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WORKER'S COMPENSATION:
DIFFICULTIES, CAUSES, AND REMEDIES



Joseph G. Newman. B.A.

An Abstract Presented to the Faculty of the
Graduate School of Lindenwood College in Partial
Fulfillment of the Requirements for the
Degree of Master of Business Administration

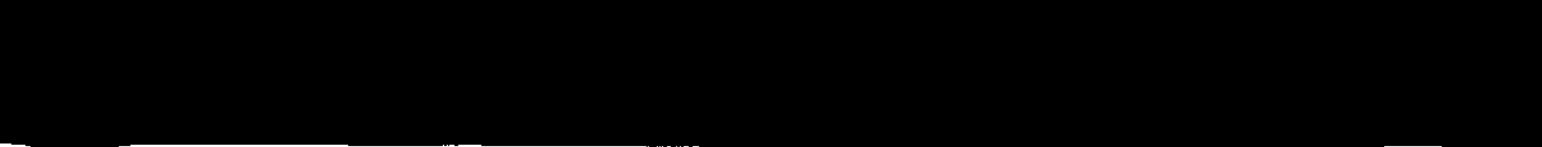
1994

ABSTRACT

This thesis will focus on the study of the Missouri workers' compensation system, its difficulties, the causes, and possible remedies. Current research reveals that the rising cost of workers' compensation is causing industry, labor, and government to consider major reforms to the system. These reforms might be directed toward curtailing rising medical costs. Workers' compensation costs have increased significantly through the 80's, and continue to rise. Excessive litigation is another factor influencing the cost of workers' compensation.

The purpose of this study is to investigate the difficulties found in administering a fair and equitable workers' compensation system. It is hypothesized that effective reform will reduce the cost of the Missouri Workers' Compensation system, thus securing the system for the future.

Results of data analysis reveal that rising costs in workers' compensation are attributable to factors of medical inflation, rising cost of wage benefits, the nature of workplace injuries, growing attorney



involvement, and ineffective legislation. There is enough data to conclude that no single enhancement to the system would salvage its decline. Enhancing the system with several effective program changes, at the legislative level and in the workplace, might curtail the destructive cost spiral that workers' compensation is experiencing.

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Chapter I
INTRODUCTION

Origin

Workers' compensation is a set of laws that provides for restitution and partial replacement of lost wages to employees for economic loss because of work-related injury or illness. Regardless of fault by the worker or employer, payment is available to all claimants when justified (Flicking 15).

As American industry grew, the workplace became increasingly dangerous during the 19th century. Industrial related deaths and injuries grew in proportion to the number of mills, shops, and mines. The laws for workers' safety changed rapidly as America became more urbanized, industrialized and mechanized. Society focused increasing attention upon the issue of workplace safety (Flicking 15). Unfortunately, during this period of history, the only recourse for an aggrieved worker or family was to sue the employer. The emergence of workers' compensation laws forced industry to upgrade the quality of the workplace (Lawson 25).

New York state passed the first workers' compensation law in 1910. The courts ruled this law unconstitutional on the basis that no liability exists without fault. Wisconsin enacted the first effective workers' compensation law in 1911. Nine other states followed Wisconsin, enacting similar legislation by year's end. Illinois passed its workers' compensation law in 1912. During the next five years, thirty-seven states legislated workers' compensation laws. By 1949, workers' compensation became a universal concept across the nation (Flicking 16).

Missouri Law

The Missouri Federation of Labor was a strong supporter of workers' compensation as far back as 1909. This body persuaded the governor to establish the first of three study committees. In 1917, supporters of the worker's compensation bill included the Missouri Bar Association and several employer groups. Both political parties supported Missouri's workers' compensation law. (Professional Independent Insurance Agents 2).

Opposition to the new law came from attorneys specializing in personal injury litigation and from influential labor groups. These groups objected to the

low rate of compensation outlined in the legislation. The Missouri legislature first passed a workers' compensation law on April 30, 1925. After voter approval, Missouri's law took effect the following November. This Missouri law ended a seventeen year struggle and included provisions which entitled workers to the third highest benefits of any state. Voters approved the bill by a two to one margin (PIIA 2).

Today, almost every worker has coverage from the moment of employment. Unlike most employee benefit insurance, there is no waiting period before coverage takes effect. Also, there is no minimum earnings level. Exceptions to Missouri's worker's compensation law include farm laborers, domestic servants, and the self-employed (Revised Missouri Statute 287).

Workers' compensation provides a minimum level of benefit to injured workers. Wage indemnity payments prevent hardship and were not intended to completely replace lost income. Today, forty-eight states and the District of Columbia provide for replacement of at least two-thirds of gross wages. This benefit is exempt from federal taxes, thus increasing the percentage to eighty percent or more of net wages (National Council on Compensation Insurance 10).

Division of Workers' Compensation

The Division of Workers' Compensation, an agency of the Missouri Department of Labor and Industrial Relations, administers the Missouri Workers' Compensation Act. The Division of Workers' Compensation has four sections: legal, administrative, rehabilitation, and claims (PIIA 4).

The legal section includes administrative law judges and legal advisors. This group hears cases on request by an injured worker, employer, or an insurance company. The administrative section processes all incoming documents, disseminates information to employers, workers and interested parties, and operates a self-insurance program. The Division of Workers' Compensation has a section specifically for claims processing. The rehabilitation section directs and audits vocational and physical rehabilitation for injured workers (PIIA 4).

Providers of Coverage

A requirement of the State of Missouri, over the past seventy years, is that employers provide workers' compensation for their employees. Acquiring coverage is a simple matter of calling an insurance agent. In the past, insurance companies were usually willing to insure

all the voluntary business available. The insurance companies would assign businesses operating in exceptionally hazardous occupations or operating in an unsafe manner to the residual market.

When revenues fall below what is necessary to cover normal risk, insurance companies tend to avoid small businesses because of the low premium dollars received, regardless of their claims experience. These small businesses make up the residual market for workers' compensation. This market is also known as the assigned risk pool. The assigned risk pool assesses all insurance companies operating in the state a percentage of all premium dollars. These funds pay claims for those employers placed in the residual market (NCCI 13).

To assist persons with pre-existing work related injuries, the Missouri workers' compensation system added a second-injury fund in 1943. This fund receives revenues by an assessment on all workers' compensation premiums collected within the state. If workers reinjure themselves and are permanently and totally disabled, or permanently partially disabled at a higher level of disability than before, the current employer's coverage would be responsible only for the compensation needed to cover the new injury. In 1991, a total of 6,322 permanently and totally disabled or permanently

partially disabled workers received payments from Missouri's second injury fund (PIIA 15).

Cost of Workers' Compensation

What began as a simple concept, that of no-fault payments for medical costs of workplace injuries and compensation for the lost work time, has become a complex system. While the system continues to meet many of its basic goals, it does so at a high and escalating cost. These costs include medical care, which over the past decade has become a national problem. Medical costs for workers' compensation amounted to about thirty percent of workers' compensation payments at the beginning of the 1980's (Missouri Executive Summary 5). By the end of the decade, the medical component of claim costs was forty percent. In a study by the Workers' Compensation Institute, the claim costs will rise to fifty percent of the medical component by the year 2000 (Calise 6).

There is no part of the original turn-of-the-century ideal that has changed more than the concept of no-fault coverage. In the past, an injured worker received medical and wage replacement costs. The worker received these costs promptly and without going to court. According to the National Council on

Compensation Insurance, in a 1990 study, more than twenty percent of all workers' compensation claims nationally involved attorneys. The involvement of litigation increases administrative costs and delayed payment, even medical treatment. The 1990 report states that in some states that one hundred percent of employees with lower back pain hire a lawyer (NCCI 11).

Missouri keeps no records of how many workers retain the services of an attorney during the formal hearings or conferences with administrative law judges or legal advisors. Workers use lawyers to assist them in deciding if a particular injury is compensable or to determine the extent of disability. Wage indemnity payments under workers' compensation are based on whether the employee would be able to earn a living in the future (Missouri Executive Summary 8).

Increases in workers' compensation benefits and payments have significantly increased employer costs. In 1946, workers' compensation benefits amounted to 0.54% of payroll nationally, rising to 0.59% in 1960, and 0.68% in 1972. The figure doubled in 1986 to 1.39% of payroll. During the 80's, the Missouri Legislature approved a total of 45.3% in benefit increases which have a direct effect on the percentage of payroll allocated to workers' compensation. These increased

costs are affecting employer's profits and ability to conduct business (Miller 26).

Another source of excessive cost is fraud by employees, employers, insurers, agents, doctors, and other care providers. During 1991, the National Council on Compensation Insurance recovered \$56 million in premiums in Missouri, because of fraudulent employee leasing arrangements and employers falsifying their classifications and payroll (NCCI 12).

The root of the workers' compensation crisis is financial. The same forces driving the escalation of accident and health costs are at work in workers' compensation. Substantial cost shifting, minimal control over the choice of a physician, and dueling expert testimony in an adversarial arena further burdens workers' compensation.

According to James P. Cittadino, President of C & G Midwest Insurers Incorporated:

There are several reasons for the escalating problems in the workers compensation system. The most dramatic is the involvement and effect of litigation. The system has no controls for the legal profession to maintain some realistic awards for claimants either in the medical or compensable damages.

Unlike health insurance, workers' compensation has no medical deductible or medical coinsurance provisions for

claimants (Sheridan 41). According to the National Council on Compensation Insurance, workers' compensation medical costs increased an average of fourteen percent a year from 1980 through 1990, compared to an average eight percent a year for medical costs as part of the consumer product index (NCCI 12).

Even though workers' compensation insurance has become a major expense for employers, the cost of providing this coverage is rising faster than the premiums insurers charge. Without slowing the rate of increase and restoring the adequacy of rates, the Missouri workers' compensation system will eventually collapse.

Several states have reported the possible collapse of their workers' compensation system. In August 1992, Maine reported in the New York Times that two of the three primary companies, still providing workers' compensation, had formally announced that they would leave the state by the end of the year (Haggar 47).

Among the other problems affecting the workers' compensation system is the extent of litigation, occupational disease coverage, and tort actions on the doctrine of exclusive remedy (Sheridan 43).

"Workers' compensation has become a lawyer driven, court driven system," according to James N. Ellenburger,

assistant director of the AFL-CIO. In some states it requires thirty six months to obtain a decision relating to an injury or illness to determine if the cause was job related. Attorneys derive fees of fifty percent of workers' compensation claim amounts in some states (Miller 28).

The workers' compensation system uses jargon-filled concepts such as "temporary partial disability" and "permanent impairment benefits." These phrases are understandably complex, which causes employees to feel more comfortable with legal representation. It is not uncommon to find attorneys outside hospitals and advertising through the media for workers' compensation cases (Miller 26).

Americans with Disabilities Act

The future of the workers' compensation fund is more uncertain since the 1993 enactment of the Americans with Disabilities Act. The effects of hiring workers with current disabilities that are not disclosed to the employer may become compensable disabilities. Some provisions of the Americans with Disabilities Act forbids employers from asking new employees about physical disabilities that are not directly related to job performance. The Americans with Disabilities Act

requires employers to accommodate disabled workers whenever possible. Because of the complexity of certain kinds of disabilities, litigation and formal hearings will determine the degree of disability.

Reform

A controlling factor of workers' compensation costs is the leverage an employer can exert. Improving the way people are hired, trained, and treated is the single greatest leverage employers have in controlling workers' compensation costs (Friedman 9). Richard Palczynski, senior vice president and chief financial officer of The Travelers Commercial Lines Property-Casualty Department, suggests that employers have the most leverage in the battle to contain costs in what they do everyday when hiring workers, when training them, when developing safety plans, when caring for workers after they are injured, and in creating return-to-work opportunities. State and federal agencies can help employers improve workplace safety by shifting from an emphasis on law enforcement and penalties to support and education. Government specialists, when touring a workplace, should suggest changes to improve safety and assist the employer in acquiring funding for safety improvements (Friedman 11).

The Missouri Department of Insurance, in conjunction with House Bill 975 enacted in 1992, authorizes insurance companies to offer deductible plans as part of workers' compensation policies. As is the case in other states, who have deductible plans, the insurance company retains the ultimate responsibility for payment of compensable claims. This reformed Missouri law does not specify the size of the deductible the employer may choose. The Department of Insurance will monitor the appropriate premium deductions exercised by insurance companies. The Department of Insurance states that generally the deductible not exceed forty percent of the standard premium (Howe 5).

Unlike other states, Missouri's workers' compensation law allows an insurer to use either a "gross" or "net" plan. The National Council of Compensation Insurance has raised several concerns regarding these two reporting methods. These concerns include the negative reaction anticipated from employers who choose the gross reportable plan when they incur a very large number of small claims within the deductible amounts. A second concern is the lack of data available for ratemaking (Flicking 17).

Another workers' compensation reform discussed on a

national basis includes 24 hour coverage. This kind of coverage for workers' compensation may reduce costs, litigation, and the elimination of double dipping. The enactment of 24-hour coverage is subject to ERISA regulation of health care and state regulation of workers' compensation and eligibility (Davis 26).

Summary

To cure the ailing workers' compensation system major revisions in the law should be enacted by the Missouri lawmakers. Employers can do much to restore the system to good health. In the process, employers can reduce their cost of operations.

Both government and the private sector need to work diligently to replace existing legislation with workable reforms. These reforms must provide care for the worker, adequate compensation, maintain a rate structure profitable to providers, and costs that are not a danger to the employer and the economic well being of a productive society.

Statement of purpose

This study will investigate the problems in the Missouri workers' compensation system, attempting to reveal a cause and effect relationship that these

problems have on employers and insurance providers. More specifically, this study will explore possible revisions to current compensation statutes in an effort to provide employers and insurance providers with the impetus to resolve problems and establish sound compensation policy.

Chapter II

LITERATURE REVIEW

In medicine, a crisis identifies the stage of an illness in which a decisive change occurs. This change will either lead to recovery or death. Workers' compensation insurance is in such a dilemma. This crisis will foster reform and evolution through human decision in a variety of jurisdictions. But, exact results and their timing are not predictable.

With limited exception, the law requires that all United States employers provide workers' compensation coverage through private insurance, a state fund, or self insurance. Each of these workers' compensation coverage options results in a different problem. The cost of workers' compensation benefits, for example, exceed and is growing faster than premium revenues. Benefit costs are also rising faster than payroll costs. More liberal awards and increases in claim frequency increase benefit costs. Other problems in the workers' compensation system included higher inflation for medical expenses than for health care costs, abundant fraud, and increased attorney involvement, which have increased settlement costs (Bushman 30).

State lawmakers are trying to save their workers' compensation systems by enacting one reform proposal after another. Between January and February of 1993, legislatures added 228 comp-reform bills to the 234 already on the legislative table, according to the National Restaurant Association (Romeo 71).

Workers' compensation, conceived early in the twentieth century, is a way of protecting both employer and employee. Workers received a means of support while they recuperated from on the job injuries, regardless of fault. In return, employers are shielded from litigation. The system functioned as planned for about seventy of the last eighty years (Howard 6).

According to the National Council on Compensation Insurance, health care costs pushed the average medical expenditure for workers' compensation claims from \$1,748 in 1980 to \$6,611 in 1990. Lawyers, in the mean time, convinced workers that claims were a good way to supplement income. Increased litigation occurred after the legal profession waived its long standing ban on advertising for clients. Lawyers looking for workers' compensation cases began advertising in the media in most states (Foppert 107).

In a study sponsored by the California Workers' Compensation Institute, researchers found that limiting

physician fees had little effect on the cost of medical care. Creative physicians find ways to avoid established fee schedules. A second factor in increased medical costs is "procedure creep." Health care providers tend to charge more for intensive services. According to the study, both factors increased California workers' compensation costs 25 percent in 1991 (Haggerty 6).

In a release, provided by Californians' for Compensation Reform and the California Chamber of Commerce, "the California system is plagued by rampant abuse and a system out of control" (Fields 2). California's workers' compensation system is now providing full employment opportunity for forensic doctors, lawyers, and other middle men. The report proposes a series of systematic changes in the workers' compensation law. These proposed changes will save \$2.3 billion within three years and \$2.3 billion every year after that (Fields 2).

The report documents the waste in each of four crucial areas of the workers' compensation system:

- (1) the system's open-ended vocational rehabilitation program, which invites abuse by service providers who can prolong an injured worker's rehabilitation;
- (2) the system's definition of a work related injury;
- (3) the

exorbitant fees the system pays to doctors who write unlimited numbers of competing medical evaluations of a worker's injuries; and (4) the system's method of paying for medical treatments for injured workers, which is not subject to any of the cost control measures now common in any other health insurance programs. Cost in these areas is escalating. Without changes in the laws governing these programs, the report concludes that California's workers' compensation system will be unable to provide benefits to injured workers at a price business can afford (Fields 3).

A large part of the overall increase in physician fees results from doctor's increased billing for medical procedures not regulated by the workers' compensation fee schedule. California's lawmakers last updated the state's fee schedule in 1987. The earlier schedule was based on the practice of medicine in the early 1970's (Haggerty 17).

According to the National Association of Home Builders (NAHB), increasing premium costs, poor administration, increased litigation, and rampant fraud within the workers' compensation system further finally burden their members. The NAHB believes the situation would worsen by splitting the system between federal and state governments (Thompson 22).

The Presidential Task Force on Health Care Reform, headed by First lady, Hillary Rodham Clinton, is now considering removing the medical component from workers' compensation. The Presidential task force proposes placing the medical component into a national health care system, while leaving benefit delivery to the states. The Presidential Task Force believes that such action will lower Workers' Compensation costs for small businesses. The NAHB feels that including workers' compensation in the overall health plan is a misguided strategy of the proposed plan (Fisher 55).

When drafting new legislation, it is important to understand the distinctions between health care and workers' compensation:

- Health insurance plans respond to those injuries and illnesses that develop as a result of non-occupational causes.
- Return to work is not a central factor in the delivery of medical care under health insurance.
- There is no adjudication process under health care.
- Health benefit plans are strictly voluntary.
- Workers' compensation systems offer first dollar coverage with no deductibles and co-payments

similar to those under health care plans (Fisher 55).

The NAHB states several reasons why the financial responsibility for the medical portion of workers' compensation should remain at the state level: increased administrative costs; undermined safety incentives; increased litigation; and health care system costs (Thompson 23).

Under a merged system, increased administrative costs would result from employers and injured workers forced to deal with multiple levels of jurisdiction. Incentives for an employer to provide a safe workplace would cease to be based on the employer's actual claims experience. It would instead be based on the insured group's experience (Thompson 29).

Federalizing the medical component would subject employers to liability for workers' compensation disability and tort damages (wrongful acts that do not involve a breach of contract and for which a civil suit can be brought), since no exclusive remedy doctrine exists in the health care system. In a merged system, return to work and other unique issues related to workplace injuries and illnesses would receive inadequate and inappropriate attention. Workers are

more likely to be out of work longer in a merged system (Thompson 29).

In Missouri, political bodies are at work reforming the current Workers' Compensation laws. House Bill 975 established the Workers' Compensation Advisory Committee. This committee became the legislative vehicle for Senate Bill 251. The new revised Senate Bill 251, passed by both houses of the Missouri legislature and signed by the Governor, became law on August 28, 1993. The new legislation includes several positive features, but no short term cost containment provisions (Frappier 1).

According to the Workers Compensation Research Institute (WCRI), historically, Missouri has been a low cost state for workers' compensation. Missouri provided lower maximum temporary total disability (TTD) and permanent partial disability (PPD) benefits than most states. Missouri also had a restrictive definition of compensable injury, but this definition is changing. Court rulings have increased the number of claims, and recent benefit increases may raise costs (Frappier 2).

A study completed by the Workers' Compensation Research Institute inventories the administrative changes in the Missouri law. Before releasing this study, the institute examined workers' compensation

systems in nine other states for comparison. The study addresses eleven core issues in the Missouri system:

- How is the system administered?
- What benefits are paid?
- What is the role of the special fund, and what does it cost?
- How do claims flow through the system?
- How quickly are payments received and claims resolved?
- What dispute resolution procedures are used?
- How are attorneys involved in the system?
- How litigious is the system?
- What is the work load of the administrative agency?
- What is the cost of administration?
- What aspects of the system deserve special attention?

The state agency responsible for the administration of workers' compensation is a division of the Missouri Department of Labor and Industrial Relations. This study found that this agency's frequent use of meetings to resolve issues increases friction costs for both sides. The Division held almost 119,000 informal

conferences, prehearing conferences, and formal hearings in 1989 (the most recent year for which complete conference/hearing data are available). Overall, forty-three percent of all 1988 indemnity claims in Missouri involved meetings at the agency. The huge volume of meetings is because of the agency's practice of initiating meetings to review cases indicating permanency. The agency also schedules prehearing conferences at regular intervals, rather than at the request of the parties (Ballantyne 3).

The WCRI study found the Division is not using all available resources. In the 1980's, administration revenues exceeded expenditures, creating a surplus in the administration account in 1992 of over \$40 million. The agency budget fell almost 18 percent between 1982 and 1992. Observations during this study note a lack of basic equipment and support staff to handle claims and resolve disputes efficiently (Ballantyne 4).

Paid benefits, according to Division data, grew \$10 million in 1986. These paid benefits escalated to \$376 million in 1991. Maximum weekly benefit for TTD increased fifty percent between August 1990 and August 1992. The weekly benefit for PPD grew by twenty-five percent during this period. This study suggests that higher benefits increased total costs, as compared to

other geographical areas, when comparing utilization and litigation (Gardner 6).

The role of the second injury fund in Missouri is different from most other states. In most states, the employer or insurer and the worker resolve payment total within the State guidelines. The employer or insurer makes a payment and later seeks reimbursement from the second injury fund. In Missouri, the employer or insurer and worker resolve the employer's or insurer's liability. The worker seeks additional payment from the second injury fund. In other systems, the employer or insurer is an aggressive advocate for cost containment. The employer or insurer has no interest in the total amount the worker receives (Ballantyne 5).

Missouri's use of prehearing conferences creates delays in cases. Cases that do not require a formal hearing take longer than similar cases in most other states. The average interval from claim-for-compensation (hearing requests), filing to judges' award, is twenty months, statewide. This interval varies considerably among districts, from eighteen months in Springfield to twenty-five months in Kansas City (Karll 1).

The rules for ending TTD benefits are unclear and the determination of the extent of disability has few guidelines. This study shows that there is much confusion in Missouri about the definition of permanency benefits. It is unclear whether ratings are based on impairment alone or take other factors such as age, occupation, and education into account. The law refers to disability, but does not define it. There are also no guidelines for adjudicators. The lack of guidelines also create incentives for lump-sum payments, which increases cost (Ballantyne 6).

The WCRI survey suggests that the Missouri system is litigious. In 1990, twenty-six percent of claims involved one or more meetings before a judge. An additional 17 percent of claims were held before a legal advisor. Forty percent of all indemnity claims involved attorneys. Rules require that attorneys represent employers and insurers at informal conferences. These rules add friction costs and cause litigiousness. Missouri's rules regarding the "unauthorized practice of law" require that defense attorneys, as opposed to claims adjusters, represent employers and insurers at informal conferences. Missouri Division of Workers' Compensation data indicates that the metropolitan St. Louis area (the St. Charles and St. Louis districts)

have higher rates of attorney involvement, requests for hearings, and claims against the second injury fund, than do the other districts (Boden 13).

An earlier Workers' Compensation Research Institute study concluded that from 1980 to 1985, Workers' Compensation medical costs in Missouri, grew faster than they did in the nation as a whole. The Missouri system gives the employer or insurer only one tool, that of choosing the treating physician. In thirty-two other states, there is a medical fee schedule for compensable illness or injury (Boden 14). Another study identifies cost drivers specific to claims experience.

A 1993 Missouri Closed Claim Study, one of several conducted by NCCI, reviews a number of high cost, closed permanent partial disability claims. These claims account for only ten percent of Missouri's workers' compensation claims, yet they produce forty-five percent of benefit costs. By reviewing this data, researchers identified key cost drivers specific to Missouri.

According to the WCRI study, Missouri law requires that attorneys represent insurers at dispute hearings. This law encourages injured workers to believe they too must be represented by legal counsel. The consequence is that the intended no-fault system has become highly contentious.

eighty-one percent of the cases in the study had attorney representation. Cases represented by attorneys produced indemnity amounts slightly greater than cases without representation. After deducting attorney fees, the net amount awarded to claimants are actually lower (Figure 1).

The Closed Claim study suggest that the Missouri benefit for TTD, PPD, TPD, and death have risen from seventy percent of the State Average Weekly Wage (SAWW) in 1985 to a maximum of 105 percent of the SAWW in 1992. Previous studies by NCCI have shown that ten percent increase in benefit levels produces a seven to ten percent increase in the use of the system. In Missouri, the maximum benefit for PPD has risen from forty-five percent of the SAWW to fifty-two percent. This study found that eighty-two percent of claimants were male, seventy-two percent of claimants were married, and the average age of male claimants was forty and female claimants were forty-three years of age (Taylor 3).

The interval between injury and release to work, and return to work rose significantly from 1989 to 1991. The elapsed time until release rose by thirty-seven percent, while the elapsed time until return to work increased forty-two percent. In 74.3 percent of the cases, claimants returned to work. About one-third of

these cases return to regular employment. An additional fifty-two percent returned in a modified capacity, and the remaining claims did not specify the kind of work performed (Strauss 4).

The rate of Missouri medical costs increased at 11.6 percent per year and is more than twenty-five percent higher than the national medical trend of 9.1 percent. Approximately seventy-two percent of all cases involve surgery. Analysis suggests that surgery increases total costs by thirty percent and medical costs by 110 percent. Physician services accounted for forty-five percent of medical costs, with surgery accounting for thirty-two percent of physician's services and fifteen percent of medical cost. Hospitals account for fifty-two percent of medical cost and increased 18.9% from 1988 to 1990 (Strauss 5).

In Missouri, final disability ratings are often negotiated as part of the settlement, with average impairment ratings about twelve percent higher than the initial disability rating by the physician. This differential suggests that the determinations by administrative law judges are often arbitrary, making the dispute resolution process a key cost driver (Strauss 5).

The Closed Case study suggests that the Missouri system requires multiple and, at times, repetitive hearings before settlements. The system for settlements provides for appeals to the Labor and Industrial Relations Commission, with further appeals to the Circuit of Appeals Court (Strauss 5).

A review of The Missouri Workers' Compensation Legislative Changes, enacted by Senate Bill 251, indicates many changes in the original provisions. The ultimate effect on containment of cost lessened. The following are the major changes introduced in Senate Bill 251 along with a brief discussion of their effect on the system (Evans 2).

The expanded definition of accident and injury, along with occupational disease, says that an injury is clearly work related if work was "a" substantial factor in the cause of the resulting medical condition. The difference in "the" and "a" is significant in that more cases will enter the system with the "a" definition. The new definition also provides that if the injury was only a "triggering or precipitating factor," the injury is not compensable (Banahan 4).

The definition of covered workers excludes from coverage three generations of family members and certain workers, volunteers and officials of not-for-profit

organizations. Certain small corporations, if they file for exemption, are also excluded (Banahan 6).

The provision for safety programs mandates that insurers provide employers with safety programs certified by the Department of Labor and Industrial Relations. The mandate further provides for notice provisions of these programs by the Division. There are provisions for registry of certified safety consultants and engineers. Failure by an insurance company to provide such a safety program, after a thirty-day period, can lead to a fine or suspension of their insuring authority in the state (Ringer 8).

The change in the fraud provision is an attempt at a comprehensive system to stop fraud. An employer who fails to insure is guilty of a class A misdemeanor and fined up to \$25,000. The Division of Workers' Compensation must set up a "fraud and non-compliance unit" to investigate complaints and present any findings to the Director. Under this section there are specific fraudulent acts aimed at health care providers, especially billing, unbundling, and upcoding (Evans 9).

The managed care provision provides that Missouri now has managed care on a voluntary basis upon certification by the Division. There is a provision for utilization review, dispute resolution review, and

appeals procedure, subject to Division review. This section prohibits a hospital or other health care provider from billing or trying to collect any portion of a bill rendered to an employee when it has received actual notice in writing that it is a workers' compensation case. This provision requires that the health care provider give written notice to the Division. Procedures provide for the administrative law judge to direct payment or an award to the provider. This provision change excludes employee medical selection (Ringer 18).

The subrogation section previously allowed an employer 100 percent recovery made against a third party, whatever the comparative fault of the employee. The 1993 change had diminished the subrogation rights of the employer, its insurer, and the second injury fund. The amount of subrogation recovery is to be credited against actual losses paid in determining the experience modification factor of the employer. This section of the law may affect employer rates (Banahan 12).

The waiting period provision, in case of disability, changed. Payment beginning from the first three calendar days of disability changed to the first three scheduled work days before temporary total disability begins. Employers can make advance payments

for TTD, and if the claim is fraudulent, the employer has the ability to recoup their monies (Ringer 20).

Changes in the medical report section allow the administrative law judge to appoint a duly qualified, impartial physician. The expanded definition of a physician's report includes a list of the physician's qualifications. A party can require any treating physician to furnish a rating or complete medical report, unless the physician is a salaried employee of the employer. The testimony of a treating physician is admissible in evidence, providing the party intending the use gives sixty days notice to all parties, before the hearing. This notice will include a copy of the report and all clinical and treatment records of the physician. This revision in the law is the first time that interrogatories are allowed in workers' compensation cases (Evans 22).

The parties involved in workers' compensation cases incur additional expenses. Any party offering a complete medical report into evidence must also make available copies of all x-rays or other diagnostic studies relied upon by a physician. The changes to the medical provisions may have an immediate effect upon the day-to-day practice in the thousands of cases pending before the Division of Workers' Compensation (Evans 25).

For the first time, the second injury fund has a threshold established for access to the fund. For a pre-existing injury to "attach" to the second injury fund, the pre-existing PPD must be of such seriousness as to constitute a hindrance or obstacle to employment. A change in this provision requires the Attorney General for the State of Missouri to represent the fund with in-house attorneys. There is an exception in certain areas where that is impractical (Banahan 26).

The concurrent employment section reflects changes made to the second injury fund. The employee can make a claim for lost wage benefits when the employee has more than one job and the wage in the job, where he suffered injury, is less than the rate the employee is entitled to in the employment which pays him the highest rate of pay. These changes broaden the exposure of the fund beyond its traditional requirements (Banahan 27).

The rate filing procedures for group self-insured employers provision now allows employers to insure through an insurance company on a group basis. The filings of reports of injury was amended so that cases where the medical costs are under \$500 and there is no lost time, the employer shall prepare a form 1 and give the employee written notice of the employee's rights. These filings of reports allow the employer to opt out

of a chargeable injury if the employer pays \$500 under these circumstances (Evans 30).

The new law allows the reopening of a claim after settlement. A new hearing occurs if (1) the claimant can show good cause, (2) the claim is for the payment of medical procedures involving life threatening surgical procedures, (3) the claimant requires the usage of new or of an existing altered prosthetic device. These changes in the new law may require a self-insured or insurance company retain claims for the rest of that employee's natural life (Evans 33).

Senate Bill 251 now requires administrative law judges to participate in continuing education. Further, the law provides an administrative fund as a loan to the Missouri Employer's Mutual Insurance Company (Evans 33). A revision to the residual market section eliminates the safety credit to premiums after January 1, 1994. Previous legislation established this credit so that employers who had a state certified safety program established could receive a ten percent credit toward their workers' compensation premiums. As of January 1, 1994, employers no longer receive this credit (Ringer 34).

Legislative action in other states continues to address the escalating cost of workers' compensation.

Several states have made significant reform to their systems, thus saving employers substantial cost to business and industry.

Arkansas, like many other states, was facing a crisis in the workers' compensation arena, because of insurance losses and rising premiums. Approximately two and one-half years ago, the Arkansas Insurance and Commerce Committee of the House of Representatives, charged Insurance Commissioner Lee Douglass with developing reform legislation. The Commissioner and his staff drafted the "Douglass Initiative." In the later part of 1992, Commissioner Douglass presented this proposed legislation to the House of Representatives. The House of Representatives appointed an ad hoc committee, composed of representatives from labor, management, industry, health care, and self-insureds. Despite their intensive review, the committee reached no consensus in a total workers' compensation reform package (Bornhoft 3).

In Arkansas, it is necessary to receive a two-thirds vote of both houses to pass workers' compensation legislation. With the assistance of Representative Mike Wilson and Senator Bill Guatney, House Bill 1615 passed and this legislation signed into law by Governor Tucker.

Among the major components of the Arkansas workers' compensation reform legislation are provisions that:

If an injury is not caused by a specific incident or is not identifiable by time of place or occurrence, the injury is compensable only if the injury is the major cause of the disability or need for treatment. Permanent benefits apply only upon a determination that the compensable injury was the major cause of the disability or impairment.

At age sixty five, permanent partial disability benefits are offset by benefits received by publicly or privately funded retirement or pension plans.

The commission is to adopt an impairment rating guide to be used in the assessment of anatomical impairment. The guide cannot include pain for a basis for impairment.

Permanent total disability is defined as the inability to earn any meaningful wages in the same or other employment.

Aging and the effects of aging on a compensable injury are not to be considered in determining whether there has been a change in physical condition.

The Workers' Compensation Commission is enabled to develop a managed care system in Arkansas by July 1, 1994.

A unit based in the Insurance Department is established to pursue anyone committing fraud through a workers' compensation claim.

A new safety division within the Workers' Compensation Division will educate employers and promote safety. This division will also identify extra-hazardous employers, who will be required to setup accident prevention plans (Bornhoft 4).

Also, the Arkansas courts will strictly construed the new legislation. The maximum weekly benefit rate will increase January 1, 1997, if the overall workers' compensation insurance rates decrease by at least ten percent following the effective date of this 1993 act. Another positive note in the Arkansas Workers' Compensation System occurred with a new medical fee schedule for physician's charges on September 15, 1992. Arkansas is today developing a fee schedule for hospitals (Bornhoft 4).

Arkansas has already experienced a positive development based on its reform measures. NCCI withdrew a proposed fourteen percent rate increase in workers' compensation premiums. NCCI cited the effect of the medical fee schedule adopted in September 1992, the passage and enactment of House Bill 1615, and the proposed hospital fee schedule. "A fourteen percent increase in premium rates for workers' compensation would have amounted to approximately \$50 million in additional cost to business and industry in Arkansas" (Bornhoft 4).

Pennsylvania's legislature responded in 1993 to the state's ailing workers' compensation system with a reform package that addresses exemptions, proof of insurance, and fraud. The major provisions of Senate

Bill 1 include exempting executive officers, who have ownership interest in a corporation, from workers' compensation coverage and allowing benefits to be offset by any unemployment compensation benefits. Another provision of the law denies benefits to any employee whose injury or death results from intoxication, although the burden of proof falls upon the employer (O'Brien 18).

One part of the Pennsylvania law requires proof of insurance or an affidavit of exemption from insurance, for a municipality to grant a building permit. Another provision will require workers' compensation referees and appeal board members to provide reasoned decisions for their actions (O'Brien 18).

Employees in Pennsylvania may not accept benefits from the state if they are receiving benefits for the same injury from the federal government or from any other state. Medical cost containment is a goal of the Pennsylvania legislation. Reimbursement for medical and hospital services has been at 113 percent of Medicare rates. Future changes or additions to Medicare allowances are not applicable to workers' compensation (O'Brien 18).

Other provisions of Senate Bill 1 include premium discounts of five percent for employers who apply for

and receive certification for an established safety committee. Insurers and self-insurers must enact accident and illness prevention programs. Senate Bill 1 also provides stringent fraud enforcement allowing County District Attorneys and the Attorney General to investigate and start criminal proceedings (O'Brien 18).

Florida governor, Lawton Chiles, proposed a Workers' Compensation "consensus" bill that effectively shuts the trial bar out of the work comp system. His plan would set up a 100 attorney Office of Claimant's Council within the state's department of labor. This council would provide free legal services to injured workers. Employees would retain the option of hiring private attorneys, but they would be responsible for attorney fees. If enacted, the potential savings in the first year, according to Jon Shevel, President of Associated Industries, could account for as much as twenty-five percent of Workers' Compensation payments. The bill would create a guarantee fund for self-insurance funds. This modification links medical cost inflation to the consumer price index. The change allows insurance carriers to perform their own state-certified utilization review and decertify providers without the order of the state's Division of Workers' Compensation (Morrill 41).

The governor's reform bill would also limit chiropractic treatment, allowing only thirty days of treatment or twelve visits, whichever occurs first, unless an orthopedist prescribes continued chiropractic treatment. The bill would also restore provisions deleted from the law in 1990, which allowed recovery of concurrent earnings (Morrill 42).

A provision in the State of Maine Workers' Compensation law requires insurers, not a part of the residual market, to pay that market's deficit. In a December 11, 1992 decision, Maine's Superior Court ruled that insurers not participating in the residual market should not be responsible for its debt. This decision invalidates the assessment formula in the state of Maine. The State Insurance Superintendent will be required to make recommendations for legislative change for a residual market deficit solution (Calise 29).

NCCI responded to the ruling of the court by filing a motion with the State Insurance Department, asking reconsideration of that department granting a rate increase of 8.9 percent, rather than the twenty-one percent requested by NCCI. According to NCCI, several insurance carriers are rescinding their announcements to withdraw from the residual market (Calise 29).

Effects of reform in other states allow them to enjoy substantially lower average rate increases. Colorado enacted Senate Bill 218 in 1990, leading to no recommended rate increases from 1991 through 1993. Kansas Senate Bill 307, adopted into law in 1993, resulted in a zero rate increase for 1993, as compared to a twenty-one percent increase in 1992. Oklahoma, through the legislative changes adopted in House Bill 1447, signed into legislation in 1993, resulted in a zero rate increase for 1993, as compared to a 1992 rate increase for workers' compensation of thirty-one percent (Taylor 29).

Summary

The Missouri Legislature has the responsibility for enacting laws, which protect the worker. This legislative body also carries the additional responsibility of mandating premium cost increases for the insurance industry. Workers' compensation costs in Missouri now escalate to a point where double digit rate adjustments are commonplace.

Several existing studies indicate a major problem in Missouri's workers' compensation system. The legislature has reacted to the lobbying efforts of

outside interest, rather than looking at other examples of positive change. Like California and Maine, Missouri has enacted change which does not produce a cost savings. This inaction will have a direct effect on the industrial and economic base of the state.

The WCRI study offers examples of administrative waste and inadequacy. With a budget surplus, the Division of Workers' Compensation, over the past decade, has failed to recognize and recommend needed legislative reform.

Close Case Study, performed by NCCI, compares Missouri to surrounding states. There is strong indication that other legislative bodies have initiated reform which produce positive results. This study indicates that the current legislation generates a large volume of claims cost. This cost will continue to grow through present enactments.

The review of 1993 Senate Bill 251 reflects the inability of the legislature to look at workers' compensation in an enlightened or responsible manner. The changes introduced in this bill, according to Evans and Dixon, will most probably create additional litigation and subject the system to additional cost drivers.

Statement of Hypothesis

External and internal forces affect workers' compensation in the state of Missouri. The guidelines established by law are those used by the public sector. Missouri's workers' compensation law creates a window of opportunity for abuse and special interest manipulation. The creation of effective legislation could produce cost saving. Reform such as the elimination of the second injury fund, not requiring attorney representation of the employer, and allowing the employer to choose payment of a lump sum settlement in the event of a hardship will reduce the cost. The NCCI and other experts in the field of Workers' Compensation suggest that these changes would save the employers of Missouri as much as twenty-five percent of their current cost. Peter Strauss, Regional Legislative Manager for NCCI stated "the suggested rate for 1994 for Missouri of 24%, is the direct result of the legislature not enacting effective reform" (Strauss 7). Legislative reform is difficult, but sometimes necessary.

Chapter III

SELECTIVE REVIEW AND EVALUATION OF RESEARCH

The Missouri workers compensation system has experienced significant cost pressures over the past several years. The reasons for these added pressures are varied. Maximum benefit levels have undergone a marked increase over the past eight years transforming Missouri from a low benefit state to a high benefit state (Strauss 6).

The Missouri Closed Claim Study conducted by NCCI is an analysis of the trends in benefit cost growth and determination of the allocation of benefit dollars. Detailed data collected from the review of a sample of high cost claims of major workers compensation carriers forms the basis of the study. The data consists of the data elements collected under the expanded Detailed Claim Information Call from the database at NCCI headquarters. This study made use of the data to analyze cost allocation changes over time and to identify and measure cost drivers affecting the Missouri system (NCCI 2).

The Workers' Compensation in Missouri Administrative Inventory Study, conducted by the Workers' Compensation Research Institute based their

analysis on a variety of sources. These sources include published data and reports from the Missouri Department of Labor and Industrial Relations, Division of Workers' Compensation, and Labor and Industrial Relations Commission, and the National Council on Compensation Insurance (NCCI). Other sources used were a review of the statute and other studies on the workers' compensation program in Missouri. The Closed Claims Study performed by NCCI duplicate basic analysis and research techniques.

The Administrative Inventory is a study completed by the Workers' Compensation Institute. The study's objective describes how the workers' compensation system in Missouri actually functions. Its purpose is to assist policy makers and other participants in understanding the features of the workers' compensation system and to make informed intrastate comparisons. The intended audience includes public officials, insured and self-insured employers, labor, and others interested in the provisions and operations of the Missouri Workers' Compensation System (Ballantyne 3).

The Administrative Inventory Study addresses eleven core issues in the workers' compensation system, as it functioned in 1992. Data collected is from the period

1982 to 1991. The study observes changes and their relevance over the seven year period.

METHODOLOGY

The Closed Claim Study made use of five major insurance carriers who supplied the claims data summarized in this study:

Carrier	1991 Market Share
Aetna	6.7%
CIGNA	7.2%
ITT Hartford	5.8%
Liberty Mutual	13.3%
Wausau	6.8%
Total	39.8%

Based on 1991 A.M. Best Company data, these carriers represent 39.8 percent of the market in Missouri. The carriers' combined premium and loss experience represents a 1991 calendar year loss of 93.2 percent (NCCI 3).

The claims in the NCCI Closed Claim study were major permanent disability cases closing in 1989, 1990, and 1991. The sample generated the following claim size thresholds for each year, based on the indemnity costs:

Year	Sampling Threshold
1989	\$18,500

1990	\$19,500
1991	\$23,500

Each participating insurance carrier in the state of Missouri, provided a random sample of approximately fifty claims for each year that met or exceeded the indemnity sampling threshold. Based on a review of Missouri closed claims reported under the Workers Compensation Statistical Plan, the population of the claims sampled account for approximately forty-five percent of benefit costs. The chosen thresholds represent the percentage of claims expected to meet the threshold comparable from year to year (NCCI 5).

The focus of the NCCI Closed Claim study is principally descriptive; the aim is to present a detailed review workers compensation benefit costs distributions. To accomplish this task, the study presents a number of statistical measures and analyses. Among the basic statistical measures are means, medians, and standard deviations. The median is the mid-point of the range of values observed for a particular characteristic. There are as many claims with a value above the midpoint as there are below. The standard deviation is a measure of dispersion or variation around the mean. In long-tailed lines of insurance such as

workers compensation, the median rather than the mean, measures the central tendency because of the influence of extreme data observations. Basic statistical analyses, T and Chi-Square tests, test for differences in the statistical measures across various diaggregations of the data (NCCI 7).

Researchers often measure the marginal or net impact of a specific characteristic on workers compensation system outcomes. Multivariate statistical techniques like regression analysis explain the effect of attorney involvement or claim settlements on claim costs. These techniques control for other influential factors including injury severity and demographic characteristics that are known to affect claim costs (NCCI 7).

Throughout this study, there are references to the marginal effect of certain indicators on workers compensation system costs and outcomes. These findings are based on statistical methods that allow the simultaneous investigation of more than two variables. The research strategy involved developing models explain total claim costs, indemnity and medical costs separately, and return to work. The models identify and measure those factors with the largest impact on system outcomes (NCCI 8).

The regression coefficients, that is the cost models, represents the percentage change in the outcome measure given a percentage change in the individual explanatory variable, with all other variables in the model held constant. In the total cost regressions, for example, the estimated wage coefficient is .04. This coefficient shows that for a ten percent increase in wages, total costs would increase 0.4 percent (NCCI 9).

The multivariate models generally perform reasonably well in explaining the variation in system costs and in the probability of return to work among the sample of injured workers in the study. All the models are highly statistically significant. A number of the explanatory variables are individually significant as well and provide an interesting perspective on the Missouri workers compensation system (NCCI 10).

Among the more interesting findings are those relating to claim dispute and resolution. Although attorney involvement is not statistically significant in the cost regressions, the estimated coefficients are positive. Attorney involvement tends to increase claim costs. Attorney involvement has a strong and significant negative impact on the probability of return to work after consideration of demographic and injury



severity controls, such as managed health care providers (NCCI 10).

If the worker disputes the claim because of the level of benefits, there is no statistically significant effect on indemnity costs. However, medical costs are estimated to be fifty-one percent higher, with a strong probability that the worker does not return to work. Pre-existing conditions appear to have no impact on costs, the coefficients are negative, but not statistically significant (NCCI 11).

Injuries that require surgery have a significant impact on claim costs increasing overall costs by eleven percent and medical costs by eighty-seven percent. Report lags from notice to the employer and insurer and time to first benefit payment are claim milestones. With one exception, these variables do not generally have a significant impact on claim costs (NCCI 11).

Slightly more than eight percent of cases use some form of vocational rehabilitation. These cases have 16.6 percent higher total claim costs, twelve percent higher indemnity costs, and thirty-nine percent higher medical costs. But, these cases are much less likely to return to work. Vocational rehabilitation does not appear to be effective and it increases system costs (NCCI 11).

One of the by-products of the regression analysis performed on this study is that it allows for selecting a "claim profile" and observing the changes in the cost of that claim over a period of time. The regression models estimate that if an injury had occurred in 1987, the total costs would have been \$57,994. If the same accident had occurred in 1990, and the duration of disability was exactly the same, the estimated total claim costs would be \$72,662, or 25.3 percent greater. This is roughly comparable to the change in the Consumer Price Index. Claim durations have increased, thus driving health cost growth in excess of the general price inflation. Increased times, to reach the various critical claims milestones, are significant drivers of costs in the Missouri system (NCCI 12).

The Administrative Inventory uses a five step approach, beginning with an examination of the statute and literature. The Missouri Division of Workers' Compensation provided published and unpublished reports and materials used to identify the relevant statutory provisions of the Missouri system. Next, structured interviews probed beyond the statutory provisions, determining how the system actually operates. Thirty three individuals, with substantial experience and a variety of perspectives, were respondents which helped

insure a balance in the information obtained in the interviews (Ballantyne 4).

The third step was an analysis of available data, collected for a ten year period from the Division of Workers' Compensation, the Labor and Industrial Review Commission, and the National Council on Compensation Insurance. Step four was a collection and analysis of additional data detailing claim flow and dispute resolution. This data included the years 1988, 1990, and 1992 (Ballantyne 5).

The study of data collected in step four determined the proportion of all indemnity cases and nonindemnity cases that had various kinds of dispute activity. This special data run, requested of the State of Missouri, included 50,753 claims throughout the entire state. The final step in the study was a reconciling of the information by submitting drafts of the study to the individuals interviewed in step two for their evaluation (Ballantyne 112).

To determine the proportion of appeals of judges' awards filed by workers and employers or insurers and the outcome of appeals, the Workers' Compensation Commission tabulated activity on 144 applications and 52 awards from July 1992 to October 1992. Data before 1992 are not available. To determine disability ratings the

Division provided a data run of 2,075 indemnity claims with back injuries in 1980. The data run also included cases with injuries to multiple body parts. Since both sets of data showed similar results, the data for back injuries was used in this study (Ballantyne 112).

Major findings of the Administrative Inventory Study indicate that paid benefits more than doubled from 1986 to 1991 because of the following multiple system cost drivers. System cost drivers include:

- (1) An increase in claims relative to employment.
- (2) Indemnity growth (dollars paid per claim) due to more claims with partial permanent disability payments and lump sum settlements.
- (3) Recent benefit increases.
- (4) Rising medical cost.
- (5) Escalating second injury fund benefit costs.

Compared to other states, the Workers' Compensation Research Institute study indicates that litigation and attorney involvement are common and growing in the Missouri system. Seventeen percent of claims involved one or more conferences before a legal advisor. The Missouri agency often began these conferences so that legal advisors may review cases for possible permanency benefit (Ballantyne 8).

Hearing requests grew eleven percent annually in the 1980's, indicating that litigiousness is common and increasing. There is a direct correlation between the number of claims and the amount of attorney involvement.

The State agency's frequent use of meetings to resolve issues increases costs for both sides (Ballantyne 8).

The WCRI study outlines the administration of the workers' compensation system in Missouri. Political incumbents in state government directly affect the system. Three commissioners appointed by the governor head the Labor and Industrial Relations Commission. This commission directs the administrative appeals of judges. The commissioners serve a six year rotating term and must represent employers and workers. The member representing the public must be an attorney. These commissioners need no experience in the workers' compensation system. Assisting the commissioners are four attorneys who draft opinions, six support staff, and a secretary. In 1993, the commission included a former state representative, a former state senator, and a former state agency general counsel. All three had prior experience and involvement in the drafting of current workers' compensation legislation. The Administrative Inventory shows that politics in the state of Missouri enhances the opportunity for attorney involvement in the system (Ballantyne 15).

The Administrative Inventory further revealed that 145,000 injured workers received medical payments in 1987, which represents sixty-eight percent of all claims

in that year. Indemnity benefits rose by ninety-three percent between 1986 and 1991. After adjusting for inflation, the percentage change was 9.3 percent. During the same period, benefit increases for medical treatment rose at a rate of 14.6 percent after inflation adjustment. The medical aspect of cost drivers, according to the Workers' Compensation Research Institute, increased fifty-seven percent from 1981 to 1987, and twenty-five percent from 1987 to 1991 after adjustment for inflation (Ballantyne 20).

Compared with other states Missouri ranks near the bottom in total benefit cost paid to workers. This comparison is deceptive, since the average weekly wage is twenty-seven percent lower in Missouri than the median wage allotted to workers' compensation in other states (Ballantyne 85).

Throughout the NCCI and the WCRI studies, there are references to the impact of certain indicators on the workers' compensation system cost and outcomes. Among the more interesting findings are those relating to claim dispute and resolution. These findings indicate attorney involvement has a strong and negative impact on the probability on the return to work. Claim durations have increased, thus driving cost growth in excess of the general price inflation rate.

Chapter IV

RESULTS

This chapter will consider the results of the most significant studies performed on the subject of Workers' Compensation as it pertains to the State of Missouri. The actual findings are presented as shown in the studies.

It is important to view the study results in the context of specific characteristics of the workers' compensation system. Economic, judicial, and social factors will also affect the outcome of workers compensation cases. This study highlights a number of interesting features of the Missouri system, some which have adverse implications for cost application and growth.

Table 1

Demographic Characteristics

	Male	Female
Average Age	40.18	43.05
Marital Status	75% Married	60 % Married
Total Cases	559	122

SOURCE: "A Summary of Issues Influencing Workers Compensation." Issues Report 7 (1992).

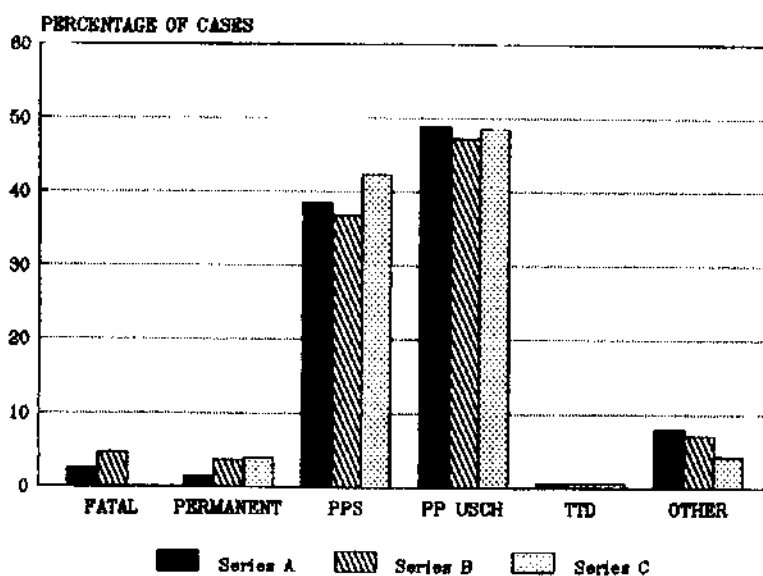
Table 1 shows the demographic characteristics of the cases studied by the NCCI. These characteristics

represent those persons with significant claims as a representative sample for the purposes of the study.

The NCCI Closed Claim Study, descriptive in nature, presents in Figure 1 a review of workers' compensation injury distributions by kind of disability.

Figure 1

DISTRIBUTION BY INJURY TYPE

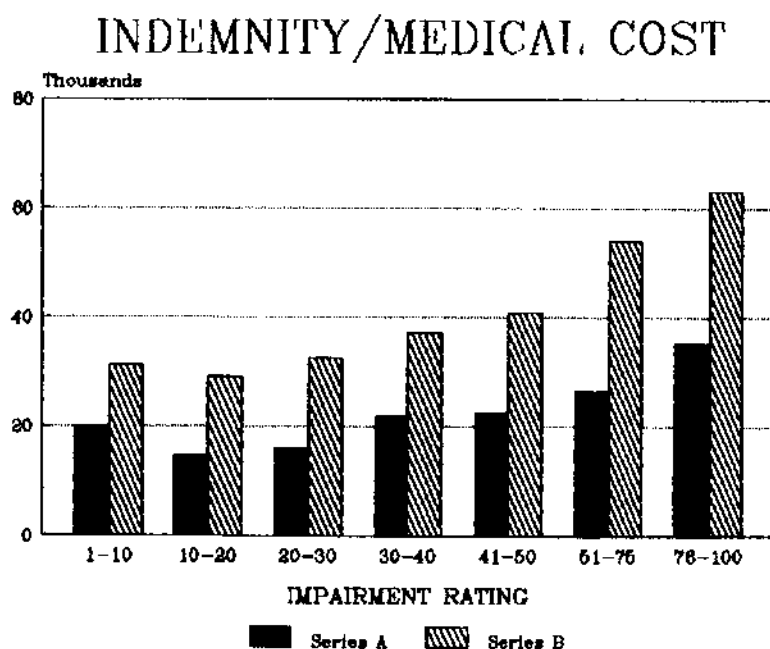


SOURCE: "A Summary of Issues Influencing Workers Compensation." Issues Report 7 (1992).

This graph indicates in Series A the percentage of cases per kind of disability. Series B reflects the percentage of indemnity payment allocated to the kind of disability. Series C represents medical costs allocated to each classification of disability.

The study presents an analysis of indemnity costs per case as compared to medical costs when classified by impairment rating. Figure 2 illustrates medical costs in Series A and indemnity costs in Series B. These costs are relevant when compared to other costs within the workers' compensation system.

Figure 2



SOURCE: "A Summary of Issues Influencing Workers Compensation." Issues Report 19 (1992).

There are a number of claim resolution milestones that provide information on claim settlement patterns. As shown in Tables 2 through 5, there is considerable variability in the time elapsed between the first

report, the report to insurer, the first payment, and determination of disability. These factors affect the administration of the workers' compensation system. Table 2 indicates the amount of time from the injury until the employer becomes aware of the incident.

Table 2
Time Elapsed To Report To Employer

Closure Year	Mean Number of Days (Standard Deviation)	Median Number of Days
1989	7.5 (23.8)	0
1990	9.5 (38.6)	0
1991	9.8 (31.5)	0

SOURCE: "A Summary of Issues Influencing Workers Compensation." Issues Report 9 (1992).

Table 3
Time Elapsed To Report To Insurer

Closure Year	Mean Number of Days (Standard Deviation)	Median Number of Days
1989	29.3 (67.2)	10
1990	27.0 (58.4)	11
1991	31.9 (76.6)	10

SOURCE: "A Summary of Issues Influencing Workers Compensation." Issues Report 9 (1992).

Table 4
Time Elapsed to First Payment

Closure Year	Mean Number of Days (Standard Deviation)	Median Number of Days
1989	110.0 (276.7)	20
1990	106.3 (281.1)	21
1991	83.9 (203.8)	20

SOURCE: "A Summary of Issues Influencing Workers Compensation." Issues Report 9 (1992).

Table 5
Time Elapsed to Disability

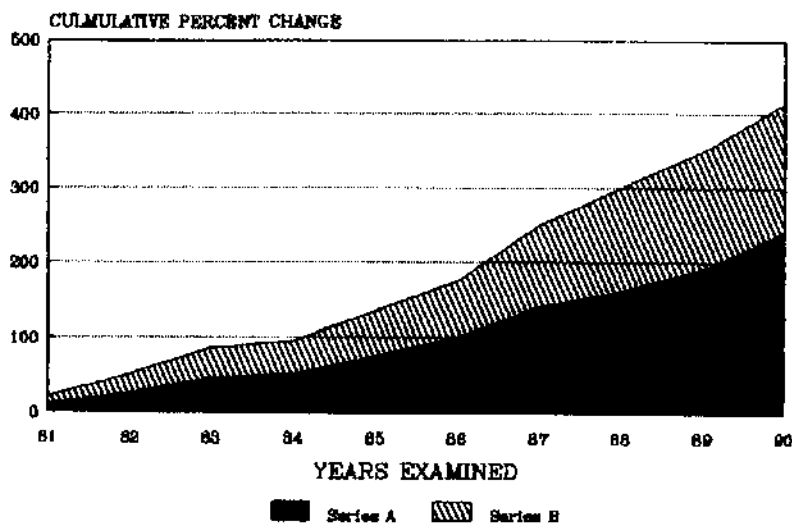
Closure Year	Mean Number of Days (Standard Deviation)	Median Number of Days
1989	32.0 (135.7)	1
1990	20.7 (62.3)	1
1991	33.4 (155.1)	1

SOURCE: "A Summary of Issues Influencing Workers Compensation." Issues Report 9 (1992).

Figure 3 compares the average benefit costs per covered employee in the state of Missouri to the average benefit cost in the United States. This graph represents a benefit cost analysis over the preceding decade. The costs increase is a cumulative total.

Figure 3

AVERAGE BENEFIT COST PER COVERED EMPLOYEE



SOURCE: "A Summary of Issues Influencing Workers Compensation." Issues Report 5 (1992).

Table 6 contains the estimated regression coefficients for selected variables. The coefficient represents a percentage change in the outcome measure, given a percentage change in the individual explanatory variable, with all other variables in the model held constant. The multivariate model generally performed very well in explaining the variation in system costs and in the probability of return to work among the sample of injured workers in the NCCI study.

Table 6

Summary of Multivariate Analysis Impact On Missouri
Workers Compensation Outcomes: Coefficients and
Standard Errors

Variable	Total Costs	Indemnity Costs	Medical Costs	Return to Work
Wage	.040	.116*	-.135	.558**
Male	.100**	.073	.098	-.173
Age	.079	.158*	-.078	-1.637*
Tenure	-.011	-.008	-.009	.091
Attorney	.034	.040	.055	-.890*
Lump Sum	-.177**	-.168*	-.016	.857***
Surgery	.305*	.108*	1.005*	1.031*
Pre-Exist	-.055	-.030	-.017	-.485**
Dispute Over Benefit	.051	-.003	.411*	.746***
Duration	.354*	.298*	.409	-.477
Time to Report to Employer	-.021	-.027***	.026	-.021
Time to Report to Insurer	-.001	.012	-.041	-.234**
Time to First Benefit Payment	-.037*	-.021***	-.102*	.119
Vocational Rehabilitation	.154**	.114***	.331**	-.960**
R2	.319	.268	.358	
F	5.380*	4.205*	6.093	
X2				124.06*

*Significant at .01 *** at .10 ** at .05

SOURCE: "A Summary of Issues Influencing Workers
Compensation." Issues Report 27 (1992).

Table 7 looks at claim flow trends through the percentage change in claim flow components from 1983 to 1991. Paid indemnity claims grew almost fifty-nine percent during this period.

Table 7
Claim Flow Trends 1983-1991

Item	Percentage Change	Annual Average Percent Change
Nonagricultural employment	18.5	2.1
Injury reports*	46.0	5.6
Paid indemnity claims+	58.6	5.9
Hearing requests	126.3	10.7
Prehearing conferences scheduled	71.4	9.4
Formal hearings held	120.7	10.4
Appeals to commission	59.3	6.0

* In 1982 and 1983, injury reports were not required in cases that did not involve lost time. + Paid indemnity claims were estimated for 1990 and 1991, based on the ratio of injury reports to paid indemnity claims in prior years. ** Percentage change calculated from 1983 to 1989.

SOURCE: "Workers' Compensation in Missouri: Administrative Inventory." Workers Compensation Research Institute 50 (1993).

Voluntary payment resolved a majority of indemnity claims as shown in Table 8. This was found to be common among the states studied by the WCRI. What is uncommon is the relatively high percentage of claims resolved by lump sum settlement or agreement which end in disputed cases.

Table 8
Methods Of Claim Resolution

Method of Resolution	Percentage of Indemnity Claims	Percentage of Disputed Claims
Voluntary payment	63.6	-
Lump sum settlement	35.3	96.8
Judge's award	1.0	2.7
Commission award	0.1	0.3
Appellate court decision	+	0.2
+ Less than 0.1 percent		

SOURCE: "Workers' Compensation in Missouri: Administrative Inventory." Workers Compensation Research Institute 72 (1993).

In Figure 4 the graph indicates the difference in the amount received by the injured party and the amount of the claim with and without attorney involvement. Presented in Table 9 is the measure of litigiousness that compares dispute resolution activity in a given year to indemnity claims arising in the same year.

Requests for hearings is the data basis for determining litigiousness.

Figure 4

MEAN BENEFIT PAID ATTORNEY EFFECT



SOURCE: "Workers' Compensation in Missouri: Administrative Inventory." Workers Compensation Research Institute 75 (1993).

Table 9

Measures of Litigiousness 1982-1991

Calendar Year	Hearing Requests per 100 Paid Indemnity Claims	Informal Conferences per 100 Paid Indemnity Claims	Prehearing Conferences per 100 Paid Indemnity Claims
1982	28.2	80.6	156.8
1983	28.5	77.7	113.0
1984	31.8	72.6	106.6
1985	39.1	80.7	115.6
1986	34.5	75.9	112.2
1987	35.1	72.3	106.9

1988	35.3	73.4	114.3
1989	38.5	83.3	128.2
1990	38.7	#	#
1991	40.7	#	#

#Comparable data are not available

SOURCE: "Workers' Compensation in Missouri: Administrative Inventory." Workers Compensation Research Institute 76 (1993).

The results of these two pertinent studies and their findings are relevant when analyzing the cost drivers for the Missouri Workers' Compensation System.

Chapter V

Discussion

The research performed by the Workers' Compensation Research Institute is the primary study observing the administrative aspects of the Missouri Workers' Compensation System. This study used an empirical type of research.

Certain aspects of the Missouri system are especially noteworthy, either because of their strengths to the system or the need for further attention to improve the system. The NCCI Study used an empirical research basis to observe the actuarially determined trend underlying the increase in benefit cost in the Missouri system. The NCCI Study defines "trend" as the excess growth in benefit costs above the growth in payroll. The focus of the NCCI Study is descriptive and presents a detailed critique of benefit distribution for Workers' Compensation.

The Workers' Compensation Research Institute Study focuses attention for further inquiry, but makes no expressed or implied recommendations. The studies by NCCI and the WCRI view the Workers' Compensation System of Missouri from two different perspectives. The WCRI study in the formulation of their analysis used information provided by previous NCCI studies. The NCCI

and WCRI studies tried to investigate the general factors affecting the Missouri Workers' Compensation System.

The conclusion drawn from the Administrative Inventory study indicates that the Missouri Workers' Compensation System is in need of administrative and statutory revision. The administrators of the system do not effectively use the resources available in several areas. The usefulness of data contained in the data base currently in use by the Division of Workers' Compensation does not regularly monitor claims, agency performance, or overall system outcomes. The example for the ineffective use of resources is the timeliness of initial payments and delays in dispute resolution.

State statute does not mandate to the administration of the Missouri system time requirements for payment or denial of claims. The statutes do not provide a clear definition for disability and uses the term impairment and disability interchangeably.

The Missouri Division of Workers' Compensation, by direction of the legislature, lacks the power to forego lump sum settlements, thus increasing attorney involvement. State statute mandates attorney involvement on behalf of the employer in certain sectors of the state. The data indicates that without revision

of the statutes pertaining to the administration of the system and a clear understanding by those administering the system, cost containment is unlikely to occur.

The more interesting findings in the NCCI study relate to claim dispute and resolution, preexisting conditions, lump sum payments, and reporting periods. These positive coefficients do not reflect the effect that current legislation has on the cost.

As shown in Table 6, lump sum payments, preexisting conditions, and the reporting period had negative impact on medical, indemnity, and total cost to the system. Variables such as vocational rehabilitation, kinds of surgery, age, sex, and amount of earnings had little or no effect on these same costs.

There is the suggestion that attorney involvement increases claim cost. Although attorney involvement is not significant in the cost regressions, the estimated coefficients are positive. The current statutes require that employers in the eastern half of Missouri defend themselves with the assistance of legal council.

As shown in Table 6, attorney involvement has a strong significant negative effect on the probability of return to work after consideration of demographic and injury severity. If the worker disputes the claim because of the level of benefits, there is no

statistically significant effect on indemnity costs. Preexisting conditions have no impact on cost as their negative coefficients would normally indicate. The NCCI study shows that claim durations increased during the study period, thus driving cost growth.

The average duration of disability increased with little change in the underlying claims severity. The increases in benefit levels play a significant role in this process. Employee awareness of increased benefit levels and the constraints placed upon the employer create an atmosphere for increasing disability duration without an increase in claims severity.

The NCCI study used regression analysis to estimate the increase in costs for an average worker's compensation claim, holding the duration of the claim fixed. This analysis indicates that the growth in costs for the average claim would not differ from the change in the Consumer Price Index. The actual claim cost, however, did increase over the time period studied above the Consumer Price Index.

The NCCI study of the Second Injury Fund suggests that the Missouri system encourages attorney representation in claim disputes. Attorney involvement occurs without an apparent gain to the injured worker. Claims involving attorney representation increased in

the amount per claim. The award to the employee decreases after deduction of attorney fees.

With the uncertainty over the outcomes of litigation and claim costs, there is reluctance toward claim settlement. The Second Injury Fund is a significant cost driver because the likelihood of attorney involvement prior to an award from this fund.

The NCCI study indicates that preexisting conditions have little effect on claim costs, thus agreeing with the Workers Compensation Research Institute study. Injuries that require surgery have a significant impact on claim costs, as well as indemnity and medical costs.

These studies show a need for legislative change to contain costs in the Missouri system. These changes would include the use of managed health care, the elimination of the Second Injury Fund, and restricting lump sum settlements.

The Second Injury Fund is obsolete. The legislature established the Second Injury Fund to benefit returning disabled World War II veterans. The Americans with Disabilities Act protects today's disabled workforce from discriminatory employment practices.

Only those individuals declared totally and

permanently disabled and prevented from gainful employment should receive lump sum settlements. The enactment of this legislative change would lead to less attorney involvement. Attorneys receive their fees based on the amount of disability settlement over the duration of the payment. By eliminating the lump sum settlement except in those cases as outlined above, it is less likely that the legal profession would involve themselves to the extent they now enjoy, as their payment would extend over the length of the payments.

Legislation enacting a provision for the mandatory use of managed health care facilities and providers will have a significant cost effect on the system. The use of managed health care encourages the employer and injured worker to select treatment from those providers specializing in Workers' Compensation injuries. Employers would select managed health care providers from a pool of providers in the employer's geographic area. These health care providers are contracted by the workers compensation insurers with fees less than the usual and customary rates for medical treatments. Today, an employee must seek medical attention from the employer's physician. This requirement does not restrict the employee from receiving medical treatment from a provider of the employee's choice.

There is considerable evidence that the Missouri Workers' Compensation System is in need of change.

Limitations

The NCCI and WCRI's empirical studies generally find indices that try to measure cost drivers in the Missouri Workers' Compensation System. Each study approaches their view from only one perspective. Also, there are few organizations or individuals who perform an indepth analysis of the Missouri System. Most analysis available focuses on information derived from the Department of Insurance or the Department of Labor Relations. The organizations performing these analysis are insurance oriented and prone to bias.

The availability of data and the logistics of an independent study are formidable. The transfer of results from studies completed in other states is difficult because of the differences in legislation and bureaucratic administration.

While some states are successful in the enactment of legislative controls on their Workers Compensation Systems, at present the Missouri system lacks legislative guidelines that have a positive effect on cost containment. Effective legislation must encompass

and address the significant cost drivers. These drivers include the administration of the system.

To have effective reform of current statutes, legislative bodies must include the experience of others who have brought about effective change. Missouri has tried over recent years to enact new laws with little substantiate effect.

Suggestions for Future Research

As noted earlier, Workers' Compensation is an extremely complex issue involving many separate and distinct elements. Each of these elements play a separate role in determining the effectiveness of the Workers' Compensation System. The administration of the system has a direct effect on the ability of the employer and the insurer. The amount of premium cost affects the cost to the consumer. The employee is affected by the amount and timeliness of compensation. Continued study would include the examination of certain aspects of the Workers' Compensation System. Such an examination should concentrate with the effect of enhancing the administrative regulations of the system. A need exists for further study of the effects of fraudulent claims and a system of determination of such claims is suggested.

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