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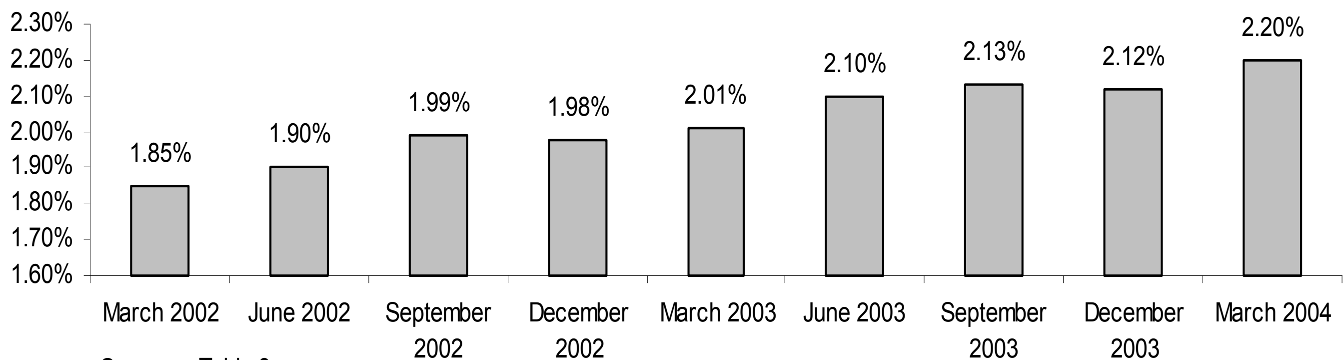
Summary of the Contents

Workers' compensation costs to employers continued to increase in the first quarter of 2004. The employers' costs as a percent of payroll for all non-federal employees increased to 2.20 percent of payroll in March 2004, which is up 18.9 percent from March 2002, when costs reached their recent low point of 1.85 percent of payroll (Figure I). The lead article also indicates that for the five quarters ending between March 2003 and March 2004, the annual rates of increase in the employers' costs of workers' compensation for this aggregation of employees have varied between 7.0 and 10.5 percent (Figure M). Despite these recent increases, the employers' costs as a percent of payroll for all non-federal employees were lower in March 2004 (2.20 percent) than in all years between 1991 and 1997.

The National Commission on State Workmen's Compensation Laws submitted its report to the President and Congress in 1972. Two of the key participants in the work of the National Commission – the Chairman and the Executive Director – have contributed articles concerning the operation and legacy of the National Commission. John Burton describes one key proposal of the National Commission that never came to fruition despite its unanimous endorsement by the members, namely federal standards for state workers' compensation programs. Peter Barth describes a shortcoming of the National Commission's report, research activities, and public hearings, namely the lack of attention to occupational diseases. Additional articles dealing with the legacy of the National Commission will be included in subsequent issues.

Figure I
Workers' Compensation Costs as a Percentage of Gross Earnings, All Non-Federal Employees, March 2002 - March 2004



Source: Table 3

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Workers' Compensation Costs for Employers: 2002 to 2004

by John F. Burton, Jr.

The Bureau of Labor Statistics (BLS) recently released information on the employers' costs of workers' compensation in March 2004. Information on costs for private sector employers is available for one survey a year between 1986 and 2002. Similar data are available on the employers' costs of workers' compensation for one survey a year between 1991 and 2002 for state and local government employers and for all non-federal employees. These one-survey-per-year data were analyzed in Burton (2004), which also contains an appendix that explains in more detail the source of the information and the methodology used to prepare the tables and figures in the current and earlier articles.

The BLS has also published data on the employers' costs of workers' compensation in the private sector, the state and local government sector, and for all non-federal employers based on quarterly surveys since March 2002, as shown in Table 3. (The tables and figures in this article retain the designations used in Burton (2004) for the convenience of readers.) Table 3 presents information on two measures of the employers' costs of workers' compensation: in costs per hour worked (which is how the BLS reports the data) and in costs as a percentage of payroll (which were calculated for this article).

QUARTERLY DATA

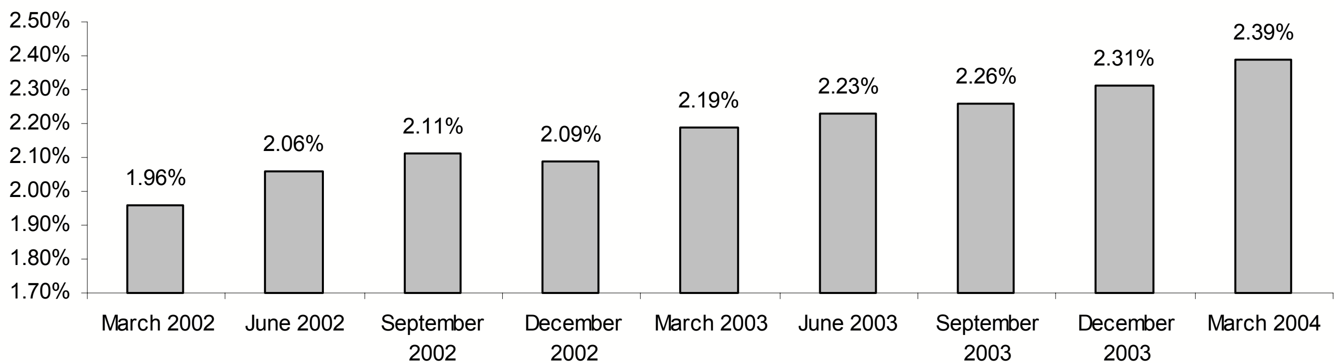
Workers' Compensation Costs as Percent of Payroll

Private sector employees. The trend towards higher workers' compensation costs in the private sector that began after March 2002 is documented in Figure G and Panel A of Table 3, which present information on the nine quarters of data available under the new BLS quarterly publication schedule. The employers' costs of 1.96 percent in March 2002 increased until September 2002, dropped slightly in December 2002, and subsequently resumed an increase in every subsequent quarter, reaching 2.39 percent of payroll in March 2004. This was the highest cost since 1997, when private sector employers expended 2.65 percent of payroll on workers' compensation (Burton 2004, Figure A).

State and Local Government Employees. The fluctuations in workers' compensation costs in the state and local sector in recent years are evident in the nine quarters of data available included in Figure H and Panel B of Table 3. The employers' costs increased from 1.37 percent of payroll in March 2002 to a peak of 1.45 percent of payroll in December 2002, dropped to 1.40 percent of payroll in March 2003, and then matched the previous peak of 1.45 percent of payroll in September 2003, before declining again to 1.44 percent of payroll in December 2003. In March 2004, the employers' costs of workers' compensation reached 1.47 percent of payroll for state and local government employers, the highest figure since the 1.54 percent of payroll in 1996 (Burton 2004, Figure B).

All Non-federal Employees. A general trend towards higher workers' compensation costs for all non-federal employers since 2002 is shown in the nine quarters of data in Figure I and in Panel C of Table 3. The employers' costs of 1.85 percent of payroll in March 2002, increased to 1.99 percent of payroll in September 2002, dropped slightly to 1.98 percent

Figure G
Workers' Compensation Costs as a Percentage of Gross Earnings, Private Industry Employees, March 2002 - March 2004



Source: Table 3

Table 3 - Total Remuneration, Wages and Salaries, and Workers' Compensation, Quarterly Since March 2002
(In Dollars Per Hours Worked)

Panel A: Private Industry Employees		March 2002	June 2002	Sept. 2002	Dec. 2002	2002 Average	March 2003	June 2003	Sept. 2003	Dec. 2003	2003 Average	March 2004
(1)	Total Remuneration	21.71	21.83	22.01	22.14	21.92	22.37	22.61	22.84	22.92	22.69	23.29
(2)	Gross Earnings	17.86	17.94	18.05	18.16	18.00	18.26	18.41	18.59	18.61	18.47	18.80
(3)	Wages and Salaries	15.80	15.90	16.00	16.08	15.95	16.15	16.31	16.46	16.49	16.35	16.64
(4)	Paid Leave	1.44	1.44	1.45	1.47	1.45	1.47	1.46	1.48	1.48	1.47	1.50
(5)	Supplemental Pay	0.62	0.60	0.60	0.61	0.61	0.64	0.64	0.65	0.64	0.64	0.66
(6)	Benefits Other Than Pay	3.86	3.89	3.95	3.98	3.92	4.11	4.20	4.25	4.31	4.22	4.50
(7)	Insurance	1.40	1.42	1.45	1.46	1.43	1.52	1.57	1.59	1.62	1.58	1.65
(8)	Retirement Benefits	0.63	0.62	0.63	0.64	0.63	0.67	0.67	0.68	0.70	0.68	0.80
(9)	Legally Required Benefits	1.80	1.82	1.84	1.85	1.83	1.89	1.93	1.95	1.96	1.93	2.01
(9A)	Workers' Compensation	(0.35)	(0.37)	(0.38)	(0.38)	(0.37)	(0.40)	(0.41)	(0.42)	(0.43)	(0.42)	(0.45)
(10)	Other Benefits	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.03	0.04
(11)	Workers' Compensation as Percent of Remuneration	1.61%	1.69%	1.73%	1.72%	1.69%	1.79%	1.81%	1.84%	1.88%	1.83%	1.93%
(12)	Workers' Compensation as Percent of Gross Earnings	1.96%	2.06%	2.11%	2.09%	2.05%	2.19%	2.23%	2.26%	2.31%	2.25%	2.39%

Panel B: State and Local Employees		March 2002	June 2002	Sept. 2002	Dec. 2002	2002 Average	March 2003	June 2003	Sept. 2003	Dec. 2003	2003 Average	March 2004
(1)	Total Remuneration	31.29	31.20	31.89	32.32	31.68	32.62	32.99	33.62	33.91	33.29	34.21
(2)	Gross Earnings	24.83	24.72	25.17	25.46	25.05	25.66	25.96	26.26	26.43	26.08	26.59
(3)	Wages and Salaries	22.14	22.00	22.40	22.68	22.31	22.85	23.14	23.42	23.56	23.24	23.69
(4)	Paid Leave	2.43	2.45	2.49	2.49	2.47	2.51	2.52	2.55	2.58	2.54	2.60
(5)	Supplemental Pay	0.26	0.27	0.28	0.29	0.28	0.30	0.30	0.29	0.29	0.30	0.30
(6)	Benefits Other Than Pay	6.46	6.47	6.72	6.85	6.63	6.96	7.02	7.36	7.48	7.21	7.62
(7)	Insurance	2.82	2.85	2.96	3.02	2.91	3.12	3.16	3.32	3.39	3.25	3.48
(8)	Retirement Benefits	1.74	1.72	1.81	1.84	1.78	1.85	1.86	1.99	2.03	1.93	2.07
(9)	Legally Required Benefits	1.84	1.84	1.89	1.92	1.87	1.93	1.94	1.98	1.99	1.96	2.02
(9A)	Workers' Compensation	(0.34)	(0.35)	(0.36)	(0.37)	(0.36)	(0.36)	(0.37)	(0.38)	(0.38)	(0.37)	(0.39)
(10)	Other Benefits	0.06	0.06	0.06	0.07	0.06	0.06	0.06	0.07	0.07	0.07	0.05
(11)	Workers' Compensation as Percent of Remuneration	1.09%	1.12%	1.13%	1.14%	1.12%	1.10%	1.12%	1.13%	1.12%	1.12%	1.14%
(12)	Workers' Compensation as Percent of Gross Earnings	1.37%	1.42%	1.43%	1.45%	1.42%	1.40%	1.43%	1.45%	1.44%	1.43%	1.47%

Panel C: All Non-Federal Employees		March 2002	June 2002	Sept. 2002	Dec. 2002	2002 Average	March 2003	June 2003	Sept. 2003	Dec. 2003	2003 Average	March 2004
(1)	Total Remuneration	23.15	23.20	23.44	23.66	23.36	23.93	24.19	24.48	24.59	24.30	24.95
(2)	Gross Earnings	18.91	18.92	19.09	19.24	19.04	19.39	19.57	19.76	19.80	19.63	19.97
(3)	Wages and Salaries	16.76	16.78	16.93	17.06	16.88	17.17	17.35	17.52	17.56	17.40	17.71
(4)	Paid Leave	1.59	1.59	1.60	1.62	1.60	1.63	1.63	1.64	1.65	1.64	1.66
(5)	Supplemental Pay	0.56	0.55	0.56	0.56	0.56	0.59	0.59	0.60	0.59	0.59	0.60
(6)	Benefits Other Than Pay	4.24	4.26	4.35	4.41	4.32	4.54	4.64	4.73	4.78	4.67	4.97
(7)	Insurance	1.61	1.63	1.67	1.69	1.65	1.77	1.81	1.86	1.88	1.83	1.93
(8)	Retirement Benefits	0.80	0.78	0.80	0.82	0.80	0.85	0.86	0.88	0.90	0.87	0.99
(9)	Legally Required Benefits	1.80	1.82	1.85	1.86	1.83	1.89	1.93	1.95	1.96	1.93	2.01
(9A)	Workers' Compensation	(0.35)	(0.36)	(0.38)	(0.38)	(0.37)	(0.39)	(0.41)	(0.42)	(0.42)	(0.41)	(0.44)
(10)	Other Benefits	0.03	0.03	0.03	0.04	0.03	0.03	0.04	0.04	0.04	0.04	0.04
(11)	Workers' Compensation as Percent of Remuneration	1.51%	1.55%	1.62%	1.61%	1.57%	1.63%	1.69%	1.72%	1.71%	1.69%	1.76%
(12)	Workers' Compensation as Percent of Gross Earnings	1.85%	1.90%	1.99%	1.98%	1.93%	2.01%	2.10%	2.13%	2.12%	2.09%	2.20%

Notes: See table on page 5.

Sources: Data in rows (1), (3) to (5), and (7) to (10) of Panels A, B, and C:
March 2002: U.S. Department of Labor, 2002a, Tables 1, 3, and 5.
June 2002: U.S. Department of Labor, 2002b, Tables 1, 3, and 5.
September 2002: U.S. Department of Labor, 2002c, Tables 1, 3, and 5.
December 2002: U.S. Department of Labor, 2003a, Tables 1, 3, and 5.
March 2003: U.S. Department of Labor, 2003b, Tables 1, 3, and 5.
June 2003: U.S. Department of Labor, 2003c, Tables 1, 3, and 5.
September 2003: U.S. Department of Labor, 2003d, Tables 1, 3, and 5.
December 2003: U.S. Department of Labor, 2004, Tables 1, 3, and 5.
March 2004: U.S. Department of Labor, 2004, Tables 1, 3, and 5.

Notes for Tables 1, 2, and 3

Notes: * = $0.01 or less

(1) Table 1 and the text of this article use the term "remuneration" in place of the term "compensation" that is used in the BLS publications, and use the term "All non-federal Employees" in place of the term "Civilian workers'" that is used in the BLS publications.
(2) Total remuneration (row 1) = gross earnings (row 2) + benefits other than pay (row 6).
(3) Gross earnings (row 2) = wages and salaries (row 3) + paid leave (row 4) + supplemental pay (row 5).
(4) Benefits other than pay (row 6) = insurance (row 7) + retirement benefits (row 8) + legally required bene fits (row 9) + other benefits (row 10).
(5) Workers' compensation (row 9A) is one of the legally required benefits (row 9).
(6) Workers' compensation as percent of remuneration (row 11) = workers' compensation (row 9A)/total remuneration (row 1).
(7) Workers' compensation as percent of gross earnings (row 12) = workers' compensation (row 9A)/gross earnings (row 12).
(8) Results in rows (2), (6), (11), and (12) were calculated by Florence Blum and John F. Burton, Jr.

of payroll in December 2002, and then increased during the first three quarters of 2003, reaching 2.13 percent of payroll in September 2003, before dropping to 2.12 percent of payroll in December 2003. In March 2004, the employers' costs of workers' compensation reached 2.20 percent of payroll for all non-federal employers, the highest figure since the 2.44 percent of payroll in 1997 (Burton 2004, Figure C).

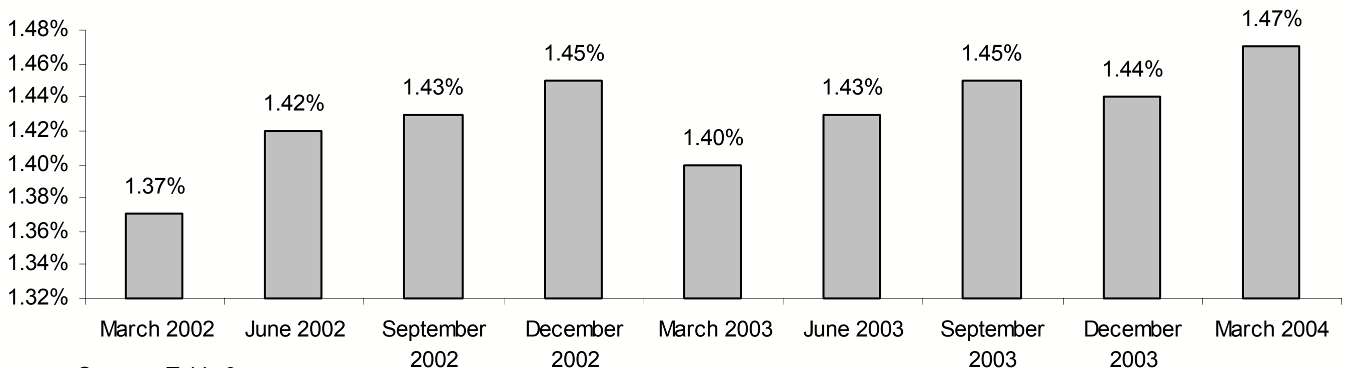
Workers' Compensation Costs per Hour Worked

Private Sector Employees. The quarterly data indicate that private sector employers expended $0.35 per hour on workers' compensation in March 2002 and that these expenditures increased almost every quarter until reaching $0.45 per hour in March 2004 (Figure J and Panel A of Table 3). Using this measure of costs, since September 2003, private sector workers' compensation costs have exceeded the previous high of $0.41 per hour reached in 1994 (Burton 2004, Figure D).

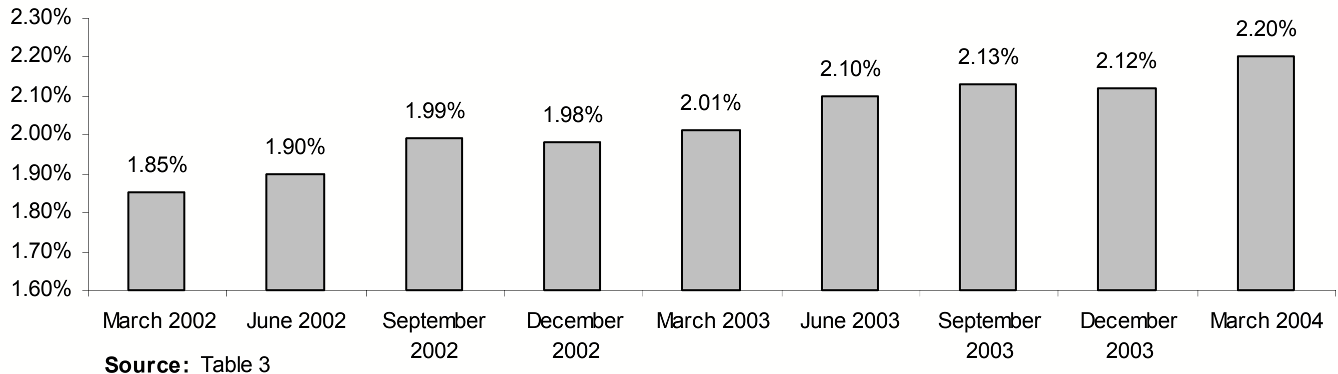
State and Local Government Employees. The quarterly data indicate that state and local government employers expended $0.34 per hour on workers' compensation in March 2002, that these expenditures fluctuated between $0.36 and $0.38 per hour between September 2002 and December 2003, and that costs reached $0.39 per hour in March 2004 (Figure K and Panel B of Table 3). Using this measure of costs, since September 2003, workers' compensation costs for state and local government employers have been at their highest level since the series began in 1991 (Burton 2004, Figure E).

All Non-Federal Employees. The quarterly data indicate that state and local government employers expended $0.35 per hour on workers' compensation in March 2002 and that these expenditures increased in most quarters until they reached $0.44 per hour worked in March

Figure H
Workers' Compensation Costs as a Percentage of Gross Earnings, State and Local Employees, March 2002 - March 2004



Source: Table 3



2004 (Figure L and Panel C of Table 3). Using this measure of costs, since September 2003, workers' compensation costs for all non-federal employees have been at their highest level since the series began in 1991 (Burton 2004, Figure F).

RECENT INCREASES IN WORKERS' COMPENSATION COSTS

The most comprehensive set of employers represented in the BLS survey are those employing all non-federal employees. For those employers, the low point for employers' costs as a percent of payroll occurred in March 2002, when the costs represented 1.85 percent of payroll. Tables 4 and 5 indicate the increases in workers' compensation costs since March 2002.

Employer's Costs as a Percent of Payroll

Private Sector Employees. The employers' costs of workers' compensation as a percent of payroll increased from 1.96 percent in March 2002 to 2.39 percent of payroll in March 2004 (Figure G and Panel A, Column (1) of Table 4). This represents a cumulative increase of costs of 21.9 percent over the nine quarters (Table 4, Panel A, column (2)). The quarterly data can also be used to calculate annual rates of increase in workers' compensation costs over the preceding year. For example, private sector employers' costs were 1.96 percent of payroll in March 2002 and 2.19 percent of payroll in March 2003, which represents an 11.7 percent increase in costs over the twelve months (Figure M and Table 4, Panel A, Column (3)). The data indicate that the annual rate of increase in the employers' costs of workers' compensation in the private sector fluctuated

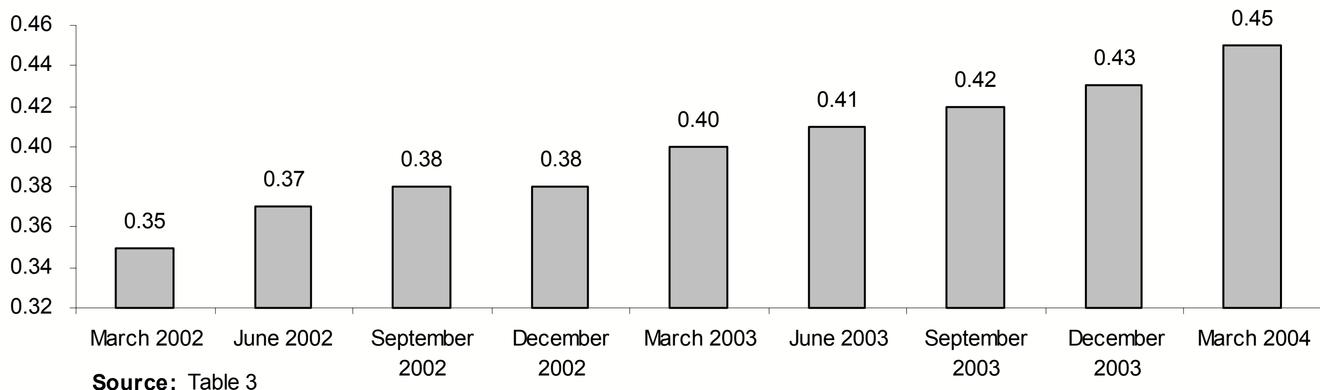


Table 4 - Employers' Cost of Workers' Compensation as Percent of Gross Earnings (Payroll): Increases Since March 2002

Panel A: Private Industry Employees

	Employers' Costs as % of Payroll (1)	Cumulative Increase Since March 2002 (2)	Increase Over Twelve Months (3)
March 2002	1.96		
June 2002	2.06	5.1%	
September 2002	2.11	7.7%	
December 2002	2.09	6.6%	
March 2003	2.19	11.7%	11.7%
June 2003	2.23	13.8%	8.3%
September 2003	2.26	15.3%	7.1%
December 2003	2.31	17.9%	10.5%
March 2004	2.39	21.9%	9.1%

Panel B: State and Local Employees

	Employers' Costs as % of Payroll (1)	Cumulative Increase Since March 2002 (2)	Increase Over Twelve Months (3)
March 2002	1.37		
June 2002	1.42	3.6%	
September 2002	1.43	4.4%	
December 2002	1.45	5.8%	
March 2003	1.40	2.2%	2.2%
June 2003	1.43	4.4%	0.7%
September 2003	1.45	5.8%	1.4%
December 2003	1.44	5.1%	-0.7%
March 2004	1.47	7.3%	5.0%

Panel C: All Non-Federal Employees

	Employers' Costs as % of Payroll (1)	Cumulative Increase Since March 2002 (2)	Increase Over Twelve Months (3)
March 2002	1.85		
June 2002	1.90	2.7%	
September 2002	1.99	7.6%	
December 2002	1.98	7.0%	
March 2003	2.01	8.6%	8.6%
June 2003	2.10	13.5%	10.5%
September 2003	2.13	15.1%	7.0%
December 2003	2.12	14.6%	7.1%
March 2004	2.20	18.9%	9.5%

Source: Column (1) from Table 3, Row (12) of Panels A, B, and C.

during 2003, first decelerating over the first three quarters and then accelerating in the final quarter. The annual rate of increase in the employers' costs of workers' compensation in the private sector then slowed to 9.1 percent in the first quarter of 2004.

State and Local Employees. The employers' costs of workers' compensation as a percent of payroll increased from 1.37 percent of payroll in March 2002 to 1.47 percent of payroll in March 2004 (Figure H and Table 4, Panel B, Column (1)). This represents a cumulative increase in costs of 7.3 percent over nine quarters (Table 4, Panel B, Column (2)). The quarterly data can also be used to calculate annual rates of increase in workers' compensation costs over the preceding year. For example, state and local government sector employers' costs were 1.37 percent of payroll in March 2002 and 1.40 percent of payroll in March 2003, which represents a 2.2 percent increase in costs over the twelve months (Figure M and Table 4, Panel B, Column (3)). The data indicate that the annual rate of change in the employers' costs of workers' compensation in the state and local government sector fluctuated during 2003, ranging from a 2.2 percent increase from March 2002 to March 2003 to a 0.7 percent decrease from December 2002 to December 2003. The annual rate of increase in the employers' costs of workers' compensation in the state and local government sector then accelerated to 5.0 percent in the first quarter of 2004.

All Non-Federal Employees. The employers' costs of workers' compensation as a percent of payroll increased from 1.85 percent of payroll in March 2002 to 2.20 percent of payroll in March 2004 (Figure I and Table 4, Panel C, Column (1)). This represents a cumulative increase of costs of 18.9 percent over the nine quarters (Table 4, Panel C, Column (3)). The quarterly data can also be used to calculate annual rates of increase in workers' compensation costs over the pre-

Table 5 - Employers' Cost of Workers' Compensation in Dollars Per Hours Worked: Increases Since March 2002

Panel A: Private Industry Employees

	Employers' Costs in Dollars (1)	Cumulative Increase Since March 2002 (2)	Increase Over Twelve Months (3)
March 2002	0.35		
June 2002	0.37	5.7%	
September 2002	0.38	8.6%	
December 2002	0.38	8.6%	
March 2003	0.40	14.3%	14.3%
June 2003	0.41	17.1%	10.8%
September 2003	0.42	20.0%	10.5%
December 2003	0.43	22.9%	13.2%
March 2004	0.45	28.6%	12.5%

Panel B: State and Local Employees

	Employers' Costs in Dollars (1)	Cumulative Increase Since March 2002 (2)	Increase Over Twelve Months (3)
March 2002	0.34		
June 2002	0.35	2.9%	
September 2002	0.36	5.9%	
December 2002	0.37	8.8%	
March 2003	0.36	5.9%	5.9%
June 2003	0.37	8.8%	5.7%
September 2003	0.38	11.8%	5.6%
December 2003	0.38	11.8%	2.7%
March 2004	0.39	14.7%	8.3%

Panel C: All Non-Federal Employees

	Employers' Costs in Dollars (1)	Cumulative Increase Since March 2002 (2)	Increase Over Twelve Months (3)
March 2002	0.35		
June 2002	0.36	2.9%	
September 2002	0.38	8.6%	
December 2002	0.38	8.6%	
March 2003	0.39	11.4%	11.4%
June 2003	0.41	17.1%	13.9%
September 2003	0.42	20.0%	10.5%
December 2003	0.42	20.0%	10.5%
March 2004	0.44	25.7%	12.8%

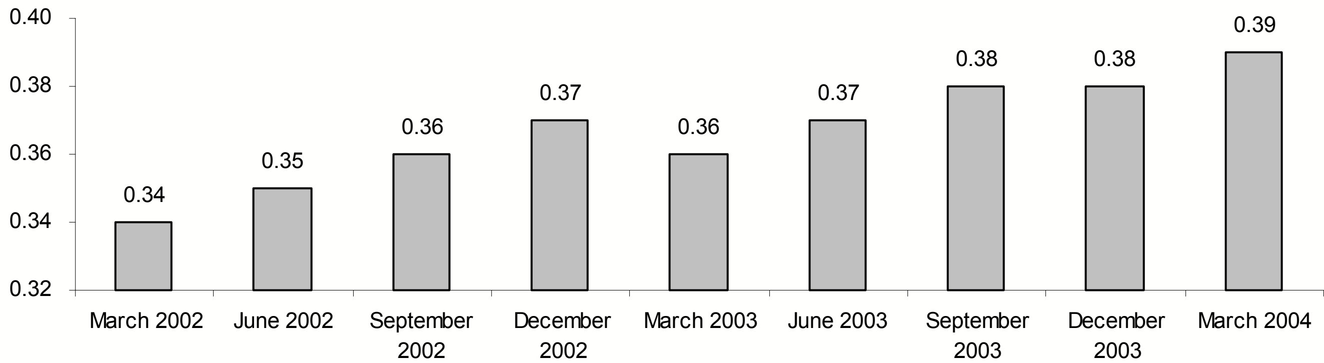
Source: Column (1) from Table 3, Row (9A) of Panels A, B, and C.

ceding year. For example, all non-federal employers' costs were 1.85 percent of payroll in March 2002 and 2.01 percent of payroll in March 2003, which represents an 8.6 percent increase in costs over the twelve months (Figure M and Table 2, Panel C, Column (3)). The annual rate of increase in the employers' costs of workers' compensation for all non-federal employees fluctuated during 2003, although the rate of increase was lower in the last two quarters than in the first half of the year. The annual rate of increase in the employers' costs of workers' compensation for all non-federal employers then accelerated to 9.5 percent in the first quarter of 2004.

Workers' Compensation Costs per Hour Worked

Private Sector Employees. The employers' costs of workers' compensation per hour worked increased from $0.35 in March 2002 to $0.45 percent of payroll in March 2004 (Figure J and Panel A, Column (1) of Table 5). This represents a cumulative increase of costs of 28.6 percent over the nine quarters (Table 5, Panel A, column (2)). The quarterly data can also be used to calculate annual rates of increase in workers' compensation costs over the preceding year. For example, private sector employers' costs were $0.35 per hour in March 2002 and $0.40 in March 2003, which represents a 14.3 percent increase in costs over the twelve months (Figure N and Table 5, Panel A, Column (3)). The data indicate that the annual rate of increase in the employers' costs of workers' compensation in the private sector fluctuated during 2003, decelerating over the first three quarters and then accelerating in the final quarter. The annual rate of increase in the employers' costs of workers' compensation in the private sector measured in dollars per hour worked declined slightly to 12.5 percent in March 2004.

Figure K
Workers' Compensation Costs for State and Local Employees, March 2002 - March 2004 (in Dollars per Hour Worked)

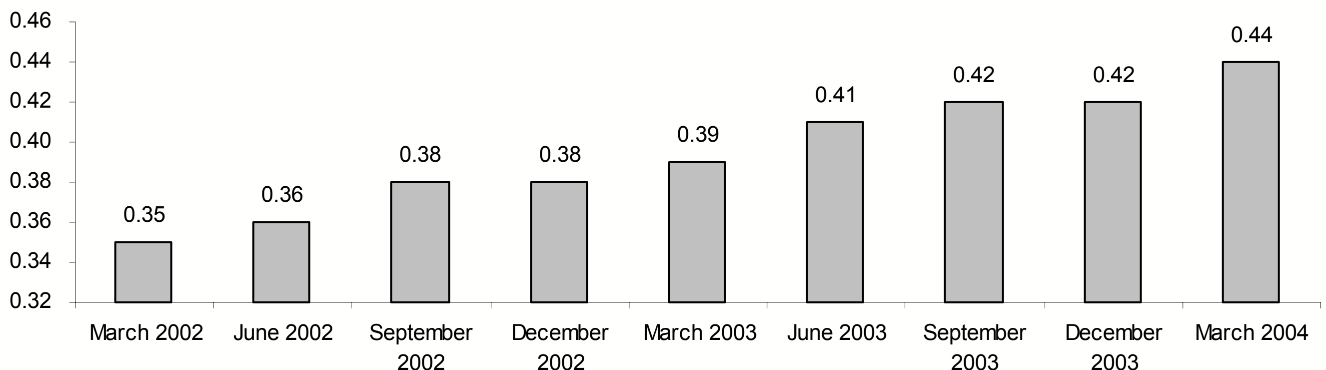


Source: Table 3

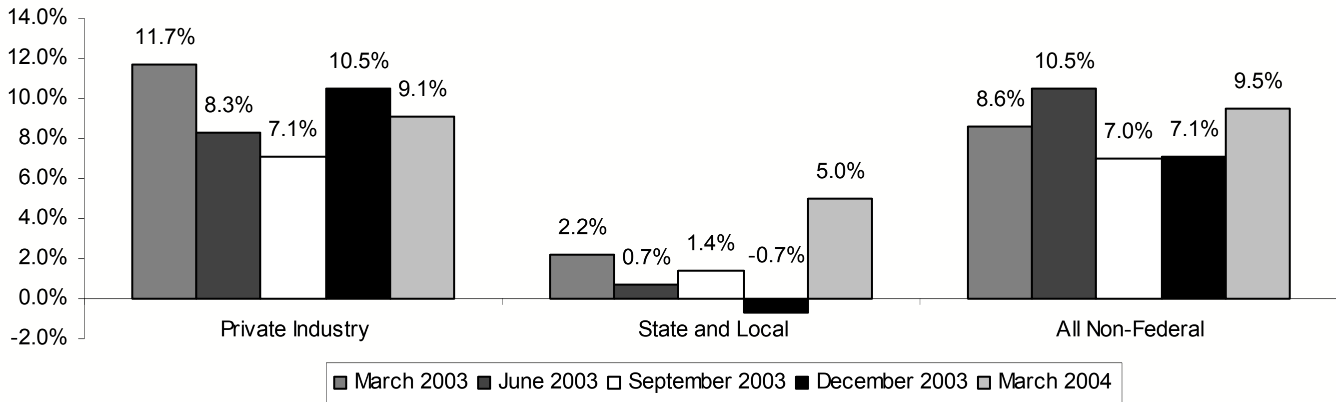
State and Local Employees. The employers' costs of workers' compensation per hour worked increased from $0.34 in March 2002 to $0.39 in March 2004 (Figure K and Table 5, Panel B, Column (1)). This represents a cumulative increase of costs of 14.7 percent over nine quarters (Table 5, Panel B, Column (2)). The quarterly data can also be used to calculate annual rates of increase in workers' compensation costs over the preceding year. For example, state and local government sector employers' costs were $0.34 per hour worked in March 2002 and $0.36 per hour worked in March 2003, which represents a 5.9 percent increase in costs over the twelve months (Figure N and Table 5, Panel B, Column (3)). The data indicate that the annual rate of change in the employers' costs of workers' compensation in the state and local government sector decelerated throughout 2003, starting with a 5.9 percent increase from March 2002 to March 2003 until slowing to a 2.7 percent increase from December 2002 to December 2003. The annual rate of increase in the employers' costs of workers' compensation in the state and local government sector measured in dollars per hour worked increased to 8.3 percent in March 2004

All Non-Federal Employees. The employers' costs of workers' compensation per hour worked increased from $0.35 in March 2002 to $0.44 in March 2004 (Figure L and Table 5, Panel C, Column (1)). This represents a cumulative increase of costs of 25.7 percent over the nine quarters (Table 5, Panel C, Column (2)). The quarterly data can also be used to calculate annual rates of increase in workers' compensation costs over the preceding year. For example, all non-federal employers' costs were $0.35 per hour worked in March 2002 and $0.39 in March 2003, which represents an 11.4 percent increase in costs

Figure L
Workers' Compensation Costs for All Non-Federal Employees, March 2002 - March 2004 (in Dollars per Hour Worked)



Source: Table 3



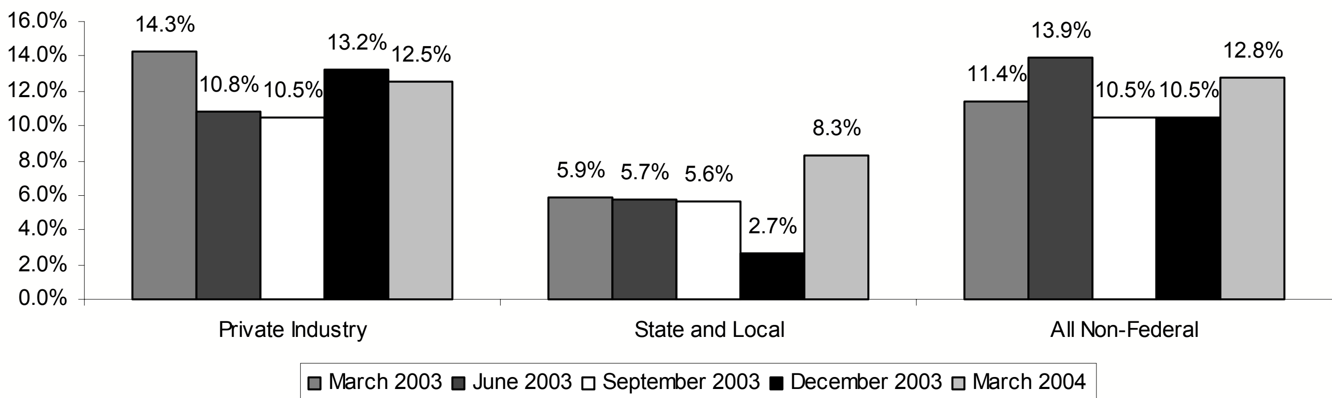
over the twelve months (Figure N and Table 5, Panel C, Column (3)). The annual rate of increase in the employers' costs of workers' compensation for all non-federal employees fluctuated during 2003, although the rate of increase was lower in the last two quarters than in the first half of the year. The annual rate of increase in the employers' costs of workers' compensation for all non-federal employees measured in dollars per hour worked increased to 12.8 percent in March 2004

ANALYSIS

Employers' Costs in Historical Context

Workers' compensation costs as a percentage of gross earnings (or payroll) is the most common measure of employers' costs used in the workers' compensation literature. The rationale is that over time employer expenditures on remuneration for employees, including wages, health insurance, pensions and workers' compensation, increase. For example, between March 1991 and March 2004, all non-federal employers' expenditures for workers' compensation increased from $0.32 to $0.44 per hour worked, which represents a 38 percent increase (Table 3 and Burton 2004, Table 1). In isolation, a 38 percent increase in workers' compensa-

Obviously, workers' compensation costs per hour worked have increased much less rapidly than payroll since 1991...



tion costs per hour worked may sound like a substantial increase. However, over that same period – between March 1991 and March 2004 – the gross earnings (payroll) paid by employers for all non-federal employees increased from $13.30 to $19.97 per hour worked (Table 3 and Burton 2004, Table 1), which is a 50 percent increase. Obviously, workers' compensation costs per hour worked have increased much less rapidly than payroll since 1991, which helps put the workers' compensation cost developments in perspective.

Another way to put in perspective the developments over time in employer expenditures on workers' compensation is to compare them to payroll in each year. That workers' compensation expenditures represented 2.41 percent of payroll in March 1991 for employers of all non-federal employees and 2.20 percent of payroll in March 2004 provides information more useful than simply stating that workers' compensation costs per hour increased by 38 percent over those 14 years.

The current article plus the earlier article (Burton 2004) have documented the changes in employer expenditures on workers' compensation as a percent of payroll for three levels of aggregation of employees. For private sector employees, where the data are available since 1986, the costs increased from 1986 to 1994, declined sharply through 2001, and then increased from 2001 to March 2004. For state and local government employees, where the data are only available since 1991, the pattern is roughly similar: employers' costs increased through 1995, declined until 2000, and then increased in an irregular pattern through March 2004. Finally, for all non-federal employees (which primarily consists of private sector employees), the data series shows an increase in employers' costs between 1991 and 1994, then a decline from 1994 to 2002, followed by an increase in the last two years. While the patterns differ slightly among sectors in recent years, the experience for the most inclusive category of employers – namely, all non-federal employees – indicates that the employers' costs of workers' compensation have been increasing in the last few years in the range of 7 to 14 percent annually (Figures M and N).

...workers' compensation costs as a percent of payroll in March 2004 (2.39 percent) were lower than in any year between 1990 and 1997.

While these recent increases in costs are noteworthy, the run-up in costs for private sector employers nonetheless meant that workers' compensation costs as a percent of payroll in March 2004 (2.39 percent) were lower than in any year between 1990 and 1997. Likewise, the employers' costs of workers' compensation as a percent of payroll in the state and local sector (1.47 percent) were lower in March 2004 than in any of the years between 1991 and 1996, while the employers' costs as a percent of payroll for all non-federal employers (2.20 percent) were lower in March 2004 that in all the years between 1991 and 1997.

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- Posting of Job Opportunities and Resumes for those seeking candidates or employment in workers' compensation or related fields.
- The full text of the *Report of the National Commission on State Workmen's Compensation Laws.* The report was submitted to the President and the Congress in 1972 and has long been out of print.

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The National Commission on State Workmen's Compensation Laws

by John F. Burton, Jr.

The National Commission on State Workmen's Compensation Laws (National Commission) submitted its *Report* to the President and the Congress in 1972. This article describes the background for the National Commission, the substance of the *Report*, the aftermath and impact of the Commission on state workers' compensation programs, and the relevance and limitations of the Commission's analysis for workers' compensation in the 21st Century.[1]

Background

Workplace injuries increased during the 1960s and many persons blamed inadequate state safety programs for the problem. The major consequence was the enactment of the Occupational Safety and Health Act of 1970 (Act), which created a federal program and preempted most aspects of state workplace safety and health regulation. The OSHAct was supported by the Nixon Administration and passed both Houses of Congress with bipartisan support and overwhelming majorities. As with many laws, there are provisions included to gain the support of key legislators. In the case of the Act, one of those provisions, included at the behest of New York Senator Jacob Javits, was Section 27, which created the National Commission on State Workmen's Compensation Laws.[2]

Section 27 provided that the National Commission would include three ex officio members drawn from the Executive Branch plus 15 members appointed by the President to represent the various constituencies involved in workers' compensation. Not surprisingly, the appointees were almost all Republicans vetted by the White House staff. Among the members were Melvin Bradshaw, then Executive Vice President of the Liberty Mutual Insurance Company; James O'Brien, Assistant Director of the AFL-CIO Department of Social Insurance; and William Moshofsky, Vice President of the Georgia-Pacific Corporation. State interests were represented by James Flournoy, Commissioner for the California Workmen's Compensation Appeals Board; Marion Martin, Commissioner of Labor and Industry for Maine; Daniel Doherty, Chairman of the Maryland Workers' Compensation Commission and a former President of the IAIABC; and Holland Krise, Chair of the Industrial Commission of Ohio and a subsequent President of the IAIABC.

> ***...the totality of the testimony conveyed a picture of the state of workers' compensation that was much worse than we had anticipated.***

Holland Krise was designated Vice Chairman of the National Commission and, undoubtedly to the surprise of most aficionados of workers' compensation, I was appointed Chairman.[3]

The Act specified that the final report of the National Commission be submitted no later than July 31, 1972. However, even though the Act was passed on December 29, 1970 and became effective 120 days later, the members of the National Commission were not appointed until June 1971. One of my first tasks as Chairman was to see if the July 1972 reporting date could be extended since we had such a late start. I was rebuffed by Congressional staff because in the six months since the Act had been enacted it had become so controversial there was concern that even an innocuous bill to extend our reporting deadline would serve as the platform for significant amendments to the Act. And so we were left with a 13-month "window of opportunity."

The 13 months were exceedingly busy. The National Commission appointed an excellent staff, including Peter Barth as Executive Director and John Lewis as Chief Counsel. There were also a number of consultants and contractors, including Professor Monroe Berkowitz, an economist, Professor Arthur Williams, an expert on insurance, and Professor Arthur Larson, a lawyer, all of whom had extensive backgrounds in workers' compensation. The Commission held 11 meetings that consumed 32 days, with on average 17 of the members in attendance. There were also nine public hearings around the country, which involved an additional 18 days. After the first hearing, at least 15 members of the Commission attended each of these hearings. The Commission published a treatise, the *Compendium on Workmen's Compensation* (Williams and Barth 1973). The Commission also sponsored 40 supplemental studies written by staff members or contractors, which were published in three volumes (Berkowitz 1973). Preliminary versions of the *Compendium* and most of the supplemental studies were provided to the Commission members before the *Report* was written.

The interactions among the commission members were intense. To my surprise, the public hearings had a significant impact on the deliberations of the National Commission. One reason is that, even though we were careful to not stack the sessions with egregious examples of injured workers or financially imperiled em-

ployers, the totality of the testimony conveyed a picture of the state of workers' compensation that was much worse than we had anticipated. Another reason is that some witnesses (most notably those from the International Association of Industrial Accident Boards and Commissions [IAIABC], the professional association for workers' compensation administrators) were unpersuasive in their presentations and/or aggressive towards the mission of the National Commission, which resulted in a high degree of cohesion among all the members.[4]

The Substance of the *Report*

The *Report* (1972, 15) identified five major objectives for a modern workers' compensation program: (1) broad coverage of employees and of work-related injuries and diseases; (2) substantial protection against interruption of income; (3) provision of sufficient medical care and rehabilitation services; (4) encouragement of safety; and (5) an effective system for delivery of the benefits and services. State workers' compensation programs were then evaluated in terms of these objectives and the language in the Act that required the National Commission to determine if state laws provide an "adequate, prompt, and equitable" system.

The National Commission was generally quite critical of the status of the laws in the early 1970s. For example, as to the major objective concerning coverage, the national percentage of workers covered of about 85 percent was described in the *Report* (1972, 15) as "inadequate," while "inequity results from the wide variations among the States in the proportion of their workers protected by workmen's compensation." As to the objective requiring substantial protection against loss of income, the *Report* (1972, 18) concluded that "In general, workers' compensation programs provide cash benefits which are inadequate" as well as being inequitable. After examining state programs in terms of all five major objectives, the National Commission reached this overall assessment (1972, 24-25): "Our intensive evaluation of the evidence compels us to conclude that State workmen's laws are in general neither adequate nor equitable. While several States have good programs, and while medical care and some aspects of workmen's compensation are commendable, strong points too often are matched by weak."

The National Commission did more than provide broad objectives for a modern workers' compensation program and use those objectives to assess the laws as of 1972. The Commission also made 84 recommendations that were designed to translate the five broad objectives into specific guidance for legislators and others involved in improving state workers' compensation programs. There were 19 recommendations in the chapter of the Report dealing with the coverage objective. These included R2.2, which recommended that employers not be exempted from coverage because of a limited number of employees, and R2.12, which recommended that the "accident" test for compensability be dropped.

The Report noted that the insurance industry "is in a difficult position, however, because its clients are employers and it is temped to avoid any stance which could possibly antagonize them."

There were 27 recommendations in the chapter dealing with the income maintenance objective. These included R3.17, which recommended that total disability benefits be paid for the duration of the workers' disability without any limitations as to dollar amount or time, and R3.22, which recommended that beneficiaries in death cases have their benefits increased through time at the same rate as increases in the state's average weekly wage. Probably the most innovative idea pertaining to cash benefits was R3.1, which recommended that weekly benefits be at least 80 percent of a worker's spendable weekly earnings, where spendable was defined as gross wages minus federal income taxes and the employee's contributions to the social security program. The major area where the National Commission was not able to reach a consensus concerned permanent partial disability (PPD) benefits. The Commission offered some suggestions for restructuring PPD benefits, such as explicitly separating impairment and disability benefits, but the only recommendation for PPD benefits was R3.19, which called for state and federal examinations of present and potential approaches to these benefits.[5]

The chapter on the medical care and rehabilitation objective included 12 recommendations. These included R4.2, which recommended there be no statutory limits of time or dollar amount for medical care or rehabilitation services for any work-related impairment. The chapter on the safety objective contained four recommendations, including R5.3, which recommended that, subject to sound actuarial standards, the experience rating principle be extended to as many employers as practical. Finally, the chapter on the effective delivery system objective included 22 recommendations. These included R6.16, which recommended that the workers' compensation agency permit compromise and release agreements only rarely and only after a hearing before the agency.

The National Commission devoted most of the final chapter in the *Report* to the future of workers' compensation. The *Report* (1972, 121-25) noted that the work of the National Commission was not the first effort to improve workers' compensation programs. One example of such re-

form efforts involved the IAIABC, which had developed 22 recommended standards for which compliance was encouraged by "sending a certificate to each Governor indicating the number of standards met by his state." Lobbying efforts were also discussed, including the efforts of the insurance industry to promote changes in workers' compensation laws. The *Report* noted that the insurance industry "is in a difficult position, however, because its clients are employers and it is tempted to avoid any stance which could possibly antagonize them." Still another effort at reform was the project sponsored by the Council of State Governments: representatives from most of the organizations interested in workers' compensation drafted a Model Act that was published in the mid-1960s.

After cataloguing these previous efforts at reform, the National Commission concluded "it is evident from our evaluation of the workmen's compensation program that these efforts have been insufficient. The crucial question is why?" The *Report* provided several reasons. First, the deficiencies in many states result from a lack of leadership, understanding, or interest in workers' compensation, in part because the program is so complex. Second, in many states there are interest groups with power to veto proposed changes, which can keep the states locked into programs despite serious abuses. Third, there is competition among states for employers. The U.S. economic system encourages efficiency and mobility, which impel employers to locate where the environment offers the best prospect for profit. At the same time, many of the programs that regulate industrialization are enacted by the states rather than the Federal government. Any state that enacts programs to regulate or ameliorate the byproducts of industrialization, such as the disability resulting from workplace injuries, invariably must tax or charge employers to cover the expenses of the programs. This combination of mobility and regulation poses a dilemma for policymakers in state government: enactment of relatively restrictive or costly regulations to protect workers may precipitate the departure of current employers or deter the entry of new enterprises.

Can a state have a modern workers' compensation program without driving employers away? The National Commission argued that the actual costs of workers' compensation should not deter any state from enacting such a modern program, but also observed (*Report* 1972, 125) "while the facts dictate that no State should hesitate to improve its workmen's compensation program for fear of losing employers, unfortunately this appears to be an area where emotion too often triumphs over fact." State legislators cannot be expected to become experts on interstate differences in workers' compensation costs and their effects on employers' location decisions. Furthermore, some employers will claim that the increases in costs will force a business exodus, and "it will be virtually impossible for the legislators to know how genuine are these claims." The National Commission concluded the analysis of the reasons why previous reform efforts had failed with this crucial passage (*Report* 1972, 125):

> When the sum of these inhibiting factors is considered, it seems likely that many States have been dissuaded from reform of their workmen's compensation statute[s] because of the specter of the vanishing employer, even if that apparition is a product of fancy and not fact. A few states have achieved genuine reform, but most suffer with inadequate laws because of the drag of laws of competing states.

The serious deficiencies of state workers' compensation programs and the failures of previous reform efforts led the National Commission to consider new strategies for improving workers' compensation.

The serious deficiencies of state workers' compensation programs and the failures of previous reform efforts led the National Commission to consider new strategies for improving workers' compensation. One approach considered and rejected was federalization of the state workers' compensation programs – that is, enactment of a federal workers' compensation law that displaced state laws and turned over the administration of workers' compensation to federal employees.[6] I occasionally hear allegations that the National Commission recommended federalization of workers' compensation, which I attribute to sloppy reading skills or perhaps (spare the thought) a conscious effort to undermine the credibility of the *Report*.

What the National Commission did recommend was "creative Federal assistance" in order to enhance the virtues of a decentralized, state-administered workers' compensation program. The assistance was to consist of two forms: (1) appointment by the President of a new commission to provide encouragement and technical assistance to the states, and (2) a 1975 review of the states' record of compliance with 19 essential recommendations of the National Commission, which would culminate in Federal mandates if necessary to guarantee state compliance with these essential recommendations.

The 19 essential recommendations were a subset of the 84 National Commission recommendations that focused on coverage and benefits. For example, there were to be no numerical exemptions for small employers and work-related diseases were to be fully covered. There were to be no limitations as to time or dollar amount for medical or rehabilitation

benefits. Cash benefits for temporary total disability, permanent total disability, and death were to be at least 66 2/3 percent of the worker's average weekly wage, subject to maximums that were to be at least 100 percent of the state's average weekly wage by July 1, 1975.

The National Commission stated (Report 1972, 127) "that compliance with these recommendations should be evaluated on July 1, 1975, and, if necessary, Congress with no further delay in the effective date should guarantee compliance." And how was compliance to be guaranteed? Ah, there's the rub. The "obvious" enforcement mechanism was to impose a payroll tax on employers in states that did not comply with the 19 essential recommendations, which is essentially the method used since the 1930s to induce states to pass unemployment insurance laws adhering to federal standards. However, this payroll tax enforcement mechanism was not considered politically feasibly in 1972, and so the National Commission relied on two other devices. First, federal laws would require employers to purchase workers' compensation insurance or otherwise secure workers' compensation protection incorporating the 19 essential recommendations. Second, an individual worker could file his or her claim with the state workers' compensation agency, which would be authorized by federal law to make awards consistent with the federal standard even if the state had not amended its workers' compensation laws to incorporate the 19 essential recommendations. The National Commission was candid enough to admit (Report 1972, 128) "the enforcement methods we have recommended lack the attribute of instant intelligibility." Not to mention the distinct possibility they were unconstitutional.[7]

The unanimous recommendation of the 18 members of the National Commission for the enactment of federal standards for the workers' compensation program in 1975 if states did not reform their laws was undoubtedly a great surprise to workers' compensation experts and Washington politicians. Not what you would expect from 18 members, almost all of whom were Republicans and about half of whom represented employers, the insurance industry, and state agencies. The explanation of this outcome is essentially that the National Commission concluded (1) state workers' compensation programs had such serious deficiencies that the future of the system was in jeopardy; (2) a major source of the deficiencies was competition among states to see who could have the least expensive programs, which translated into the least adequate and equitable programs; (3) states should be given one last chance to improve their laws without federal intervention; (4) however, if the states did not respond quickly (by 1975) then federal standards were needed to prop up the state-run system and save it from self-destruction. Thus, paradoxically, federal intervention – while "radical" in terms of the history of workers' compensation in the U.S. – was actually a conservative remedy that would allow the state-run workers' compensation system to survive and prosper.

If the Republican Administration ignored the issue of federal standards, the same could not be said for important elements of Congress.

Aftermath and Impact of the National Commission

The Report of the National Commission received front-page coverage in the July 31, 1972 issue of *The New York Times*. Elsewhere on the page was a story about a continuing investigation into a strange break-in at the Democratic National Headquarters. That was the last time news coverage of workers' compensation outranked the saga that began at the Watergate office complex and culminated two years later in the resignation of Richard M. Nixon

One consequence of the preoccupation of the Nixon Administration with political survival is that the recommendation of the National Commission that the President appoint a new commission to provide encouragement and technical assistant to the states to improve their workers' compensation laws did not occur until 1974, when the Interdepartmental Workers' Compensation Task Force was established with J. Howard Bunn, Jr., former Chairman of the North Carolina Industrial Commission, as Executive Director. The Task Force made important contributions, issuing a report entitled *Workers' Compensation: Is There a Better Way?* (Interdepartmental Workers' Compensation Task Force, 1977)[8] and publishing nine volumes of a *Research Report* (Interdepartmental Workers' Compensation Task Force, 1979). The Task Force report provided a careful review of the extent of progress of the states after 1972, and noted that the compliance with the 19 essential recommendations had increased from an average of eight per state to 11 ½ in 1976, which represented a 44 percent improvement. The Task Force report generally endorsed the analysis of the National Commission, although it specifically recommended the wage-loss approach as the basis for cash benefits and also it called for more emphasis on rehabilitation and reemployment. As to the National Commission's recommendation for federal standards if states did not adopt the 19 essential recommendations by 1975, the Task Force Report was totally void of comment.

If the Republican Administration ignored the issue of federal standards, the same could not be said for important elements of Congress. Within a year after the submission of the National Commission's report, Senator Jacob Javits, Republican from New York, and Senator Harrison Williams,

Democrat from New Jersey, introduced legislation that provided for federal standards for state workers' compensation laws. On one hand, this legislation probably convinced state policy makers that federal standards were a viable threat, and this spurred reforms in a number of states. On the other hand, the Williams-Javits bill was premature relative to the July 1, 1975 evaluation date for state programs proposed by the National Commission, and the list of federal mandates went well beyond the 19 essential recommendations of the National Commission. I testified before Congress and opposed William-Javits. John Lewis, former Chief Counsel of the National Commission, and I drafted our own version of a federal standards bill that was consistent with the spirit of the National Commission's Report, and offered it to Congress. We were unsuccessful in having our "bill" formally introduced, let alone passed, but then Williams-Javits never was enacted either. It retrospect, probably the worst consequence of the efforts to pass Williams-Javits is that it contributed to the demise of the coalition of employers, insurers, and state agencies that had supported federal standards in 1972.

There was another unsuccessful attempt to adopt federal standards for state workers' compensation programs during the Administration of Jimmy Carter. Donald Elisburg, Assistant Secretary of Labor for Labor Standards, led an effort to draft federal legislation that would have relied on the enforcement mechanism used in the unemployment insurance program, which was a great improvement over the enforcement schemes proposed by the National Commission. Unfortunately, the runaway inflation made the White House unwilling to support any legislation that might add to cost pressures on employers and thereby aggravate the inflation problem and jeopardize the President's prospects for re-election, and so the federal standards bill was never introduced.[9]

The election of Ronald Reagan in 1981 effectively ended any serious threat of federal legislation mandating federal standards for workers' compensation for the balance of the 20th century and for the foreseeable portion of the 21st century. And with the removal of that threat, a major impetus for reform of state workers' compensation laws – at least along the lines envisaged by the National Commission – disappeared. One indication is the record of compliance with the 19 essential recommendations. As noted, states on average increased their compliance scores from eight in 1972 to 11.5 in 1976. The average compliance score in 2003 stood at 12.9 (U.S. Department of Labor, 2003). Extrapolations of the rate of progress in the last quarter century suggests that full compliance with the 19 essential recommendations will be achieved around the middle of the 23rd century.

… during the last decade, many if not most state workers' compensation laws have been amended to make it more difficult for diseases … to receive workers' compensation benefits.

Relevancy and Limitations of the National Commission's Analysis for the 21st Century

How should the agenda of a new national commission differ from that of the National Commission of 30-some years ago? While I believe that the basic major objectives for a modern workers' compensation program and most of the 84 recommendations are still valid, there are several areas where a modern analysis could usefully supplement or supplant the 1972 *Report*.

The National Commission obviously provided an incomplete guide on what should be done with permanent partial disability benefits. We essentially ran out of time and passed this issue onto subsequent efforts at the federal and state level. To its credit, the Interdepartmental Task Force did subsequently endorse the wage-loss approach to benefits. And to their credit (I say modestly), John Lewis and I played a major role in the enactment of the 1979 reforms of the Florida workers' compensation program that incorporated a dual system of PPD benefits (impairment benefits and wage-loss benefits). But realistically (I say regretfully), that reform effort, and in particular the wage-loss benefits component of the Florida law, was unsuccessful.[10] I have spent much of the last 30 years conducting research and writing about PPD benefits, and I am now more pessimistic about finding a solution to this crucial aspect of workers' compensation than I was in 1972.

The National Commission inadvertently also provided an incomplete guide on what should be done with occupational diseases. There was only a brief discussion of the topic in the Report (1972, 50-51), with one recommendation (R.2.13) indicating that states should provide full coverage of work-related diseases.[11] There were some other recommendations in that discussion dealing with criteria for coverage, procedures for determining the etiology of a disease, and the apportionment of benefits when there were work-related and nonwork-related causes of impairment or death. In retrospect, the difficult issues of the determination of causation and the extent of disability for diseases were not adequately explored. In defense of the National Commission, these issues were not seen as compelling issues at the time. To the credit of the Interdepartmental Task Force, they sponsored conferences and research that plumbed these issues much more deeply, and to the credit of Peter Barth, the Executive Director of the National Commission, he subsequently became a leading scholar on this important issue.[12] Peter's views on the disease topic and other matters pertaining to the Na-

tional Commission are included in a companion article in this issue.

The issues of work-related diseases are crucial for workers' compensation in the 21st Century for several reasons.[13] First, disabilities for workers are increasingly due to diseases (or long-term trauma with similar issues) as opposed to injuries resulting from traumatic incidents, and workers' compensation has more difficulty applying the work-related tests for diseases than for injuries. Second, the workforce is aging, and older workers are more likely to be disabled from diseases than from injuries. And third, during the last decade, many if not most state workers' compensation laws have been amended to make it more difficult for diseases (especially those with multiple causation) to receive workers' compensation benefits.

Medical benefits for workers' compensation are also an issue that warrants consideration by a new commission. The National Commission was primarily concerned with those states that still imposed arbitrary limits on the duration or amount of medical care. But in the last 30 years, medical benefits have become a much more pressing problem. One reason is that as late as 1981, medical benefits accounted for 33.3 percent of all benefit payments (with cash benefits accounting for the balance), while by 2001 medical benefits were 44.9 percent of all benefits (Williams, Reno, and Burton 2003, Table 7). Another reason (associated with the first) is that the delivery system for health care in the workers' compensation program has become much more complex in these last 30 years, with the introduction of a variety of cost-containment devices, ranging from HMOs to fee schedules to utilization review to practice guidelines. In the early 1990s, as discussed in Burton (1997), the rapid escalation of health care costs in workers' compensation (and in the general health care system) led some analysts or politicians to propose integration of the health care delivery systems for work-related and nonwork-related medical conditions, and the resurgent costs of health care in recent years has led to a resurgence of such proposals.

The rationale for the solution for the woes of state workers' compensation programs proposed by the National Commission – namely federal standards for state programs to offset the depressing influence of interstate competition for employers that results in meager benefits in order to reduce insurance costs – needs to be reevaluated. Competition in labor and product markets has intensified in the last 30 years as a result of deregulation of important industries, including the workers' compensation insurance market, and the globalization of the economy. Are federal standards to place a floor under vicious competition by states to attract employers by lowering workers' compensation coverage and benefits still a viable solution? If not, is there now a compelling case for a federal workers' compensation program with uniform protection for all employees and comparable costs for all employers? While this case may not appeal to all participants in the workers' compensation program, there is this factor: as state legislatures have been persuaded to tighten the eligibility standards for workers' compensation benefits during the last decade, one possible consequence is that the costs of work-related disabilities have increasingly been shifted to the Social Security Disability Insurance program (Williams, Reno, and Burton 2003, 36). How long can the participants in the workers' compensation program employ the cost-shifting strategy before it backfires and results in Federal intervention? The recent effort by the Centers for Medicare and Medicaid (CMS) to require workers' compensation to pay an appropriate amount of medical expenses before the Medicare program will provide benefits, as discussed by Welch (2004), may be a harbinger of Federal efforts to oversee and override state workers' compensation programs.

Mel [Bradshaw] was the crucial person in persuading the members to stand our ground. Would a 21st century National Commission on Workers' Compensation include such members?

Finally, what about a new National Commission to deal with these issues? Personally, when I was Chairman, I was young, bright, brash, and lucky. At least one of those attributes has, admittedly, forsaken me. But "lucky" may have been the key to my success and to the accomplishments of the National Commission. Because I was lucky to be able to put together on short notice an exceptional group of staff and consultants, most notably Peter Barth, Monroe Berkowitz, and John Lewis, who remain my friends and co-conspirators (I mean, of course, collaborators) to this day. But the more critical manifestations of good luck were the members of the National Commission, who were willing to listen, learn, and take tough stands when necessary. As an example, let me offer Mel Bradshaw who was then Executive Vice President of the Liberty Mutual Insurance Company. When he first heard of the spendable earnings concept as the basis for cash benefits, he vigorously asserted that it was a dumb idea. But by the time the *Report* was issued, Mel endorsed the spendable earnings approach as one of our greatest contributions. And when the word began to circulate that the National Commission was on the verge of endorsing federal standards for state workers' compensation programs and the pressures built on the Commission members to reverse that stand, Mel was the crucial person in persuading the members to stand our ground. Would a 21st century National Commission on Workers' Compensation include such members? Perhaps.

ENDNOTES

1. This article is a revised version of Burton (2003). I appreciate the willingness of Robert Aurbach, Editor of the *IAIABC Journal* to allow me to use that article with the notation: Copyright 2003, IAIABC. Republished with permission.

2. The importance of Senator Javits, a Republican from New York, is reflected in the contemporary view that the U.S. Senate consisted of four political parties: the Republicans, the Northern Democrats, the Southern Democrats, and Javits.

3. I was then an Associate Professor in the Graduate School of Business at the University of Chicago. The Dean who had hired me was George Shultz, who by 1971 was a key official in the Nixon Administration, which may help explain my selection. In addition, the OSHAct included as one of the categories for representation on the National Commission "educators having special expertise in the field of workmen's compensation." I qualified because I had written a dissertation and several articles on workers' compensation. I had even already attended several IAIABC Conventions, beginning in Miami Beach in 1963 or so. And, oh yes, I was a Republican. There were probably only two persons who were Republicans and academics with expertise in workers' compensation. The other was Arthur Larson, a distinguished legal scholar and an Under Secretary of Labor in the Eisenhower Administration. Arthur was the obvious choice to serve as Chairman of the National Commission. However, Arthur had supported Lyndon Johnson in his election campaign against Barry Goldwater, and Arthur was therefore rejected by the White House staff for membership on the National Commission.

4. I recall two incidents involving the testimony of the IAIABC that exasperated many members of the National Commission. At one hearing, a designated representative of the IAIABC agreed that if states did not sufficiently improve their laws through state action, then Federal standards for the state programs were appropriate. At the next hearing, a new designated representative of the IAIABC retracted the support for Federal standards. The other incident involved a report submitted by the IAIABC on the extent of state compliance with the 22 recommended standards of the organization. During a hearing, members of the National Commission pointed out several obvious errors in the extent of compliance by contrasting state statutory language with the results in the IAIABC document. The response from the IAIABC representative was that the report had been prepared on the basis of the information submitted by the states and that the IAIABC had made no effort to insure the accuracy of the information. After these incidents, the IAIABC abandoned its plans to present testimony at all of the National Commission's hearings.

5. I think the main casualty of the truncated life of the National Commission resulting from the belated appointment of the members was the inability to form a consensus on more specific recommendations for PPD benefits. On the other hand, I am not sure we could have held the members together much longer on the unanimous recommendation for federal standards since, as the word began to circulate that we were considering such a stance, pressures mounted on some members to abandon their support for this reform method.

6. As noted in the *Report* (1972, 126), several members of the National Commission believed that a Federal takeover of workers' compensation might be appropriate in a few years if the deficiencies in the state programs were not repaired promptly, but they also believed these deficiencies could be overcome by the states.

7. Another consequence of the enforcement mechanism is that the 19 essential recommendations were selected in part because they could be enforced by suits against employers or by employees against their employers. This meant, for example, that none of the National Commission's 22 recommendations for the effective delivery system were included in the 19 essential recommendations, even though many of them were as important as the essential recommendations.

8. The 20-page report of the Interdepartmental Workers' Compensation Task Force was submitted on January 19, 1977, the last day of the Administration of President Gerald Ford.

9. The annual inflation rate exceeded 10 percent in 1979 to 1981, the last thee years of the Carter Presidency.

10. Chapter 7 of Berkowitz and Burton (1987) examines the transformation of Florida to a wage-loss state. As recounted there, Governor Robert Graham appointed an advisory committee (which I chaired) to evaluate the 1979 legislation. We unanimously recommended that the law not be signed because of its flaws. He ignored our advice.

11. The Department of Labor continues to monitor the extent of state compliance with the 19 essential recommendations of the National Commission. The latest compilation (U.S. Department of Labor, 2002) shows that all 50 states complied with recommendation R2.13 (All states should provide full coverage for work-related diseases) as of July 2002. However, the only factor considered by the Department of Labor in determining compliance is whether the state limits its compensable diseases to those on a statutory schedule. While all states have now eliminated such restrictive schedules, the clear intent of the National Commission was that diseases were to be treated no differently than injuries in determining compensability. In fact, most, if not all, states place more restrictions on diseases than injuries, and therefore arguably should not be given credit for complying with recommendation R2.13.

12. The best treatment of occupational diseases is still Barth with Hunt (1980).

13. The issues in this paragraph are examined in greater detail in Burton and Spieler (2001).

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Some Reflections on the National Commission and its Legacy

by Peter S. Barth

Art Buchwald, a humor columnist for the *Washington Post*, once wrote that there is a small island in the Potomac where reports of national commissions are taken to be buried. Indeed there is a very long list of commissions that totally disappeared from consciousness almost immediately after the news conference that accompanied the release of the commission's report. Since the National Commission on State Workmen's Compensation Laws is still often cited in forums and in public policy debates, it seems premature to announce that funeral arrangements for the report are in order. This paper will provide some added thoughts about the National Commission and on its subsequent impact.

For persons who were not concerned with workers' compensation in 1971-72, their knowledge of the National Commission may be limited to its Report, or possibly also to the Compendium on Workmen's Compensation and the Supplemental Studies that were also products of its work. The Compendium is a volume that sought to describe the existing characteristics of the state laws and practices, often quantitatively, while the Supplemental Studies were a series of staff and commissioned research papers covering a wide range of topics. But for those who have only since become involved with workers' compensation, what may not be well understood are the difficulties that the Commission had to overcome to produce a meaningful report. That said, the Commission also had one extraordinary advantage going for it that will be noted below.

The National Commission was the direct product of Section 27 of the Occupational Health and Safety Act of 1970. Only after the Commission ended its work did I learn that it was principally the product of a staff person working for Senator Jacob Javits of New York. In a conversation with Eugene Mittelman, he acknowledged that his proudest accomplishment in serving for many years as a Senate staffer was to have this section inserted into the OSHA legislation. Inserting this section into the legislation was no simple matter. The creation of the National Commission was perceived by many at the time to be a serious threat to the state systems. That fear was not totally irrational. In the late 1960s and early 1970s the continuing back and forth of our federal system was moving swiftly towards an all-powerful federal role at the expense of the states. Consider simply a few examples. In 1969 the federal government replaced the states as the source and monitor of health and safety standards in the coal mines. More significantly, perhaps was that the Coal Mine Health and Safety Act of 1969 instituted a federal entitlement to compensation benefits to coal miners and their survivors who were disabled or died due to "Black Lung" disease. The reason for the health and safety and the compensation actions was the perception that the states had failed in their responsibilities and that the Federal government was left with little choice but to step into the breach. Within a year the Occupational Health and Safety Act of 1970 essentially replaced existing state programs. A linkage to Social Security was established (again) in 1965 when the offset between Social Security Disability Insurance (SSDI) and state workers' compensation benefits was enacted, which limited the combined total of workers' compensation and SSDI benefits.[1] Much of the welfare system that had been directed by the states was federalized in 1974 with the passage of legislation creating Supplemental Security Income. In that year Congress expanded the coverage under the Fair Labor Standards Act to provide minimum wage and overtime hours protection to state and local government workers.[2]

The point is simply that at the time of the National Commission there was some justification for the serious concern on the part of certain stakeholders that the state workmen's compensation would be "federalized." Aside from state administrators and attorneys who made their living from the state programs, the insurance industry had a major stake as well, particularly if federalization meant that the prospective financing mechanism would shift to Social Security and bypass private carriers. Some employers and their representatives also were fearful that any federal takeover would cause the costs of workers' compensation to increase. We later learned that some very large employers believed that it would be less costly, administratively, for them to operate with a single, consistent system; multi-state operations incurred administrative costs within each state. While these employers might have supported full federalization of the program, they were reluctant to enter into open conflict with others in the business community.

In reality, during the life of the Commission it became clear that advocates of change and particularly of federal involvement were hoping that federal minimum standards could be imposed on the states. Those favoring this outcome wanted states to be forced to improve their programs but not to have Washington take them over. The worst fears of the insurance industry, that workmen's compensation would be rolled into the Social Security system, seemed entirely unwarranted, at least for the immediate future. That realization was one of the factors that allowed the industry – and its representatives on the Commission – to support the reforms that

the Commission advocated. Further, it explains why several individuals from the insurance industry lobbied vigorously for those reforms in some states after the Commission issued its report. They believed that improvements in the state systems would forestall federal involvement in the form of federal standards imposed on the states and the carriers, or even a full takeover.

The work of the Commission was made more difficult by the absence of research and data that shed light on the state programs. That was compounded by the absence of individuals with any experience in analyzing the state programs, in either single or multiple jurisdictions. With two exceptions, namely Lloyd Larson, who was detailed to work for the Commission by the Department of Labor, and Daniel Price, who was loaned by the Social Security Administration, the staff was comprised almost entirely of virtual novices in the field. The Commission's chief counsel, John Lewis, had some familiarity with issues outside of his home state through assisting Arthur Larson in the preparation of his multi-state treatise on workmen's compensation. However, John was primarily a practicing workers' compensation attorney in Florida, and in large measure his experience in the field was limited to that state. The federal government had devoted virtually no resources previously to acquiring data on the state programs, and the states were almost totally bereft of data about their own systems. While there are never enough or the right kind of data to satisfy the research community, in retrospect the degree to which that has changed over the past three decades seems extraordinary. And while the number of researchers in the field is still comparatively small, it has grown exponentially from the tiny base that existed in the early 1970s.

Despite these challenges, the National Commission itself had one tremendous advantage that enabled it to produce a report with little dispute. Even in the absence of hard evidence and data, it was virtually impossible to avoid concluding that the state systems were in terrible disrepair. With hindsight, it is clear that had more information existed and been available, this conclusion would not have been weakened. Indeed, it is likely that with additional information the programs would have looked even worse than they did based on the scant information that existed. Still, on the core issues of coverage and benefits, the states were hardly treating injured workers adequately or equitably. What brought that home inescapably emerged from the various hearings held around the country by the Commissioners. An example is still vivid in my mind. A very large Texas insurance company asked to testify before the Commission, and in the course of their presentation introduced a young man who was rendered quadriplegic by his contact with an electric power line while climbing a utility pole. The insurers argued that the system worked well, as evidenced by the fact the young worker was receiving health care and cash benefits in accordance with the state's law. However, upon questioning, the benefit amount was hard to defend. As of 1/1/72, Texas law replaced only 60 percent of an injured worker's wage, subject to a maximum of $49 per week. The state's average weekly wage at that time was $134 so the maximum benefit represented only 36 percent of the average wage in the state. Moreover, since the benefit was not inflation adjusted and concerns about inflation in the early 1970s were understandably high, the injured worker could only look forward to seeing this benefit decline in real terms. Worse, the benefit for that worker was not a lifetime benefit, so at some future point the benefit would be terminated. The gap between the insurers' perception that this was an exemplary case of the system working well and the reality for that worker hardly could have been greater, nor could that be missed by the Commissioners who attended that hearing.

The single most critical decision for the Commission was whether it should call for recommended "guidelines" or impose "standards" on the states. These terms simply represented the difference between a mandatory versus a (minimal) recommended set of standards for the states to adopt. In the end what appeared to be a compromise was agreed upon with the voluntary approach to be used and the states' actions to be monitored. As such, the July 1972 report urged that Congress evaluate the states' compliance with the essential recommendations and if necessary "... with no further delay in the effective date should then guarantee compliance with these [19 essential] recommendations."

One means of reaching compromise and ultimately agreement was to avoid being too specific about the criteria to be used in evaluating compliance by the states. Some of the essential recommendations could be measured with alternative criteria. And some of the essential recommendations were simply more important than others. What if the states met most of the 19 but missed on the most important ones? What if a state missed compliance with a standard but only marginally? And what if most states met all the essential recommendations but a few states missed badly to meet the norm? In retrospect the Commission appears to have been wise not to tackle these "details." Aside from the fact that the Commission found itself running out of time and that each of these questions could have led to lengthy controversy, dealing with them could have led to undermining the fragile compromise that emerged in the Report. Though such details were important ones, ultimately they would be resolved in the larger political arena were Congress to move ahead on the central recommendation to legislate after July 1, 1975 if the states did not improve their laws.

Of course the "compromise" that would have led to federal legislation

in 1975 if the states did not voluntarily meet (some or most of) the 19 essential recommendations did not result in any effective action by Congress. Clearly, the Nixon-Ford administrations opposed any moves that would lead to federal involvement in the state programs. As a means of demonstrating some concern about workers' compensation without doing anything to change the *status quo*, the White House decided to take steps that would allow it to defer any action that would jeopardize the system. Two measures were agreed upon as a way of showing some movement, while the underlying motive was to stall. (I actually participated in several of these meetings.) The first was to create an interdepartmental task force to conduct further research into workers' compensation. The second step was for the U.S. Department of Labor to name a person in its regional offices to work with the States, as needed, to assist in improving their state laws.[3] This enabled the administration to show that it not forgotten workers' compensation.

The other "big" question regarding possible congressional action that the Commission did not address was one that a number of us wrestled with over the years following the Report of the National Commission. If the federal government was to impose minimum standards on the states, but the states were to administer the laws and be allowed to operate above the threshold levels set by federal law, what would be the appropriate method of imposing compliance? What method could be used to force the states to bring their laws into compliance? After several post-Commission years, no satisfactory method emerged. Perhaps if there had been widespread interest in forcing compliance upon some or all of the states while retaining the core state systems, some imaginative method would have emerged. The one method that seemed capable of accomplishing the goal was copying the tactic that led to the rapid adoption by all of the states of unemployment insurance laws in the late 1930s. Essentially, that was achieved by imposing a 3 percent federal payroll tax on employers, but forgiving employers having to pay (all but .3 percent of) the tax if they operated in a state with a minimally acceptable unemployment insurance law. The most learned scholar of workers' compensation, Arthur Larson, advised privately against using this technique on grounds that it was too powerful a device to enforce compliance on the states. He noted that after the method was used in the 1935 statute that created the unemployment system, Congress never used the method again.[4]

The National Commission gave little attention in its report, its research activity, or in the public hearings to the subject of occupational diseases. There are several explanations (rationalizations?) for what appears in hindsight as a shortcoming. First, there was little interest in the matter at the time, coal miners aside. The asbestos catastrophe was not yet on radar screens. Data were virtually non-existent. Though it would later generate substantial interest in the field, NIOSH (the National Institute for Occupational Safety and Health) was in its infancy. Still, broadly construed occupational illnesses were an issue as they related to matters of compensability. The Report did discuss compensation in "heart cases," a subject that had long been of interest to legal scholars and practitioners in the field. Second, the Report acknowledged that the "by accident" provision found in many state statutes had been interpreted in such a way as to rule out compensation for certain slow-to-develop conditions, and the Report recommended that the accident test should be dropped. Finally, the Commission spoke to the issue of schedules of diseases that could be compensated. Briefly, many jurisdictions (including many today outside the U.S.) list diseases that can be presumed to be occupationally caused and therefore compensable. While scheduling diseases can make considerable sense (at least to me), there are several problems that can be associated with this approach. First, if the schedule of potentially compensable diseases is an exclusive schedule, it rules out compensation for diseases that are not on the list, regardless of the facts in the case. Secondly, if the schedule is not updated with some frequency, as new scientific and epidemiological discoveries are made, diseases that should be added to the schedule remain unlisted, making it difficult or impossible for claimants to receive benefits when they appear to be warranted. The problems of these diseases schedules (exclusive and/or inflexible) caused the Commission to add as a recommendation, "...that all States provide full coverage for work-related diseases."[5] It would be difficult to find anyone today who would openly quarrel with this recommendation. There was little debate about it in the Commission. It was an easy recommendation to add to the list of "essential recommendations." The sole problem with it was that it overlooked the key issues relating to occupational diseases that existed at the time, and that are still largely present today. This is demonstrated by the fact that the Commission inserted a table that identified the number of states that had "full coverage of occupational diseases," and it reported that 41 of the 50 states already met the recommended standard.[6] Indeed, by the narrowest of constructions this could be correct, as a number of states may have eliminated certain barriers to obtaining compensation for occupational illnesses. However, it did not and does not reflect the important obstacles that prevent certain (potential) claimants from receiving medical and indemnity benefits.

Though occupational disease seemed to be a minor issue to many in the workers' compensation field, it was hardly irrelevant, as some Commissioners stated privately. In the mid-1960s the Atomic Energy Commission (AEC), together with the U.S. Department of Labor, undertook

one of the most systematic approaches to occupational disease compensation.[7,8] The studies were touched off by concerns that the AEC's workers found it difficult to gain benefits from their state workers' compensation agencies for illnesses that they attributed to radiation exposure.[9] As the studies were undertaken it became clear that radiation-induced illnesses or fatalities were not unique. Volume IV of the series concluded that problems existed with regard to claims for asbestos or beryllium caused diseases. Overall a consistent finding was that there was a (surprising) dearth of claims for occupational diseases. For example, Professor O'Toole concluded:

> "The volume of claims for delayed consequences of radiation exposure is surprisingly small. There appear to be fewer claims filed than would be expected, considering (a) present medical knowledge of the biological effects and (b) the number of serious accidental exposures known to have taken place. Although the examined claims cover a wide variety of alleged diseases, there is a noticeable absence of claims for some diseases which have been demonstrated through medical research to be among the consequences. This is most striking in the Colorado cases, where the only claims are for lung cancer."[10]

Concerns about occupational disease are actually centuries old, and difficulties regarding the compensation for such illnesses, either under a tort scheme or workers' compensation, were not unknown at the time of the Commission.[11] Still, aside from the efforts of some dedicated staff at the AEC and the successful pressure of some legislators from the coal mining states that led to the Black Lung provisions in the Coal Mine Safety and Health Act of 1969, workers' compensation for occupational illnesses had a very low profile in 1971. Precisely what changed that is difficult to establish. One might note that the early 1970s found a growing concern regarding matters of health and the environment. Early in the 1970s the linking of the deaths of nine employees of Goodrich Rubber Co. to their exposure to vinyl chloride received widespread attention. What made the cases so dramatic was the very rare form of cancer that killed these men, seemingly ruling out other possible causes of the disease. In 1972 the Ford Foundation commissioned a study of occupational health and safety. The result was a wide-ranging study by Nicholas Ashford that found public policy at the time to be wholly inadequate, needlessly dangerous, and generally unfair to the interests of workers and their families. Among the many criticisms that emerged from this genuinely seminal work was that of the National Commission's report, in part for its cautious approach to the future role of the federal government. Ashford found the weakest part of the Report to be in the area of occupational disease, stating:

> "The area in which the report of the National Commission on State Workmen's Compensation Laws seems most deficient is the coverage of occupational diseases. . . In summary, the report provided too little real analysis of the problems involved in the coverage of occupational diseases."[12]

Ashford even suggests that workers' compensation contributed to the problems of disease. Along with underreporting, an inappropriate shortfall in claims volume contributes to giving a low profile to the problem. The result is a low degree of public attention and the absence of demands by the public for policies that would curb the incidence of such illnesses. In his view, the extent of occupational illness in the U.S. was (is) vastly understated. And in agreement with most studies that occurred both before his work and since then, he believes that workers' compensation does not provide protection for most of those who have succumbed to disability or death from such illnesses. He argued: "...factors have combined to keep occupational disease claims well under 1% of all compensation payments. Yet the burden of disability and death from occupational disease may be as great as or greater than the burden from accidents."[13]

The mounting interest in occupational disease and its compensation contributed to a high level of activity from the 1970s for more than a decade. The growing realization that asbestos had harmed (hundreds of) thousands of workers, among other revelations, was beginning to provide some substance to the arguments of those who claimed that an occupational disease crisis was at hand. The Interdepartmental Task Force was persuaded to undertake a study of compensation for diseases, and it held a conference to bring together the occupational health community with the small number of workers' compensation researchers. A variety of measures in the Congress stirred the pot, though the driving force tended to be the larger issue of a federal role in workers' compensation, along with some recognition of the disease problem. Interest in federal legislation for diseases crossed party lines. Senator Taft (R-Ohio) introduced legislation in 1973 that would have provided compensation for those with occupationally induced respiratory illnesses. Senators Williams (R-NJ) and Javits (R-NY) introduced several measures, beginning in 1973 with S. 2008. Javits had been one of the major backers of the Occupational Safety and Health Administration (OSHA) legislation and along with his staff was largely responsible for the insertion of Section 27 of that law, which created the National Commission. Among other measures the bill would have had the Secretary of Health, Education and Welfare (the predecessor to today's Department of Health and Human

Services) assess criteria to determine which illnesses are work-caused, and it would have loosened compensability standards in a manner that would have made claims for diseases more successful. A later measure to bring federal standards into the state systems, S. 3060, also contained a controversial provision that would have given the Secretary of Labor regulatory authority to improve coverage of occupational diseases, and it also garnered inadequate support.[14]

Amendments to the Black Lung law in 1977 further loosened eligibility criteria for those seeking benefits, greatly expanding the numbers of beneficiaries. That followed on the heels of the 1972 amendments to the original law, which greatly widened the standards for compensation.[15] Both measures contributed to the interest in compensation for occupational diseases. However, the effort to vastly broaden eligibility criteria for Black Lung claimants may also have created a backlash, instilling a fear that other federal occupational disease compensation legislation would lead to huge numbers of claimants and substantial costs for businesses.

A study that I wrote with Allan Hunt in 1980 argued that the extent of claims for occupational diseases was far below what might be expected given the incidence of such occurrences.[16] It was difficult to prove the case, however. One could point to barriers in state laws that made it difficult or impossible to be granted benefits for an illness and to the absolute paucity of claims in those rare instances where data were available. Still, how was one to prove that there were actual incidents where claims were not filed but the disease was work-caused? The opportunity to do this came shortly thereafter. Dr. Irving Selikoff of Mt. Sinai School of Medicine had developed a reputation as an expert in asbestos-caused diseases. Among other research, he had worked closely with members of the insulators' workers labor union, a group that had particularly high risk of developing asbestos-caused occupational disease. By working with a large cohort of these workers over a number of years, Selikoff identified a group whose deaths he attributed to asbestos exposure.[17] Selikoff allowed us to contact survivors of these workers and interview them. Of 995 possible decedents, partial or completed interviews were conducted with 792 survivors.[18] Our findings indicated that while most of these workers were forced to stop working because the illness ultimately killed them, fewer than 30 percent had sought workers' compensation disability benefits for their condition. (Exactly one-half of this group of applicants actually was awarded disability benefits. While some had their claims denied, most of the others had their claims pending at the time of death.) Subsequent to Selikoff's examination of the deceased worker's medical records, he usually corresponded with the survivors and/or the union to inform them when he found that the death was due to asbestos exposure.

If any group of workers could be expected to use the workers' compensation system, it was this group and their survivors. The union is a small one with its members educated to the risks of asbestos exposure, a substance they had worked with regularly. It is also likely that the publicity surrounding asbestos meant that family members were aware of the hazardous nature of the work. In most cases the diseases that first disabled and then killed these workers did not overtake them so suddenly that there was no time to find assistance or information about gaining benefits. In most cases the survivors were informed by Dr. Selikoff or the union of the role that asbestos played in the death. For all these reasons, if any group of survivors could be expected to seek workers' compensation for the death of a husband or other family member, it would likely be this group. Yet, our survey found that 64 percent of the survivors did not file a claim for death benefits for workers' compensation. The bottom line is that workers' compensation was certainly not being used by either workers or their survivors in cases of occupational disease associated with asbestos.

Serious difficulties in obtaining compensation for and underreporting of occupational disease cases were hardly limited to the United States. Even those systems that were generally perceived as more "worker-friendly" than those found in the U.S. seemed to have parallel difficulties. In Ontario, a province with a workers' compensation agency that was typically more liberal than most, if not all, the American states at that time, standards for the compensation of asbestos-caused disease appeared to be difficult for claimants and inflexible.[19] Overall, there were surprisingly few claims for asbestos-caused disease, and of those many were denied.

There has been awareness and publicity of the plight of atomic energy workers with radiation-induced illnesses at least since the late 1950s. It has been more than a generation since the enactment of the Black Lung law, the work of the National Commission, and the onset of the extraordinary attention given to compensating workers with asbestos-caused diseases. One might be led to believe that underreporting of occupational diseases is no longer a reality. No doubt, the problems both of reporting and of gaining a measure of compensation are less severe in the 21st century than in earlier years. Yet a steady stream of research suggests that the problems remain substantial, even if they are smaller in scope today than they were decades ago. Biddle et al. report that an estimated 9 to 45 percent of persons with occupational illnesses are likely to file claims for workers' compensation benefits.[20] Substantial underreporting was also identified by Pransky et al.[21] Rosenman et al. found that physicians in Michigan were seldom likely to report instances of occupational illness, despite the legal requirement to do so.[22] Despite these findings there appears to be little interest in legislation

at the federal level to educate workers and their survivors about the rights to benefits that many appear to be foregoing. While several of the states have enacted legislation to require more accurate reporting by health care providers and employers of instances of occupational disease, progress is measured in very small increments. Would a more aggressive stance in 1972 by the National Commission regarding occupational disease find us in a different position than we are more than 30 years later? I doubt that it would.

ENDNOTES

1. An offset was originally included in the 1956 law that established SSDI, but it was removed in 1958.

2. However in 1976 this very significant step was found by the U.S. Supreme Court to be too great a usurpation of state responsibilities in *National League of Cities v. Usery* (460 U.S. 833).

3. The highly political environment at the time was reflected in the demise, virtually overnight, of the Interdepartmental Task Force. The final report of the Task Force had been rushed out in the last days of the Ford administration with some confusion about its content and who the signers were to be. Further, early on the morning that President Carter was inaugurated in 1977, the locks on the doors of the Task Force offices were changed without providing replacement keys for the remaining staff.

4. A discussion of this issue, including the pros and cons of using the unemployment insurance approach can be found in Johnson 1965.

5. Recommendation R 2.13.

6. Table 2.6.

7. In a series of studies, including hearings, see U.S. Department of Labor and Atomic Energy Commission 1965-1968. Several of the volumes are undated but they appear to have been printed between 1965 and 1968.

8. The Atomic Energy Commission was the predecessor of the Department of Energy. Based on information that led to the enactment of the Energy Employees Occupational Illness Compensation Program Act of 2000, and the early experience of that law, many of the recommendations found in these earlier studies were largely or totally neglected. In particular, see the recommendations from the report of O'Toole 1965.

9. Credit needs to be given also to Earl Cheit for his alert that radiation-caused disease was problematic in the workers' compensation system. See Cheit 1957 and Cheit 1959.

10. O'Toole 1965, pp. 34-35.

11. Indeed, the Act creating the Commission charged it with undertaking a comprehensive study and evaluation of, among other things, "…standards for determining which injuries or diseases should be deemed compensable…" (Section 27, (d) (1) (I)) .

12. Ashford 1976, pp. 302-303.

13. Ashford 1976, p. 416.

14. A good way to measure the reaction to the proposed bill by the interest groups can be seen in National Workers' Compensation Standards Act of 1978, Hearings before the Subcommittee on Labor of the Committee on Human Resources, U.S. Senate, 95th Congress, 2nd Session on S. 3060, U.S. GPO, 1978.

15. The development of these amendments and their impacts are described in Barth 1987.

16. Barth and Hunt 1980.

17. In most cases he autopsied the deceased persons to assist him in determining the nature of the underlying illness.

18. Barth 1982a.

19. Barth 1982b.,

20. Biddle et al. 1998.

21. Pransky et al. 1999.

22. Rosenman et al. 1997.

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About the Author

Peter S. Barth is currently Emeritus Professor of Economics at the University of Connecticut, where he formerly served for 6 years as the Department Head. His undergraduate degree in Economics is from Columbia University and he earned his Ph. D. in Economics at the University of Michigan. My wife, Janet, and I met Peter and his wife, Nancy, when we were all graduate students at Michigan in the early 1960s, and we all have been constant friends, and Peter and I occasional collaborators, since then.

Peter and I were involved in 1971-72 in the activities of the National Commission on State Workmen's Compensation Laws, a presidential commission created as a result of the enactment of the Occupational Safety and Health Act of 1970. As discussed in the two articles in this issue, I was appointed Chairman of the National Commission in June 1971, which meant we had a nearly impossible task of completing our work by July 1972, as required by the Act. The Commission was extremely fortunate that Peter agreed to serve as Executive Director. He played several crucial roles, including helping recruit and manage a staff, writing and editing some of the Commission's publications, and dealing with the suggestions and requests of the diverse members of the Commission. Peter, John Lewis, the Associate Executive Director and Chief Counsel, and I spent numerous hours developing and implementing strategies to insure that the Commission was a success and completed its work on a timely basis.

One of the most positive consequences of the National Commission is that much of Peter's subsequent writing and research has dealt with several important aspects of workers' compensation. His 1980 book with H. Allan Hunt, *Workers' Compensation and Work Related Illnesses and Diseases*, was published by the M.I.T. Press, won the Clarence Kulp Prize from the American Risk and Insurance Association, and remains the best book on the topic. Peter also published a book on the Federal Black Lung program, and has prepared studies on workers' compensation in Connecticut, Texas, California and Florida for the Workers Compensation Research Institute. Several of his publications in recent years have focused on workers' compensation for permanent partial disability, and on the treatment of workers' compensation issues in an international context. In that regard, he has recently co-authored studies of the programs in British Columbia and in Victoria, Australia.

Peter has also served as a consultant on workers' compensation to private organizations as well as to numerous states and to the federal government in regard to workers' compensation laws. He served as an expert witness in three states where the provisions of state laws were challenged on constitutional grounds. In 1990-91 he was appointed to chair the Governor's Commission on Fair Wages (Connecticut). Peter is currently a member of the Steering Committee on Workers' Compensation of the National Academy of Social Insurance.

Peter and Nancy Barth, and Janet and I have remained close friends for over 40 years. We have spent time together in our homes and in various other locations, such as Rome. These long professional and personal associations make me particularly appreciative of Peter's contribution to this issue.

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