



# Workers' Compensation

Regulation and Multi-Jurisdictional Claims  
Handling – Back To Basics  
What Is Our Mission?



# Speaker

Michael J. Marsh, RPA, CPIA, CIA, CIU



- President – Midland Claims Service, Inc & Industrial Injury Claims®
  - Info Systems Report and AI Design and Implementation
  - Architect of Humanizing The WC Claim Process
  - Claims Process Expert for systems design and litigation
  - Large / Complex Loss Resolution Manager
- 35,000 WC Claims Managed in MT w/ Incurred Losses > \$160M



# Speaker

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- President elect National Association of Independent Insurance Adjusters ([www.naiia.com](http://www.naiia.com))
- Sec/Treasurer – MT Self-Insurers Association
- Board – Montana State Fund
- Board – Big Sky Economic Development Corp
- Public Speaker – National Council of Self-Insurers, National Comp, A.M. Best



# What Is Our Mission?



## **work-ers' compensation** (wûr'kərz)

n. Payments required by law to be made to an employee who is injured or disabled in connection with work.

*The American Heritage® Dictionary of the English Language, Fourth Edition*

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# Early 20<sup>th</sup> Century

## **“Industrial” injuries in the early 20th century**

- Significant increase in “employment”; city living, away from working the land, fishing and subsistence type living
- Railroad, Manufacturing and Mining occupations
- Medical care was primitive by today’s standards, many ‘insignificant’ injuries led to permanent impairments and death, loss of eye sight, hearing and limbs common
- Most workplaces did NOT offer medical coverage or insurance of any kind



# What Happened?

## **Challenges for workers injured at work to seek redress in the early 1900s**

- Impact of the Industrial Revolution; move away from a farm-based economy
- Over 7,000 work related deaths in 1907 in just two of the “new” occupations (factories)
- Remedies in the event of a work related death or injury: seeking charity and/or law suit against employer
- Results left many families destitute, without the primary wage earner and no income to assist paying the medical bills and lost income arising out of the injury / death



# Remedies

## Litigation and burden of proof

- In the early 20th century, the sole legal remedy for an injured worker was to sue the employer for negligence
- The burden of proof was on the worker to prove the employer's negligence
- Obstacles to recovery were:
  1. Contributory negligence rules (significant employee contributory negligence could bar any recovery),
  2. Fellow-servant rule (recovery not allowed if injury caused or contributed to by a fellow worker, and
  3. Assumption of risk (recovery barred if the injury was due to an inherent hazard to which the employee knew or should have known existed)
- Most workplace injuries led to no financial assistance of any kind



# The Issues

## Employee Issues:

- Injuries in many cases led to physical and financial ruin;
- Suing the employer rarely led to a recovery, and if it did, years passed before payments were made (appeals, etc);
- After injury, workers became unemployable
  - Physically damaged merchandise in manual labor environment
  - Financially destitute
  - Emotional damage incalculable





# The Issues

## Employer Issues:

- Legal process disruptive and costly
- Growth of union activity exacerbated by discontented workers
- Financial implications if a trial was lost were devastating
- Costs and time associated with replacing injured workers



# The Issues

## Societal Issues:

- Destitute families and increasing reliance upon social welfare type programs
- Substantial increase in metropolitan residents working in manufacturing and labor jobs (“voters”)
- Unemployable injured workers (“voters”)
- Lowered overall economic productivity caused by necessity to fill positions vacated by experienced injured workers with inexperienced labor



# The Solution

## Workmen's Compensation

- Creation of a balanced system that would allow for “guaranteed” compensation on a no-fault basis to injured workers while providing for more predictable costs associated with workplace injuries for employers
- Concept of “quid pro quo”
  - 1. (*italics*) *Latin*. one thing in return for another



# The Solution

- Montana's first workers' compensation law passed in 1909
- Montana's Supreme Court, along with a number of other states, ruled the first "mandatory" workman's compensation laws unconstitutional shortly thereafter
- 1910 Chicago conference on workman's compensation, drafting of Uniform Workmen's Compensation Law, which became the blueprint for the creation of nearly all of the various state-based workers' compensation systems
- The blueprint "Uniform" law was then used in the creation and amendment of laws in all but 8 states by 1920



# 1920 - 1970

- 50 years of state-based Workmen's Compensation existed in all states in the U.S.
- Laws in each state continued to be different from one another, along with benefit types, benefit amounts and coverage thresholds
- A variety of Federal WC systems were put into place for:
  - Longshore and Harbor Workers
  - Railroad Workers
  - Federal Employees
- By 1970, the complexity and costs of these systems were high and increasing
- Occupational Safety and Health Act of 1970 ("OSHA")



# OSHA



Congress, in the Occupational Safety and Health Act of 1970 declared that: “the vast majority of American workers and their families are dependent on workmen’s compensation for their basic economic security in the event such workers suffer disabling injury or death in the course of their employment; and that the full protection of American workers from job-related injury or death requires an adequate, prompt, and equitable system of workmen’s compensation as well as an effective program of occupational health and safety regulation....



# OSHA



....in recent years serious questions have been raised concerning the fairness and adequacy of present workmen's compensation laws in the light of the growth of the economy, the changing nature of the labor force, increases in medical knowledge, changes in the hazards associated with various types of employment, new technology creating new risks to health and safety, and increases in the general level of wages and the cost of living.

*Occupational Safety and Health Act of 1970*



# 1972 Study

Congress established the National Commission on State Workmen's Compensation Laws

- ...“undertake a comprehensive study and evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compensation”...
- Required that the Commission file a final report with Congress and President Nixon containing a “...detailed statement of the finds and conclusions of the Commission, together with such recommendations as it deems advisable...” by July 31, 1971





# 1972 Study

## **1972 National Commission on State Workmen's Compensation Laws**

- June 15, 1971, 20 member commission appointed by the President
- Mission to study and evaluate workers' compensation in 56 jurisdictions and 16 specific topics
- Working period approximately one year
- Multiple meetings held in addition to nine public hearings in Washington, Chicago, Boston, San Francisco, Dallas, Atlanta, and New York
- Conclusion that the over 50 years of development has led to a workers' compensation system throughout the United States that plays a "substantial and vital role" in contemporary America
- Full Text In PDF format of the National Commission Report is at:

<https://workerscompresources.com/national-commission-report/>



# 1972 Study

INDUSTRIAL  
INJURY  
CLAIMS

## Commission Report filed July 31, 1972

- John F. Burton, Jr (Chairman)
- 20 Commission members
- Staff of 36
- 31 “contractors” including A.M. Best, NCCI, US Commerce Dept, and a variety of universities from across the eastern U.S.
- Report included 3 major parts:
  - Objectives of Modern WC System
  - Evaluation of Current System
  - The Future of WC and Recommendations



NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS  
1825 K STREET, N. W.  
WASHINGTON, DC 20006

July 31, 1972

To the President and The Congress

I have the honor to submit to you the Report of the National Commission on State Workmen's Compensation Laws in accordance with the provisions of the Occupational Safety and Health Act of 1970.

Although the backgrounds of the members of the Commission varied considerably, we began with a common and profound conviction that American workers should receive adequate and fair protection if they suffer a work-related injury, disease, or death. The importance we attached to our assignment was heightened by the recognition that workmen's compensation now covers almost 85 percent of the labor force and annually provides benefits to millions of workers.

As our year of hearings and meetings progressed, we reached a general agreement on the potential role and actual record of workmen's compensation. We have concluded that there is a significant role for a modern workmen's compensation program and that the States' primary responsibility for the program should be conserved. We also agree that the protection furnished by workmen's compensation to American workers presently is, in general, inadequate and inequitable. Significant improvements in workmen's compensation are necessary if the program is to fulfill its potential.

We have indicated our prescription for needed reforms. We believe the actual protection afforded by workmen's compensation to injured workmen and their families can soon converge on the potential.

Sincerely,

  
John F. Burton, Jr  
Chairman

The President

The President of the Senate

The Speaker of the House  
of Representatives



# 1972 Study

## General Objectives of Workers' Compensation

- Broad coverage of employees and of work-related injuries and diseases
- Substantial protection against interruption of income
- Provision of sufficient medical care and rehabilitation services
- Encouragement of safety
- An effective system for delivery of the benefits and services



# 1972 Study

## Detailed Evaluation of Present Program(s)

- Only 85% of the nation's employees covered by WC
- Most employees not covered are low wage earners



# 1972 Study

## The Future (Commission Recommendations)

- Coverage be broadened to include most uncovered classes of employees
- Coverage be mandated as mandatory, eliminate “elective” coverage options where they exist and exemptions for small employers be eliminated
- Coverage be extended to farm workers, casual household and domestic workers
- Coverage be made mandatory for all local, state and federal workers
- Employee be given choice of filing in state where hired, where employment located or where injury occurred



# 1972 Study

## The Future (Commission Recommendations)

- Remove “accident” test for determination of compensability and provide full coverage for all work-related diseases
- Lost wage waiting period be no more than 3 days
- Increase the maximum weekly wage benefit
- Increase cash benefits to at least 2/3 of gross weekly wage, with goal to meet 80% of worker’s pre-injury “spendable weekly earnings”.
- Permanent Total benefits be paid for duration of worker’s disability without limitation to amount or time
- Benefits of Social Security be reduced if WC paid



# 1972 Study

## The Future (Commission Recommendations)

- Death benefits paid at least 66 2/3% of pre-injury gross weekly wage; minimum weekly benefit at least 50% of state average weekly wage; increasing max benefit annually until max is equal to 200% of state average weekly wage
- Death benefits be paid to survivor for life or until remarriage (2 year cap); benefits paid to dependent children until age 18, or age 25 if enrolled as a full-time student in an accredited educational institution



# 1972 Study

## The Future (Commission Recommendations)

- Remove all statutory limits for dollar or time for medical care or physical rehabilitation for any work-related impairment
- Each state to have an agency to supervise medical care and rehabilitation services
- Every worker who can benefit from vocational rehabilitation services be offered such services, costs charge to employer
- Workers that refuse VR subject to denial of other benefits
- All states to establish Second-Injury funds to encourage hiring of physically handicapped; liberal qualification





# 1972 Study

## The Future (Commission Recommendations)

- Experience rating be used liberally to encourage safety
- Insurance carriers and State Funds be required to provide loss prevention services, and such safety programs, in addition to those in place with self-insureds, be subject to audit by governing state agency
- Attorney's fees for all parties reported to state agency to allow measurement of 'self-administering' effectiveness
- Time limit for filing be 3 years from claimant knowledge or first wage loss arising out of work-related impairment
- 3 year statute of limitations for reactivation of claim where benefits were previously provided



# 1972 Study

## The Future (Commission Recommendations)

- Create nationally uniform system for data reporting
- Continuation of state-determined use of insurance, State Fund and Self-Insurance to finance employer WC
- Establish state-based insolvency protection for each type of WC coverage to ensure benefits to workers

*When commenting on the possibility of federalizing or dismantling the state-based workmen's compensation system:*

- “For the foreseeable future we are convinced that, if our recommendations for a modern workmen’s compensation program are adopted, the program should be retained”...“We reject the suggestion that Federal administration be substituted for State programs...”



# 1972 Study

## Results

- As a result of the Commission's study, most states changed their WC laws to conform to a variety of the recommendations
- Shortly after the study, because of the huge influx of women entering the modern workplace, the common use of Workmen's Compensation was eliminated, from here on the system would be referred to as:

**Workers' Compensation**



# 50 Years Later

- Coverage mandatory for all employers for employees
- Insurance, Self-Insurance and State Fund coverages readily available
- Basic objective to provide, without regard to fault, wage supplement and medical benefits to workers suffering from a work-related injury or disease
- Benefits are intended to assist injured workers at a reasonable cost to the employer.
- Claims Frequency and Cost Declines Allowed For Consistent Premium Reductions



# Mission of Regulators

- Ensure full and complete coverage
- Resource to validate independent contractors
- Oversight of the claims process ensuring timely, accurate and legal delivery of benefits to recovering workers
- Data collection and evaluation for purposes of legislation and rule making
- Resource for injured workers when system frictions arise
- Educational resource for legislators, employers, insurers and workers
- Resource for payers for mediation, fraud, change mgmt



# Developing Issues

- Handling of Independent Contractors (1099s)
- PTSD, Mental/Mental Issues; Presumption
- Work From Home Staffing, Causation, Early RTW
- Regulatory Oversight and Enforcement
- Hybrid Coverage Models ie: Captives, Groups, etc
- Payment Delivery



# Multi-Jurisdictional Issues

- Claim Staffing; Consistency
- Statutory and Case Law Differences; Change Management
- Cloud / Data PI Security
- Roll Up /Consolidation of Claim Responsibilities
- Medical Access and Inflation



# Workers' Compensation

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Questions and Discussion

