

S B

2 0 8

Alaska State Legislature

Senator Drue Pearce, Chair
Senator Virginia Collins, Vice Chair
Senator Dick Eliason
Senator Rick Halford
Senator Jay Kerttula



SENATE LABOR AND COMMERCE COMMITTEE

WHILE IN JUNEAU
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3844

3111 C STREET, SUITE 150
ANCHORAGE, ALASKA 99504
(907) 561-2018

SENATE LABOR AND COMMERCE COMMITTEE LETTER OF INTENT

CS SB 208 (L&C)

The Senate Labor and Commerce Committee is concerned that volunteer firefighters providing volunteer service outside an incorporated city or borough may not be covered by workers' compensation. This committee encourages representatives from the Alaska Fire Chiefs Association, the Alaska Firefighters Association, the state Fire Marshal's office, the Emergency Medical Services Association, and the state Emergency Medical Services' office to meet during the interim to address this concern. Recommendations on how to remedy this lack of insurance coverage should be reported to the Second Session of the Seventeenth Alaska State Legislature by January 31, 1992, for possible legislative action.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 202

Revision Date: _____ Department Affected: Administration
 Title: An act relating to Workers' compensation for emergency medical BRU: Risk Management
techs Component: _____
 Sponsor: Eliason
 Requestor: Labor and Commerce COMPONENT SERIAL NO.

| | | | |
|--|--|--|--|
| | | | |
|--|--|--|--|

Expenditures/Revenues: (Thousands of Dollars)

| OPERATING | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | 0 | 0 | 0 | 0 | 0 | 0 |
| TRAVEL | 0 | 0 | 0 | 0 | 0 | 0 |
| CONTRACTUAL | 0 | 0 | 0 | 0 | 0 | 0 |
| SUPPLIES | 0 | 0 | 0 | 0 | 0 | 0 |
| EQUIPMENT | 0 | 0 | 0 | 0 | 0 | 0 |
| LAND & STRUCTURES | 0 | 0 | 0 | 0 | 0 | 0 |
| GRANTS, CLAIMS | 0 | 0 | 0 | 0 | 0 | 0 |
| MISCELLANEOUS | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | |
|---------|---|---|---|---|---|---|
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

| | | | | | | |
|---------|---|---|---|---|---|---|
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|---|---|---|---|---|---|
| GENERAL FUND | 0 | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS | 0 | 0 | 0 | 0 | 0 | 0 |
| OTHER | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)

See Attached

Prepared By: Don Hitchcock Phone: 465-2180
 Division: Risk Management Date: 3-20-91
 Approved by Commissioner: Millett Keller
 Agency: Administration Date: 3/21/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO : SB 208

Revision Date: _____
Title: " An Act relating to workers' compensation for emergency medical ..."
Sponsor: Senator Eliason
Requestor: Senate Labor & Commerce

Department Affected: Labor
BRU: Workers' Compensation
Component: Workers' Compensation
COMPONENT SERIAL NO. 344

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND&STRUCTURES | | | | | | |
| GRANTS.CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|------------|------------|------------|------------|------------|------------|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Linda Rexwinkel, Director *LR* Phone: 465-2790
Division: Workers' Compensation Date: 4/2/91
Approved by Commissioner: Nancy Bear Usera *NBU*
Agency: Department of Labor Date: 4/2/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

ALASKA STATE LEGISLATURE SENATE

SENATOR RICHARD I. ELIASON

PRESIDENT OF THE SENATE
LABOR & COMMERCE COMMITTEE
RESOURCES COMMITTEE
RULES COMMITTEE
CHAIRMAN, SPECIAL COMMITTEE ON
DOMESTIC & INTERNATIONAL
COMMERCIAL FISHERIES



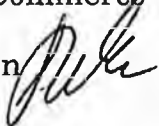
P O BOX 143
SITKA, ALASKA 99835

P O BOX V
JUNEAU, ALASKA 99811
(907) 465-4916

FAX (907) 465-4928

MEMORANDUM

TO: Senator Drue Pearce, Chair
Senate Labor and Commerce Committee

FROM: Senator Dick Eliason 

DATE: March 19, 1991

RE: Senate Bill 208 - Workers' Compensation for Volunteer EMTs

I respectfully request a hearing in the Senate Labor and Commerce Committee to take testimony on Senate Bill 208, Workers' Compensation for Volunteer Emergency Medical Technicians. This legislation would provide workers' compensation coverage to a volunteer EMT who is injured during the course of providing service as a volunteer EMT.

Senate Bill 208 has the support of the Department of Labor and the Department of Administration has indicated a zero fiscal note would be prepared for this legislation.

Thank you very much for your consideration of this request.

Alaska State Legislature

Senator Drue Pearce, Chair
Senator Virginia Collins, Vice Chair
Senator Dick Eliason
Senator Rick Halford
Senator Jay Kerttula



SENATE LABOR AND COMMERCE COMMITTEE

WHILE IN JUNEAU
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-2844

3111 C STREET, SUITE 150
ANCHORAGE, ALASKA 99504
(907) 561-2010

TO: Mike Ford, Legal Counsel
Legal Services Division

FROM: Rod Mourant, Legislative Aide
Senate Labor & Commerce Committee

A handwritten signature in cursive script that reads "Rod".

DATE: April 13, 1991

RE: SB 208

Mike, Labor & Commerce Committee passed out a CSSB208 (L&C) yesterday. The CS was based on SB 208 draft 7-LS0932\A and the three amendments on the attachment.

There is also a letter of intent that I will finalize with Senator Eliason's staff.

I need a final ASAP. Thank you.

To

clayt Chris

Date

Time

11:15

While You Were Out

M

Kenn BRUCE

of

Phone

274-1007

AREA CODE

NUMBER

EXTENSION

| | | | |
|--------------------|--|-----------------|-------------------------------------|
| TELEPHONED | | PLEASE CALL | <input checked="" type="checkbox"/> |
| WAS IN TO SEE YOU | | WILL CALL AGAIN | |
| WANTS TO SEE YOU | | URGENT | |
| RETURNED YOUR CALL | | | |

Message

re: tort reform

Operator

STATE OF ALASKA
THE LEGISLATURE

POURBY MAIL CAPTION
HEAD ALASKA 99811
907 465 3000

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

September 7, 1988

SUBJECT: Tort reform initiative
(Work Order No. 6-0079)

TO: Senator Jan Faiks

FROM: Michael F. Ford *M.F.*
Legislative Counsel

Assuming the ballot initiative repealing joint liability under AS 09.17.080(d) passes, you have asked if this will also affect the joint liability for discharges of oil or other pollutants under AS 46.03, or the liability for clean-up or containment of oil or hazardous substances under AS 46.08.070. As explained in this memo, I do not believe that passage of the initiative will affect the joint and several liability provided for under AS 46.03.758(e) or other civil liability imposed under AS 46.03 or AS 46.08.

Passage of the initiative would amend AS 09.17.080(d) and eliminate joint liability under that law. The initiative does not directly amend any other civil penalty or reflect an intent to repeal or amend civil liability established under other statutes. Absent a specific intent to repeal or amend, the question becomes will the passage of the initiative result in amendment by implication? A statute can certainly be amended by implication, but generally only when the statute falls into one of two categories. First, when there is irreconcilable conflict between two laws, then the later act constitutes implied repeal to the extent of the conflict. Second, if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will similarly repeal the earlier act. Peter v. State, 531 P.2d 1263 (AK 1975).

Concerning the first category, there is not an irreconcilable conflict between the AS 09.17.080(d) and the pollution laws, particularly when comparing these laws in the context of their respective chapters. The AS 09.17 pro-

Senator Jan Faiks
Page 2
September 7, 1988

vision is a general limitation on civil liability, imposed in tort cases. The AS 46.03 and AS 46.08 provisions only apply to civil suits brought for illegal oil or other hazardous pollution. These environmental provisions are narrow public interest statutes, clearly distinguishable from the tort limitations imposed under AS 09.17.

Given the distinctions between AS 09.17 and AS 46.03 and 08, it is also difficult to argue that the second category of repeal by implication applies. There is no indication that the tort reform act was intended to address the natural resource protection policies outlined in AS 46.03 and 08, or that the tort reforms were intended as a substitute for the civil penalties contained in those chapters. Therefore amendment of AS 09.17.080(d) by initiative will not amend these provisions by implication. This same reasoning applies to regulations adopted under the environmental statutes. Unless the limitation on tort liability irreconcilably conflicts with the regulations, or is intended as a substitute, passage of the initiative will have no affect on these regulations.

Federal law in the area of hazardous pollution is contained in 46 U.S.C. 9601 - 9657. While the federal law does not preempt the states from imposing additional liability, a person who receives compensation under federal law is precluded from recovering compensation for the same damages under state law. See 46 U.S.C. 9614(b). Under federal law, "hazardous substance" does not include petroleum or natural gas, unless specifically designated as a hazardous substance by the administrator of the Environmental Protection Agency. See 46 U.S.C. 9601(14).

If you have further questions please contact me.

MFF:gc
WKG3:090

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
 Title: "An Act relating to workers' compensation." BRU: Workers' Compensation
 Sponsor: Senate Labor & Commerce Components: _____
 Requestor: Senate Labor & Commerce Workers' Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 91 | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND&STRUCTURES | | | | | | |
| GRANTS,CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

Note: There will be no impact on FY 90.

Prepared by: Elaine VanderSande, Admin Officer
 Division: Workers' Compensation

Phone: 465-2790

Date: 4/23/90

Approved by Commissioner: Jim Sampson
 Agency: Department of Labor

Date: 4/23/90

Distribution (by preparer) :

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Administration
 Title: An Act relating to workers BRU: Risk Management
compensation
 Sponsor: Labor and Commerce Components: _____
 Requestor: Sen. Kelly

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 91 | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | 0 | 0 | 0 | 0 | 0 | 0 |
| TRAVEL | 0 | 0 | 0 | 0 | 0 | 0 |
| CONTRACTUAL | 0 | 0 | 0 | 0 | 0 | 0 |
| SUPPLIES | 0 | 0 | 0 | 0 | 0 | 0 |
| EQUIPMENT | 0 | 0 | 0 | 0 | 0 | 0 |
| LAND & STRUCTURES | 0 | 0 | 0 | 0 | 0 | 0 |
| GRANTS, CLAIMS | 0 | 0 | 0 | 0 | 0 | 0 |
| MISCELLANEOUS | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|---|---|---|---|---|---|
| GENERAL FUND | 0 | 0 | 0 | 0 | 0 | 0 |
| FEDERAL FUNDS | 0 | 0 | 0 | 0 | 0 | 0 |
| OTHER | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 0 | 0 | 0 | 0 | 0 | 0 |

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary)

The addition of Volunteer Emergency Medical Technicians to the State workers compensation program will not require any change in the Risk Management appropriation request.

Prepared by: Don Hitchcock, Director *[Signature]* Phone: 465-2180
 Division: Risk Management Date: 4-23-90
 Approved by Commissioner: Frank S. Baxter *[Signature]* Date: 4-23-90
 Agency: Department of Administration

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR ELIASON

TO: SB 208

Page 1, line 9, following "technician":

Insert "or is an active roster volunteer member of a state certified emergency medical service and is registered with the Department of Health and Social Services"

Page 2, line 1, before "gross":

Insert "minimum"

Page 2, line 9, following "AS 18.08":

Insert "or is an active roster volunteer member of a state certified emergency medical service and is registered with the Department of Health and Social Services"

For an Act entitled: "An Act relating to worker's compensation for volunteer emergency medical technicians."

SB 208 would provide workers' compensation coverage by the state for state certified volunteer EMT's who are injured while providing emergency medical services outside an incorporated city or borough and who are not otherwise covered for worker's compensation.

Background

Approximately two-thirds of Alaska's twenty five hundred state certified Emergency Medical Technicians (EMT's) are volunteers. These volunteers provide the backbone of the emergency medical services system in many parts of rural Alaska. Although most volunteers respond to fewer emergency medical calls than paid EMT's, they often face similar hazards and are at some risk of becoming injured.

Under AS 23.30.092, a political subdivision may elect to provide benefits and compensation to volunteer ambulance attendants, policemen or firemen by obtaining insurance and filing copies of the policies with the commissioner of the Department of Labor. However, volunteer EMT's who live in, and provide services in, unincorporated communities outside organized incorporated cities or boroughs do not have worker's compensation coverage at the present time. A review of the computer records of the Emergency Medical Services Section in the Division of Public Health reveals that less than one hundred fifty state certified volunteer EMT's reside in unincorporated areas and therefore would be eligible to receive benefits under this bill.

If this bill passes, those volunteer EMT's who reside in incorporated cities or boroughs that elect not to provide this coverage would still not be eligible to receive workers' compensation benefits, except if they happen to be injured while providing services outside incorporated cities and boroughs. We have no way of estimating how many volunteer EMT's would be in this category, but we estimate that the number is low.

The Matanuska-Susitna Borough has provided workers' compensation coverage for volunteer EMT's and firefighters for over ten years. Currently, 350 volunteers are covered by borough paid worker's compensation coverage. According to Kevin Koechlein, Director of Emergency Services for the Matanuska-Susitna Borough, over ten years there have been two lost work time injuries, costing less than \$1,000 apiece, and an average of about \$2,000.00 per year in medical claims. Last

year, among the volunteer EMT's, there were two needlestick injuries, one back strain, and one laceration.

Position

The Department of Health and Social Services supports SB 208. We believe it is only fair that EMT's who provide emergency medical services in unincorporated areas should receive the same or similar benefits if injured as those volunteer EMT's who are provided workers' compensation coverage by a local government. This should help emergency medical services in remote rural areas to recruit and retain volunteer EMT's.

The Department of Health and Social Services supports SB 208.

Recommended by: Peter Nakamura MD

Peter M. Nakamura, MD, MPH
Director
Division of Public Health

Date: 4/3/91

Approved by: Theodore A. Mala

Theodore A. Mala, MD, MPH
Commissioner
Department of Health and Social Services

Date: 3 Apr 91

To Senator Dick Eliason 4/3/91
From Reed Reynolds, SE Region EMS

Re: SB 208 Worker's Comp for EMS

This will advise you that the entire 30 member regional Board of Directors voted unanimously on March 18, 1991, to endorse SB 208. In making this decision, the regional board called attention to the significance of having volunteers to provide emergency medical care to the unincorporated areas of Alaska. The risk to the workers' compensation fund is considered very low based on 13 years of experience; the benefits to the public far outweigh the risk. Protection of such volunteer EMS workers is proper and is essential to the maintenance of vital, high quality EMS on a continued year round basis. On behalf of rural, isolated volunteer EMS workers, the regional board strongly encourages adoption of SB 208.

SOUTHEAST REGION

EMERGENCY MEDICAL SERVICES COUNCIL
207 MOLLER DRIVE RM. 113 • SITKA, ALASKA 99835
TELEPHONE 907-747-8005

Southeast Region EMS Fax Cover Sheet
Fax # (907) 747-1406

Date: 4/3/91

To: SENATOR DRUE PEARCE, CHAIRMAN

From: SHAWN NEWELL

Number of pages including cover: 2

If you have any problems receiving, please contact person sending right away.

PLEASE ENTER INTO THE RECORDS
THE FOLLOWING TESTIMONY TO
THE SENATE LABOR & COMMERCE
COMMITTEE.

APR 5 1991

POD

SOUTHEAST REGION

EMERGENCY MEDICAL SERVICES COUNCIL
207 MOLLER DRIVE RM. 113 • SITKA, ALASKA 99835
TELEPHONE 907-747-8005

Senator Pearce
P.O. Box V
Juneau, AK 99811

April 2, 1991

Dear Senator Pearce,

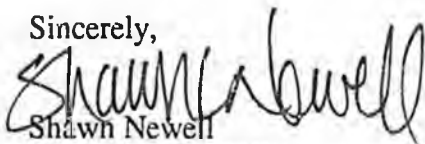
I am writing to comment on SB208.

The bill goes a long way toward supporting the volunteer EMS workers who provide an essential state-mandated service to Alaska for free. Senator Eliason's bill, through providing worker's compensation insurance for volunteers in Alaska's unincorporated areas, supports those volunteers in a very quantifiable way. We've notified people from unincorporated areas in Southeast about the upcoming hearing on SB 208, and I believe you'll be hearing from folks in places like Hollis, Gustavus, Elfin Cove and Port Protection who are really behind the bill. These people have no significant sources of local funding and rely on the state to support their work through mini grants (funded through the Grants to EMS Councils line item) and bills like this one and SB194, that would make Hepatitis B vaccinations available to volunteer EMS workers.

In a conversation with Jack Mason, EMS Captain for Port Protection, he noted that SB208 proposes to cover "emergency medical technicians...". Our experience is that in a lot of smaller communities, emergency trauma technicians make up the brunt of the emergency medical service workers. We, therefore, suggest that a broader definition of emergency medical service workers be considered that would include the whole range of EMS volunteers.

As liason between the communities of Southeast and the state of Alaska, Southeast Region EMS Council fully supports SB208 and the philosophy behind it-- supporting Alaska's volunteer EMS system.

Sincerely,



Shawn Newell
Executive Director

* ORIGINAL
 * SENT: 04/03/91 TIME: 15:28
 * FROM: LTCCSIT
 * SUBJECT: 91-03-108; FL#1; SL&C; 4-3
 * PRINT DATE: 04/03/91 TIME: 15:28

SUBJECT LINE TO READ: TC NO., FL/FS, SHORT SUBJECT, DATE

T/C NO: 91-03-108
 DATE: APRIL 3, 1991
 SPONSOR: SENATE LABOR & COMMERCE
 SUBJECT: MISC. BILLS
 MODERATOR: KATHY
 SITE: SITKA

PARTICIPANT LIST

TESTIFIED to testify

| NAME/REPRESENTING | ADDRESS | PHONE | BILL NO. |
|--|---------|-------|----------|
| 1. CRAIG LEWIS | | | SB 208 |
| 2. REED REYNOLDS, S.E. REG. EMERGENCY MEDICAL SERVICES | | | SB 208 |
| 3. | | | |
| 4. | | | |
| 5. | | | |

OBSERVED

| NAME/RERESENTING | ADDRESS | PHONE | BILL NO. |
|------------------|---------|-------|----------|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |

TESTIFIED:

 * DELIVER TO: LIOCROG *
 * ORIGINAL *
 * SENT: 04/03/91 TIME: 15:36 *
 * FROM: LIOCVAL *
 * SUBJECT: 91-03-108; PL#1; SB208, L&C; 4-3 *
 * PRINT DATE: 04/03/91 TIME: 15:36 *

SUBJECT LINE TO READ: TC NO., PL/FS; SHORT SUBJECT, DATE

T/C NO: 91-03-108
 DATE: APRIL 3, 1991
 SPONSOR: (S) LABOR & COMMERCE
 SUBJECT: SB 184, SB 208, SB 212, SB 95
 MODERATOR: DONNA GRENIER
 SITE: VALDEZ

PARTICIPANT LIST #1

FINAL STATS

 TESTIFIED

| NAME/REPRESENTING | ADDRESS | PHONE | BILL NO. |
|-----------------------------------|--------------|----------|----------|
| 1. CHARLES LUNDFELT FIRE DEPT. | P.O. BOX 307 | 835-4560 | SB 208 |

 OBSERVED

| NAME/REPRESENTING | ADDRESS | PHONE | BILL NO. |
|-------------------|---------|-------|----------|
| 1. | | | |

TESTIFIED:
 UNABLE:
 OBSERVED:
 TOTAL:

 *
 * DELIVER TO: LIOCROG *
 *
 * ORIGINAL *
 * SENT: 04/03/91 TIME: 15:37 *
 * FROM: LTCCKTN *
 * SUBJECT: 91-03-108, PL1; MULTI BILLS, 4-3 *
 * PRINT DATE: 04/03/91 TIME: 15:37 *
 *

T/C NO: 91-03-108
 DATE: APRIL 3, 1991
 SPONSOR: (S) LABOR & COMMERCE COMMITTEE
 SUBJECT: SB184: CORRECTIONAL INDUSTRIES PROGRAM CHANGES
 SB208: WORKER'S COMPENSATION FOR ENT'S
 SB212: MEDICAL INDEMNITY CORPORATION DISSOLUTION
 MODERATOR: JUNE ROBBINS
 SITE: KETCHIKAN

PARTICIPANT LIST

TESTIFIED

| NAME/REPRESENTING | ADDRESS | PHONE | BILL NO. |
|--|---|-------|----------|
| 1. PEGGY ENTWIT, KETCHIKAN FIRE DEPARTMENT | | | SB 208 |
| | SOUTHEAST REGIONAL EMERGENCY MEDICAL SERVICES CORPORATION | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |

OBSERVED

| NAME/REPRESENTING | ADDRESS | PHONE | BILL NO. |
|-------------------|---------|-------|----------|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |

TESTIFIED:
 UNABLE:

SUBJECT LINE TO READ: TC NO.; PL/FS; SHORT SUBJECT; DATE

T/C NO: 91-03-108
DATE: 4-3-91
SPONSOR: S, LAC
SUBJECT: MULTIPLE BILLS
MODERATOR: PHYLLIS
SITE: BARROW

PARTICIPANT LIST #1

TESTIFIED

| NAME/REPRESENTING | ADDRESS | PHONE | BILL NO. |
|---|---------|----------|---------------|
| 1. <u>MIKE KLAWITTER, NSB-PERSONNEL, BOX 69</u> | | 852-2611 | <u>SB 208</u> |
| 2. | | 276-5617 | |
| 3. | | | |
| 4. | | | |
| 5. | | | |

OBSERVED

| NAME/RERESENTING | ADDRESS | PHONE | BILL NO. |
|--|---------|----------|----------|
| 1. LORI WING, RBH, BOX 7502, ANCH, 99510 | | 276-5617 | SB 208 |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |

TESTIFIED:

UNABLE:
OBSERVED:
TOTAL:

START TIME:

END TIME:

```

*****
*
* DELIVER TO: LIOCROG
*
* ORIGINAL
* SENT: 04/03/91 TIME: 15:41
* FROM: LTCCHOM
* SUBJECT: 91-03-108; PL; S.L&C; 4-3-91
* PRINT DATE: 04/03/91 TIME: 15:41
*
*****

```

SUBJECT LINE TO READ: TC NO.; PL/FS; SHORT SUBJECT; DATE

```

T/C NO: 91-03-108
DATE: APRIL 3, 1991
SPONSOR: SENATE LABOR AND COMMERCE
SUBJECT: MULTIPLE BILLS
MODERATOR: CHARLENE
SITE: HOMER

```

PARTICIPANT LIST

TESTIFYING

| NAME/REPRESENTING | ADDRESS | PHONE | BILL NO. |
|-------------------|----------------------|----------|----------|
| 1. ROBERT PURCELL | HVFD, 604 E. PIONEER | 235-3155 | SB200 |
| 2. HOMER | 99603 | | |
| 3. | | | |

OBSERVING)

| NAME/REPRESENTING | ADDRESS | PHONE | BILL NO. |
|-------------------|---------|-------|----------|
| 1. | | | |
| 2. | | | |
| 3. | | | |

TESTIFIED

* ORIGINAL *
 * SENT: 04/03/91 TIME: 15:35 *
 * FROM: LTCCGLN *
 * SUBJECT: 91-03-108, PL, WRKS COMP, 04.391 *
 * PRINT DATE: 04/03/91 TIME: 15:36 *
 * *

SUBJECT LINE TO READ: TC NO., PL/FS, SHORT SUBJECT, DATE

T/C NO: 91-03-108
 DATE: 04-03-91
 SPONSOR: (S) LABOR AND COMMERCE
 SUBJECT: WORKERS COMP FOR EMT'S
 MODERATOR: PATSY HILL
 SITE: GLENNALLEN

PARTICIPANT LIST

 TESTIFIED

| NAME/REPRESENTING | ADDRESS | PHONE | BILL NO. |
|-------------------------------------|---------------------------|----------|---------------|
| 1. <u>CHERIE ANSELL</u> | BOX 529, GLENNALLEN 99588 | 822-3671 | <u>SB 208</u> |
| 2. ...COPPER RIVER EMS COUNCIL INC. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |

 OBSERVED

| NAME/REPRESENTING | ADDRESS | PHONE | BILL NO. |
|-------------------|---------|-------|----------|
| 1. | | | |
| 2. | | | |
| 3. | | | |
| 4. | | | |
| 5. | | | |

 TESTIFIED:

UNABLE:
 OBSERVED:
 TOTAL:

START TIME

END TIME



Paul Mattera
Vice President
Assistant General Counsel

To help further meaningful reform of our troubled workers compensation systems, Liberty Mutual is repeating our Fall workers compensation advertisements in The Wall Street Journal and other respected business publications from now through April.

For added perspective on this issue, I urge you to read this booklet entitled, "Challenges for the 1990s," produced by the Workers Compensation Research Institute. The booklet's essays offer a thoughtful review of workers compensation issues from some noted experts in the field, including Liberty Mutual's President and CEO, Gary L. Countryman.

I encourage you to participate with us in this important debate. By working together, we can improve a system that so many Americans rely upon.


Paul Mattera

175 Berkeley Street Boston, Massachusetts 02117

Challenges for the 1990s

Richard A. Victor, Editor

WORKERS COMPENSATION RESEARCH INSTITUTE

About the Institute

The Workers Compensation Research Institute is a nonpartisan, not-for-profit research organization providing objective information about public policy issues involving workers' compensation systems.

The Institute does not take positions on the issues it researches; rather it provides information obtained through studies and data collection efforts that conform to recognized scientific methods, with objectivity further ensured through rigorous peer review procedures.

The Institute's work helps those interested in improving workers' compensation systems by providing new, objective empirical information that bears on certain vital questions:

- How serious are the problems that policymakers want to address?
- What are the consequences of proposed solutions?
- Are there alternative solutions that merit consideration? What are their consequences?

The Institute's work takes several forms:

- Original research studies on major issues confronting workers' compensation systems
- Original research studies of individual state systems where policymakers have shown an interest in reform and where there is an unmet need for objective information
- Sourcebooks that bring together information from a variety of sources to provide unique, convenient reference works on specific issues
- Periodic research briefs that report on significant new research, data, and issues in the field

Challenges for the 1990s

Challenges for the 1990s

Richard A. Victor, Editor

WC-90-3

JULY 1990

WORKERS COMPENSATION RESEARCH INSTITUTE

COPYRIGHT © 1990 BY THE WORKERS COMPENSATION RESEARCH INSTITUTE

ALL RIGHTS RESERVED. NO PART OF THIS BOOK MAY BE COPIED OR REPRODUCED IN ANY FORM OR BY ANY MEANS WITHOUT WRITTEN PERMISSION OF THE WORKERS COMPENSATION RESEARCH INSTITUTE.

LIBRARY OF CONGRESS CATALOGING-IN-PUBLICATION DATA

Challenges for the 1990s / Richard A. Victor, editor.

p. cm.

"July 1990."

Includes bibliographical references.

"WC-90-3."

ISBN 0-935149-24-4 : \$20.00

I. Workers' compensation—United States. I. Victor, Richard A., 1950- II. Workers

Compensation Research Institute (Cambridge, Mass.)

HD7103.65.L6C46 1990

368.41'00973—dc20

90-12784

CIP

PUBLICATIONS OF THE WORKERS COMPENSATION RESEARCH INSTITUTE DO NOT NECESSARILY REFLECT THE OPINIONS OR POLICIES OF THE INSTITUTE OR THE INSTITUTE'S RESEARCH SPONSORS.

Editor's Note

This is the third in a series of special volumes of papers commissioned by the Workers Compensation Research Institute. Together the papers present a multi-faceted view of the challenges facing workers' compensation systems in the new decade. Each paper relies heavily on the experience of the author and in some cases formal empirical research. The papers have not undergone the Institute's technical review process.

WCRI would like to extend its sincerest thanks to the authors for preparing these insightful papers. The Institute also would like to thank Barbara Bell Pitnof for editing and designing the book and Antoinette Pellegrino for preparing the manuscript.

RICHARD A. VICTOR
Executive Director
July 1990

About the Authors

RICHARD A. VICTOR is the executive director of the Workers Compensation Research Institute. Dr. Victor holds both a Ph.D. in economics and a law degree from the University of Michigan, where he was the George Humphrey Fellow in Law and Economic Policy. He was a principal researcher at the Institute for Civil Justice at The Rand Corporation. Dr. Victor is a frequent speaker and author on workers' compensation public policy issues.

RICHARD I. FEIN is executive vice president and chief operating officer of the National Council on Compensation Insurance. He has worked with NCCI for thirteen years. He holds a Ph.D. in mathematics. Dr. Fein is a fellow of the Casualty Actuarial Society and of the Conference of Actuaries in Public Practice.

EDWARD M. WELCH has been director of Michigan's Bureau of Workers' Disability Compensation since 1985. Before that, he was an attorney representing injured workers. Mr. Welch, who received his law degree at the University of Michigan, is the author of *Workers' Compensation in Michigan: Law and Practice*.

JAMES N. ELLENBERGER has been the assistant director of the AFL-CIO's Department of Occupational Safety and Health since 1984, and has worked for the AFL-CIO since 1972. Mr. Ellenberger has written extensively on international labor affairs. He received his B.A. in political science at San Francisco State University.

THOMAS J. RITTENHOUSE is the director of risk management at GenCorp, Inc. He has been working in the field of risk management since 1972, and has published papers on the subject. Mr. Rittenhouse received his B.A. from Point Park College.

GARY L. COUNTRYMAN is president and chief executive officer of Liberty Mutual Insurance Group. He began working for Liberty Mutual in 1963, after receiving his master's degree in business and economics from the University of Oregon. Mr. Countryman currently serves on the board of directors of several organizations, among them the Alliance of American Insurers and the Insurance Service Office.

Contents

List of Tables / xi

- 1. The Context of Workers' Compensation in the 1990s** / RICHARD A. VICTOR **3**
- The Context of the 1990s / 4
 - The New Demographics / 4
 - Increasing Litigation and Complex Claims / 5
 - Rethinking Medical Care Delivery and Payments / 6
 - Insistence That Insurers Contain System Costs / 6
 - Frustration with Reforms / 7
 - Contents and Scope / 7
- 2. Major Challenges Facing Workers' Compensation Systems in the 1990s** / RICHARD A. VICTOR **9**
- Introduction / 9
 - Soaring Medical Costs / 10
 - Maldistributed Benefits / 14
 - Assessing Benefit Utilization / 17
 - Reducing Litigation / 17
 - Conclusion / 22

| | |
|--|----|
| 3. The Pricing and Profitability of Workers' Compensation Insurance / RICHARD I. FEIN | 24 |
| 4. New Strategies for the 1990s / EDWARD M. WELCH | 35 |
| Introduction / 35 | |
| Federal Action / 35 | |
| Strategies for the 1990s / 37 | |
| Conclusion / 45 | |
| 5. Workers' Compensation Challenges: Organized Labor's View / JAMES N. ELLENBERGER | 47 |
| The Challenge / 48 | |
| The Current Debate / 48 | |
| The Business Climate / 49 | |
| Deprecation of Claimants / 49 | |
| Hostility Toward Insurers and Employers / 50 | |
| Renewing the Commitment / 52 | |
| 6. Workers' Compensation Challenges: The Employer's Perspective / THOMAS J. RITTENHOUSE | 54 |
| 7. Workers' Compensation: A Call for Reform / GARY L. COUNTRYMAN | 58 |
| An Emerging and Dangerous Trend / 59 | |
| A Comprehensive Strategy / 60 | |
| A National Catalyst for Reform / 61 | |
| References / 63 | |

List of Figures

- 1.1 Labor Shortage Looms / 4
- 1.2 Labor Force Grays / 5
- 2.1 Trends in U.S. Medical Costs: Workers' Compensation Versus Non-workers' Compensation / 11
- 2.2 Income Replacement, Permanent Partial Claims in California, 1975-1977 / 16
- 2.3 Litigiousness in Three States / 18
- 3.1 Workers' Compensation Premium-level Changes / 25
- 3.2 Earned Impact Achieved / 26
- 3.3 Comparison of Countrywide Annual Trend Factors over the Last Six Policy Year Calls / 27
- 3.4 Comparison of Annual Indemnity Trend Factors, Policy Years 1983-1987 / 28
- 3.5 All NCCI Pools — Written Premiums, All Years Combined / 29
- 3.6 Residual Market Share, Pool Premiums as a Percentage of Direct Written Premiums / 30
- 3.7 Premium Size Profile, 1988: Distribution of Premium / 31
- 3.8 Residual Market Burden, All States with Full Assigned Risk Plans, 1982-1989 / 32
- 4.1 Transportation Equipment Manufacturing Industry, Claims per 100 Employees / 41
- 4.2 Automotive Stamping Subgroup, Claims per 100 Employees / 41

Challenges for the 1990s

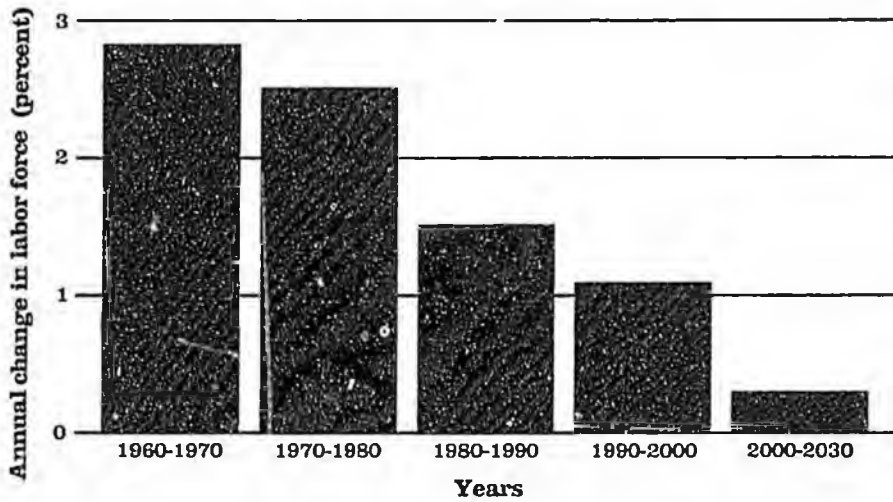
The Context of Workers' Compensation in the 1990s

RICHARD A. VICTOR

As we enter a new decade, we often reflect on where we have come from and where we are going on issues of personal, national, and international significance. The popular media barrage us with end-of-decade reviews — some substantive and insightful, others nostalgic or humorous. For workers' compensation professionals, the 1980s were a decade of challenge and increasing frustration. Costs rose dramatically; medical costs exploded, rising even faster than they did in the non-workers' compensation arena; insurers saw losses mount; benefit levels in some states remained low relative to accepted standards; and litigation seemed to increase despite efforts to reduce it. Too often, reforms that were implemented with enthusiasm and optimism were followed by disappointment with the results achieved.

The 1990s provide many challenges, some old and some new. Most important, the 1990s give us an opportunity to use more effectively the lessons learned from nearly two decades of workers' compensation reform in the wake of the report of the National Commission on State Workmen's Compensation Laws in 1972. This book offers the insights of some of the nation's leading workers' compensation experts on these challenges and lessons. These experts come from diverse backgrounds: the chief executive officer of the nation's largest workers' compensation insurer, a national spokesman from the labor movement, the director of an innovative workers' compensation state agency, a leading risk manager, the executive vice president of the nation's largest insurance rating bureau, and a researcher.

Figure 1.1. Labor Shortage Looms



The Context of the 1990s

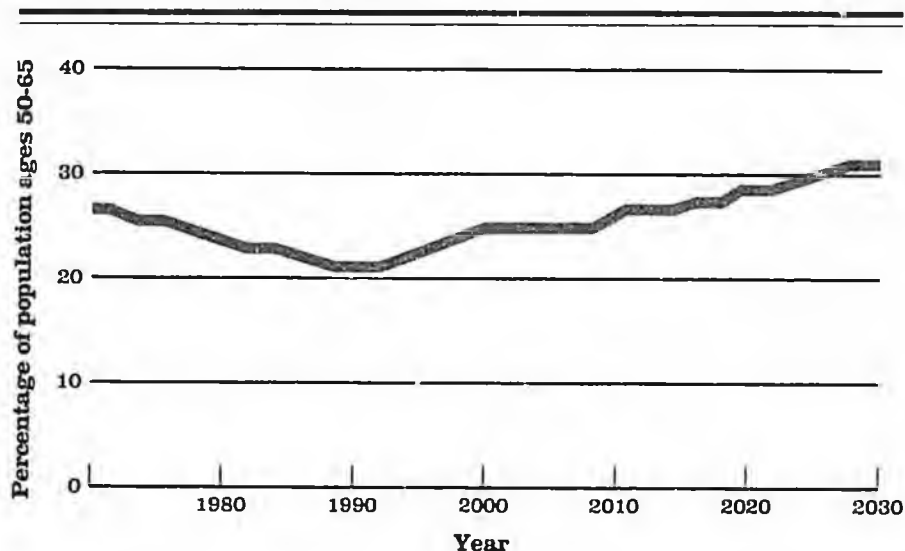
Many themes will shape workers' compensation unless system reforms resolve some major issues. Among the most significant are the following:

- New demographics that will produce major changes in the labor market: a labor shortage and the rising prominence of older workers
- Increasing litigation arising in part from the growth of complex claims
- A major rethinking of the ways that medical care is provided generally and in workers' compensation
- A growing insistence by employers that insurers find new ways to contain system costs
- Increasing frustration with the political process and reform efforts that have not produced promised results

The New Demographics

During the 1960s and 1970s, we grew accustomed to a plentiful supply of labor. As the baby boomers entered the labor market in record numbers, the labor force grew by at least 2.5 percent each year for twenty years (Figure 1.1). That began to change in the 1980s, as the baby boomers were succeeded by a much smaller

Figure 1.2. Labor Force Grays



cohort, the "baby bust." The 1990s will bring this trend home to us in striking ways, as labor force growth averages just 1 percent annually, and much less in the next century. The labor market will be a seller's market -- workers will be choosier and change jobs more often. And employers will have to work harder to find and retain valued employees.

What are the consequences of the new demographics for workers' compensation?

- Accelerating automation and lower injury rates as workers become more difficult and more expensive to find
- A stronger emphasis by employers on return-to-work programs
- An aging labor force that will tend to have disabilities of longer duration and more cumulative injuries (Figure 1.2)

Increasing Litigation and Complex Claims

Older workers are more likely to have diseases associated with both the workplace and the aging process: hearing loss, joint diseases, back problems, cardiac and respiratory diseases, and cancers. These cases typically are litigated. With older workers comprising a larger share of the labor force, litigation will increase significantly. Most state systems are not prepared to meet this challenge. State agencies do not have the staff and budgets to accommodate a sizable increase

in litigated cases. And most state agencies focus on dispute resolution, not dispute prevention. Dispute resolution procedures emphasize adversariness rather than prompt, efficient, and fair outcomes.

Rethinking Medical Care Delivery and Payments

The past decade has seen increased activity to contain medical costs — enacting fee schedules and other reimbursement regulations, mandating utilization review, encouraging competition among providers, and so on. The 1990s will see continued experimentation and new initiatives.

However, unless these show results, the rapid growth of medical costs and our apparent inability to contain those costs may force us to reexamine traditional ideas of how medical care is provided — in general and in workers' compensation. In the larger health care system, the constituency for dramatic solutions (national health insurance, rationing care to achieve stated expenditure targets) grows. Because workers' compensation is just a small part (2 percent) of the larger health care system, this mood undoubtedly will spill over to workers' compensation systems in unforeseen and unforeseeable ways. Discussions of twenty-four-hour care and managed care are just the beginning.

Insistence That Insurers Contain System Costs

Faced with yearly double-digit rate increases, employers are expressing with increasing vehemence their frustration with the costs of the system. Yet many employers, especially small employers, do not adequately understand the sources of cost increases and feel powerless to contain costs at a system level.

Often we hear small employers decry significant premium increases, especially when they have not had claims in several years. This is the same complaint offered by good drivers who see their auto insurance premiums go up. In both instances, the frustration arises from cost drivers outside the individual policyholder's and insurer's control — *system-level cost drivers* — the basic rules of the game that determine utilization, litigation, and benefit payments. In both instances, the policyholder vents frustration by "shooting" the messenger — the insurer.

Growing employer dissatisfaction with rising rates and the reluctance of some insurance regulators to approve adequate rates are symptoms of this frustration. Implicit here is that someone should be responsible for containing the growth of system costs. Insurers readily accept certain cost containment responsibilities for individual policyholders. Employers report that insurer-provided loss prevention services are the single most influential factor affecting their safety actions (Sims 1988). And insurer-provided claims services are highly valued by policyholders as

cost containment activities. Employers are looking to their insurers (or the industry) to control the system-level cost drivers.

In Chapter 7, Gary Countryman, the president of the nation's largest workers' compensation insurer, writes that coalitions that include at least representatives of employers and workers, with the help of insurers and other interested groups, are needed to achieve constructive reform that preserves the basic objectives of workers' compensation systems.

Frustration with Reforms

Demands for reform arise from one or more interests in a growing number of states. Yet many of these states implemented major reforms that were heralded as "successful" during the late 1970s and 1980s. Florida and Massachusetts are just two of a growing list of examples. In retrospect, questions are being asked about whether the reforms have addressed the underlying problems or merely the visible symptoms. Questions also arise about whether dynamic systems need regular monitoring and periodic reform.

The cycle of reform and disappointment could produce a cynicism that increasingly questions whether workers' compensation objectives can be adequately achieved. Or it can produce a commitment to learn the lessons and "do better" next time. The next attempts will be served by a clearer understanding of two critical elements of successful reform: (1) what actually works to achieve the promised results and (2) what changes in the political process can lead to improved and more stable results.

Contents and Scope

This book contains papers by six experts. Each offers a unique perspective on the major challenges facing workers' compensation systems in the 1990s. In Chapter 2, Dr. Richard A. Victor, executive director of the Workers Compensation Research Institute, describes research on three key challenges:

- Containing medical costs
- Redressing the maldistribution of benefits
- Reducing litigation

In Chapter 3, Richard I. Fein, executive vice president of the National Council on Compensation Insurance, describes the deteriorating insurance market, a product of costs escalating faster than premiums, and discusses efforts to meet this challenge.

Chapter 4 contains the thoughts of one of the nation's leading workers' compensation state administrators. Edward M. Welch, director of the Michigan agency, reports that there are untapped "win-win" cost containment strategies for employers and employees. He discusses the results of a study in Michigan that suggests several directions employers can take.

The perspective of organized labor is presented in Chapter 5 by James N. Ellenberger, assistant director of the AFL-CIO's Department of Occupational Safety and Health. He points out deficiencies in benefits and safety that have yet to be addressed, that remain as outstanding challenges for the 1990s. And he reminds us that cost containment is not an end in itself, that the system should be designed to prevent injuries and compensate those who are injured. Meeting these challenges is crucial to retaining the confidence of injured workers.

In Chapter 6, Thomas J. Rittenhouse, director of risk management at GenCorp, offers the employer's view. He gives us a list of challenges, among them improving the distribution of benefits to compensate according to the actual severity of disability, reducing litigation and lump sums, and eliminating the tax bias against self-insurance.

Finally, Gary L. Countryman, president of Liberty Mutual Insurance Group, calls for a new order to meet the challenges to the system. "Since inordinate cost escalation is the root cause that threatens the system and inadequate rates are merely the result, it follows that reform is our best and only hope. What is needed is a strategy and a structure to achieve reform across a broad array of states, each with its own culture, its own system, and its own problems."

Together these papers give us stimulating insights into the challenges facing workers' compensation professionals as we move into a new decade and prepare for a new century.

Major Challenges Facing Workers' Compensation Systems in the 1990s

RICHARD A. VICTOR

Introduction

Throughout most of this century, victims of industrial disabilities have looked to state workers' compensation systems to provide medical treatment and replace lost income. These no-fault systems replaced traditional fault-based tort remedies. As a result, the majority of injured workers receive prompt medical treatment and income benefits from a system that is largely self-executing. The no-fault concept — employer liability even when the injury arises entirely from the worker's own negligence — increases workers' security and reduces the need for expensive time-consuming litigation. In return, workers accept benefits that provide less than full income replacement and limit payments for less tangible damages. The system creates incentives to return to work and mitigates the cost to employers of expanded access to compensation.

Modern workers' compensation systems throughout the United States share six goals:

- To provide adequate and equitable benefits to injured workers
- To promptly pay those who are eligible

This paper is based on a presentation made in October 1989 by Dr. Victor at WCRI's Annual Issues and Research Conference.

- To encourage employees to return to work
- To create self-executing nonlitigious systems for delivering workers' compensation benefits
- To effectively administer the system
- To impose affordable and stable costs on employers and insurers

Although most workers' compensation systems have achieved these goals in a majority of claims, many have not in claims where legal issues of causation, diagnosis, or extent of disability are not easily determined (for example, back injuries and occupational diseases). Unfortunately the claims for which the systems are not functioning well can represent a significant portion of cases. More important, they will increase over the next decade.

In this paper we discuss some of the challenges facing workers' compensation systems in three important areas where the need for improvement appears significant in a number of states: medical cost containment, benefits, and litigiousness.

Other challenges that confront the systems include improving safety at the work site and restoring balance in insurance pricing mechanisms. Other papers in this book address these issues.¹

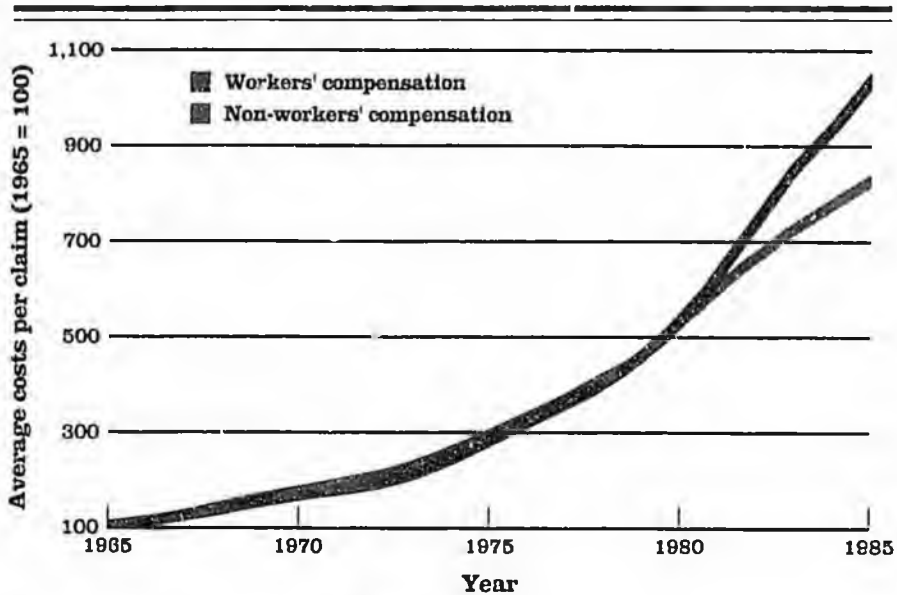
Soaring Medical Costs

Soaring medical costs present a major challenge to both workers' compensation and the entire health care system. Statistics document that medical prices have risen much faster than consumer prices generally. Medical costs now account for more than 11 percent of gross national product. In workers' compensation, expenditures on medical care grew by nearly 400 percent from 1975 through 1985, the most recent year for which data are available. Medical costs now account for approximately 40 percent of all workers' compensation benefit payments, and they are the fastest growing component of those payments (Boden and Fleischman 1989).

However serious the problem is outside workers' compensation, evidence suggests that soaring medical costs are more of a problem for workers' compensation. As Figure 2.1 indicates, average workers' compensation medical costs grew much faster than non-workers' compensation medical costs after 1980 (Boden and Fleischman 1989). Although research has yet to quantify the reasons, several factors seem to be at work:

1. In particular, see the chapter by James N. Ellenberger for a discussion of safety issues, and the chapters by Gary L. Countryman and Richard I. Fein for discussions of insurance pricing issues.

Figure 2.1. Trends in U.S. Medical Costs: Workers' Compensation Versus Non-workers' Compensation



SOURCE: Boden and Fleischman (1989), p. 16.

- Workers' compensation systems have been slower than other systems in developing cost containment programs. Non-workers' compensation costs have risen more slowly as a consequence.
- In response to non-workers' compensation cost containment initiatives, medical providers may have shifted additional costs to programs with less stringent constraints on reimbursement, notably workers' compensation.
- Other forces affect workers' compensation medical costs. For example, medical services may be used more when litigation increases or when utilization of the workers' compensation system increases as a result of economic recession (as it did in the early 1980s).

The challenge to the states is to contain rapidly rising medical costs while providing workers with access to quality medical services. States may be helped in their efforts to contain medical costs by looking to systems that have been able to control their costs. A recent WCRI study demonstrates the wide variation in average medical costs per state and in the rate of growth of these costs (Boden and Fleischman 1989). Table 2.1 lists average workers' compensation medical costs in each of forty-six jurisdictions. It also describes how these costs changed from

Table 2.1. Average Medical Costs in Workers' Compensation, 1984

| Jurisdiction | Average Medical Cost* (dollars) | Average Annual Growth, 1980-1985 (percent) |
|----------------------|------------------------------------|--|
| Alaska | 1,672 | 10.9 |
| Louisiana | 1,363 | 19.0 |
| California | 1,270 | 15.6 |
| New Mexico | 1,259 | 16.1 |
| Hawaii | 1,213 | 15.0 |
| Texas | 1,201 | 18.2 |
| District of Columbia | 1,080 | 7.7 |
| Oregon | 1,057 | 17.0 |
| Oklahoma | 1,036 | 16.8 |
| Montana | 1,017 | † |
| Minnesota | 956 | 13.1 |
| Florida | 918 | 12.5 |
| Arizona | 860 | 10.1 |
| Maine | 827 | 15.6 |
| Colorado | 825 | 15.6 |
| Maryland | 814 | 13.2 |
| Illinois | 811 | 11.2 |
| Idaho | 786 | 12.8 |
| Arkansas | 779 | 11.0 |
| Georgia | 776 | 13.4 |
| Alabama | 754 | 13.1 |
| Kentucky | 748 | 14.8 |
| New Hampshire | 747 | 14.6 |
| Mississippi | 737 | 13.1 |
| Rhode Island | 730 | 10.7 |
| New Jersey | 724 | 12.6 |
| Kansas | 708 | 12.3 |
| Michigan | 700 | 8.8 |
| Virginia | 698 | 11.8 |

* Average cost per client.

† Data are not comparable.

Table 2.1 continued

| Jurisdiction | Average Medical Cost* (dollars) | Average Annual Growth, 1980-1985 (percent) |
|----------------|------------------------------------|--|
| South Dakota | 690 | 12.7 |
| Connecticut | 684 | 14.8 |
| New York | 676 | 13.1 |
| Missouri | 649 | 15.4 |
| Tennessee | 630 | 11.4 |
| Iowa | 614 | 12.2 |
| Nebraska | 604 | 12.4 |
| South Carolina | 603 | 12.8 |
| Utah | 593 | † |
| Wisconsin | 584 | 12.7 |
| Vermont | 572 | 10.8 |
| Indiana | 450 | 11.2 |
| North Carolina | 432 | 10.1 |
| Arizona | † | 10.1 |
| Washington | † | 12.1 |
| Ohio | † | 9.7 |
| Massachusetts | † | 9.6 |

* Average cost per client.

† Data are not comparable.

SOURCE: Boden and Fleischman (1989).

1980 to 1985. The higher-cost states show costs that are more than double those of the lower-cost states. From 1980 to 1985, medical costs grew at an average annual rate of more than 15 percent in the states with most rapid growth, but at less than 10 percent in slower-growth states.

Policymakers should ask several questions:

- Are there lessons to be learned from lower-cost or slower-growth states?
- What factors help explain the results?
- What has happened to access to medical care in lower-cost states?

Maldistributed Benefits

A second challenge facing workers' compensation systems is improving the maldistribution of income benefits. The two most common income benefits are weekly benefits for temporary disability and additional payments for any residual permanent consequences of an injury. Both types of payments suffer from significant maldistribution.

TEMPORARY DISABILITY

In all states, workers receive weekly benefits for temporary disability — typically two-thirds of their lost before-tax earnings. For the majority of workers, benefits replace 80 to 100 percent of their after-tax income loss. However a significant fraction of workers receive either more than 100 percent of lost before-tax earnings or less than 80 percent. These disparities are a product of the statutory design of benefit structures.

In a WCRI study of sixteen states, Victor and Fleischman (1989) found that fifteen had a significant percentage of workers who received either more than 100 percent of after-tax earnings from workers' compensation or less than 80 percent (Table 2.2). All base benefits on a fraction of the worker's before-tax earnings. The sixteenth state — Michigan — was the exception. In Michigan, benefits are based on a percentage of the worker's after-tax earnings. For temporary disability, benefits based on a percentage of the worker's after-tax (spendable) earnings provides a more equitable distribution of benefits.

PERMANENT DISABILITY

Most workers heal completely from their injuries and return to work at their old jobs. However some workers sustain permanent consequences from an injury. These workers receive additional benefits.

The conceptual basis for additional benefits varies widely from state to state. Some compensate for future physical consequences (for example, reduced range of motion in a joint or persistent pain). Others compensate for reduced future earnings caused by physical limitations. In either case, the extent of physical or vocational disability must be determined in order to establish the benefit amount. Often that determination is made without a strong scientific basis. Back injuries are the most common source of claims for permanent disability.

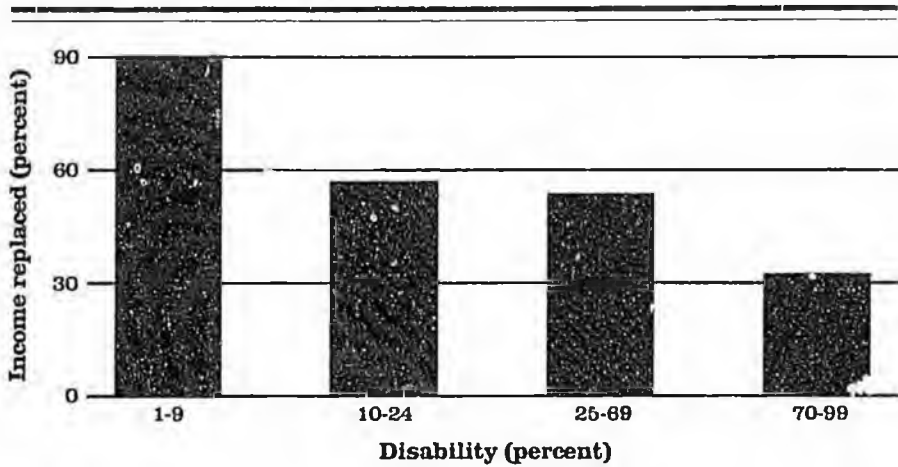
Evidence from several studies indicates that permanent disability benefits overcompensate those with minor disabilities and undercompensate those with serious disabilities. For example, a study by the California Workers' Compensation Institute (1984) found a maldistribution among permanent partial disability

Table 2.2. Workers with Higher or Lower Replacement Rates, by State and Benefit Feature Responsible, 1988*

| Replacement Rates | Percentage of Workers' Compensation Recipients in | | | | | | | | | | | | | | | |
|----------------------------|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
| | CT | IL | MA | MN | OH | PA | TX | CA | FL | GA | LA | NY | NC | WA | WI | MI |
| Between 80 and 100 percent | 81 | 78 | 82 | 61 | 78 | 71 | 39 | 49 | 78 | 48 | 68 | 78 | 80 | 41 | 83 | 92 |
| Over 100 percent | 19 | 17 | 13 | 38 | 16 | 25 | 29 | 9 | 1 | 0 | 2 | 0 | 2 | 0 | 5 | 5 |
| Because of | | | | | | | | | | | | | | | | |
| High minimum benefit | 3 | 4 | 1 | 31 | 9 | 20 | — | 9 | — | — | 2 | — | — | — | — | — |
| High maximum benefit | 16 | 13 | 10 | 7 | 7 | 5 | — | — | 1 | — | — | — | 2 | — | 5 | 5 |
| Other factors | — | — | 2 | — | — | — | 29 | — | — | — | — | — | — | — | — | — |
| Under 80 percent | 0 | 5 | 5 | 1 | 6 | 4 | 32 | 42 | 21 | 52 | 30 | 22 | 18 | 59 | 12 | 3 |
| Because of | | | | | | | | | | | | | | | | |
| Low gross replacement rate | — | 5 | 2 | — | 4 | — | — | 6 | 17 | 14 | 15 | 10 | 18 | 37 | 7 | — |
| Low maximum benefit | — | — | 3 | 1 | 2 | 4 | 32 | 36 | 4 | 38 | 15 | 12 | — | 22 | 5 | 3 |

* Other factors include dependents' allowances (Massachusetts) and the method of calculating the worker's average weekly wage for the purpose of computing benefits (Texas). In Texas, the group of workers noted in the table received 99 percent, which we regard as essentially equivalent to 100 percent for our purposes here.

Figure 2.2. Income Replacement, Permanent Partial Claims in California, 1975-1977



SOURCE: CWCI (1984).

recipients in California from 1975 to 1977. Based on interviews with over one thousand workers, the study found that those with minor disabilities (less than 10 percent permanent impairment) receive almost all of their before-tax income loss from workers' compensation benefits (Figure 2.2). Those who suffer significant permanent disabilities (between 10 and 69 percent permanent impairment) receive between 50 and 60 percent of their before-tax income loss. However, those with the most severe permanent disabilities (greater than 70 percent permanent impairment) receive only 33 percent of their before-tax income loss.

California enacted significant reforms in its workers' compensation system in 1989, but several features of the state's permanent partial disability system were similar to those in other states. So the significance of the study remains: Those with the greatest needs — those with the most severe permanent impairments — are the worst served by the design of many workers' compensation systems.

Assessing Benefit Utilization

Some observers attribute increasing workers' compensation costs to increased use of the system. Increased use is not a public policy problem if workers are making legitimate claims and receiving benefits for which they are eligible. The question that has been raised, however, is the possibility of increased use in other circumstances, where workers are not necessarily eligible and/or receive benefits despite being able to work.

There are many reasons for increased use of the system, and research is needed to better measure utilization and to clarify whether it is appropriate or not. However evidence points to several sources of increased use, namely rising benefit levels, new types of claims, and economic downturns.

A recent study by WCRI identified a very strong relationship between increased benefits and increased utilization (Gardner 1989). The study found that if benefits increase by 10 percent, utilization increases by 5 percent. Increased utilization here is due to reports of more lost-time claims and the extension of claims for longer durations. When benefits are changed, policymakers should be aware of the effect on utilization and system costs.

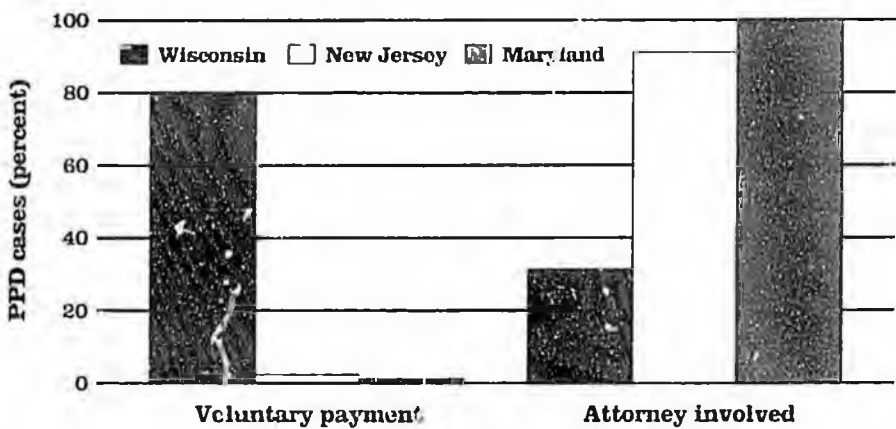
Some of the increased use of the system stems from new types of claims that are being deemed compensable. That is, claims that have not traditionally been a part of workers' compensation systems in the past regularly surface. An example is the mental stress claim, which has become much more common in several states. In California, for example, mental stress claims have more than quintupled from 1980 to 1986 (CWCI 1988a). These types of claims raise two central issues, one conceptual and one practical. First, there is no clear definition of what should be compensable. Too often legislatures leave a definition to the courts. Second, these claims require practical proof of work relatedness where an illness may have both personal and work-related origins. Difficult medical issues of diagnosis and causation must be resolved, too often on a weak scientific basis.

Evidence is emerging that workers' compensation benefits are more heavily used in times of economic distress. The severe recession that hit Michigan saw a surge in claims by workers taking early retirement from automobile companies (Hunt and Eccleston 1990). The recession in Texas saw an increase rate of claim filing and a significant increase in the duration of lost time (Barth, Victor, and Eccleston 1989; Joint Select Committee 1989).

Reducing Litigation

There has been growing concern in the past decade about the societal problem of increased litigation, both in workers' compensation and in court systems. Litigation is very costly. In California, an extreme example, litigation costs in workers' compensation exceeded \$1 billion in 1988 (CWCI 1988b).

Figure 2.3 Litigiousness in Three States



SOURCE: Boden (1988).

Litigation in workers' compensation probably will continue to escalate in the future. One important reason is the aging of the labor force. An older labor force means more claims associated with the ordinary diseases of aging — for example, back and joint problems, hearing losses, respiratory problems, and cardiac diseases. All of these raise difficult issues of causation, diagnosis, and extent of disability — the most often litigated issues.

However, even with an aging labor force, the amount of litigation in many workers' compensation systems is unnecessarily high. A recent study indicates that the design of a state's workers' compensation system encourages litigation (Boden 1988). The study also found that there are less litigious alternatives available. This study examined back injuries with permanent disability — the most frequently litigated cases in most states. Two of the states studied, New Jersey and Maryland, use typical approaches to resolving these cases. As Figure 2.3 shows, both are very litigious: Attorneys are regularly involved, and voluntary payments of permanent partial disability benefits are rare. A third state, Wisconsin, uses a different approach and achieves very different results.

Wisconsin shows how a state can design its system to reduce litigation significantly. The Wisconsin system has four features that help reduce litigation:

- Active and early involvement by the state agency to prevent disputes.
- Clear disability evaluation guidelines that encourage prompt voluntary payments by insured employers.
- Heavy reliance on a nonadversary expert, the treating physician.

- Dispute resolution by final-offer adjudication. Under this procedure, an adjudicator who receives conflicting disability evaluations from adversary experts cannot simply split the difference. The adjudicator must select one evaluation — the most credible. This procedure creates incentives to rely on the treating physician's evaluation and reduces incentives to use "dueling" adversary experts.

The study also found that the design of the system, not a nonlitigious climate often attributed to Wisconsin, actually reduced litigation. When governed by the procedures typically used in other states, the Wisconsin system shows markedly more litigation.

THE TYPICAL SYSTEM

Most workers' compensation systems are ill equipped to handle current levels of litigation, let alone the challenge of growing litigation. Apart from limited resources, the typical workers' compensation system has characteristics that tend to discourage voluntary payment of difficult cases and encourage attorney involvement.

First, the typical state agency's posture is often a passive one. Rather than intervening and preventing disputes, the agency waits for disputes to be brought forward. Usually at this point an attorney already has been hired. Unlike the agency in Wisconsin, most agencies are in the business of dispute resolution, not dispute prevention.

Second, the typical system relies heavily on partisan experts to resolve disputes. Cases often depend on the testimony of medical or vocational experts who offer opinions on diagnosis and the cause and extent of disability. Each side hires a medical or vocational expert who supports its position. The dueling experts offer their opinions, which often are different, providing little guidance to the hearing officer who must make the final adjudication. More often than not, the adjudicator simply splits the difference. Dueling expert testimony as a method of dispute resolution gives rise to legal game playing and increases litigation and costs.

Finally, relatively few states have effective guidelines for evaluating disability. These guidelines have the potential to increase the certainty of outcome. In the process, they encourage voluntary payments that help reduce the need for litigation. This is particularly relevant for resolving permanent partial disability claims.

OTHER APPROACHES TO REDUCING LITIGATION

Throughout the 1980s, the states began to focus on reducing litigation by implementing administrative and legislative changes. Fortunately they have tried

to improve the dispute resolution process by relying more on independent experts, mediation, and other mechanisms rather than dueling experts, to help avoid costly formal hearings. And some states have worked to reduce litigation by creating better benefit schedules and guidelines for permanent partial disability to cover often-litigated claims like back injuries.

Independent medical experts. Independent experts often are called *independent medical examiners* or *medical panels*. These experts are not hired by either side, nor are they appointed in a political process that may be partisan. An early WCRI study identified some of the lessons for designing a successful independent expert system (Barth 1985).

First and foremost, the credibility of the experts is key. The system works only if the experts are credible to both parties and to the adjudicator. Experts can be selected by the agency responsible for the administration of the workers' compensation system. However appointment by an agency whose administrator is appointed by the governor or the secretary of labor raises concerns about partisanship and, possibly, the quality of the experts.

An alternative is to let the parties choose an expert using methods similar to those used to select a grievance arbitrator under a collective bargaining agreement. Here each party takes turns striking names from a list of five names drawn randomly by some independent body. The last name left is the expert who is most acceptable to both parties. In the case of workers' compensation claims, a local medical society or workers' compensation agency could provide the parties with the initial list of names.

Should the use of independent experts be mandatory? Research indicates that if the use of independent experts is discretionary, some adjudicators may resist using them. Certain adjudicators may feel that relying on outside experts is tantamount to delegating an important part of their job.

Another design issue facing policymakers is whether or not to make the findings of independent experts binding on the adjudicator. Our study concluded that the advisory findings of a credible expert are essentially equivalent to binding findings. But if an expert is not credible, there is little purpose served by making his or her findings binding on the parties.

Informal dispute resolution. Another increasingly common way that states are trying to improve the dispute resolution process is the use of *informal dispute resolution*. This includes a variety of methods, among them prehearing conferences, mediation, and arbitration. The informal dispute resolution process generally sets a time and place for the parties to meet and discuss settling the case before a more formal hearing is called. The primary purpose of *prehearing conferences* is to bring the parties together (often for the first time) in the hopes of settling in cases where the disputes may not necessitate a formal hearing.

A second type of informal dispute resolution is *mediation*. This is where a neutral

party (generally a mediator employed by the agency) facilitates the resolution of the case by encouraging the parties to settle. Mediation provides not only a time and a place for the parties to meet, but also some expertise.

A third variation involves an *arbitrator*, who not only encourages the parties to settle, but also lets the parties know what he or she thinks the value of the case is. The arbitrator may render an informal advisory opinion or a formal (binding or nonbinding) recommendation if the parties fail to reach a settlement on their own.

Research by both WCRI (Hunt and Eccleston 1990; Pease 1989; Barth, Victor, and Eccleston 1989; Barth 1987) and the Institute for Civil Justice at The Rand Corporation (Rolph 1985; Hensler 1986, 1989; MacCoun et al. 1988) suggests some guidelines for the design of the informal dispute resolution processes for both workers' compensation and court systems. Most cases simply need a time and place for the parties to focus their attention on settling. A majority of cases do not require more. And they do not need highly qualified individuals to preside over this kind of meeting. It can be a very low cost, largely bureaucratic process.

However, a small number of cases need something more, possibly an outside opinion about what the case is worth. This can be accomplished in the context of mediation or arbitration. Most experienced attorneys know which cases can be settled and what they will settle for. But problems sometimes arise when cases involve less experienced (in terms of how long they have been practicing or exposure to workers' compensation cases) attorneys. Although these cases ordinarily settle, inexperienced attorneys may need the help of an objective third party to put a settlement value on a case.

In a third type of case there is a substantive dispute, a fundamental disagreement about the facts of the case and how the law applies. Here the parties are represented by experienced attorneys. In these cases expeditious adjudication makes sense. An informal resolution process is not likely to yield a settlement; in fact it simply postpones the inevitable — a formal hearing.

The major challenge with an informal dispute resolution process, then, is to design a system that can provide a majority of cases with a time and place to discuss settlement. The system also must establish cost-effective and timely mechanisms to identify cases where there are real disputes, and to get them to adjudication quickly.

Improving schedules and guidelines. Certain states have tried to reduce litigation by improving the schedules or guidelines for permanent partial disability payments. Improved schedules reduce uncertainty about what is due injured workers. This means defendants are more likely to make voluntary payments of permanent disability benefits, and voluntary payments have been shown to reduce litigation.

There are some significant concerns about permanent partial disability schedules and guidelines. On the one hand, current schedules often have an

arbitrary element, not necessarily related to the economic loss suffered by a specific injured worker. On the other hand, not having schedules breeds litigation by creating uncertainty. This forces participants to rely on the dueling experts we discussed earlier.

The need here is to develop new schedules or guidelines that are better related to the income that a worker loses. Oregon is one state that has taken steps in this direction. Oregon bases permanent partial benefits on disability evaluations. It also uses a system of "modifiers" that attempts to adjust benefits based on workers' characteristics that are associated with the extent of lost income.

Unfortunately the states are somewhat frustrated in their efforts to create credible schedules, guidelines, or modifiers. The task is a complicated one. Those proposing the schedules must show public officials that they provide acceptable levels of income replacement to workers who have lost or will lose wages. Further research will help identify not just what factors should be considered in these schedules, but how much weight each factor should be given and how much money should be tied to the presence or absence of each factor.

Dispute prevention. A final way of strengthening the capabilities of state systems to deal with growing litigation is to focus less on dispute resolution and more on dispute prevention. The research we discussed on reducing litigation indicates that this can be a successful strategy when properly administered. Success here depends on certain elements.

First, the agency should be an active one that follows the claims and intervenes in a timely way to prevent unnecessary disputes, and to ensure that the parties are doing what they should be doing given the available information. For example, when there is substantial certainty about what is due, the agency should see that prompt payments to claimants are made.

A second element is the development of clear guidelines for permanent partial disability benefits. This increases certainty about what is owed and helps stimulate voluntary payments by providing a basis on which to mandate payment or require that the case be contested in a timely manner. Research suggests that voluntary payments often substitute for workers' going to attorneys. Workers who receive an appropriate voluntary payment are less likely to retain counsel — thus reducing litigation and costs for both sides.

Conclusion

For most claims, workers' compensation systems have worked well for much of this century. However the types of claims for which the systems do not work as well have grown and will continue to grow in the 1990s. This creates several important challenges for public officials:

- Containing soaring medical costs while retaining access to quality medical care
- Redressing the maldistribution of benefits
- Ensuring appropriate utilization of the system
- Reducing litigation

In the 1980s we gained a greater understanding of the problems facing workers' compensation systems. Experts have begun to uncover some important lessons to guide solutions. However, more work and experimentation are necessary.

States regularly make important changes in their systems. Unfortunately, once these changes are implemented, the tendency is to proclaim the problems "solved" and move on. States need to establish monitoring capabilities that allow them to track system performance and respond to changes. This is a critical missed opportunity in the never-ending search for solutions and stable reform.

Pricing and Profitability of Workers' Compensation Insurance in the 1990s

RICHARD I. FEIN

Over the last few years, workers' compensation insurance has reached a curious impasse. Despite substantial increases in rate levels, the line continues to be unprofitable. It remains a system with serious and growing financial troubles.

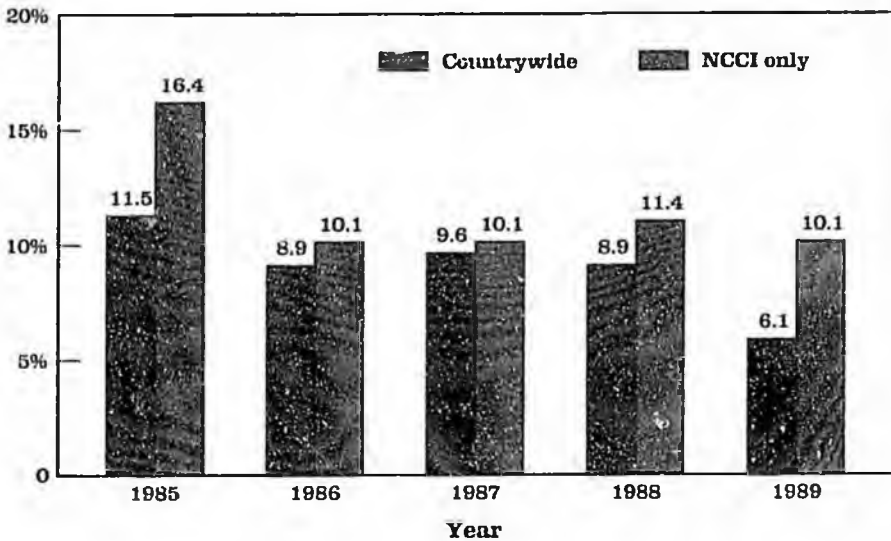
This paper takes a look at some of the factors contributing to an unsatisfactory combined ratio and describes some of the efforts being made to rectify the problems. The figures cited are current as of late spring 1990.

There are many root causes for the workers' compensation debacle the industry is now confronting. To at least some degree, the increased system costs are the result of the increased benefits enacted into law in many states during the 1970s in response to the findings of the National Commission on State Workmen's Compensation Laws. No one can seriously argue that these benefit increases were not needed, but neither can we deny that increased benefit levels generally bring with them increased utilization of the system.

Economic distress in some regions of the country also has played a role, increasing system utilization and, perhaps, stretching out durations in areas where job prospects are bleak. In recent years workers' compensation systems in the oil states of Texas and Louisiana have been under severe strain, even as those state economies have reeled from the decline of oil prices. Other states involved in the oil industry have had problems, though not of the same magnitude.

Medical cost increases have been chronic for many years, outstripping inflation and wage-level increases. Workers' compensation is one of the few so-called first-

Figure 3.1. Workers' Compensation Premium-level Changes

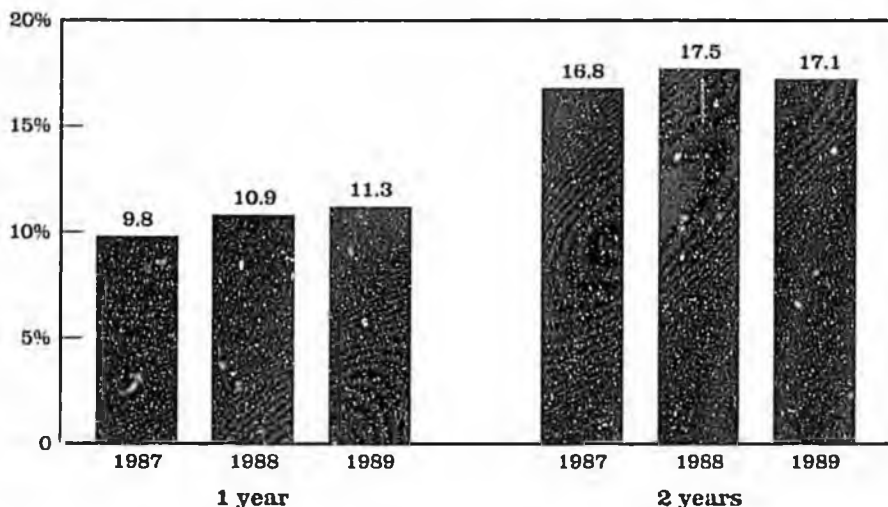


dollar payers of medical costs left. That is, workers' compensation medical costs are paid in full by the carriers, with no upper limits on total payment. There is even some evidence of cost shifting, where medical care providers charge more for workers' compensation cases to offset the limits on payments in group hospitalization policies or such social insurance programs as Medicare and Medicaid. The medical share of the workers' compensation benefit dollar, which was slightly over 30 cents at the beginning of the 1980s, had reached 40 cents as the decade came to a close. Moreover, the rate of increase shows no sign of slowing — it actually picked up momentum this year, after a mild slackening — and may very well bring medical costs to 50 percent of all claims costs by the year 2000.

Whatever the causes of the phenomena we observe, there can be no arguments with the effects. In Figure 3.1, which represents the average level of premium changes that has been approved over the past five years, the solid bar represents data on a countrywide basis, while the shaded bar represents results achieved in NCCI-administered states only. For most of its three-quarters of a century, workers' compensation had been a stable line, with minimal alterations in rate levels. It was of minor concern to employers and insurers alike as the benefits were paid and rates adjusted with little drama. Because benefit levels are scheduled, the kind of sensational judgments encountered in liability did not occur and rate levels rose slowly.

All that changed in the 1980s, when we saw five consecutive years of substantial

Figure 3.2. Earned Impact Achieved*



* Excludes effects of law changes.

rate increases, not only in individual states, but in the countrywide aggregates. In 1985, rate levels for NCCI states climbed 16.4 percent, and increases in each of the next four years averaged more than 10 percent.

In the previous fifteen to twenty years, changes had averaged plus or minus 5 percent. Rates occasionally rose by nearly 10 percent in the mid-1970s, but actually decreased between then and 1984. Moreover, the increases came at a time of high general inflation levels in the national economy and could be seen as a part of a more general societal problem.

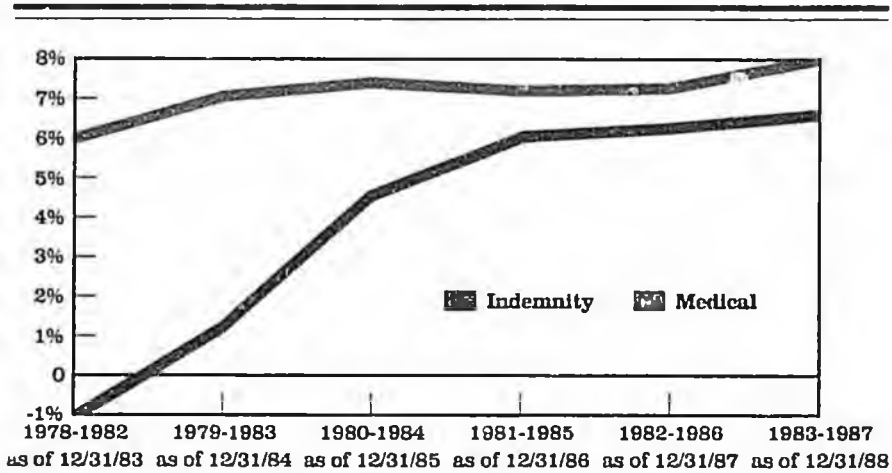
When rate-level decreases occurred in the early 1980s, they left carriers in the red by the middle of the decade, creating the need to ask for the series of hefty increases that began in 1985.

Increases in premium levels in NCCI states brought about earned increases of 9.8 percent in 1987, 10.9 percent in 1988, and 11.3 percent in 1989 (Figure 3.2). Over a two-year period, from 1988 to 1990, the impact of premium-level changes on earned premiums came to 17.1 percent.

Workers' compensation premiums are based on a percentage of employers' payrolls, adjusted for experience. Because premiums are tied to salary levels, they were once thought of as relatively immune to substantial rate increases. Prior to the mid-1980s, increases in premiums were roughly equal to increases in payrolls. The situation is entirely different today.

For each of the last five years, unprofitable operating results have forced NCCI

Figure 3.3. Comparison of Countrywide Annual Trend Factors over the Last Six Policy Year Calls*



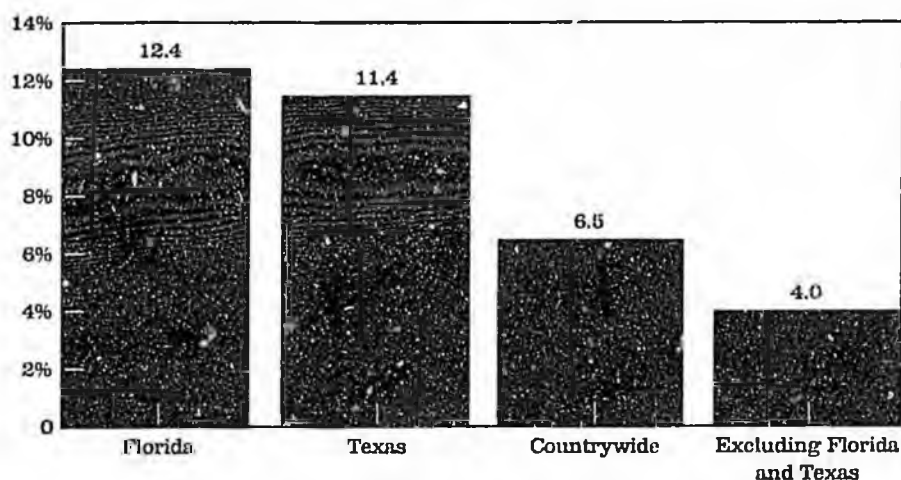
* The trend factors are based on incurred losses including IBNR.

to file rate increases in excess of 10 percent. Nevertheless, many of the approvals from state regulators split the difference between what was needed and what seemed politically possible. Although several regulators took bolder action and issued approvals close to correct actuarial indications, on the average, requests were slashed by 35 percent for 1989. However, that was an improvement over the 50 percent cut the previous year.

The difficulty of the workers' compensation environment is evident from carriers combined ratios for the line in recent years. For 1990, the ratio is projected at 119.0, and the preliminary figure for 1989 is 120.1. The ratio was 113.4 in 1988 and 117.6 in 1987.

What has driven this once stable product line to outpace the general rate of inflation? A high rate of medical cost inflation has plagued every health benefit program from group insurance to social security, and workers' compensation has not been immune. Medical costs have been increasing from 6.5 percent to 7 percent faster than payrolls, and although the impact is substantial, that trend has not changed greatly in recent years. As inflation cooled in the 1980s and wages remained relatively stable throughout the national economy, the expectation was that indemnity benefits, which are the wage replacement portion of workers' compensation claims, would remain stable. Interestingly, that has not occurred. The most dramatic element in recent rate increases has been the change in indemnity costs, which are now rising at a rate nearly equal to medical losses (Figure 3.3).

Figure 3.4. Comparison of Annual Indemnity Trend Factors, Policy Years 1983-1987*



* As of December 31, 1988.

This problem had been noted countrywide, but in two jurisdictions — Florida and Texas — it is especially severe (Figure 3.4). In Florida, the indemnity trend is now 12.4 percent annually; and in Texas it is 11.4 percent. If these two states are excluded from the total countrywide indemnity trend of 6.5 percent, the trend drops to 4.0 percent. Although these jurisdictions are especially troublesome, other states also are posting high indemnity trend increases that need to be brought under control.

Another major indication of problems in the workers' compensation system is the growth and size of the residual market. When rate levels are sufficient, carriers seek out new business and the populations of the pools drop. This is what occurred early in the 1980s. In 1984, the reinsurance pools administered by NCCI accounted for \$448 million in written premiums. Unfortunately that was the high point for the pools, which is to say, the period when their share of the workers' compensation market was at its lowest.

Two years later, written premiums had more than quadrupled, to \$1.9 billion. In 1988, coverage in the residual market was afforded to more than half a million risks, with written premiums totaling more than \$2.89 billion. The preliminary estimate for 1989 is for the residual market to account for \$3.6 billion in annual premium volume, of which NCCI pools account for nearly \$1 billion (Figure 3.5).

This market of last resort — designed as a mechanism for providing workers' compensation insurance to businesses unable to find it in the voluntary market

Figure 3.5. All NCCI Pools — Written Premiums, All Years Combined

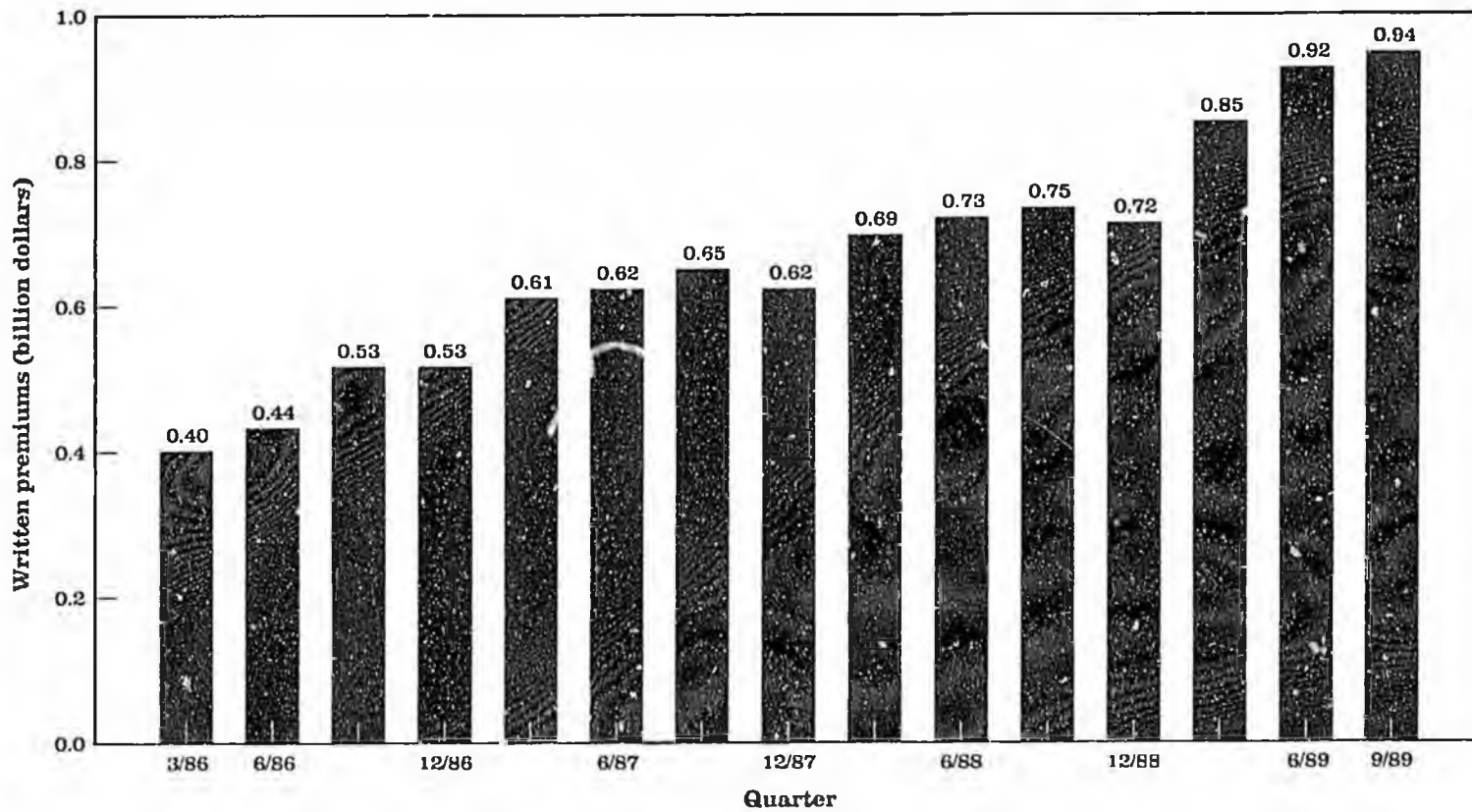
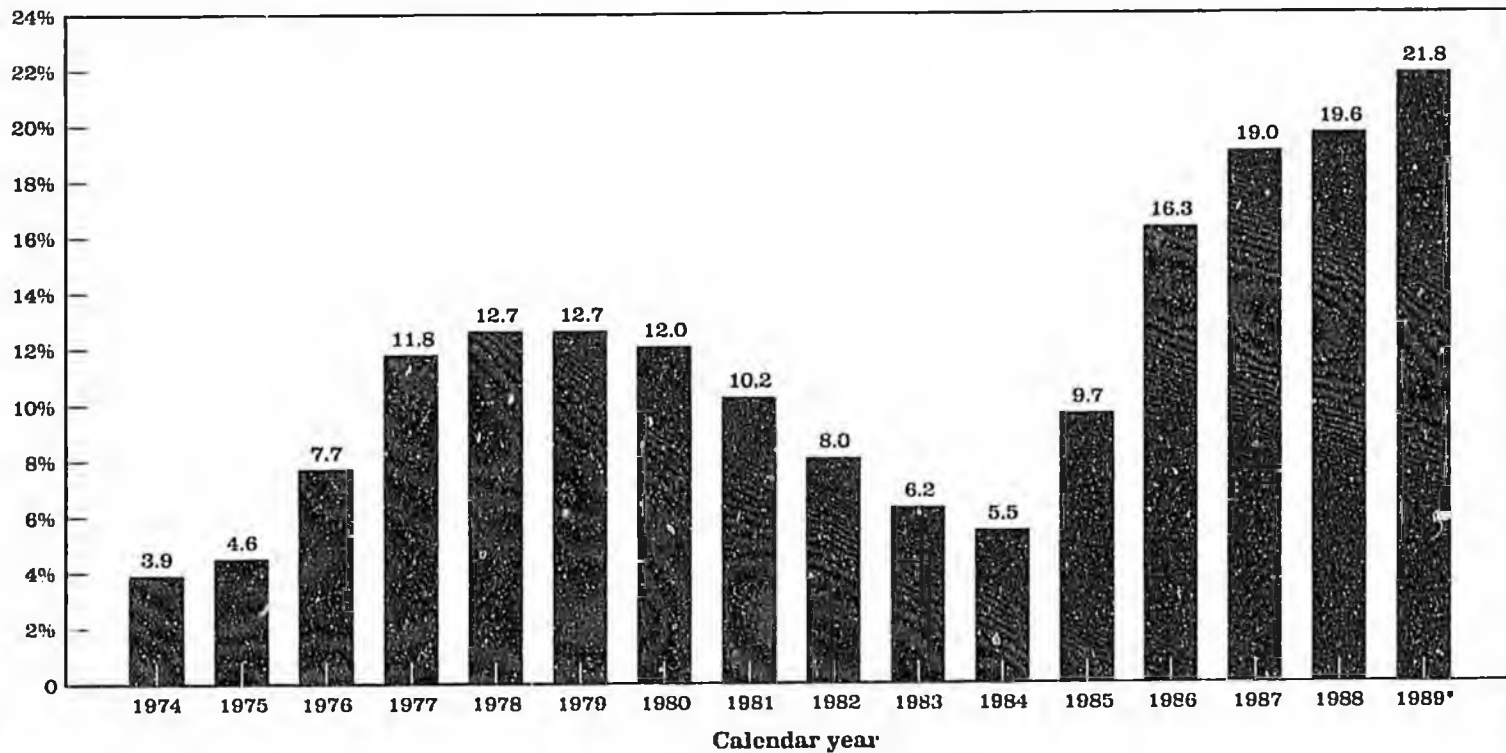
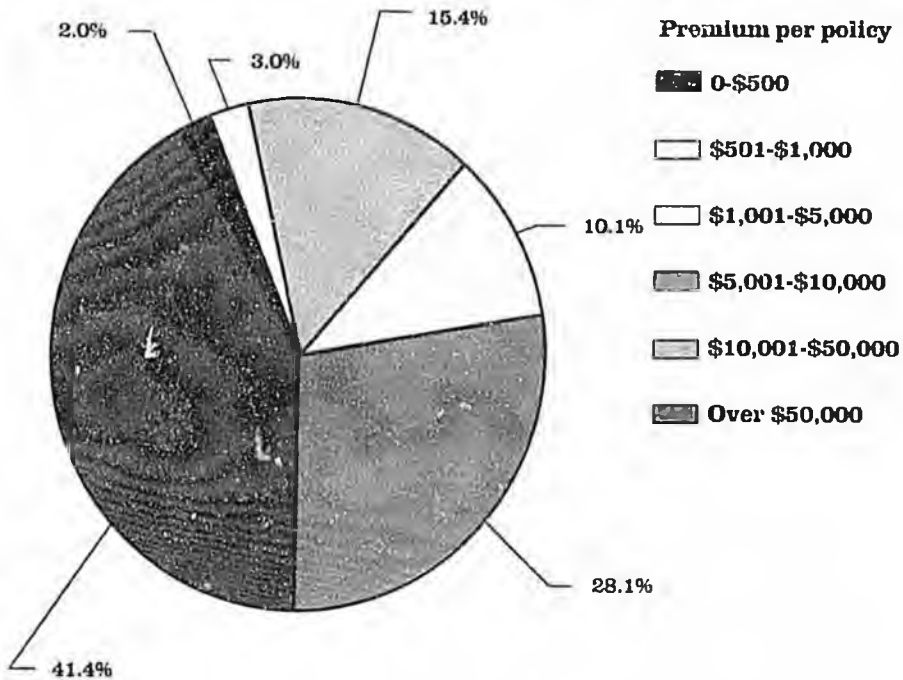


Figure 3.6. Residual Market Share, Pool Premiums as a Percentage of Direct Written Premiums



* For thirty-three states with full assigned risk plans.

Figure 3.7. Premium Size Profile, 1988: Distribution of Premium

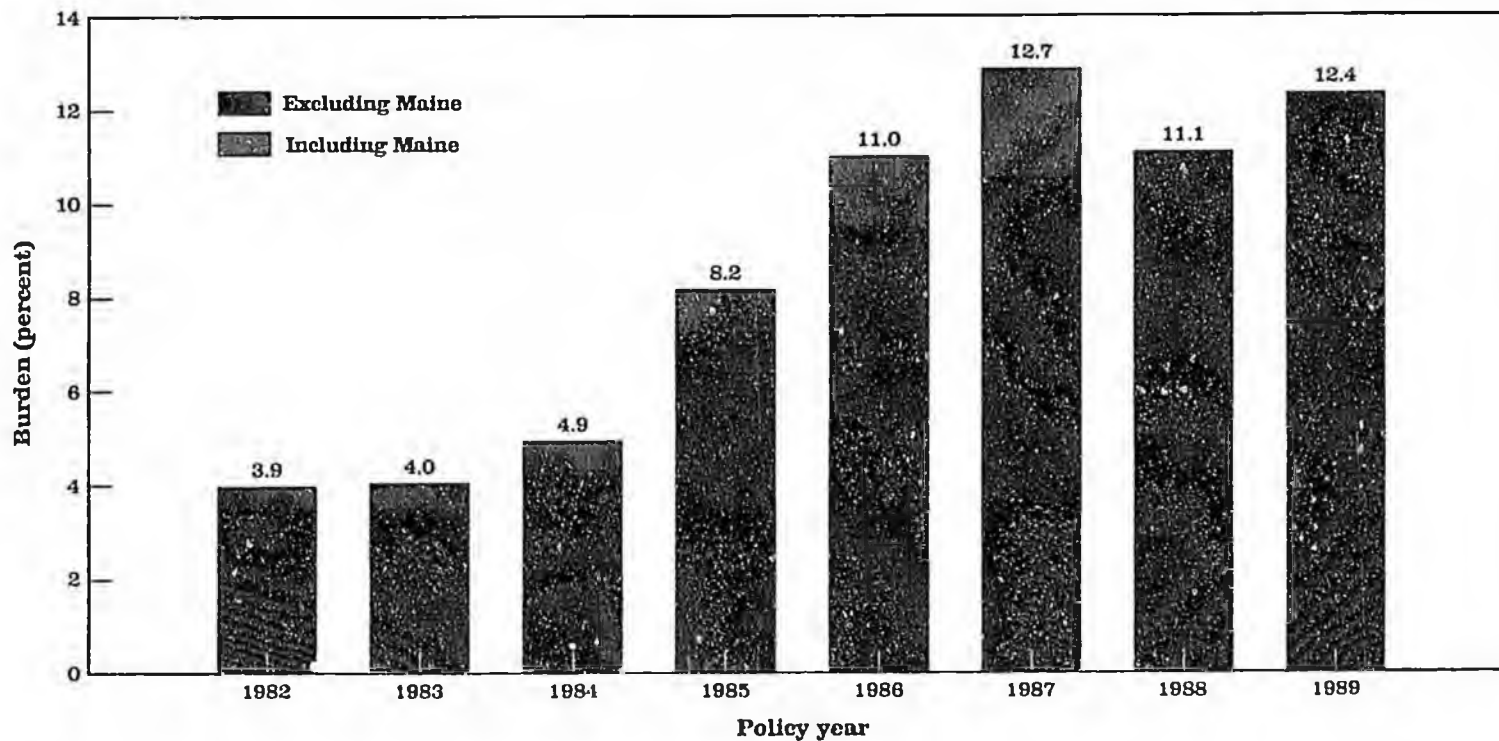


— has grown to a point where it is the largest single source of workers' compensation insurance in the country. The residual market now accounts for more than 20 percent of total workers' compensation premiums in the states where NCCI manages the pool. In 1984 it accounted for only 5.5 percent of the total (Figure 3.6).

A common misconception is that the residual market is made up primarily of employers that are so small that no carrier is willing to underwrite their risk. At one time there was some validity in that viewpoint. However, if the multimillion-dollar accounts are excluded from consideration, there is now very little difference in the size distribution of risks in the voluntary and residual markets. Accounts with annual premiums in excess of \$50,000 make up more than 41 percent of the residual market (Figure 3.7). In fact more than four hundred of those accounts have premiums of more than \$100,000.

The way many states' workers' compensation systems are structured, residual market risks pay no penalties for being in the market of last resort. The insured obtains the coverage for the same price as insureds in the voluntary market and

Figure 3.8. Residual Market Burden, All States with Full Assigned Risk Plans, 1982-1989



NOTE: Pool operating losses in Maine for policy year 1988 and subsequent years may be partially or wholly financed by insureds. Losses valued as of September 30, 1989.

receives the same other services from the carrier assigned to handle the policy. There is little or no monetary incentive to improve safety records and bring overall costs down to reasonable levels. Thus the profits carriers earn on voluntary-market insureds are used to subsidize risks in the residual market. Currently, that subsidization is estimated to cost carriers nearly 12.5 cents for every premium dollar written in the voluntary market. Figure 3.8 illustrates the residual market from 1982 through 1989.

The National Council on Compensation Insurance views resolution of the residual-market problem as a key to putting the workers' compensation line back on a secure footing. Resolution must come in either of two ways: make the residual market more self-funding or otherwise prod accounts to leave that market and rejoin the voluntary market. In either option, achieving rates that adequately correspond to the degree of risk involved is essential. Residual-market rates must no longer be competitive with those of the voluntary market.

To begin the process of depopulating the residual market and bringing workers' compensation back to a state of reasonable profitability, NCCI is pursuing a three-pronged action involving aggressive rate activity, special residual market programs, and a leadership role in benefit reform.

Without some financial incentive, there is no reason for insureds to leave the residual market. To provide that incentive, it is necessary to make coverage in the residual market more expensive than coverage obtained in the voluntary market. NCCI has adopted several programs designed to do just that.

Since 1986 NCCI has filed price differentials for residual-market rates, and by the end of April 1990, twenty-four states had approved some kind of pricing differential. These programs include the reduction or removal of premium discounts, manual rate differentials, and surcharges on premiums in excess of specified thresholds. In addition, NCCI developed mandatory retrospective rating programs for large residual-market risks and prospective surcharge plans based on risk experience. Similar programs already exist in several states.

But the troubles of the system are deeply rooted and will require a new consensus about the ends and means of the system if it is to be preserved in its present form. Restoration of that consensus is beyond the power of any one entity or even one industry. It will require the combined efforts of many interests, all acting to promote revision and reform. To begin the process of developing that new consensus, NCCI organized a two-day workers' compensation congress of insurance company representatives, academicians, regulators, legislators, employers, and labor leaders, held in Philadelphia early in September 1989.

The idea was to bring together the many groups involved in workers' compensation to review the problems before the system and begin to weigh proposals for their solution. No one party has a monopoly on wisdom; and even if it did, no single group has the strength to impose its vision on all the rest. Without an agreed-on sense of direction, all groups would suffer in the long run.

In preparation for the congress, six committees, each with representatives from

a wide range of disciplines, researched, evaluated, and proposed strategies for dealing with an area of particular concern. The first five committees studied cost containment, benefit utilization, loss control and prevention, rehabilitation, and alternative programs. The sixth committee analyzed and recommended measures for improving the workers' compensation systems in nine critical states: Connecticut, Illinois, Rhode Island, Louisiana, Florida, Texas, Oregon, Colorado, and New Mexico.

The committees submitted their analyses and recommendations at the congress and solicited feedback from attendees. The input was analyzed and incorporated into the final versions of the reports, which were released late in 1989.

The reports are not an end result but rather a starting point from which to begin tackling the many problems besetting the workers' compensation system. It took a long time to reach the impasse in which we find ourselves as we enter the 1990s, and recovery from it will not come quickly. The willingness of regulators to grant all or substantial portions of needed rate increases is an important step forward, but in a sense it still is only playing catch-up ball.

What is needed now, and what we hope the congress has initiated, is a long-term look at these systemic problems. The situation is difficult, but it has not slipped out of control. We are not looking at the insurance equivalent of the savings and loan disaster. The measures needed for reform are still, relatively speaking, modest ones. But as we contemplate them, we must be aware that delay carries its own price. The longer we shirk from the costly solutions we need today, the dearer will be the price that must be paid tomorrow.

New Strategies for the 1990s

EDWARD M. WELCH

Introduction

I believe that the most important trend in workers' compensation during the coming decade will be a shift of emphasis away from the state and federal levels to the firm and plant levels. Before addressing that trend, however, I look briefly at potential action on the federal level.

Federal Action

In the short run, I see very little likelihood of any federal action dealing directly with workers' compensation. In the long run, I believe there is one issue that we must be prepared to face.

FEDERAL LEGISLATION AND STANDARDS

During the next decade it is my prediction that we will see no serious attempts to federalize workers' compensation or even to set national workers' compensation standards. Business interests and insurance companies generally oppose federal regulation. Although organized labor would like to see national standards, they currently are not high on labor's agenda.

There are, of course, reasons to argue that we benefit from diversity among the states in their workers' compensation programs. It has been said that we have

fifty different experiments operating simultaneously and that the system benefits from this situation by adopting the best and most successful approach from each state. Unfortunately when a state legislature attempts to modify its workers' compensation system, the situation usually is so surrounded in clouds of political controversy that the parties making the decisions rarely look beyond their immediate situation and lessons from other states often are ignored. I believe that this situation is improving somewhat as legislators, researchers, scholars, and administrators increasingly are sharing with one another their successes and failures. Previous efforts at sharing information by organizations like the International Association of Industrial Accident Boards and Commissions and the National Council on Compensation Insurance have been augmented in recent years by organizations like the Workers Compensation Research Institute and publications like John Burton's *Workers' Compensation Monitor*.

It also can be argued, however, that as we become more of a global economy, the states should stop competing among themselves and instead work together to create a more competitive national economy. This effort is hampered to some degree when the costs to employers and the benefits for workers differ from state to state. Accordingly the nation as a whole might benefit from federal efforts, which tend to encourage a more uniform approach to workers' compensation laws. In view of the current political climate, however, I see little chance that any action along this line will take place before the end of the century.

There is some likelihood that a high-risk occupational disease and notification act may pass Congress during the next ten years. This, however, does not directly impact states' workers' compensation programs, and I believe that the adverse indirect impact of such a law would be less significant than many predict.

CONSOLIDATION IN THE LONG RUN

Looking to the next century, there is one basic change in our system that sooner or later will appear tempting to Congress and to others who examine our system of paying benefits to the disabled. Sooner or later someone is bound to ask, "Do we need so many different programs? Should the social security disability program be separate and distinct from workers' compensation programs? In states that have a no-fault auto insurance program, why does that need to be an additional separate system? Would it be more efficient to somehow combine unemployment insurance as part of this scheme? Should aid to dependent children be brought into the same program?"

If in the interim we have developed a system of national health insurance, it will probably somehow be connected to a person's place of employment. Why should its administration be distinct from the administration of health benefits for workers hurt on the job? The "product liability crisis" and the "medical malpractice crisis" seem to have subsided temporarily. It is likely, however, that

they will reoccur, and it is quite possible that the solution may involve some type of no-fault system for compensating victims. Such a system may well be modeled after our present workers' compensation programs. If such a system is created, should it be maintained as separate and distinct from workers' compensation programs or should they somehow be combined?

There are advantages in maintaining distinct programs. The most common argument is that the cost of on-the-job injuries should be related back to the employment and eventually passed on to consumers. It also is assumed by many that workers' compensation costs provide an incentive for employers to create a safe workplace. Some economists, however, question whether costs are really passed on to consumers and whether the safety incentive really works (Worrall 1983; Worrall and Appel 1985; Berkowitz and Hill 1986). Nevertheless, it is logical to suggest that if the workplace causes injuries, the costs should be allocated through, if not to, the employer, and that if the highway causes deaths, the burden should fall primarily on owners or operators of motor vehicles.

On the other hand, there are many costs that result from having multiple systems. It is not unusual for an injured worker to litigate both his or her workers' compensation and his or her social security disability claim. It also could happen that the worker would litigate a tort action and a no-fault auto action as well. All of this greatly increases the friction costs of a system intended to provide care to injured individuals. In addition all of these programs have different standards for evaluating the extent of disability and for compensating the disability that is measured. Those of us who have been acquainted with the development of these systems can readily explain why the differences exist. To an outsider, however, the distinctions often appear illogical.

The question that must be asked is "Do the benefits derived from maintaining separate systems outweigh the costs of administering all of the individual programs?" At this point I am not prepared to predict what the answer to this question will be, but I do suggest that some time in the next twenty years we will need to give some thought to the topic. It is possible that at some time in the future we will be forced to accept national standards for workers' compensation, not because someone objected to the diversity among state workers' compensation programs, but because someone objected to illogical differences in the way people are treated based on what they happened to be doing when the injury occurred.

Strategies for the 1990s

INTRODUCTION

I believe that in the near future we will see a shift in the way we look at workers' compensation, especially in the way we approach improvements or "reforms" of

the system. This will be a shift of emphasis from the state to the firm level and from the legal to the human resource point of view.

PAST TRENDS

Before going on to the future, it is important to examine past trends. While each of us has been viewing our individual system and wrestling with its problems, we tend to overlook the fact that we often fit into a pattern of change that is fairly consistent on a nationwide basis.

During the 1960s and 1970s, there was a clear trend to expand the availability of benefits and to raise the level of benefits. The tendency to expand was given great impetus in 1972 by the report of the National Commission on State Workmen's Compensation Laws. Although the commission did not recommend mandatory national standards, it did publish a set of recommendations for state workers' compensation programs. Following these recommendations, many states whose system fell below the recommended standards amended their laws to make benefits more readily available and to raise the level of benefits in order to achieve or at least move toward the recommended standards.

During the 1980s there has been a trend in the other direction. Many states have been moving to restrict the availability of benefits, and some have actually lowered the level of benefits. There has been an outcry from business and industry that workers' compensation costs are too high, that this is ruining the business climate, and that companies are moving from one state to another in order to avoid high workers' compensation costs. In state after state there has been a demand to "reform" the workers' compensation program. In some states sweeping reform packages have been adopted, while in others the legislature still grapples with difficult decisions.

It can, of course, be argued that this trend in workers' compensation benefits is not unique and that in fact it merely reflects a change in attitudes that pervades many aspects of our society. During the 1960s and 1970s we experimented with liberal ideas in a great many programs. The judgment of the 1980s often was that we went too far and that a more conservative approach is appropriate. This is undoubtedly true but it does not detract from the fact that these trends have, in fact, taken place in workers' compensation.

THE MICHIGAN RESEARCH¹

Strategies that lower costs and reduce workers' suffering. In the 1960s and 1970s we had a trend toward increasing benefits to workers at the expense of employers. During the 1980s the trend was to take benefits back from workers in order to save money for employers. I am convinced that for the 1990s we must focus on strategies that will lower costs and reduce workers' suffering at the same time.

Is this possible? Are there really strategies that both lower costs and reduce workers' suffering? We have conducted some research in Michigan that suggests that it is possible. The research shows great variability in workers' compensation experience among Michigan employers. In examining what accounts for the differences, the research points to factors that appear to benefit both the employers and workers.

It has been customary in workers' compensation to focus on *interstate* differences. (Is it more costly in Michigan than in Indiana?) Beginning in 1987 we sought instead to examine the *intrastate* differences. We wanted to determine if there were variables among employers within Michigan and to examine, if possible, what accounted for those differences. Michigan's Bureau of Workers' Disability Compensation contracted with Dr. H. Allan Hunt of the W. E. Upjohn Institute for Employment Research in Kalamazoo, Michigan, to conduct the study. Hunt in turn enlisted the aid of Dr. Rochelle Habeck of the Rehabilitation Counseling Program at Michigan State University, and later Dr. Michael J. Leahy, also of the Rehabilitation Counseling Program at Michigan State University.

Differences among employers within Michigan. The study examined the workers' compensation experience of approximately five thousand Michigan firms with fifty or more employees. It compared the number of claims closed in 1986 with the number of workers employed. We assumed that there would be substantial differences among employers in different industries. Accordingly the study focused on the differences among employers within the same industry.

The study found remarkable differences among employers in the same industry. In fact it found that these intrastate differences were substantially greater than interstate differences. The National Commission on Unemployment Compensation and Workers' Compensation (1988) reports that the difference between Michigan and Indiana is about twofold. Michigan's costs are about two times those in Indiana. The difference between Indiana and Maine (the lowest- and highest-cost states) is about sixfold. Maine's costs are about six times those of Indiana (National Foundation 1988). Because of limitations in the data available we looked at

1. This section is based largely on Habeck, Hunt, Leahy, and Welch (1988). A summary of the study is available free of charge from the Bureau of Workers' Disability Compensation, P.O. Box 30016, Lansing, MI 48909. The complete report is available for \$10 from the W. E. Upjohn Institute for Employment Research, 300 South Kalamazoo, MI 49007.

frequency rather than cost, but there is clearly a relationship between frequency and cost. The Michigan study found that the differences among employers within Michigan were about tenfold. The "worst" employers had ten times as many claims as the "best" employers.

The study examined twenty-nine different industries and the tenfold difference was found in each of those industries. For example, in the transportation equipment manufacturing industry, 6 percent of the plants had less than 1 injury per 100 employees, while 8 percent had 11 or more injuries per 100 employees. At the same time 38 percent had less than 3 injuries per 100 employees, while 15 percent had 9 or more injuries per 100 employees (Figure 4.1).

The industry analysis was based on the two-digit standard industrial classification. In order to account for the difference in the work done within industries, the study broke some industries down into their four-digit standard industrial classification. Thus, for example, fabricated metal products was broken down into auto stamping and other subgroups. The differences persisted. In auto stamping 25 percent of the employers had less than 3 injuries per 100 employees, while 18 percent had 11 or more injuries per 100 employees (Figure 4.2). There was as much variation at the four-digit industry level as at the two-digit level.

What accounts for the differences? These large differences among employers within the same state are obviously not attributable to differences in the law. What factors do account for the differences? To answer this question we conducted a mail survey of the high- and low-frequency employers in four industries (food production, fabricated metals, transportation and equipment, and health services). The survey covered a number of areas, but special attention was focused on three factors:

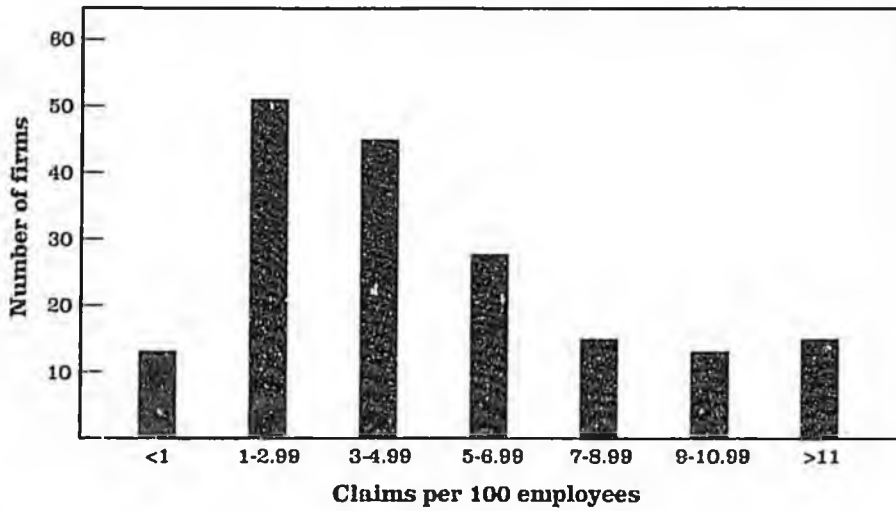
- Safety and the prevention of accidents
- Management climate and culture
- Disability prevention and management

The survey asked a series of questions in each category. When the responses from all of the questions in each category were taken together, each of the three categories was found to be a significant factor in differentiating between high- and low-frequency employers.

The specific items within each category that were statistically significant by themselves are as follows:

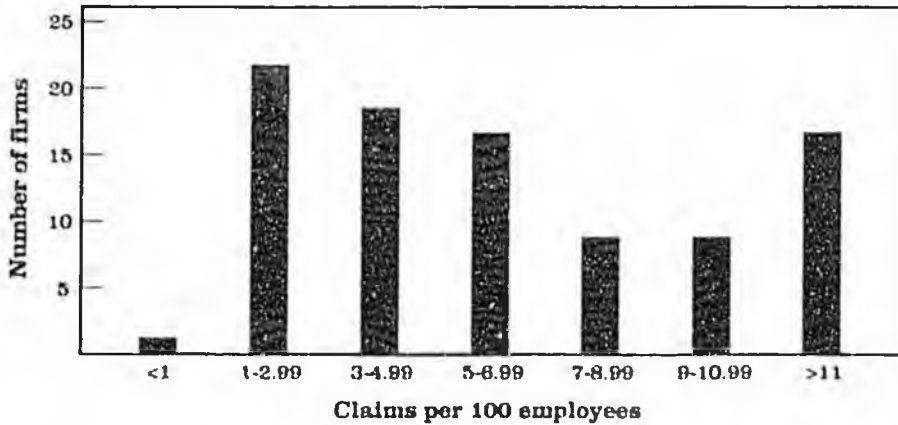
- Safety and prevention of work-related accidents
 - Monitoring and correcting unsafe behaviors on a systematic basis
 - The occurrence of safety training for new and transferred employees
 - Modeling and attending to safe behaviors on the part of company leaders

Figure 4.1. Transportation Equipment Manufacturing Industry, Claims per 100 Employees



Number of firms = 168
Mean claim rate = 5.07 per 100 employees
Coefficient of variation = 81.61

Figure 4.2. Automotive Stamping Subgroup, Claims per 100 Employees



Number of firms = 88
Mean claim rate = 6.75 per 100 employees
Coefficient of variation = 74.18

- Management, climate and culture
 - Using a profit- or gain-sharing program to stimulate and reward productivity of employees at all levels
 - Employee participation in problem solving and decision making
 - Communication traveling from the bottom up as well as the top down
- Disability prevention and management
 - Providing wellness programs and fitness resources to promote employees' health
 - The use of light-duty or modified work assignments to help restricted workers back to the job
 - The presence of procedures to monitor and encourage supervisors to assist in the return to work of injured workers
 - Providing employee assistance programs
 - Screening employees on a continuing basis for job-related health and disability risks

In summary, the study demonstrated that those employers that most frequently engage in safety and prevention efforts, that tend to have an open managerial style and a corporate climate that shares decision making, and that make the most effort to prevent and manage disability are the employers most likely to have low workers' compensation claims frequency.

IMPLICATIONS

Safety, corporate climate, and disability management are factors over which employers and workers have substantial control. They also are strategies that can be implemented in a manner that works to the benefit of employees. If in fact they are important determinants of workers' compensation costs, this has serious implications for employers, unions, insurance companies, state agencies, and workers.

Employers. We often are told that workers' compensation is a very important cost consideration for employers. The research suggests that there are some employers who are using the strategies discussed above to lower their costs. In order to compete, other employers must adopt their own versions of these strategies.

Employers must implement effective safety programs. They must be taken seriously. They must include everyone in the plant. They will not be given the importance they deserve unless they include the serious commitment of top management. At the same time they must be accepted by the hourly work force.

Every employee in the plant must be involved in the planning and implementation of safety programs.

Traditional safety is not enough. We must now employ ergonomics. For years we have been designing plants that produce our products using the fewest possible workers. We must turn our attention to designing plants and machines that use workers in the most efficient possible way. Sometimes the simplest changes, such as raising the height of a work station or changing the angle of a handle on a tool, can drastically reduce the number of injuries and disabilities that result from doing the job. Sometimes the implementation of these strategies requires the expertise of highly trained engineers. To solve these problems we must bring to bear all of the forces that are available. As the research shows, some employers already are doing this.

Disability management, like ergonomics, is a concept that is winning growing acceptance in American industry. The early return to work of the disabled worker is probably the most important single factor. In my experience, most men and women want to return to work during the first few weeks after their injury. They frequently complain of the boredom of sitting at home; they talk about the "four walls closing in on them." If, however, these people are allowed to sit idle for six months or a year, everything changes. Their attitude toward work, their attitude toward themselves, their relationship with their employers and even with their families, all deteriorate. This does not mean that we should force individuals into dangerous situations or "make work" jobs. But it does mean that we should work together with them to lessen in every way possible the disabling effects of an injury.

There are many other approaches to disability management that must be considered, not the least of these is the idea that it should be a unified concept (Berkowitz 1985; Carbine and Schwartz 1987). For too long workers' compensation, medical services, health insurance, long-term disability, and pension benefits have all been compartmentalized and separated from one another. Many businesses are moving to an approach that unifies their treatment of all aspects of disability.

The corporate culture or the industrial relations atmosphere is probably the most difficult aspect to change. Any serious discussion of that is beyond the scope of this paper. It should suffice to say, however, that there are many scholars and practitioners who are suggesting that cooperation between labor and management is the wave of the future. The research suggests that among other things it may reduce workers' compensation claims.

These are only a few of the things that must be done by employers to implement these strategies. What is clear is the fact that some employers are already implementing these and other similar strategies. In order to compete, others will have to do the same in the future.

Unions. Many of the things outlined above for employers cannot be accomplished without the cooperation of their workers. If the workers are

represented by a union, then the union leadership must become a partner in implementing these policies.

Traditionally unions have dealt with workers' compensation by referring their workers to attorneys or advocating that each individual worker should receive the maximum amount of benefits to which he or she may be entitled. There is no need for unions to stop doing that in selected cases. Unions, however, must realize that in the long run they can best serve their brothers and sisters by working together with employers, first by reducing the frequency of accidents and second by lessening the disabilities that result from accidents that do occur.

Often an early return to work requires an exception to the seniority system. Seniority is a very important concept to organized labor in the United States. I would certainly not suggest that it should be abandoned or even deemphasized. Many unions, however, are finding that under carefully defined circumstances it is to everyone's advantage to make temporary exceptions to seniority policies.

Insurance companies. The largest employers in the country already are implementing many of these strategies on their own. Some small and medium-sized employers, however, do not have the knowledge or the resources to put these ideas into practice. They should be able to turn to their insurance carriers for help. The workers' compensation insurance carriers that will capture the largest share of the market in the 1990s will be those who do the best job of helping employers implement these strategies.

Carriers always have provided services called *loss control*. In recent years many also have added or expanded vocational rehabilitation services. The loss-control operations must be expanded, and the vocational rehabilitation experts should be used not only to help workers after they are injured, but to help employers create disability management strategies so that they are prepared to deal with disabilities before injuries occur. Loss control surely includes not only avoiding injuries, but also reducing the amount of loss that results from injuries that occur.

There is clearly going to be a demand for these services in the coming years. There already are some independent private providers who are offering these services to employers. I think that it is reasonable to expect that employers should be able to turn to their insurance carriers for help in this regard. If some carriers begin emphasizing these services, it will undoubtedly have an important effect on their market share. There are, of course, carriers that already provide these services, but they must be greatly expanded and given much more emphasis.

State agencies. State workers' compensation agencies also have an obligation to take the lead in making workers, employers, and insurance carriers aware of these strategies. I am very proud that Michigan has taken the lead in this regard. We have sponsored the research discussed above. We sponsor a variety of educational programs on this topic, and we are implementing further services to

Michigan employers. Other state workers' compensation agencies have similar programs, and I expect many more will be following our lead.

In conjunction with the School of Labor and Industrial Relations at Michigan State University, Michigan's Bureau of Workers' Disability Compensation sponsors an annual seminar focusing on strategies that lower costs and reduce workers' suffering. I should hasten to add that this is not a program in which the state agency tells employers how to run their businesses. Instead we bring in experts from the academic area, from insurance companies, and, in particular, businessmen and -women, who share their successful experiences with other employers.

LRP Publications of Fort Washington, Pennsylvania, has obtained from Michigan the right to publish selected proceedings from our first two conferences. The book *Workers' Compensation Strategies for Lowering Costs and Reducing Suffering* allows people who are not able to attend a conference to benefit from the ideas presented.²

In addition to these annual programs, Michigan's bureau sponsors various other educational efforts that provide information about traditional workers' compensation programs as well as these new approaches. Working with the safety and labor relations agencies in the department of labor, Michigan's bureau is initiating a program to provide consulting services to businesses that wish to explore possibilities for implementing these strategies. It is not our intention to compete with private providers in this regard. Instead we hope to stimulate a market so that in the future many individuals will provide these services.

I believe that in the 1990s we will see more and more state workers' compensation agencies providing information and assistance to the people of the state concerning these new strategies.

Conclusion

In the past, workers' compensation has been seen primarily as a legal problem. When workers were injured, they hired an attorney and sued their employer. When business was unhappy with the situation, it went to the legislature and asked for a change in the law. I believe that in the 1990s we are going to treat workers' compensation as a human resource management problem.

Some employers already have learned that they have it within their own power to control their workers' compensation costs. To the extent they are able to do this, they have an advantage over their competitors. State agencies and insurance carriers must work to make employers and unions aware that these strategies exist and to help them to implement the strategies.

These strategies will never solve all the problems. They will never completely

2. The book is available from LRP Publications, 1035 Camphill Road, Fort Washington, PA 19034 (800-341-7874).

eliminate litigation. There will always continue to be some individuals who claim benefits they are not entitled to and some employers who arbitrarily deny benefits. The biggest problem with our system, however, is those large number of cases in which the worker clearly has suffered some injury and is entitled to some amount of disability compensation, but in which he or she claims more than the employer feels it owes. These are the cases that can be helped by disability management. These are the people who would return to work earlier if the work atmosphere had not been so hostile in the first place. This is the area in which the strategies that lower employers' costs also can work to the benefit of employees.

The research shows that some employers are already implementing these strategies. For the 1990s we must all work together cooperatively to lower costs and reduce workers' suffering.

Workers' Compensation Challenges: Organized Labor's View

JAMES N. ELLENBERGER

Due to serious questions about the fairness and adequacy of the way in which our society compensated the victims of industrial accidents and exposures, Congress established the National Commission on Workmen's Compensation Laws as part of the Occupational Safety and Health Act of 1970. In the two years following the 1972 report of that commission, many improvements were made in state workers' compensation systems. Since 1975, however, there has not only been a lack of progress in correcting the shortcomings that gave rise to the commission; there has been, in many cases, a retrenchment in coverage and benefits.

Workers' compensation has proved to be woefully lethargic and insufficient. In state after state, workers' legitimate claims are delayed, contested, and frequently denied. Compensation benefits lag far behind the levels that the national commission declared "essential" to the survival of the state workers' compensation system. State legislatures, through their refusal to enact the minimum reforms so strongly suggested eighteen years ago, have sent a clear message to employers and workers that they will not act to establish equity and justice in workers' compensation without mandatory federal standards.

The Challenge

Hazards on the job and the disabilities and deaths that result from those hazards are the very heart of what the workers' compensation system is all about. What we can do about those accidents and exposures and for those disabled or killed — that represents a positive change from what is happening today — is the challenge before us.

There are in fact two directions that, while not "new" by any stretch of the imagination, ought to receive far more emphasis and attention from those concerned about the direction of workers' compensation than is currently the case.

First and foremost is the reduction and elimination of injuries, illnesses, and deaths that occur at and from the workplace. There is no excuse, for example, to accept the fact that in excess of eleven thousand job-related deaths occur each year, including over eight hundred people who die annually from workplace injuries or illnesses in Texas alone. Nor is there any reason to remain silent about exposures to toxic substances that poison workers on the job. Actions can and should be taken to eliminate or reduce all sorts of hazards on the job — from chemicals, repetitive motion injuries, back strains, trenching accidents, falls, and unguarded or poorly designed machines, just to name a few.

The second direction we should pursue relates to renewing the commitment made over seventy years ago when workers' compensation was introduced as the "fair" and "just" way to take care of those injured or diseased from work. Workers were to get prompt, certain, and adequate medical care and financial indemnity for accidents and illnesses related to their work. Employers, in return for providing this protection, were to be shielded from legal action and lawsuits under the concept of "exclusive remedy." What working people have found is that while employers take shelter in exclusive remedy, the other side of the bargain has not been fulfilled.

The Current Debate

The dialogue and controversies that surround workers' compensation today are dominated by issues like premium levels, escalating utilization of medical care and treatment, "new" areas of claims such as stress disorders and cumulative motion trauma, coverage of occupational diseases, the increasing litigiousness of the process, the proper role of providers of rehabilitation services, whether an injured or diseased worker should have the right to seek treatment from the physician of his or her choice or be forced to go to one chosen by the employer, disability ratings, open competition or prior approval for providers of insurance and the appropriate level of their "profits," the role of state insurance funds, pure "wage loss" benefits versus recognition and restitution for pain and suffering in permanent partial disabilities — the list is virtually endless.

The Business Climate

All of these issues, and many more, can be laid at the doorstep of the "business climate" approach to workers' compensation. In a recent presentation to a group of state workers' compensation administrators, a senior representative of the insurance industry said, "I'm sure all of you are anxious to have the most favorable legal, political and economic environment possible in each of your respective states that will bolster your climate for retaining industry as well as attracting new business." Similarly, in a *Business Week* article about workers' compensation costs influencing decisions about where to locate facilities, a vice president of the Indiana Chamber of Commerce bragged, "We've seen more than 100 companies move out of Michigan and Ohio into our northwest corner" (King 1987).

This is the real world of workers' compensation. Forget about safe, clean, and decent workplaces. Don't worry about seriously disabled workers trying to get by on 57.3 percent of the state average weekly wage in Georgia (\$225), 57.2 percent in California (\$266), 58.8 percent in Texas (\$238), or 59.2 percent in New York (\$300). Never mind that the national commission said that if states did not set their maximum disability payments at 100 percent of the average weekly wage by 1975, and twenty-two of them have not, the U.S. government should force them to do so with federal standards. Abolish the thought that New Jersey, South Carolina, and Texas should protect their workers with mandatory and compulsory workers' compensation coverage. Perish the concept that all classes of workers, without exemption or exception, should have that right to workers' compensation under law.

The reigning viewpoint holds that it is okay to seek a competitive edge based on maltreatment and undercompensation of those workers killed, broken, or diseased in the process of conducting business. States are compared using such measurers as "average benefit cost per employee" or "benefits as a percentage of total wages" or "costs per \$100 of payroll." State legislators are then told that costs have gotten out of line and that measures must be taken to make the state more competitive with those where workers' compensation coverage and benefits are less "generous." Companies have even told their employees in a few instances, though it is rarely the real reason, that plants are being closed or relocated due to workers' compensation costs.

Deprecation of Claimants

Not surprisingly, the focus on costs ranges far beyond simple interstate comparisons and strikes at the motivation and justification of workers who file for compensation for injuries or illness suffered from the job. Board allegations, painting claimants as malingerers or their claims as fraudulent, are common. A

former chairman of the insurance industry's rate-setting body (the NCCI) said, "Employees of small businesses — far less likely to have group health insurance as a fringe benefit — may be turning to workers' compensation as a means of providing medical care for injuries caused by non-work related incidents." (Actually it is much more likely that a far greater number of injuries that are work related end up being covered by regular health insurance than by workers' compensation.) The chairman of the U.S. Chamber of Commerce workers' compensation committee was more direct in charging that "we're getting too many people in the workers' compensation system...people are getting benefits they don't deserve." Proving that there is one-upmanship in denigrating the character of American working people, a former employer representative on the Texas Industrial Accident Board alleged that increases in workers' compensation rates were "fueled by employees' trying to make quick bucks from on-the-job injuries and doctors and lawyers who were eager to help them."

Are sentiments such as these an aberration, or do they accurately reflect the mainline concern of employers with the direction of workers' compensation?

Hostility Toward Insurers and Employers

What about the views of working people toward workers' compensation and the "insurance" it is supposed to provide? Are workers' opinions of insurers any different today than those expressed in 1921 by the mild-mannered and soft-spoken mine worker, William Green, who was eventually to become president of the American Federation of Labor? Green, in extolling the virtues of the Ohio workers' compensation law, told a labor gathering that under the exclusive state fund insurance plan, "no liability insurance company can sell workmen's compensation in the State of Ohio. We have driven them out, and the working man, his wife and his family daily fall upon their knees and thank Almighty God that these blood-sucking liability insurance companies are driven from their homes."

A number of workers injured on the job were interviewed about workers' compensation on the ABC television program "Burning Questions — Working in America: Hazardous Duty." "Just don't get hurt," one worker says, "but, if you do, you better have lots of money." Another worker notes, "You work hard; you give an honest day's work for an honest day's pay and we end up getting sick. The next thing you know, we get treated like criminals."

Elizabeth Groves, the widow of a power company worker electrocuted on the job, went five months after her husband's death without any benefits or burial expenses. The hospital and lab that had treated her husband even threatened to sue her for unpaid bills. The company did not help her, the insurance carrier did not help her, and the state workers' compensation bureau did not help her. As she told ABC News, she got "nothing but a lot of crap...I had to fight to get

it (death benefits). I had to fight every step of the way." In fact she did not get anything until a member of the U.S. House of Representatives intervened on her behalf.

Many claims that ought to be compensated as a matter of course are routinely contested by companies or their insurers. There are, for example, some 5.3 million health care workers at 620,000 work sites who are at risk for blood-borne diseases due to frequent contact with potentially infectious material. Twelve thousand are infected annually with hepatitis B, leading to over 250 deaths each year attributable to hepatitis-related diseases. In a 1988 case, a hospital contested a compensation claim by a nurse who had contracted hepatitis B. The evidence was clear that she had suffered frequent needle-stick accidents in the course of her work. The state workers' compensation commission denied her claim on the basis that there was no causal connection between her disease and her employment. Although this decision was eventually reversed by the state appellate court, the question must be asked: Why was the claim contested by the hospital or its insurer in the first instance?

Similarly, in a contested case involving a women salesclerk who struck her head on a fireplace door and sustained a brain injury that left her unable to care for herself and unable to read or write, the state industrial commission denied a claim for permanent total disability. The injured woman, according to the commission, failed to qualify under the definition of imbecility or insanity as called for by the workers' compensation statute. Although later reversed by the state's court of appeals, this woman's benefit is now reduced by her attorney's fees in a case that should never have been contested in the first place.

In many cases justice does not prevail. Alabama's statute requires that an accident be "an unexpected event, happening suddenly and violently and producing at the time injury to the physical structure of the body." A lumber company employee, whose job involved frequent lifting, suffered a serious back injury at work. The claim for workers' compensation was contested and ultimately denied by the court of civil appeals on the basis that "stress over a period of time is not sufficient cause for compensation since there is no accident."

Unfortunately these are not isolated stories. It is not just occupational disease and back injury claims that are contested by employers or their insurers. Case after case involving traumatic injuries on the job are challenged or even worse, as in the case of Mrs. Groves, ignored. Plagued with uncertainty, burdened with delay, threatened with the loss of employment by their employers, it is not surprising that so many injured and ill workers automatically seek assistance from attorneys when faced with a workplace disability. State workers' compensation agencies or industrial accident boards sometimes advise first-time callers seeking assistance with their claims to talk to a lawyer first.

Renewing the Commitment

It is time to revisit that seventy-year-old mutual pact between workers and their employers and to eliminate the debilitating and destructive arguments among states based on lousy benefits and poor coverage. If a no-fault compensation system is the best way for us to take care of those injured or diseased from the job, the challenge ahead of us is to restore the trust and renew the confidence that employers and workers must have in workers' compensation in order for the program to work. At a minimum this will require leadership, the willingness to do what is right, and the fortitude to withstand the inevitable pressure from outside forces.

When it authorized the creation of the National Commission on State Workmen's Compensation Laws as part of the 1970 OSHA, the Congress noted that serious questions had been raised concerning the fairness and adequacy of workers' compensation. The president appointed members to the commission representative of state agencies, insurance carriers, business, labor, the medical profession, academia, and the public. Those honorable participants said that although all of their recommendations were important, some were "essential" and were particularly suitable for federal support to guarantee their adoption.

Where are the descendants of that commission in today's business community, insurance industry, educational institutions, and state workers' compensation boards? Are those essential recommendations still valid? Is an average compliance rate of 64 percent the best we can do?

The organization of workers' compensation professionals, the International Association of Industrial Accident Boards and Commissions (IAIABC), has adopted over the years since 1919 some twenty-three standards "for the guidance of legislators and administrators." Unfortunately these standards have not been used by workers' compensation directors or industrial accident board members to provide direction to policymakers. Rather they have gathered dust and cobwebs while the "leaders" of this system express their undying support of the workers' compensation program under exclusive state control and their absolute opposition to any federal "interference." They are cannon fodder for the base requests of insurers and employers that appeal for a more favorable "business climate."

One of the key challenges for workers' compensation in the future is for a new generation of leaders, unafraid of committing themselves to action on behalf of the convictions that brought about the historic compromise early in this century, to bring to fruition the national commission's essential recommendations and the standards proclaimed by the IAIABC. This leadership from business, labor, and administrators is the prime ingredient in and intrinsic to the restoration of trust and confidence in the workers' compensation system.

Those who pledge themselves to workers' compensation as the appropriate mechanism to take care of work-related injuries, disease, and death must be prepared to fight for a system that is just and equitable and efficient. The

commitment to workers' compensation must be, as suggested by Dr. Arthur Larson, the "task of providing not only prompt and adequate income protection to the victims of industrial injury or death, but also the fullest possible medical care, rehabilitation and restoration, all within the traditions of the American legal system and form of government."

Spearheading an effort to restore the covenant in workers' compensation to an even-handed, rational, and sufficient method of caring for those "victims of industrial injury and death" will require that leaders have the fortitude to withstand the inevitable pressures from those who are confused as to whether it is their job to serve the system or to be served by it.

Those who represent labor's interest should be of labor and not those who claim to represent working people by virtue of their vested interest in a portion of the injured worker's award. Attorneys are essential to the system and always will have a role. That role is the appropriate adjudication of disputes and controversies — not as a "voice" for labor in negotiations over changes in or reform of the law.

Business and management representatives, similarly, need to get directly involved in the construction of a fair and just workers' compensation system. Their interests are ill served by insurance industry professionals or agents of firms who offer consulting or representative services in workers' compensation. To do otherwise is to accept the proposition that competition can be advanced on the basis of inequity and injustice and that a high-cost system with inadequate benefits and coverage is tolerable.

Those charged with running this system are key to its reconstruction. Directors and commissioners of workers' compensation bureaus, accident board members, and administrators of agencies have the knowledge and experience to help policymakers and representatives of business and labor achieve improvements in the effectiveness and fairness of the system. They must be especially vigilant, however, against the pressure and influence exerted by those who have no interest in and do not support the standards adopted by the IAABC.

The providers of workers' compensation services — insurers, lawyers, doctors, rehabilitation specialists, and chiropractors, to name a few — have a role in the system and should be supportive of efforts to improve it. It is not "their" system, however, and it should not be designed in response to their interests.

Can we meet the challenge of changing the direction of workers' compensation before it slips even further in trust and confidence among the people who suffer the pain and death and those who pay the bill for workplace injuries and illnesses? There are a lot of new faces in the system, but the problems remain the same. Will the next generation of workers' compensation leaders do any better than the past?

Workers' Compensation Challenges: The Employer's Perspective

THOMAS J. RITTENHOUSE

From a risk manager's perspective, the greatest workers' compensation challenge in the next decade will be to correct those things that presented serious problems for workers' compensation systems in the 1980s. Let me list the ones I believe are most important:

- First and foremost, eighteen years after the report of the National Commission on Workmen's Compensation Laws, workers with truly serious injuries still receive inadequate benefits, while employers continue to bear an ever-increasing burden from unduly generous payments to those with less serious injuries.
- Second, workers' compensation defines permanent total disability, in part, in terms of capacity to perform a specific job rather than purely as a physical disability.
- Third, each year it becomes progressively more difficult to distinguish between work-related and non-work related injuries.
- Fourth, we are still unable to evaluate the extent of disability or impairment in an automatic nonlitigious manner.
- Fifth, workers' compensation claims can be negotiated to a lump-sum settlement.
- Sixth, workers' compensation premium plans are regulated.

- Seventh, insurers can, for tax purposes, deduct incurred losses and self-insurers can deduct only paid losses.

How do we meet these challenges? I suggest that we clearly and honestly define the problems and choose the solutions that are most consistent with the original objectives of workers' compensation, which were to provide adequate, equitable, and prompt wage and medical benefits to employees for injury or death occurring in the course of employment, without a great deal of litigation.

Let us look at the first challenge: the inequitable distribution of benefits paid to those suffering serious and not-so-serious injuries. Current permanent total benefits for someone who is in fact totally physically disabled are inadequate and, due to inflation, grow progressively more inadequate. Why can't we provide adequate benefits to employees who are totally disabled in the course of employment? I fear that if we did, claims for less serious partial disability — the 20 percent of a man, 30 percent of an arm, and 10 percent of a hand — would wreak economic havoc on all employers. The concept of limited liability under workers' compensation would be a fiction on the order of *Nightmare on Elm Street*. If we were to limit partial disability benefits to wage loss, medical, and reasonable rehabilitation, we could afford to provide an adequate benefit to the totally disabled.

The elimination of impairment benefits does not mean that any injury less than total disability does not hurt. Of course it hurts, but the fact is that the vast majority of the permanency awards, both in number and dollars, are paid to people who return to work with little or no reduction in their earning capacity. This allocation of benefits is backwards. A more compassionate system would favor permanent total and rehabilitation benefits before all other benefits. Sooner or later the reality of how workers' compensation treats total disability will come out of the closet. If we do nothing it will come out of the closet as a poltergeist, resembling the Longshoreman and Harbor Workers Act.

A related challenge is that workers' compensation defines permanent total disability, in part, in terms of capacity to perform a specific job rather than purely as a physical disability. If we intend to adequately compensate the totally disabled, we must be able to clearly define *total disability*. That definition should be structured in terms of physical incapacities, not in terms of vocational incapacities.

For instance, suppose an ironworker trips and falls on the job and suffers damage to his inner ear canal. At the point of maximum recovery he still experiences intermittent dizzy spells. No problem for most people who work at ground level, but a serious problem for someone who walks on a 10-inch beam twenty or thirty stories above the ground. Is he totally disabled? No. He may need help in finding a new job, but he is not totally disabled. Finding a new job will not be easy. Many ironworkers do not have a high school education, yet they make more than a plumber. I have encountered similar scenarios many times. Faced with the prospect of a highly paid, undereducated employee prolonging his "permanent total" disability, you find yourself paying large amounts to settle or commute the claim.

Almost without exception, after the settlement is made, the employee decides he can work as an ironworker and returns to his job thirty stories above the ground. The other half of this story is that some ironworkers really are totally disabled. They fall off the side of a building or down the elevator shaft or through a hole in the floor and break nearly every bone in their body, not to mention what happens to vital organs on impact. Believe it or not, many survive this sort of mishap. Nobody negotiates with these unfortunate people. You just send the checks and be thankful that their benefits are not indexed to inflation and that you are not the payee on the check.

The system cannot afford to pay permanent total settlements to people who are not totally disabled and also pay adequate benefits to people who are totally disabled. In my opinion, both reason and compassion tell us that the current allocation of benefits is not right.

An important challenge arises as it becomes progressively more difficult to distinguish between work-related and non-work related injuries. Compounding this problem is the difficulty we have evaluating injuries. The crux of both of these problems is that workers' compensation is almost always a remedial statute, thus requiring that the common law rule of "liberal construction" be used when interpreting this statute. Moreover, a preponderance-of-evidence standard gives way to an evidence-to-support-the-finding standard. Remedial statute, liberal construction, and a support-the-finding standard of evidence are the principal reasons why stress, occupational disease, permanent partial benefits, unlimited medical, and lawyers may very well overwhelm the system.

If you can prove that your job stresses you to the point that you are totally disabled, you deserve workers' compensation benefits. If your job causes you to have a heart attack, you deserve workers' compensation benefits. If you can prove you have not reached maximum recovery from a job-related injury, you should not have to return to work and you should continue to receive benefits.

We all know about the company doctor who thinks everybody is faking, and we all know his cousin, the plaintiff doctor who thinks all injuries are work related and that nobody ever heals. We do not need either of these in the workers' compensation system.

We do need definitive standards that are consistent with the consensus of informed professional medical opinion. A doctor, not a lawyer, should determine whether the rigors of your job are too stressful for the ordinary man to handle. A doctor, not a lawyer, should determine whether physical exertion at work or 95 percent blockage in three arteries caused your heart attack. A doctor, not a lawyer, should determine whether or not you are ready to return to work. It really is not that difficult to obtain a consensus of informed professional medical opinion on the preceding conditions; however, it is impossible to obtain unanimity on any one of them. Somewhere out there there is a doctor who honestly or otherwise is willing to state that X condition is work related or that so and so employee has not yet reached maximum recovery. At the same time, there is a workers'

compensation judge out there who by law must accept evidence that supports the most liberal interpretation of the facts. Not surprisingly, there is an attorney out there who wants to bring those two guys together.

To reduce litigation, to guarantee that work-related injuries are compensable and non-work related injuries are not, to see a compensation claim properly closed without the hocus-pocus of the appeal process, the statute must provide an established and predictable framework for decision making and must not provide an arena for entrepreneurial manipulation. Putting the employee and the employer on equal footing under the statute and utilizing a preponderance-of-evidence standard will be essential for the survival of the workers' compensation system in the next decade.

Lump sum presents a further challenge. Lump-sum settlements beget claims. It would be in the employer's and the employee's best interests if payments were limited to disability, death, medical, and rehabilitation, with absolutely no provision, including death claims, for a lump-sum payment.

Workers' compensation premium plans should not be regulated. No insurance rate should be regulated. Rate regulation is irrational and counterproductive. With regard to workers' compensation, irrational rating practices have become a religion with bibles and all. We have codes and factors and applicable payroll and nonapplicable payroll and standard premium and audited premium and retro premium and dividend agreements and now assessment fees. The answer is not to fine-tune this rating scheme. The answer is to dump it, lock, stock, and barrel.

It is inequitable that insurers can, for tax purposes, deduct incurred losses while self-insurers can deduct only paid losses. The IRS says to have insurance you must have "distribution" and "spread of risk." The fact is that it is absolutely right. So what? The pivotal point that seems to be missing is that we are distributing and spreading loss, not insurance. The fact is that you can have loss without distributing or spreading it or, in the IRS's words, "insuring" it.

Just as a pension benefit is accrued and expensed in the year it is earned, so should a casualty loss be accrued and expensed in the year it occurs. The manner in which the loss is financed should have no bearing on when you recognize the expense resulting from the loss event.

In closing I would caution you not to mistake the symptoms for the problem. At the turn of the century, we will look back at the last decade of this millennium and see that occupational disease did not run rampant through the workplace; that employees are a little older but are not senile; that America has not yet become a welfare state; and that state and federal bureaucrats still are arguing about who can do the best job.

The challenge will be for employees and employers to honestly and fairly determine the objectives of the workers' compensation system.

Workers' Compensation: A Call for Reform

GARY L. COUNTRYMAN

Liberty Mutual has been the leading writer of workers' compensation insurance in the country for more than half a century, and our prominence in that market continues, accounting for about 12 percent of the private insurance market, or some \$3.5 billion in premiums. Despite our leadership role, I am concerned about the future of privately administered workers' compensation — very concerned. A pernicious pattern has emerged in many states that seems beyond the reach of our industry to deal with effectively.

Although no two states are exactly the same, the general pattern goes something like this: Costs rise at rates well above prevailing rates of inflation. The relentless march of medical costs, benefit utilization, the pioneering work and inspiration of the claimants' bar, and a frequently inefficient, understaffed, or statutorily hobbled administrative system are all to blame.

The National Council on Compensation Insurance responds with an eye-catching rate filing. Regulators respond somewhere in between what the analysis seems to dictate and what good short-term politics would suggest. After all, they reason, the observed rate of cost increase is temporary and there's time to catch up later. But, increasingly, it isn't temporary, and after several years the inadequacy of rates begins to grow quite large — certainly beyond the reach of the industry and maybe beyond the political reach of the most well intended regulator.

In the meantime, efforts to enact legislative reforms to eliminate or control costs get under way, but they too are politically difficult. The result is either reform that has little cost impact or no reform at all.

In response to the compelling economics of price inadequacy and the absence

of reform, there has been a slow but accelerating shrinkage in the voluntary insurance supply. According to the NCCI, the involuntary market grew from around 5 percent in 1984 to an estimated 20 percent in 1988.

Now, workers' compensation rate inadequacies are not new; they come and go, and on cue we in the industry whine about them. What is different this time is their scale and scope. More and more frequently we are experiencing accumulating rate inadequacies that are approaching levels that are going to be beyond a point any of us can correct. And the list of affected states that fit this pattern is growing swiftly.

An Emerging and Dangerous Trend

The trend that is emerging is dangerous for those businesses that believe that their interests are best served by a private insurance market. For example, Maine cost Liberty Mutual nearly \$130 million between 1981 and 1986 — after investment income. Year after year, we tried to obtain rate relief. Time and again we tried to work with the Maine legislature to reform one of the most liberal compensation laws in the country. On more than one occasion we sought relief in the courts. As a last resort we were left with no choice but to withdraw — the first action of its kind in our history. Needless to say, we found no joy in the actions we took in Maine, but we could no longer tolerate the financial consequences of continuing to do business in that state.

Following our withdrawal, some benefit reforms were enacted and a modest amount of rate relief was granted. It was not enough. That the combination of reforms and rate relief fell short is illustrated by an involuntary market estimated to be 82 percent of the total insured market in 1988, up from 67 percent in 1987.

So what we seem to have under way here is a trend toward restrictions in supply in response to an increasingly politicized regulatory environment, brought on by rapidly increasing system costs and an unresponsive legislative process. It manifests itself in a growing involuntary market and is periodically punctuated by an outright withdrawal of one or more major players. For reasons of financial necessity, insurers have become more selective in both the states and lines of coverage they are willing to write.

At the same time, political attitudes toward the business of insurance seem more hostile today than anytime in memory. The recent trends in workers' compensation insurance are going to be even more difficult to interrupt because of this hostile political climate. As if that was not enough, the California experience (Proposition 103) also has taught us that insurers, standing alone, have little political clout.

It has become an increasingly desperate and unstable situation. How do we find our way out of this wilderness? Since inordinate cost escalation is the root cause that threatens the system and inadequate rates are merely the result, it follows that

reform is our best and only hope. What is needed is a strategy and a structure to achieve reform across a broad array of states, each with its own culture, its own system, and its own problems.

A Comprehensive Strategy

Although the creation of a comprehensive strategy will take some time and a lot of collaboration, there are a few elements that we at Liberty think are essential.

First and foremost, any strategy must have as its centerpiece a plan for coalition building. Reform is a political struggle, and history shows that without coalition building, it's nearly impossible to achieve. Building at least a partial coalition should not be difficult. Private carriers and the insured and self-insurance business community, along with our respective national and local trade associations, are natural allies. We have worked together in the past, but we need to build stronger relationships as we look to the future. In particular we need to undertake a more coordinated reform strategy at the local level — agreement on affirmative programs before the shooting starts.

Other possible allies are not so natural. We ought to make every effort to include organized labor, and certainly we should reach out to the medical community. On the other hand, it seems improbable that any effort to include the claimants' bar would be successful. Still the legal fraternity is not monolithic, and we should not dismiss the notion that there are groups within the legal profession with which we could work effectively. The point is that coalition building, to be effective, must be as broad based as possible, and no effort should be spared to make it so.

The second element of the strategy is communication. Put simply, we must be willing to talk about the problems of our workers' compensation systems to anyone who will listen. Let us face it, workers' compensation is a fairly esoteric subject that is not at the forefront of public consciousness. The fact that employers bear the direct cost of the system and then pass those costs on to the consumers is not an issue that Ralph Nader is likely to popularize anytime soon. What this means is that our job of communication is both difficult and easy in some ways — difficult because the subject is not naturally attractive to anyone (in particular, most legislators), and easy in the sense that fewer individuals and groups require educating and convincing.

I do not think that the insurance industry or industry generally has done the job here. We must be willing to speak out at legislative and regulatory functions, and at business functions as well. Insurers must do a better job of communicating the issues to its policyholders. And we all must be more willing to talk to the press.

By explaining the problems of our workers' compensation systems, we will not only increase the depth of our coalition building, we will also help shape legislative debate and gain more control over the final outcome of legislative reform.

The third element of a reform strategy is effective lobbying. There is the old-fashioned insider kind, which is still important, and there is the new grass roots lobbying that is becoming more popular and more and more effective, as techniques for mobilizing constituencies within coalitions are perfected. The truth is we need both. We need the most skillful lobbyists available, and we need to mobilize our employees and our colleagues and customers in the business community, educate them to the issues, and show them how to effectively communicate with their own legislators.

In broad brush then, these are the three main elements of a strategy for workers' compensation reform that has a chance of altering the pernicious pattern that is emerging — coalition building, communication, and effective lobbying. Surely, I have oversimplified, but I am convinced each element is critical to a strategy that leads us toward meaningful reform.

A National Catalyst for Reform

So much for strategy. Let us turn to structure. How shall we carry out our reform strategy? The first challenge we face is fifty state systems of workers' compensation that are within the statutory control of fifty state legislatures. What this means is that if reform is going to have a chance in major problem states, it's got to be carried out locally by local coalitions. The problem will be to find the right mix of people and interest groups that can agree on the kind and extent of reform and that have the political base to get it done.

What is needed is a national catalyst with workers' compensation reform as its singular interest. Such an organization would go a long way toward helping to create, nurture, and sustain coalitions at the state level. It would be a resource and a coordinator for reform efforts in various states. It would help create and expand coalitions at the state level, and provide whatever other support state coalitions might need — some funding, technical advice, access to research and research capabilities, experts, and so on.

Although I believe a national group is essential, it would not seek reform in any state, nor would it attempt to dictate the nature of the reform to be undertaken. Rather it would be a resource and a catalyst, a creator of broad themes, for reform in support of local coalitions.

Now, I am not asking for a sudden burst of altruism, nor am I asking for charity. So that there is no misunderstanding, I freely admit that my call for joint action is inspired by my company's own self-interest, not to mention the interests of my industry. What I am asking you to do is to act in your own self-interest too. Because the truth is, our self-interests are compatible.

I believe most of us want the same thing — a private system of workers' compensation that places heavy emphasis on injury prevention and injury

mitigation, including physical and vocational rehabilitation; a system that provides for the basic needs of injured workers by promptly delivering adequate medical and income benefits; a system that delivers those benefits in the most efficient and dispute-free ways possible; and a system that provides cost stability within the framework of commonsense notions about the inevitable rate of inflation.

With the right strategy and the right organizational structure, I believe we can move many of our workers' compensation systems back closer to the ideal that we all want.

My company will provide whatever leadership it can. We pledge our resources and our commitment to a broad-based reform effort. I extend to each of you an invitation to join with us.

References

- Barth, P. S. 1985 (September). *Resolving occupational disease claims: The use of medical panels*. WC-85-1. Cambridge, MA: Workers Compensation Research Institute.
- . 1987 (December). *Workers' compensation in Connecticut: An administrative inventory*. WC-87-3. Cambridge, MA: Workers Compensation Research Institute.
- Barth, P. S., R. B. Victor, and S. M. Eccleston. 1989 (March). *Workers' compensation in Texas: An administrative inventory*. WC-89-1. Cambridge, MA: Workers Compensation Research Institute.
- Berkowitz, M. 1985 (March). Forestalling disincentives to return to work. *Business and Health*.
- Berkowitz, M., and M. A. Hill, eds. 1986. *Disability and the labor market: Economic problems, policies, and programs*. Ithaca, NY: ILR Press.
- Boden, L. I. 1988 (December). *Reducing litigation: Evidence from Wisconsin*. WC-88-7. Cambridge, MA: Workers Compensation Research Institute.
- Boden, L. I., and C. A. Fleischman. 1989 (December). *Workers' compensation medical costs: Trends and interstate comparisons*. WC-89-5. Cambridge, MA: Workers Compensation Research Institute.
- California Workers' Compensation Institute (CWCI). 1984 (December). Economic consequences of job injury. *CWCI Research Notes*.
- . 1988a (April). Mental stress claims. *CWCI Research Notes*.
- . 1988b. Litigation cost survey 1988. *CWCI Research Notes*.
- Carbine, M. E., and G. E. Schwartz. 1987. *Strategies for managing disability costs*. Washington, DC: Washington Business Group on Health/Institute for Rehabilitation and Disability Management.
- Gardner, J. A. 1989 (June). *Return-to-work incentives: Lessons for policymakers from economic studies*. WC-89-2. Cambridge, MA: Workers Compensation Research Institute.
- Habeck, R. V., H. A. Hunt, M. J. Leahy, and E. M. Welch. 1988. *Differences in workers' experience among Michigan employers*. Lansing, MI: Bureau of Workers' Disability Compensation.
- Hensler, D. R. 1986 (March). *What we know and don't know about court-administered arbitration*. N-2444-ICJ. Santa Monica, CA: Institute for Civil Justice.
- . 1989 (March). Court-administered ADR programs. Unpublished paper.
- Hunt, H. A., and S. M. Eccleston. 1990 (February). *Workers' compensation in Michigan: An administrative inventory*. WC-90-1. Cambridge, MA: Workers Compensation Research Institute.

- Joint Select Committee on Workers' Compensation Insurance. 1989. Research paper. Austin, TX.
- King, R. W. 1987 (October 12). The worsening ills of workers' compensation. *Business Week*, p. 46.
- MacCoun, R. J., et al. 1988. *Alternative adjudication: An evaluation of the New Jersey automobile arbitration program*. R-3676-ICJ. Santa Monica, CA: Institute for Civil Justice.
- National Commission on State Workmen's Compensation Laws. 1972 (July). *The report*. Washington, DC: U.S. Government Printing Office.
- National Foundation for Unemployment Compensation and Workers' Compensation. 1988 (June 15). *The Bulletin*.
- Pease, S. R. 1989 (November). *Workers' compensation in Washington: An administrative inventory*. WC-89-3. Cambridge, MA: Workers Compensation Research Institute.
- Rolph, E. 1985. *Introducing court-annexed arbitrating: A policymaker's guide*. Santa Monica, CA: Institute for Civil Justice.
- Sims, R. H. 1988. *Hazard abatement as a function of firm size: The effects of internal firm characteristics and external incentives*. Ann Arbor: University Microfilms.
- Victor, R. B., ed. 1990 (May). *Challenges facing workers' compensation systems in the 1990s*. WC-90-2. Cambridge, MA: Workers Compensation Research Institute.
- Victor, R. B., and C. A. Fleischman. 1989 (November). *Designing benefit structures for temporary disability: A guide for policymakers*. Vols. 1 and 2. WC-89-1. Cambridge, MA: Workers Compensation Research Institute.
- Worrall, J. D., ed. 1983. *Safety and the work force: Incentives and disincentives in workers' compensation*. 61-86. Ithaca, NY: ILR Press.
- Worrall, J. D., and D. Appel, eds. 1985. *Workers' compensation benefits: Adequacy, equity, and efficiency*. Ithaca, NY: ILR Press.

Other WCRI Publications

Administration/Litigation

WORKERS' COMPENSATION IN MICHIGAN: AN ADMINISTRATIVE INVENTORY. H. Allan Hunt and Stacey M. Eccleston. February 1990. WC-90-1.

WORKERS' COMPENSATION IN WASHINGTON: AN ADMINISTRATIVE INVENTORY. Sara R. Pease. November 1989. WC-89-3.

WORKERS' COMPENSATION IN TEXAS: AN ADMINISTRATIVE INVENTORY. Peter S. Barth, Richard B. Victor, and Stacey M. Eccleston. March 1989. WC-89-4.

REDUCING LITIGATION: EVIDENCE FROM WISCONSIN. Leslie I. Boden. December 1988. WC-88-7.

WORKERS' COMPENSATION IN CONNECTICUT: AN ADMINISTRATIVE INVENTORY. Peter S. Barth. December 1987. WC-87-3.

USE OF MEDICAL EVIDENCE: LOW BACK PERMANENT PARTIAL DISABILITY CLAIMS IN NEW JERSEY. Leslie I. Boden. December 1987. WC-87-2.

USE OF MEDICAL EVIDENCE: LOW BACK PERMANENT PARTIAL DISABILITY CLAIMS IN MARYLAND. Leslie I. Boden. September 1986. SP-86-1.

Benefits

DESIGNING BENEFIT STRUCTURES FOR TEMPORARY DISABILITY: A GUIDE FOR POLICYMAKERS. Volume 1. Richard B. Victor and Charles A. Fleischman. December 1989. WC-89-4.

DESIGNING BENEFIT STRUCTURES FOR TEMPORARY DISABILITY: A GUIDE FOR POLICYMAKERS. Volume 2. Richard B. Victor and Charles A. Fleischman. December 1989. WC-89-4A.

RETURN TO WORK INCENTIVES: LESSONS FOR POLICYMAKERS FROM ECONOMIC STUDIES. John A. Gardner. June 1989. WC-89-2.

INCOME REPLACEMENT FOR LONG TERM DISABILITY: THE ROLE OF WORKERS' COMPENSATION AND SSDI. Karen R. DeVol. December 1986. SP-86-2.

INCOME REPLACEMENT FOR SHORT TERM DISABILITY: THE ROLE OF WORKERS' COMPENSATION. Karen R. DeVol. December 1985. WC-85-2.

Medical Costs

IS A CHOICE OF PROVIDER AND REFLECTIONS AFFECT MEDICAL COSTS IN WORKERS' COMPENSATION. Richard B. Victor and Charles A. Fleischman. June 1990. WC-90-2.

MEDICAL COSTS IN WORKERS' COMPENSATION: TRENDS AND INTERSTATE COMPARISONS. Leslie I. Boden and Charles A. Fleischman. December 1989. WC-89-5.

MEDICAL COST CONTAINMENT IN WORKERS' COMPENSATION: INNOVATIVE APPROACHES. Richard B. Victor, ed. November 1987. WC-87-1.

Occupational Disease

LIABILITY FOR EMPLOYEE GRIEVANCES: MENTAL STRESS AND WORKING-FULL TERMINATION. Richard B. Victor, ed. October 1988. WC-88-6.

ASBESTOS CLAIMS: THE DECISION TO USE WORKERS' COMPENSATION AND TORT. Robert I. Field and Richard B. Victor. September 1988. WC-88-5.

RESOLVING OCCUPATIONAL DISEASE CLAIMS: THE USE OF MEDICAL PANELS. Peter S. Barth. September 1985. WC-85-1.

System Outcomes

PERFORMANCE INDICATORS FOR PERMANENT DISABILITY: LOW-BACK INJURIES IN TEXAS. Sara R. Pease. August 1988. WC-88-4.

PERFORMANCE INDICATORS FOR PERMANENT DISABILITY: LOW-BACK INJURIES IN NEW JERSEY. Sara R. Pease. December 1987. WC-87-5.

PERFORMANCE INDICATORS FOR PERMANENT DISABILITY: LOW-BACK INJURIES IN WISCONSIN. Sara R. Pease. December 1987. WC-87-1.

Vocational Rehabilitation

IMPROVING VOCATIONAL REHABILITATION OUTCOMES: OPPORTUNITIES FOR EARLIER INTERVENTION. John A. Gardner. August 1988. WC-88-3.

APPROPRIATENESS AND EFFECTIVENESS OF VOCATIONAL REHABILITATION IN FLORIDA: COSTS, REFERRALS, SERVICES, AND OUTCOMES. John A. Gardner. February 1988. WC-88-2.

VOCATIONAL REHABILITATION IN FLORIDA WORKERS' COMPENSATION: REHABILITANTS, SERVICES, COSTS, AND OUTCOMES. John A. Gardner. February 1988. WC-88-1.

VOCATIONAL REHABILITATION OUTCOMES: EVIDENCE FROM NEW YORK. John A. Gardner. December 1986. WC-86-1.

VOCATIONAL REHABILITATION IN WORKERS' COMPENSATION: ISSUES AND EVIDENCE. John A. Gardner. June 1985. S-85-1.

The publications listed are available at no charge to Institute members and at a modest charge to others. They can be obtained by sending a written request to

Publications Department
Workers Compensation Research Institute
245 First Street
Cambridge, Massachusetts 02141

