Approved ~~OWD~~ 3-23-90
Date

MINUTES OF THE House COMMITTEE ON Labor & Industry.

The meeting was called to order by Representative Arthur Douville at
Chairperson

9:05 a.m./~~p.m.~~ on March 16, 1990 in room 526-S of the Capitol.

All members were present except:
Representative Holmes - Excused
Representative Lane - Excused
Representative Lynch - Excused

Committee staff present:
Jerry Donaldson - Legislative Research Department
Jim Wilson - Revisor of Statutes' Office
Kay Johnson - Committee Secretary

Conferees appearing before the committee:
Robert Anderson - Director, Division of Workers Compensation

The meeting was called to order at 9:05 a.m. by Chairman Douville. The hearing continued on HB 3069.

HB 3069: Workers compensation act, administration thereof and benefits provided thereunder.

Director Anderson clarified that the correct wording should be "PPO allowance rates" instead of "PPO charge rates" in the balloon amendment he is proposing. He explained that Kansas needs a medical fee schedule because employers are buying data bases to audit medical bills and there will be no consistency unless there is some guidance from either the Director's office or the legislature. 44-510 allows the Director to make such determinations and he will do so if there is no legislation passed. Director Anderson addressed concerns with the bill:

1. Cost-shifting - it is a possiblity, but cost-shifting exists now. The proposed amendment covers all costs, not only physician charges. The fee schedule with utilization review will help control cost shifting.
2. Quality/Availability of care will decline - has not been a substantial factor in those states who have adopted a fee schedule. Where fee schedules have been too low there have been problems, but reasonable rates (for example Blue Cross/Blue Shield rates) will not create a problem in doctor participation. He stated that BC/BS rates are confidential, but they can be purchased. BC/BS currently has a 96% participation rate and there is no reason to believe that will be lower if workers compensation is included.

Representative Patrick questioned the cost to the Department of Human Resources to do utilization reviews. Director Anderson stated $483,000.00 which includes hiring 5 people. The committee could decide not to have DHR do the review and have it done by insurance companies.

Representative Hensley asked if the bill is not passed, will Director Anderson implement a fee schedule? He responded yes, he would determine reasonable fees so there will not be the litigation he expects if employers adopt their own, inconsistent fee quidelines. He is proposing the BC/BS rate level.

Representative Schauf expressed her concern that the bill clarifies things the Director shall do, but loopholes are provided to allow him to make other decisions. Also, the bill does not state that the Director has to adopt the advisory panel's recommendations. Director Anderson responded that some procedures are not covered by a fee schedule and the Director needs the ability to make determinations in those cases and he has no objection to inserting language stating the Director shall adopt the advisory panel's recommendations for the fee schedule rates.

3. Where will the savings come from? - utilization reviews will uncover overcharging and double billing. Also, exorbitant charges will be identified as a maximum rate will be established in the fee schedule.
4. Cost of vocational rehabilitation - this would be included in the fee schedule. Guidelines from states currently regulating vocational rehabilitation would be used.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor & Industry,

room 526-S, Statehouse, at 9:05 a.m./~~p.m.~~ on March 16, 1990

5. HMO's are not working - some are working, some are not. They are only as effective as they are administered. If a medical cap and utilization review are provided for, the system will work.
6. Is it a problem for the Director to set the fees? - yes, it is a problem now. The fees should be set by the medical providers, as long as they are reasonable. That is why the BC/BS rate level is suggested.
7. Bottom rate will rise to the maximum level - that is always a problem. The proposed amendment specifies the normal rate or the maximum rate in the fee schedule, whichever is less. He doesn't expect to see a mass flow of doctors charging the maximum rate. Utilization review gives you the ability to control that.

Chairman Douville stated that discussion on HB 3069 will continue next week.

HB 3036 - workers compensation, aggravation of injury by medical treatment compensable.

Chairman Douville stated there have been some problems relating to the Supreme Court vs. the Kansas Court of Appeals, therefore this bill was suggested. This bill makes it very specific that an employee injured through the negligence of a doctor will be entitled to workers compensation for the aggravated injury.

Representative O'Neal moved that HB 3036 be reported favorable for passage. Representative Buehler seconded the motion. The motion carried.

The following handouts were distributed to committee members: "Analysis of Workers Compensation Fund Receipts" from Representative Patrick, attachment #1 and "Fighting The High Cost Of Workers Compensation" from Chairman Douville, attachment #2.

The meeting adjourned at 9:55 a.m. The next meeting of the committee is scheduled for Tuesday, March 20, 1990 at 9:00 a.m. in room 526-S.

GUEST LIST

COMMITTEE: HOUSE LABOR & INDUSTRY

DATE: 03/16/90

NAME	ADDRESS	COMPANY/ORGANIZATION
John M. Ostrowski	Topeka	AFL-CIO
Charles Simrha	Topeka	KS Foundation for Medical Care
Terry Leatherman	Topeka	KCCI
S. B. Sifers	S. M. KS.	
Julie K. Sey, R	Topeka	Work Fitness Ctr of Topeka
Mary Vincent	Topeka	AGC of KS
Wayne Maichel	Top	Ks. AFL-CIO
Steve Neely	Topeka	Goodyear
Kelly Waldo	Topeka	KCA
Harold Riehm	Topeka	KAOM
Chip Wheelen	Topeka	Ks Medical Soc.
Art Brown	KCMO	KS Lumber dealers
Bill Curtis	Topeka	Ks. Assoc. of School Bds.
Robert A. Anderson	Topeka	Director of Worker's Comp

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Room 545-N -- Statehouse

Phone 296-3181

February 20, 1990

TO: Representative Kerry Patrick   Office No. 280-W

RE: Workers' Compensation Fund

Moneys received by the Workers' Compensation Fund are derived from worker compensation insurance carriers and self insureds, as well as a $4 million appropriation from the State General Fund. Other amounts received are the result of nondependent death receipts and miscellaneous reimbursements.

Enclosed you will find the breakdown as outlined by the Kansas Department of Insurance, which administers the Fund. I trust this information proves useful. If I may be of further assistance, do not hesitate to contact me.

Jerry Ann Donaldson
Principal Analyst

JAD/jl

Enclosure

House Labor & Industry
Attachment #1
03-16-90

MEMORANDUM

TO: Jerry Donaldson
Legislative Research Department

FROM: James K. Villamaria, Special Attorney
Workers' Compensation Fund

RE: Analysis of Workers' Compensation Fund Receipts and Legal Defense Fees from FY 1985 to present

DATE: February 16, 1990

Per your request the undersigned has compiled the following information concerning the above captioned matter.

Assessment receipts identified in the data below represent funds received by the Workers' Compensation Funds from workers' compensation insurance carriers and self-insureds in accordance with the provisions of K.S.A. 44-566 a(b). For fiscal years 1985 through 1990 the Workers' Compensation Fund, pursuant to K.S.A. 44-566 a(b) has received a $4,000,000.00 appropriation from the State General Fund. The remaining fund receipts consisted of non-dependent death receipts, pursuant to K.S.A. 44-570 and miscellaneous reimbursements, i.e., cancelled checks and recoveries through third-party subrogation cases. For FY 1990, the Workers' Compensation Fund assessed for $18,000,000.00. Not until the close of the fiscal year can a total of final collected receipts be known.

In regard to legal defense costs incurred over the past five years it is important to note that in FY 1987 the attorney fees represented 16.6% of the total expenditures from the Fund. Since FY 1987 this percentage has steadily decreased with the latest available year-end figures, FY 1989, shows a nominal 10.2% of total expenditures spent on legal fees. As a comparison, since FY 1987 the number of active cases involving the Fund has grown substantially from 2,955 to 4,170, an increase of 42% attorney fees paid in FY 1989 as compared to those paid in FY 1987 have grown only moderately from 1,953,605 to 2,356,858, an increase of 21%

We hope this information is of service to you. Should you wish to discuss anything contained herein feel free to contact the undersigned.

Very truly yours,

Fletcher Bell
Commissioner of Insurance

James K. Villamaria, Special Attorney
Workers' Compensation Fund

JKV:lw

KANSAS WORKERS' COMPENSATION FUND

Prepared by the Kansas Insurance Department

CASE LOAD SCHEDULED

Description	FY1989	FY1988	FY1987	FY 1986	FY 1985
Total Number of Impleadings	1,933	1,862	1,603	1,405	1,260
Total Number of Closed Cases	1,472	1,455	1,170	929	959

RECEIPTS ANALYSIS

	FY1989	(% of Total)	FY1988	(% of Total)	FY1987	(% of Total)	FY 1986	(% of Total)	FY 1985	(% of Total)
Assessment Receipts	$22,595,122.13	(84.14)	$17,983,751.16	(80.89)	$ 6,542,599.05	(55.75)	$1,644,419.98	(16.27%)	$7,850,887.88	(64.45%)
General Fund Entitlement	$ 4,000,000.00	(14.9)	$ 4,000,000.00	(17.99)	$ 4,000,000.00	(34.07)	4,000,000.00	(39.59%)	4,000,000.00	(32.84%)
Non-Dependent Death Receipts	$ 92,500.00	(.35)	$ 136,131.02	(.62)	$ 153,000.00	(1.30)	122,250.00	(1.21%)	148,000.00	(1.21%)
Miscellaneous Reimbursements	$ 147,187.64	(.55)	$ 92,052.31	(.42)	$ 127,846.50	(1.08)	63,530.40	(.63%)	18,232.95	(.15%)
TOTAL RECEIPTS	26,834,809.77		22,211,934.49		10,823,445.55		5,830,200.38		12,017,120.83	
Previous Year Carryover Balance	9,124.65	(.03)	16,552.56	(.07)	908,156.20	(7.73)	4,273,895.29	(42.30%)	164,206.60	(1.35%)
Previous Year Cancelled Checks	8,915.91	(.03)	3,241.52	(.01)	9,486.00	(.07)				
TOTAL FUNDS AVAILABLE	$26,852,850.33	(100.)	$22,231,728.57	(100.)	$11,741,087.75	(100.)	10,104,095.67	(100%)	12,181,327.43	(100%)

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TXTFMS

Legal Defense Costs

FY 85	$1,211,693.67
FY 86	2,497,818.13
FY 87	1,953,605.41
FY 88	2,330,799.05
FY 89	2,356,857.63

MARCH 1990

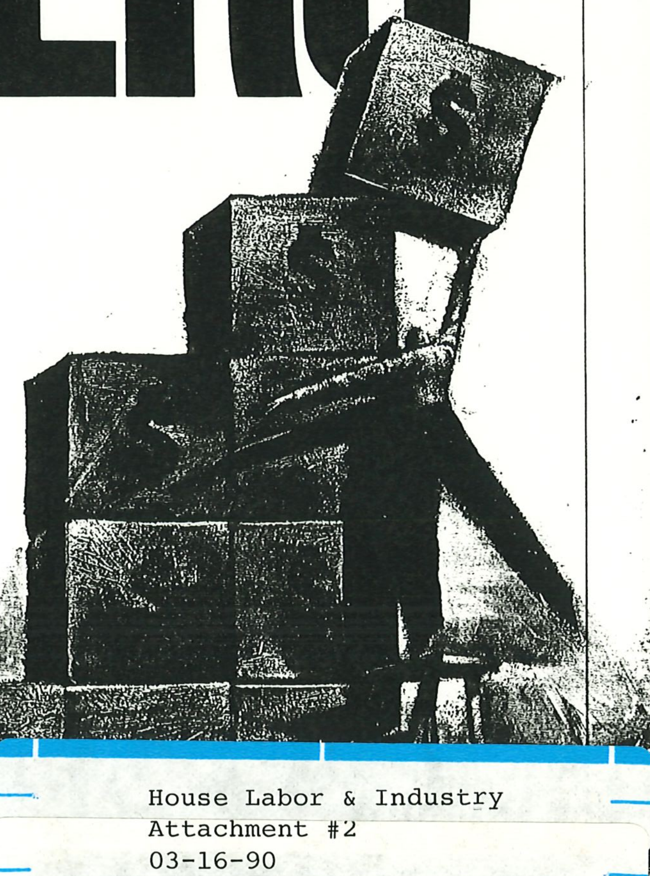
Nation's Business

Big Profits Despite Losing In The NBA

Tax Increases That Could Affect You

Franchising: Roaring Into The 1990s

FIGHTING THE HIGH COST OF WORKERS' COMP



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1767525BUEHF9286500137 JUN90
FRANK BUEHLER
P O BOX 317
CLAFLIN KS 67525

House Labor & Industry
Attachment #2
03-16-90

VER STORY

Fighting The High Cost Of Workers' Comp

By Roger Thompson

William Solburg is desperate. In good times, what he does best is build "hand-crafted" homes for the well-to-do who seek the seclusion and natural beauty of Florida's Panhandle. Lately, Solburg has begun to wonder whether he should change professions.

A dark cloud in the form of runaway costs for workers' compensation insurance has settled over Solburg's livelihood. Last year, he paid $22,000 for workers' compensation insurance—a sum that equaled about one-fourth of the total payroll for his small band of loyal employees. The premium was four times what he paid when he started his business in the mid-1970s, even though his business is nearly accident-free. This year he expects to pay over $30,000 as a result of a 37-percent rate hike approved by the state effective Jan. 1.

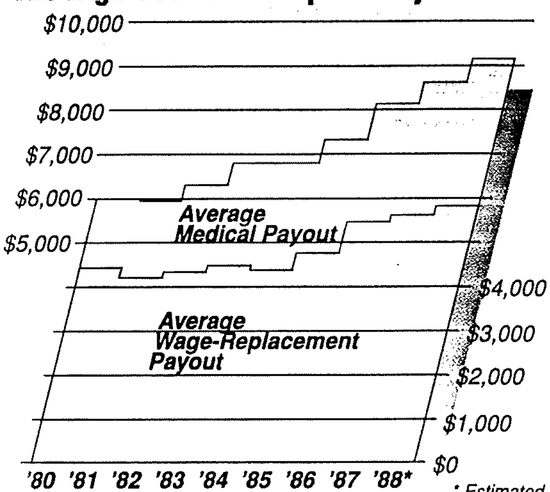
"For years, I have written a check and thought eventually it [workers' compensation costs] would level off and stabilize," says Solburg, whose business is based in Sopchoppy, 35 miles southwest of Tallahassee. "Now it's getting to the point of survival with me. When it reaches 30 percent of payroll, it's a crisis."

Florida is not the only state where small-business owners are feeling the impact of galloping workers' compensation costs—and fighting back. (See the box starting on Page 23.)

The amount that employers spend on workers' compensation insurance, which pays cash and medical benefits to workers for job-related injury or disease, has nearly doubled over the past decade. Employers, including federal and state governments, spent an estimated $45 billion on these state-mandated programs last year.

Nationwide, costs as a proportion of payroll subject to workers' compensation rose to a record 1.98 percent in 1986, the most recent figure. Some experts foresee workers' compensation premiums absorbing 3 to 5 percent of payroll in the next five years.

The High Cost Of Workplace Injuries



Source: National Council on Compensation Insurance Detailed Claim Information

CHARTS: SAM WARD

But national averages mask the problem faced by thousands of companies involved in potentially hazardous lines of work, such as construction, trucking, manufacturing, and outside service jobs. Rates for these companies already run in excess of 10 percent of payroll. Many, like Solburg's, pay much more.

Meanwhile, benefits paid by insurers to injured workers tripled in the 1980s because of increases in medical costs, cash benefits, and numbers of injuries and illnesses. In 1989, benefits exceeded $33 billion, according to estimates by the National Council on Compensation Insurance (NCCI), which represents workers' compensation insurers in rate making in most states.

To keep pace with sharply escalating benefit outlays, NCCI proposed rate increases in excess of 20 percent for 14 states in 1989. Sixteen states actually approved increases of over 10 percent.

"There is a crisis in workers' compensation costs, and we're seeing a tremendous upsurge in reform legislation," says Robin Obetz, a Columbus, Ohio, attorney who specializes in workers' compensation law. Obetz, who is chairman of the Council on Workers' Compensation of the U.S. Chamber of Commerce, says, "The push for change is basically coming from employers."

Typical reforms aim to reduce the exploding amount of litigation involved in what is supposed to be a no-fault system. Others include streamlining administrative functions, establishing medical-fee schedules, reducing overuse of benefits, and establishing payment guidelines for certain new types of stress and disease claims.

In a radical departure from current thinking, a California Senate committee has issued a report concluding that no amount of tinkering will cure what ails the workers' compensation system. It advocates a new system that would merge workers' compensation with employer-paid health insurance and other types of disability insurance. (See the box on Page 22.)

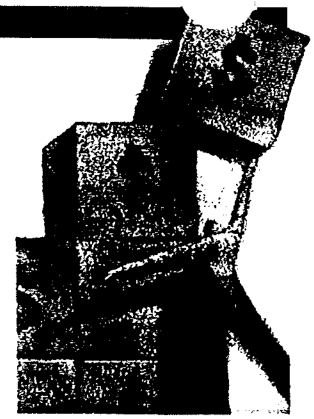
Until recently, higher workers' compensation costs were driven primarily by ever-increasing cash benefits for injured workers, says John F. Burton Jr., a Cornell University professor of labor economics and author of a bimonthly workers' compensation newsletter. "In the last few years, however, there has been a slowdown in cash-benefit growth, and medical expenses have become the driving force behind cost increases," says Burton.

Medical costs now account for almost 40 percent of workers' compensation benefit costs nationwide, up from 33 percent in 1980. From 1980 to 1988, the average medical cost for a worker who lost time on the job more than doubled, from $1,590 to $3,300, while the average cost for lost wages rose by only 31 percent, to $5,794, according to NCCI. (See the chart above.)

The average total cost of claims involving lost time at work will reach nearly $10,000 this year, compared with $6,000 in 1980, NCCI estimates.

Costs also are accelerating because

Small-business owners, stung by rapidly rising costs for workers' compensation insurance, are demanding reform.



injuries and illnesses are on the rise. The Labor Department reports that 4 percent of all full-time workers suffered from some form of injury or illness on the job in 1988. That is the highest level since 1980. Moreover, workers in 1988 spent more time out of work or doing limited work because of injury or illness than in any year since 1972, the first year the Bureau of Labor Statistics started gathering the data in its current form.

"States are paying more and paying longer for workers' compensation claims, and they are including more things for coverage," says Robert J. Will, president of Rate Consultants Inc., a Minneapolis workers' compensation consulting firm. Although there are plenty of targets for the reform-minded, don't wait for lawmakers to rescue you from rising costs, Will advises. Self-help can be the quickest and surest way to savings. (See "How To Control Workers' Comp," on Page 26.)

For their part, insurance companies say that they need hefty rate increases to keep up with rising costs. Despite substantial rate increases over the past four years, NCCI estimates that insurers nationwide in 1989 paid out \$1.17 in workers' compensation benefits for every \$1 in premiums, producing an operating loss of more than \$1 billion.

In some states, losses are far higher than the national average because insurance premiums have not kept pace with rapidly rising claims costs. In 1988, Louisiana insurers paid out an estimated \$1.60 for every \$1 in premiums. Insurers paid out \$1.50 per \$1 in premiums in Florida and Rhode Island, \$1.45 in Maine, and \$1.25 in Texas.

Because they can't make a profit, many insurers are getting out of workers' compensation. This has thrown a

Rising costs *for workers' comp could reach "the point of survival" for his firm, says builder William Solburg, left, checking progress on one of his "hand-crafted" homes.*

PHOTO: T. MICHAEL KEZA

record number of businesses into high-cost assigned-risk pools. An assigned-risk pool is established by a state and serves as the market of last resort for risk-prone companies unable to secure workers' compensation insurance in the voluntary market. Insurance for such risks is provided by private companies but at rates higher than those for ordinary risks.

Roughly 20 percent of all premium dollars flowing into workers' compensation in 1988 went to high-risk pools, up from 5.5 percent in 1984, the low point in the 1980s. In Maine, where the voluntary insurance market practically collapsed in 1987, the assigned-risk pool collected 70 percent of all premium dollars in 1988.

Small employers, especially those in hazardous classifications, are most affected by this trend because they are the least attractive insurance risks. Many of these employers are forced into risk pools simply because they are small—not because they are bad risks.

"Nobody wants to work with a business with premiums of less than $25,000 a year," says Norman Peterson, president of Norman Peterson and Associates, an Ashland, Ore., workers' compensation consulting company. "Insurance companies call them nonserviceable accounts. What they are saying is that for your small amount of premium, they can't afford to talk to you."

Insurers characterize themselves as victims of a highly regulated system that is out of their control. Legislatures set the levels of benefits that are paid to injured workers, and, in most states, insurance commissioners regulate the rates that insurers may charge to pay those benefits. Several states have deregulated the workers' compensation industry and allow carriers to set their own rates.

As costs rise, the benefits and rate-making processes have become more politically charged. Employers in many states are demanding greater scrutiny of insurance prices and their underlying costs.

Says NCCI in its *1989 Issues Report*: "If current trends continue, the next several years will be traumatic for workers' compensation. Unless something is done to moderate the underlying costs, the pressure to increase insurance prices will continue unabated."

The problems facing workers' compensation are deeply rooted in its long history. The first laws to withstand legal challenge were enacted in 1911, predating all other social or employer-paid programs to assist injured or sick workers, such as Social Security, health insurance, and disability insurance.

As the nation made a rapid transition from an agricultural to an industrial economy, workers' compensation arose as a compromise between labor and management to handle the problem of liability for workplace injury.

Before workers' compensation, injured employees typically were not able to receive any benefits because the courts held that they had voluntarily assumed the risk of hazardous work. Nonetheless, a growing number of employees hurt in industrial accidents sued for damages, forcing employers into costly legal battles.

Workers' compensation called a truce to these bitter skirmishes by creating the nation's first no-fault insurance system. Under it, workers would receive guaranteed compensation for injury at work, and employers would be sheltered from unlimited liability. As part of the deal, employers agreed to shoulder the total cost of workers' compensation premiums. Once this bargain was struck, workers' compensation plans spread rapidly. All but eight states had systems in place by 1920.

Over the years, however, workers' compensation deteriorated as maximum weekly benefits fell far below rising wage levels. By the late 1960s, many state programs paid lower benefits in inflation-adjusted dollars than in 1940, according to Cornell's Burton.

Deepening concern over the health of the system prompted Congress in 1970 to create a National Commission on State Workmen's Compensation Laws. Its 1972 report concluded that state laws were "in general inadequate and inequitable." The commission made 84 recommendations for improvements, 19 of which it designated as "essential." Most of those were aimed at broadening coverage and raising benefits.

In an effort to persuade states to take action, the commission urged Congress to impose national standards if the states did not act on its key recommendations by the mid-1970s.

Congress never intervened, largely because most states heeded the commission's advice to boost benefit levels. One key recommendation by the panel called for workers with short-term disabling injuries—the most common type of payment—to receive at least 100 percent of the state's average weekly wage. Most states now exceed that recommendation, although 14, including Texas, New York, and California, still have maximums that are 75 percent or less of the average weekly wage. (See the box on Page 25.)

Ironically, an important goal of the national commission, the desire to reduce interstate differences in benefit

California's Radical Proposal

A California Senate committee recently released a report advocating a state-mandated system of insurance for injury and illness that would pay benefits to employees regardless of whether the condition occurred on the job.

The report's goal is to improve care for injured and sick workers by eliminating overlapping programs and streamlining administration. It states:

"Entirely too much is being expended in time and money on destructive contests which attempt to tie disability to work and to determine the extent of a disability related to occupation.

"Since lifestyles, pre-existing disease, and related disabilities are burdening the workers' compensation system, the remedy is to create a truly no-fault insurance system for all disabilities which occur in the labor force and which temporarily or permanently impair the ability to stay on the job."

Unlike workers' comp, which is entirely employer-paid, financing for medical care and permanent disability would be divided between employers and employees. Financial responsibility for temporary disability and rehabilitation would fall on the state and employers.

The report was released last fall by the Senate Committee on Industrial Relations. Its chairman, Democratic Sen. Bill Green of Los Angeles, plans to appoint an advisory committee to evaluate its recommendations.

Eric J. Oxfeld, counsel for the American Insurance Association in Washington, D.C., says insurers "recognize the need for closer examination" of issues raised by the report but warns of "complications." A major one is centered on the foundation of the workers' compensation system—the legal tradeoff that shields employers from negligence lawsuits because they pay the total costs of the no-fault workers' comp system. The California proposal would have employees help finance medical and permanent-disability benefits. "If workers participate in paying," Oxfeld asks, "will they still be willing to give up the right to sue?"

Copies of the 44-page report are available for $5.95 apiece. Make a check payble to the State of California and send it to the Joint Publications Office, State Capitol, Box 942849, Sacramento, Calif. 94249.

levels, "has only been aggravated as states proceed at different rates of reform," Burton says. In California, where workers' comp costs are among the highest, employers pay on average over $12 a week per employee in workers' compensation premiums, while in Indiana, the state with the lowest such costs, employers pay less than $3.

Such cost differentials continue to figure prominently in the minds of lawmakers and business owners. Legislators typically maintain that states are competing for employers. Accordingly, it is important to maintain an attractive business climate that holds down the cost of creating jobs. This means keeping a tight rein on workers' comp costs for fear that employers will flee to lower-cost states or bypass the state in the first place. That's the message Ernest J. Schmidt delivered to the Texas Legislature last year when he testified on behalf of proposed cost-cutting reforms in that state's system.

PHOTO: ©BOB DAEMMRICH

Ernest Schmidt's *firm pays about 15 times more for workers' comp in Texas than in North Carolina.*

Schmidt's company, Glastron Inc., in New Braunfels, Texas, manufactures recreational fiberglass power boats and employs about 140 workers. Because the company also operates an almost identical plant in North Carolina, he could clearly demonstrate the cost gap between the two states' programs. Surprisingly, 93 percent of the company's costs for workers' compensation over the previous two years were incurred by the Texas facility, even though the North Carolina plant tallied more workers' compensation claims. Workers' comp added $196.08 to the price of each boat built in Texas and only $12.86 in North Carolina.

"The difference," says Schmidt, "is that the North Carolina workers' compensation law is designed to rehabilitate workers and get them back into the workplace, whereas the Texas law encourages workers to stay home longer and not go back to work."

Experts generally agree that cost differences among states are driven less by benefit levels than by administrative systems that ultimately prevent quick settlement of claims. "I've always said that administration is nine-tenths of workers' compensation law," says Columbus lawyer Obetz. "Most of the claimants who hire a lawyer don't do so because of the legal issues involved, but because they need to expedite the system to get bills paid. The backlog of contested workers' compensation bills in Ohio exceeds $100 million."

While some states encourage litiga-

Workers' Comp Trouble Spots

Maine

Workers' compensation reforms enacted by the Maine Legislature during an emergency 1987 session helped insurers begin to recover from a string of disastrous losses but made life even tougher for employers. Since then, average rates have soared 60 percent; a proposed 26-percent hike is pending.

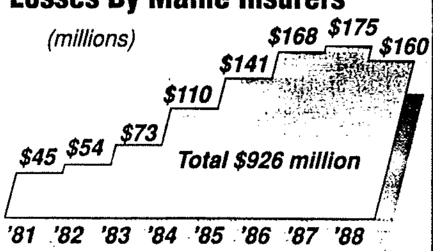
"There are hundreds of businessmen in Maine who are fed up with the current system," says Steven Hoxsie, controller for Thomas Moser Cabinet Makers Inc., in Auburn. The firm recently was forced to change insurance carriers to avoid a 50-percent increase—a $50,000 hike—in its premiums. That experience has prompted Hoxsie to devote about half of his work time lately to organizing an employers' revolt to bring about cost-cutting reforms. "It will be a long and painful battle, but we'll see it through to the end," he says.

Despite zooming rates, over 80 percent of Maine's employers must obtain their workers' comp insurance through the assigned-risk pool. The risk plan ballooned in 1987 as insurers abruptly fled the increasingly unprofitable workers' comp market. Up to that time, they had lost $750 million on the Maine system.

Maine's problems lay partially in legislation passed in the 1970s that granted lifetime escalating benefits for permanent partial disabilities. That provision was eliminated during the Legislature's 1987 emergency session.

But the most important reform that year, says Hoxsie, permitted the insurance companies to raise rates to make a profit. "That sure helped the insurance companies, but it killed employers." He maintains that the system's biggest problem now is the use of the system by workers' comp commissioners to provide health care for the uninsured and cash benefits for the unemployed.

Cumulative Workers' Comp Losses By Maine Insurers



Source: National Council on Compensation Insurance

Texas

It took two special sessions of the Legislature, but Texas lawmakers last December finally enacted a major workers' compensation reform package, handing the state's trial lawyers a stunning political defeat.

The lawyers' stake in what was supposed to be a no-fault system had grown enormously in recent years, as more than half of all cases involved legal disputes.

Business groups across Texas rallied behind Gov. Bill Clements' vow to call the Legislature into special session as many times as necessary to enact a cost-saving package of reforms.

"All Texas employers wanted was to make the system fair by giving the money to the injured worker, not [to] lawyers and doctors and hospitals," says Ernest J. Schmidt, president of Glastron Inc., a power-boat manufacturer in New Braunfels, Texas.

Workers' compensation costs in Texas have surged 123 percent since 1985 and now are among the highest in the nation, yet injured workers receive benefits lower than those in 46 states. Even with soaring rates, Texas insurers still lost $580 million in 1988.

The reform package is expected to reduce cost increases primarily by reducing litigation and doctor-shopping tion by the nature of their workers' compensation process, others offer options that are designed to minimize legal friction. For example, Wisconsin's workers' compensation system is widely known for its low levels of litigation.

A study by the Workers Compensation Research Institute, a nonprofit, nonpartisan research organization based in Cambridge, Mass., concluded that four administrative features of the Wisconsin system explain its smooth operation:

- The system requires minimum payments to injured workers. These voluntary payments often resolve claims.
- The state takes an active role in tracking claims and encouraging voluntary payment of benefits. It computes the amounts due to injured workers and expects insurance companies to pay accordingly or show why they won't pay.
- The state relies heavily on the judgment of the physician who treats the worker, and it uses the physician's rating of disability as the basis for computing benefits.
- When a case is disputed, state law requires that the administrative hearing officer select a benefit level proposed by one of the two parties in the case, rather than split the difference between the two levels. The effect limits the range of disagreement and holds down costs.

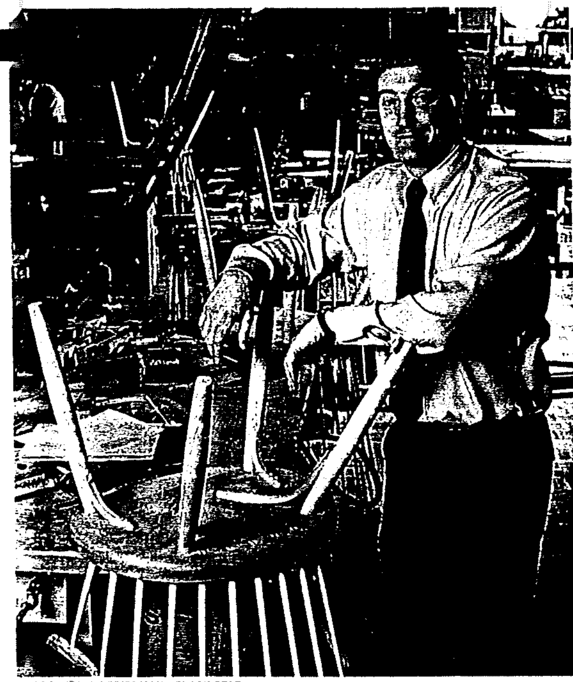


PHOTO: ©RICK FRIEDMAN—BLACK STAR

Steven Hoxsie *is organizing employers to push for major reforms of Maine's workers' comp law.*

Under the Wisconsin system, the study found, lawyers were hired to help in one-third of the claims involving permanent partial disability—the most frequently litigated type of claim. But only 6 percent of those claims with lawyers in the picture resulted in disputes requiring adjudication. By contrast, in Maryland and New Jersey, two states without any of Wisconsin's administrative features, nearly all claimants hired lawyers, and some type of adversarial action subsequently was taken in most of the cases—63 percent in Maryland and 79 percent in New Jersey.

While litigation may be reduced by administrative design changes, factors underlying the rapid rise of worker's compensation medical-care expenses are more intractable. Under workers' compensation laws, medical care is an entitlement, and employers must pay the entire cost. This puts various medical-cost-containment strategies, such as employee copayments and deductibles, off limits. Moreover, because workers' compensation reimburses hospitals and physicians for the

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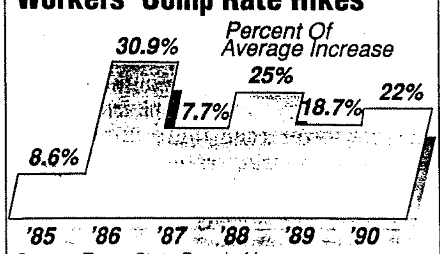
by injured workers. The new law, most of which takes effect Jan. 1, 1991, creates an administrative appeal system that will replace the current practice of taking disputes directly to court. Workers will be permitted to switch doctors only with the approval of the insurer or of the newly created, six-member Texas Workers' Compensation Commission.

The law also raises the weekly disability-benefit payments to injured workers, specifies benefit payments based on a rating schedule rather than relying on inflated loss-of-earnings calculations, and sets up incentives for improved workplace safety.

Declared Gov. Clements: "No longer will jobs and new investment go to other states because of our workers' compensation laws."

The Steady Pace Of Texas Workers' Comp Rate Hikes



Source: Texas State Board of Insurance

Florida

Florida employers are in an uproar over the average 36.7-percent increase in workers' compensation rates, which took effect Jan. 1. It followed a 25.8-percent average increase just a year earlier.

The rate-hike news is even worse for Florida's 90,000 employers—mostly small companies—who buy their insurance through the state's assigned-risk pool. They were hit with a rate hike averaging 63.3 percent.

Says Todd W. Thomas, president of the Lakeland-based Florida Employers Safety Association: "This is simply too big an increase too fast." Some small companies say they will be forced to "go off the books" by underreporting wages on which workers' comp premiums are calculated, Thomas adds.

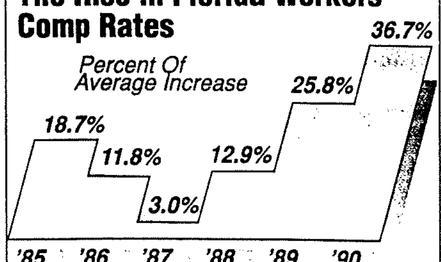
Florida insurers actually sought an average 58.4-percent rate hike to help offset their mounting losses. In 1988, they paid out $1.50 in benefits for every $1 in premiums, one of the worst loss records in the nation that year.

The rate-hike controversy prompted Gov. Bob Martinez to appoint a 32-member Workers' Compensation Oversight Board to develop cost-cutting proposals. The crisis atmosphere generated by the latest rate increase may force the Legislature to take action this year, rather than 1991, when the current workers' comp law expires under the state's sunset provisions.

Prime targets for reform include the state's generous wage-loss system for calculating benefits for injured workers, excessive litigation, and rising health-care costs.

While most states pay permanently disabled workers on the basis of an awards schedule or a subjective estimate of lost earnings capacity, Florida's wage-loss system calculates payments by comparing wages before the injury to actual wages earned afterward. Critics allege that the system allows some workers to collect even when their injury is not the reason for their inability to find a job. In such cases, the critics say, the system functions like

The Rise in Florida Workers' Comp Rates



Source: Florida Department of Insurance

full cost of treatment, they have little incentive to keep costs under control.

For insurers, about the only readily available cost-containment strategies involve case management, bill audits, and utilization review. While these techniques have been used successfully by health-care insurers, workers' compensation is sold by property/casualty insurers who traditionally have been more adept at risk management than medical-cost containment.

After a slow start, however, "the vast majority of [workers' compensation] insurance companies are currently employing these cost-containment techniques," says David Appel, an economist with Milliman & Robertson Inc., a New York actuarial consulting firm.

Other cost-cutting strategies are not available to insurers in some states. For example, only 20 states have adopted fee schedules for medical reimbursements. "Fee schedules in combination with utilization review and case management can produce significant cost savings," says Appel.

Approximately half the states do not give employers authority to choose the physician who will treat an injured worker. Without this option, employers find it difficult to negotiate cost-cutting group medical rates with doctors who form Preferred Provider Organizations (PPOs) or Health Maintenance Organizations (HMOs).

The search for effective ways to contain medical costs grows more urgent as workers' compensation struggles to absorb relatively new types of claims involving work-related diseases, repetitive-motion injuries, and stress-induced mental disorders. Not surprisingly, these areas are frequently targets of legislative-reform efforts.

Occupational diseases, such as job-related lung disorders, now account for about 1 percent of all workers' compensation claims. The Labor Department recorded 241,000 claims in 1988, up 25 percent from 1987. The department attributed the sharp rise in part to better record keeping.

The insurance industry expects the number of occupational-disease claims to rise significantly during the 1990s, as medical research more clearly links illnesses with workplace exposure to harmful substances. Disease cases also are fraught with legal conflict over the issue of causality. Some diseases don't show up for years after exposure. Others are aggravated by lifestyle choices, such as smoking or lack of exercise. In cases where it is difficult to assign re-

Continued on Page 28

unemployment insurance that can continue for up to 10 years.

Louisiana

After years of struggling to control runaway costs, Louisiana lawmakers last year enacted a "tough, tough bill" designed to rid the workers' compensation system of numerous abuses, says Rep. Garey Forster, president of a small direct-mail and printing business in New Orleans.

"People were playing the system for everything they could get out of it," says Forster. In the past, for example, state courts had ruled that any heart attack on the job was compensable. Workers won benefits for injuries resulting from horseplay and even Russian roulette. Prisoners received disability checks in jail. The new law closes all these loopholes, says Forster.

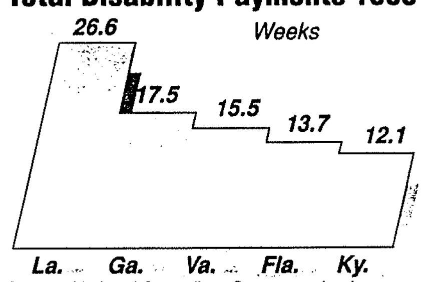
The system in recent years has also suffered from an unusually high level of litigation attributed to an administrative structure that encouraged parties to take disputes to court. In 1988, the Louisiana Legislature adopted an administrative system designed to resolve disputes without court involvement. However, an ongoing constitutional challenge delayed implementation of the system until this past Jan. 1.

Extended payments for temporary total disability—Louisiana's were longer than any other Southern state's—fueled the soaring costs of the Louisiana workers' compensation system. State courts created this situation by ruling that payments could continue beyond the point when an injured person had recovered and could return to work. The 1989 reforms put a stop to this practice.

As has happened in many other states, insurance rates in recent years were not allowed to increase at the pace of escalating benefit payouts. As a result, 55 percent of Louisiana's businesses have been thrown into the assigned-risk pool.

Nation's Business *intern Susana Dancy contributed to this article.*

Total Disability Payments 1988



Source: National Council on Compensation Insurance

Disability Benefits—State Listings

The first column shows the maximum weekly benefit **(MWB)** *to workers whose disability is total but temporary. The second column shows that payment as a percentage of the state's average weekly wage* **(WW%)**. *Figures are for 1988.*

State	MWB	WW%
Iowa	$684.00	207%
New Hampshire	600.00	162
Vermont	544.00	161
Connecticut	671.00	144
Maine	471.83	143
Illinois	604.73	142
Alaska	700.00	130
North Carolina	376.00	110
Oregon	388.99	108
Virginia	393.00	105
Alabama	357.98	104
Massachusetts	444.21	103
Montana	318.00	103
Pennsylvania	399.00	103
South Dakota	289.00	103
West Virginia	367.89	103
Dist. Columbia	513.00	102
Florida	362.00	102
Maryland	407.00	102
North Dakota	313.00	102
Ohio	400.00	102
South Carolina	334.87	102
Washington	389.32	102
Hawaii	358.00	101
Utah	347.00	101
Kentucky	343.02	100
Minnesota	391.00	100
Rhode Island	360.00	100
Wisconsin	363.00	100
Nevada	368.82	99
Wyoming	354.00	99
Colorado	371.28	94
Michigan	409.00	92
New Mexico	283.70	85
Missouri	289.75	78
Nebraska	245.00	78
Kansas	271.00	77
Louisiana	267.00	75
New Jersey	342.00	75
Arizona	276.15	74
Indiana	274.00	73
Tennessee	252.00	72
Delaware	280.64	71
Mississippi	206.60	68
Arkansas	209.08	67
Oklahoma	231.00	66
New York	300.00	63
Texas	238.00	61
Idaho	193.80	60
California	224.00	51
Georgia	175.00	47

Source: U.S. Department of Labor, based on laws in effect on July 1, 1988.

How To Control Workers' Comp

Robert J. Will didn't set out to write a cost-cutting guide to workers' compensation. He founded Rate Consultants Inc. in Minneapolis in 1983 to help manufacturers save money on their utility bills. Along the way, he found his clients grumbling more about workers' comp costs than about oil and electricity prices.

After five years of researching workers' compensation, Will wrote a manual that packaged many cost-saving ideas gleaned from his clients' experiences with workers' comp. Its immediate success created a new specialty for RCI. The manual, *How To Control Your Work Comp Insurance Costs*, has sold more than 10,000 copies. Now in its third edition, it costs $295. The manual contains scores of pointers; here are the "Top 10" selected by Will:

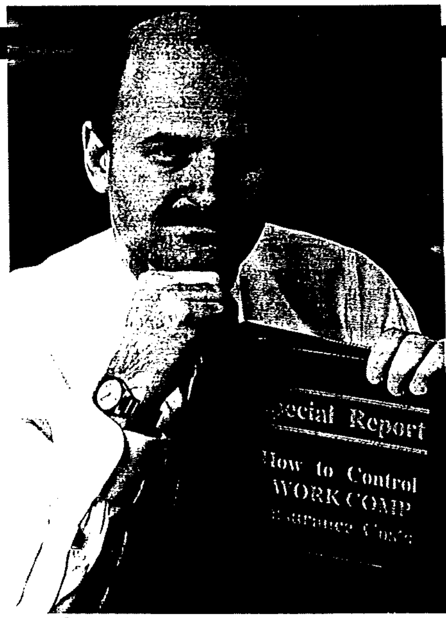


PHOTO: ©STEVE WOIT

Firms can cut *their own workers' comp costs, Robert J. Will has shown.*

The Employee

Maintain an effective safety program. Statistics indicate that people—not workplace conditions—cause 80 percent of all injuries. Carelessness, daydreaming, bad attitudes, problems at home, and physical ailments are all root problems that can lead to injuries.

Don't let people continue doing things in an unsafe manner. One company changed the attitudes of its entire staff toward safety overnight with one little idea. Next to the time clock it hung a pair of safety glasses with a drill bit lodged in the right lens. Below the glasses was the true story of how one worker had just put the glasses on when the drill bit broke and flew toward his face.

Get injured workers back to work. The sooner a person is back at work, the less you pay and the happier that person will be. Analyze your facility, and decide whether there are any jobs that could be done by an injured worker. Also, designate someone as the company representative to assist injured employees. Above all, tell the employee that you are anxious to have him back on the job as soon as possible.

Keep employees happy. People with bad attitudes toward your company and its safety rules are more likely to get hurt than those who are satisfied. Use absenteeism to anticipate injuries. Research shows a definite connection between absenteeism and injury.

Pay premiums only on straight time. In most states you don't have to pay premiums on extras such as overtime, vacation pay, paid holidays, sick leave, or employer contributions to an employee savings plan. Make sure that whoever does your accounting is aware of the laws in your state.

Classification And Claims

Change rate classes for some employees. Ask your insurance agent to review whether any of your workers might fall within a less expensive rate class. For example, a company changed the rate class of four telephone sales agents from outside salesman to clerical and saved $1,000—40 percent of the firm's workers' comp cost. Job class dictates the premium rate you will pay. Costs vary with risks and range from as little as 0.3 percent of payroll for clerical staff to 200 percent of payroll for window washers.

While most workers probably are classified correctly, improper rate classes can cost a bundle.

Pay small claims yourself. This works just like a deductible on a car-insurance policy. Since many injuries are small, you can pay a little extra now in exchange for a lot lower premium later. There is no apparent reason why this isn't standard on workers' comp policies. It allows employers to self-insure some of their risk, and that can produce big savings on workers' comp premiums. However, report all injuries to your insurer just in case that small claim you paid for suddenly develops expensive complications.

Ask for a premium discount. If an underwriter has reason to believe your company is safer than average, in some states he can give you a "schedule rating" discount of up to 25 percent. Not all states allow schedule ratings.

Even if you have had trouble in the past with too many injuries, making changes that should dramatically reduce injuries may convince your insurer to offer a discount anyway, because he now has good reason to believe your safety record will be better.

Find and correct clerical errors. Go over the loss statement provided by your insurer to detect any errors. Check for incorrect loss-reserve amounts, injuries for people who don't work for you, and claims that have been settled. Review your loss statement at least every year.

Insurance Companies And Agents

Dealing with insurance agents. Get bids from several different agents each year. Negotiate with gusto to make sure you get each one's best price and service offer. Don't accept a bid from an agent who won't give you the level of service you want.

Change insurance companies. Sometimes you have to change insurance companies to cut your costs. Let your agent know that you are shopping around. Prices for the same coverage may vary by as much as 40 percent.

For further information, contact Rate Consultants Inc., 505 North Highway 169, Suite 700, Plymouth, Minn. 55441; 1-800-848-8030, extension 20.

For More Information

The Workers Compensation Research Institute is a nonpartisan organization that publishes numerous studies on issues relating to workers' compensation. Contact the Publications Department, Workers Compensation Research Institute, 245 First St., Cambridge, Mass. 02142.

The U.S. Chamber of Commerce publishes an annual *Analysis of Workers Compensation Laws.* The 1990 edition, publication No. 0196, can be obtained for $15 by sending a check or money order—payable to the U.S. Chamber of Commerce—to Carol Meyer, Publications Coordinator, U.S. Chamber of Commerce, 1615 H Street, N.W., Washington, D.C. 20062.

LRP Publications has several up-to-date books on various workers' comp issues. For example, *Workers Compensation Insurance and Law Practice, The Next Generation* offers a comprehensive evaluation of current trends and dilemmas. Contact the publisher at 1035 Camphill Road, P.O. Box 579, Fort Washington, Pa., 19034.

COVER STORY

Continued from Page 25

sponsibility for the origin of disease, some states have opted for a statutory presumption that the claimant's disease was work-related.

Among all workplace illnesses, the fastest-growing category is a repetitive-motion injury called carpal tunnel syndrome, a disorder that affects the hand and wrist and can require surgery. Once limited primarily to meat packers and poultry workers, carpal tunnel syndrome has become a common complaint among workers using computers and computerized equipment, such as supermarket price scanners. Repetitive-motion disorders accounted for 48 percent of all workplace illnesses in 1988, up from 18 percent in 1981.

Also on the rise are claims alleging stress-related disability. Such claims now account for only 0.1 percent of all workers' compensation cases, according to NCCI, but they are expected to increase through the 1990s as workers become more aware of their ability to file for job-related stress disability. In California, often a trendsetter, 70,000 stress claims were filed in 1986, representing 17 percent of all lost-time injuries.

Because of the potential for fraud and costly litigation over stress-related cases, many states have moved to define and circumscribe the situations in which workers are awarded stress-related benefits. In light of this trend, experts disagree over whether stress claims will explode in numbers over the 1990s.

What everyone can agree upon is that workers' compensation will continue to be at the forefront of legislative agendas throughout the new decade.

Forty-one states enacted more than 150 workers' compensation amendments in 1988-89. The most common change boosted benefit levels. Few states tackled the contentious issues of excessive litigation, lack of medical-cost controls, and inefficient administration of benefits. That leaves plenty of room for future reform efforts.

Meanwhile, in those states where workers' compensation rates have risen most sharply in recent years, many small employers feel they can't wait much longer for lawmakers to act.

Says Florida builder William Solburg: "In the long run, I'll be looking at laying people off to cut my workers' compensation costs. And I won't be able to afford raises for those who are left. The system really needs to be revamped." NB

To order reprints of this article, see Page 82.