could be a year. So there are delays and there are things that can be cut back. And do I have the answers to that? Well, if we had more help, if we had more judges, more staff, if we had people who could expedite this, streamline the relaxed evidence rules that we already have in workers' comp and get people in front of a judge to say, yes, you're entitled to this, or, no you're not entitled to this, would help people get back on their feet a lot quicker. So that's all I have. Anybody have any questions? [LR246]

SENATOR HARR: Thank you, Mr. Dyer. Senator Bloomfield. [LR246]

SENATOR BLOOMFIELD: Thank you. Mr. Dyer, seeing as how you are an attorney and our esteemed Chair is an attorney, how much of that delay is due to additional attorneys fighting back and forth rather than getting it through court and getting a settlement? [LR246]

MICHAEL J. DYER: If I file a petition, when I file a petition I need to have in Workers' Compensation Court evidence that there's a permanent disability that occurred in the course and scope of employment from a doctor, if there's need for ongoing medical treatment or if there...if he's reached max medical improvement, what that restriction or impairment is. Once I have that information I can get the medical records and I can be ready for trial in six weeks. Now there is a defense to be able to question and bring out depositions and discovery. So I want to be in trial within three, four weeks if I can, the quicker the better, because this is nothing but a delay for the client who is sitting at home who is saying, hey, why isn't this going quicker? So the evidence itself that needs to be brought to court is very simple and it's usually accepted as, you know, almost a package when you go to trial: Here is my evidence; here is the exhibits; I'm going to discuss these things. And then we discuss right at the beginning. Are there any objections to these...you know, so it could be streamlined. [LR246]

SENATOR BLOOMFIELD: As an outside layman then, are the courts just overburdened? Or are the companies' attorneys causing this delay that we're seeing? You said it'd gone from six to eight weeks now up to where it can easily be a year. [LR246]

MICHAEL J. DYER: Yeah. [LR246]

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SENATOR BLOOMFIELD: Is... [LR246]

MICHAEL J. DYER: It could be both. I don't have any research to support why, but I can tell you that you can easily go to the Workers' Compensation Court. You'll see a bunch of docket books that list each docket page and you can take a look at the history of what used to happen in this state. And you can see that the turnaround is now three, four, five times as long as it used to be. [LR246]

SENATOR BLOOMFIELD: Okay. Thank you. [LR246]

SENATOR HARR: Seeing no others, I'll let you get back to answering your phone calls. [LR246]

MICHAEL J. DYER: Thank you, Your Honor. [LR246]

SENATOR HARR: Thanks. [LR246]

MICHAEL J. DYER: Senator (inaudible). [LR246]

SENATOR HARR: Yeah. [LR246]

PHILLIP B. RICE: (Exhibit 5) My name is Phillip Rice. Two Ls, please, in Phillip; R-i-c-e is the spelling of the last name. I live in Blair, Nebraska, Washington County. I was actually injured in July of 2010. The...at that time I was working for Black Hills Energy. Benefits were very good as far as the insurance coverage, as far as pay was concerned. I was a special service technician for the gas company. What I did was basically all the underground work, all of the meter set operations. I also did appliance and HVAC repair. The classifications that I had, of course, were with the Federal Energy Regulatory Committee (sic--Commission), the Department of Transportation, and national fuel protection act. I also was required to have a DOT 3 classification at that time which meant that I had to on occasion lift more than 100 pounds. But at the time of my injury I had been employed by the company for 28 years. I was looking forward to spending the last of my 12 years, when I get to the retirement age of 67, with 40 years

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with the company. I enjoyed my work. I enjoyed the people that I worked with. I thought that I was working for a good company. However, after the injury happened, they couldn't kick me out the door fast enough. I found out that the company let me go when the benefits department...or the benefits company that handled our 401(k) called me and asked me how I wanted to reschedule my benefits because I was no longer an employee. As of this time, five-plus years after that accident, I still have not received any official notification from Black Hills Energy that I am no longer an employee. I still have my company ID card. I still have the pager that was issued to me. I still have the cell phone that was issued to me. I also have the keys to numerous sensitive structures within the natural gas distribution network that if I was an employee that was really unhappy and wanted to cause difficulties, with my knowledge, I could. However, I'm not that type of person, so there's no concern on that point. In my case what happened with me is I was on a steep embankment locating a natural gas line. It had rained the night before. The grass was wet underneath. I went to make a step forward up the hill. I slipped and in a matter of a split second I went almost doing the Chinese splits. At the same time I got an extreme pain in my back and my hip. I ended up with a severe...a moderate to severe disc injury, partial dislocation of the sacroiliac joint, and a possible hip location that may have reset itself because of the injuries to the labrum and the cartilage that was in my hip. Immediately got with an orthopedic surgeon, immediately got with a neurologist just to get things finished out. The orthopedic surgeon wanted me to wait until the neurologist had done their work. Because of the back injury there can be...and the pressure that was being placed on my nerves you can get false signals to the brain as far as what hurts and what doesn't hurt. It took me four years to go through the surgeries and the assistance with my physical recovery until I reached maximum medical improvement. For one year after the injury the insurance company...workers' compensation company delayed surgeries at every turn that they could. It took a case of me going to a company or insurance physician who gave them the finding that, oh, he's fine, there's nothing wrong with him, he can go back to work. I immediately contacted an attorney. We petitioned the court. The court had me go to an independent medical examiner. The independent medical examiner said the company doctor doesn't know what the hell he's talking about. My orthopedic surgeon and my neurologist also have the same opinion. The company doctor gave them the result the company and the insurance company wanted, not what I needed. Because of the...even though I have reached maximum medical improvement I have permanent nerve damage. I also have a situation where I have to routinely go in and get injections into my hip and into my SI joint to

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relieve the pain that I'm under. Those range from epidurals to nerve blocks. Finally, after four years, when I was...reached maximum medical improvement, I was...I got Mr. Ted Stricklett, who is present, as my vocational rehabilitationist. We set up a plan with Iowa Western for me to go back to school to get my electronics engineering degree. This fit nicely with the job that I had in the company and with previous military experience because I had a lot of electronics and electrical knowledge already. I have just maybe a minute or so more. [LR246]

SENATOR EBKE: Mr. Chair. Yeah. [LR246]

SENATOR HARR: Please, yeah. [LR246]

PHILLIP B. RICE: That be okay? Okay. Okay. How has this injury affected me monetarily? With the benefits that were delayed I had to take \$20,000 out of my own retirement account in order for myself and my wife to have a basic life. We had no entertainment values. We had to get rid of a vehicle that we had...that was...we were paying for because we couldn't afford the payments. We got us down to the point where all we had was a house payment. Both of the vehicles that we are driving right now, the car my wife has, has over 100,000 miles on it, my truck has over 200,000 miles on it, because we cannot afford to get a new vehicle. Cutbacks in pleasure...the insurance costs that we have incurred for awhile we didn't have...the company insured both me and my wife. We had to buy outside insurance. It was \$1,100 a month. We had to do that for a year. I have also ended up having to take out \$20,000 more out of my retirement account to pay for things. The...as far as reeducation costs at Iowa Western Community College, we're looking at approximately \$10,000. I am very happy to say that as of this time my GPA is 3.683. This is my job. Since I don't work, my...I am a full-time student. That's the way I look at it. I am being paid to be a student and to do the best that I can in order to hopefully rejoin the work force. When I graduate I will be 58 years old. The...currently graduates from this course are not making 75 percent of the wage that I was at the time of my injury five years ago which was almost \$25 an hour. Currently the company that is giving...paying \$27 an hour to employees that are doing the same thing that I have. So I will not reach that 75 percent as far as...it's more about 60 to 65 percent. Even though companies are not supposed to take age into consideration at employment, we all know that that's a fairytale. They do take age into consideration. With me being 58 years old what I have to do is I will have to convince the employer that the knowledge

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that I have up here is worth employing me because I am physically incapable of doing many tasks. I have a weight limitation of 30 pounds as far as lifting. I cannot sit for prolonged periods of time. I cannot walk for prolonged periods of time because of the discomfort level that it causes. Thank you very much for allowing me to talk to you. I greatly appreciate it. And if there is any questions, I would be glad to answer them. [LR246]

SENATOR HARR: Well, Mr. Rice, thank you for coming down. Senator Bloomfield. [LR246]

SENATOR BLOOMFIELD: Thank you. Mr. Rice, are you currently receiving any benefits from your former employer other than the education? [LR246]

PHILLIP B. RICE: Just...all I'm getting so far at this time as far as monies is concerned is my regular workmen's compensation check of probably \$112 per week. [LR246]

SENATOR BLOOMFIELD: Okay. Thank you. [LR246]

SENATOR HARR: Any other questions? Seeing none, again, I want to thank you for taking the time to come down here, Mr. Rice. [LR246]

PHILLIP B. RICE: Thank you very much. [LR246]

SENATOR HARR: How many more testifiers do we have? Looks like I see two. All right, Mr. Howard. [LR246]

STEVEN HOWARD: (Exhibits 6 and 7) Yes. Thank you. I'm Steve Howard, H-o-w-a-r-d, on behalf of the Nebraska state AFL-CIO. And first labor would like to thank you for consideration of our comments and we would like to express our desire to participate in any discussions, anything that may help improve the vocational rehabilitation system for everyone. So first I have a couple of broad points, and then maybe some ideas about going forward. You know, in the real world you step into a workers' compensation trial, and this is what I tell clients on the first day: Well, what can the judge do? The judge really can do--and this is all according to the act--can do three things: can determine...well, first you got to determine if an accident happened on the job,

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but can award past and future healthcare expenses. So maybe the worker has got some past physical therapy bills and a past, you know, prescription reimbursement or something but the doctor says you need an MRI. So the judge can order those bills paid in the past and order the future MRI be held. Judge can award past and future weekly checks. Well, worker, you've been off for so many weeks or months and here's what you're entitled to--and if the employer has made payments they get credit for that--and here's what you're entitled to in the future. Voc rehab is only prospective. It is only for the future, so there is nothing in the law that allows a retroactive approval of benefits or a retroactive adoption by the court of vocational rehabilitation efforts. And that's the case of Mark Bradshaw, and you have a letter from Mark and you have the decision in his case. Mark's case--and, by the way, we thank Mr. Stricklett for helping with his plan and we thank the court for approving his plan--but by the time it wound its way through the system the dates for Mark's plan had already come up. So what did Mr. Bradshaw do knowing that he needed vocational rehabilitation? Well, he went and enrolled in school and he borrowed money and he paid for the tuition and he started attending classes. And one class he couldn't complete because of some reasons. But by the time he got to trial, he had good grades. And we asked the judge. We said, well, you know, this is the same plan only the dates would be different going forward, so you should approve it retroactively. And the court, my sense is the court would have approved it if the law allowed. But the court didn't allow that because the law, some older cases say that you can't approve voc rehab retroactively. So we think there ought to be some incentive, some system that rewards that worker that says, I know I'm not going to be able to go back, maybe I'll go enroll in Metro right now, maybe I'll go get my GED, and by the time I get to trial maybe I can have a plan that trains me in some new area. But there's nothing that allows for that in the law. Maybe some system, and I know these are broad concepts, but tuition reimbursement for what you've done postinjury, predecision, to improve your lot, to improve your earning power. Maybe some adjustment of your weekly benefits because you've gone out and tried to get back to work. That's my first thought. Second thought I want to...the point I want to make is there's been discussion today about, and there is at every session, about this being a cost to the employer. You know, an economist would remind us all it's a cost to the employer and the employee. I mean we live...we are a capitalist society. We have the forces of supply and demand. And if employers didn't have to write the check to buy the workers' compensation coverage, employees could negotiate a higher scale. And so even though the check is written and the payments and the premiums are paid by employers, in the end it is...it, in the broad sense, is

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something that is mandatory. It's a cost to an employer. So an employee is paid hourly less, and then that's a pure capitalist supply-and-demand view of it, but...and to that end I would remind you that in the entire history of the Work Comp Act there's never been any money awarded for pain and suffering; 100 years of cases, no pain and suffering because an employee can't get that. There's been no cost-of-living increase. There's been no benefit to families, other than in death cases, and it is a sort of a rigid system that's driven by formulas and percentages. So the yellow light is on, so I've got some ideas, and these are just broad thoughts. In terms of early intervention, if a doctor could certify that he or she believes in good faith that vocational rehabilitation is necessary, a lot of that preliminary stuff that Karen Stricklett and Jack Greene talked about--preliminary testing, evaluation of age, training, experience--perhaps that could be done. It could maybe be done in a group setting. But if a doctor could certify that then we would know ahead of time. Second, of course, is the granting of retroactive approval for tuition and rewarding, incentivizing that employee. In terms of the buyout, you know, it's never 100 percent buyout. And sometimes with our clients it's a question of take this, quote unquote, buyout--it's never labeled that--or lose your home. I'm sorry. May I finish? Is that...my red light is on.
[LR246]

SENATOR HARR: Please. [LR246]

STEVEN HOWARD: Okay. Thank you. Thank you. You can have a partial buyout...not a buyout. You can have a partial settlement and leave your medical open. The law doesn't allow a settlement that leaves vocational rehabilitation open. That would take some work to sort out those details. But that is something in the law. In terms of reporting and the statistics...and by the way, that 99 percent that go back to work at Tyson, they're never in those statistics because they're not in a plan. They're...if 99 percent of injured workers go back to work, they don't make their way into the statistics that flow from 48-162.01. The man that lost his arm and he's still working--and congratulations to both sides for that--he's not in those statistics. But if there was some six-month or one-year-out mandatory reporting, something tied when the person pays state income tax or something, you know, we're...it's a computer/digital age. We ought to be able to track long term the results. And last, some incentivized system for employers that in good faith do the right thing and return their employees to light-duty work or accommodations. I'll say this quickly. There isn't always an agreement between the employer and the insurer on return to

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work. Many times the employer is small and they say to the insurer, we just can't accommodate this person, you know, we have 25 people working and we just can't, there just isn't a spot. The bigger employers, of course, have more ability to do a better job. The insurer is putting pressure on the employer to find a job because it means lower work comp rates, lower loss of earning power, no voc rehab, so an incentive system that rewarded those who actively and productively participate in voc rehab. So thank you for letting me go over. [LR246]

SENATOR HARR: Thank you, Mr. Howard. Any questions? Senator Bloomfield. [LR246]

SENATOR BLOOMFIELD: Thank you, Chair. Mr. Howard, you talked about retroactive rehab. [LR246]

STEVEN HOWARD: Right. [LR246]

SENATOR BLOOMFIELD: If I suffered a broken leg and decided all of a sudden I was going to go sign up for four years at UNL, is my employer stuck? [LR246]

STEVEN HOWARD: Oh, you know, that would all be driven by the reasonableness of that, and certainly...yeah. [LR246]

SENATOR BLOOMFIELD: And what kind of guidelines would you think we would need to set up to prevent something like that from happening? [LR246]

STEVEN HOWARD: I think a judge would have to declare at the time of the hearing that it was reasonable and necessary because of the on-the-job injury. It's no different than approving it prospectively. And you're right. There would be folks caught saying, well, gosh, I went to school and I did all this and I don't get any credit for it, maybe, on a sliding scale, a partial credit. You're right. You don't want someone with a scratch or a hangnail and going and saying, well, I planned to go back to college anyway. [LR246]

SENATOR BLOOMFIELD: And then go to medical school for free. [LR246]

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STEVEN HOWARD: Right, right. But the judge decides those things in the end anyway. There's nothing automatic in work comp on voc rehab, so. [LR246]

SENATOR BLOOMFIELD: Thank you. [LR246]

STEVEN HOWARD: Thank you. [LR246]

SENATOR HARR: Seeing no other questions, thank you, Mr. Howard, for coming down to your Nebraska Legislature. And if you heard grumbling, that was not your testimony. That was my stomach, so (laughter). [LR246]

JULIE SHIPMAN-BURNS: Good afternoon. [LR246]

SENATOR HARR: Good afternoon. [LR246]

JULIE SHIPMAN-BURNS: My name is Julie Shipman-Burns. I am here on behalf of the Nebraska Association of Trial Attorneys. My last name is spelled S-h-i-p-m-a-n, hyphen, Burns, B-u-r-n-s. My stomach is grumbling also, so I'll try and make this quick. I just wanted to address a few of the comments that were...have been made previously today. I have been a practitioner representing injured workers for 25 years, and this is all I do. One of the concerns I had, and I have the utmost respect for Glenn Morton and the members of the court, but in doing so, one of Mr. Morton's comments was to go back to the old method of approving all the lump sum settlements. And I just want to assure this committee that there were problems with the system previously. And the Legislature discussed this. I believe it was back in 2009. We had a lot of discussion in that regard. All of the parties agreed there was some complications that needed to be fixed, and I believe they have been fixed to a very good degree. Now I want to remind everyone that lump sum settlement approval is not a fallacy. There still is lump sum settlement approvals that are required. If the individual is not represented by an attorney, they have to have court approval of their settlement for the lump sum settlements. If they are receiving Medicare or if there's a reasonable expectation that they're going to be receiving Medicare in 30 months, they have to seek work lump sum settlement approval. So it's not this "everybody gets to buy out." And really I agree with Mr. Atwood that it's just completely being grossly overused today and it's

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unfortunate because for those of us in the world of practitioners I can tell you there are a lot of reasons that my clients make decisions on their own behalf, and one of those being...let me step back. Let me just say that I believe most individual attorneys, when they represent people, they want what is best for their clients. And I truly do believe that. And education, in my opinion, is absolutely never wasted. I don't care if you take 1 class or 1,500 classes. Education is never wasted, even if you're 70 years old. That's just my opinion. But when it comes to clients, one thing you must understand. When they have to make those decisions on do they participate in a voc rehab plan, they may want to with all their heart and soul, want to participate, but here's the reality: They may get their temporary total disability benefits while they're going to school, but they don't have coverage for health insurance. So if you have a man or a woman who is the sole provider for their family and they're the ones that had the job that had the health insurance, they've lost it. And there's nothing available right now under our system to provide that individual with health insurance coverage while they're in a plan. And for a lot of people, if you have a child with a health issue, you have to have a job that provides you with health insurance. You absolutely have to. I don't care where you work. But you've got to have a job. So the other thing that my clients will look at...and I'm very up-front with my clients and tell them what they're expected. They have to go to school full time. They have to under the plan for the most part. I mean there's very few exceptions. And for those individuals that they need to get a second job in order...you know, let's just say it's at McDonald's that offers health insurance coverage. So if they go get a job at McDonald's at night so they can have health insurance coverage and then go to school during the daytime through the voc rehab plan, they basically lose not only their temporary total disability benefits but it's very difficult. So there are a lot of factors. I'm just...that's all I'm saying. There's a lot of factors that go into the consideration of whether that person participates in a voc rehab plan. And it's not just that simple black-and-white, yes, I will, no, I won't. So if some of my clients have actually accepted a settlement, they've used that money to go to school on their own time, part time. They can still work at a job, have health insurance coverage, and then they complete their degree. But it may take them six years to complete what would have been under the state voc rehab plan a two-year plan. So right now that may be an option, if we could look at something like that, to allow the extension of a plan so that people can get another job while they're going through their plan. [LR246]

SENATOR HARR: Okay. Yep. [LR246]

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JULIE SHIPMAN-BURNS: Those are just some observations. [LR246]

SENATOR HARR: Thank you, Ms. Shipman-Burns. Any questions? Seeing none, thank you very much. I appreciate your time and thank you for being patient and waiting. [LR246]

JULIE SHIPMAN-BURNS: Thank you. [LR246]

SENATOR HARR: Is there anyone else here to testify on LR246? Seeing none, that will close the hearing on LR246. Thank you very much for your time and patience. [LR246]