2005

An Historical Retrospective on the Origin of and Changes to the Worker's Compensation Insurance Industry

Gary Eure

Rochester Institute of Technology

An Historical Retrospective on the Origin of and Changes to the Worker's Compensation Insurance Industry

By Gary Eure

June 14, 2005

Graduate Thesis submitted in partial fulfillment for the degree of Master of Science in Environment, Health & Safety Management

Department of Civil Engineering Technology
Environmental Management & Safety
Rochester Institute of Technology
Rochester, NY

Approved by:

_____
Maureen Valentine, P.E., Department Chair — 6/16/05 Date

_____
Jennifer Schneider, Sc.D., CIH Thesis Advisor — 6/16/05 Date

Permissions

Title of thesis or dissertation: **An Historical Retrospective on the Origin of and Changes to the Worker's Compensation Insurance Industry**

Name of author:	Gary Eure
Degree:	Master of Science Environmental Safety and Health Management
Program:	Environmental Safety & Health Management
College:	College of Applied Science Technology

I understand that I must submit a print copy of my thesis or dissertation to the RIT Archives, per current RIT guidelines for the completion of my degree. I hereby grant to the Rochester Institute of Technology and its agents the non-exclusive license to archive and make accessible my thesis or dissertation in whole or in part in all forms of media in perpetuity. I retain all other ownership rights to the copyright of the thesis or dissertation. I also retain the right to use in future works (such as articles or books) all or part of this thesis or dissertation.

Print Reproduction Permission Granted:

I, Gary F. Eure, hereby **grant permission** to the Rochester Institute Technology to reproduce my print thesis or dissertation in whole or in part. Any reproduction will not be for commercial use or profit.

Signature of Author: _____ Date: 6-14-06

Acknowledgments

I would like to thank Professors Jennifer Schneider for her tough love and John Morelli for his support. Joseph Rosenbeck was very important for his generous consideration and for supporting my admission into the Masters Program. Special thanks to Amy Sickles who did not allow me to forget…anything.

I must thank my wife of 31 years, Sandra Eure, who supported me in spite of the many evenings that I ignored my regular duties. Thanks to my children, Liz, Damien and Ryan, all of whom are special.

Table of Contents

Abstract

Workers' compensation insurance companies have been at the vanguard of workplace safety initiatives maintaining laboratories, training facilities, intern programs, and hierarchical structures. Up until the late 1980's, risk control services were provided to clients as a customer service, with the costs hidden in the premiums. Many companies estimated 4-5 percent of the premium amount was devoted to risk control departments. The late 1980s brought about a change that some attribute to a misapplication of Deming's Total Quality Management (TQM) philosophy. Insurance companies tried to make the move to accountability, thinking that it would drive customer service to a "Deming" level and would create even higher profits. To accomplish this, companies made every department, including customer service functions such as risk control, profit centers. Risk control services that were previously funded through hidden costs were now sold at a rate of $130 - $200 per hour. Within companies, departments that traditionally had worked together began to avoid each other because of internal cost factors. Taken to the extreme, the result was that companies began "to feed on themselves." Moral decisions were replaced by a cost benefit analysis: profit became the primary focus.

Large deductible policies produced the second major change that impacted the role of risk control. Finding persons willing to go "on the record" regarding the impact is difficult, but the results are easily deduced. When there is a large deductible, the insurance company's assets are not in danger until losses approach the deductible amount. Large deductibles mitigate the insurance companies losses, but the health and safety of client employees are often minimized and even ignored. Because so little is written on

this subject, primary research consisting of interviews was conducted and opinions were compiled. Most respondents concurred that the profit center fixation had adverse impacts on employee health and safety.

Key Words: Bundled, unbundled, 'free labor', strict liability, employer's liability, negligence, tort, workers' compensation, downsizing, fiduciary, outsource, vendor, billable hours, profit center, underwriting, deductible(s), profits, third-party administration.

1.0 Introduction

During the Industrial Age, workplace injuries within the United States were seen primarily as an interruption to production; employers' primary concern was finding a replacement employee as rapidly as possible. For this reason, reliable data regarding workplace injuries was scarce. It was not until 1869, when Massachusetts established the first state Bureau of Labor Statistics, that state agencies began collecting data and conducting inspections of workplaces to document both health and safety hazards as well as safe work practices. A decade later, states began to pass "Factory Acts" establishing regulations and inspections to ensure that workplaces had adequate ventilation, emergency exits, and procedures for safe machinery repair. In 1911, Wisconsin's adoption of workers' compensation legislation fueled the spread of similar legislation throughout the United States: 43 states had passed workers' compensation laws by 1921. Even so, reliable data on injuries and illnesses remained scarce making it difficult to track the state of the nation's safety record. The passage of the Occupational Safety and Health Act (OSHA) in 1971 mandated tracking of workers' illnesses and injuries on a national scale. In 1973, the first year for which reliable data are available, 11 out of every 100 workers suffered injuries on the job (Conaway).

This thesis was started with the objective of tracing the impact of workers' compensation on workplace safety. In researching the subject, I found the political complexity of the origin of workers' compensation striking. The arguments of 1880 and the early twentieth Century regarding workers' compensation appear to be identical to the political arguments used today in relation to social security and other social programs. The same pejoratives that are commonly used today such as "Welfare State," "Socialism," or "Conservatism" were a normal part of the language regarding the establishment of workers' compensation and continued to be used today in similar attacks on other social programs.

Moving from the 18th century into the 19th and twentieth century, the United States has had to undergo changes from rugged individualism of Manifest Destiny to the "survival of the fittest" mentality that governed the earliest days of the Industrial Revolution, to the beginnings of workers' compensation governed by what many saw as socialistic fluff philosophy predicated on such vague phrases as "the common good." In the end, the fight for workers' compensation in 1880 appears to be the same fight as in 2005 between persons with a progressive interpretation of life versus the conservative interpretation.

As the country progressed toward providing a working model of workers' compensation, it had to recognize the need to determine whether a workplace injury was the fault of the employee or the employer. Dominant thinking in the 19th century was that an employee knew the hazards of the workplace; therefore it was his fault if he were injured regardless of any mechanical hazards present in the workplace. Suing an employer was unheard of as most employees were too impoverished to seek legal aid.

Furthermore, the possibility of losing their job through an attempted legal action was very real (Witt).

Because the primary focus of workers' compensation insurance is reduction or elimination of workplace injuries, the workers' compensation insurance industry has been a major driver in the fields of occupational safety and health. Within the insurance industry, safety disciplines have been enshrouded within the insurance jargon of workers' compensation, general liability, environmental liability, products liability, property and casualty and business interruption. The battle in 1880 was whether workers compensation would be private insurance or state insurance. (Witt)

For many years, insurance companies costs were largely impacted by the ability of their safety arm – risk control departments – to identify and correct physical conditions that presented unacceptable loss potential. At times, the risk control department played a major role in the underwriter's decision to write or cancel an insurance policy based on the risk evaluations.

The unstated objectives of risk control tell a more detailed and complex story. Risk control objectives were not necessarily aimed at either addressing the operating or management systems of the client or the root causes of the client's health and safety issues. Because the common policy was written on a short-term basis, typically one year, the goal was to get a client through the policy year without loss, thereby protecting the revenue of the underwriter (Montagna). Fortunately, the relationship between the client and underwriter, in relation to loss reduction, is symbiotic. In this phase, the cost of risk control to the client was hidden and the "insurance inspector" was the "eyes and ears" for underwriting. (Farren)

Starting in the mid-1980's and progressing through the misapplied approach to Deming's TQM and Continuous Improvement Model and then to the existing results-oriented approach of the 21st century, the role of Risk Control in the insurance industry has changed substantially (Negro). The title "Inspector" has often had a negative connotation, implying a person that is shortsighted, myopic and driven by physical hazards or conditions. While it was commonly accepted that most accidents were due to the human element rather than physical conditions, risk control was perceived as being driven by physical conditions (Farren). With the advent of TQM, "inspector's" became "Consultants," reflecting the change in risk control philosophy and TQM's emphasis on "partnering with customers." Also at this time, costs for risk control were often "unbundled" meaning the client paid separately for risk control services; this was a major motivation for risk control experts and companies to seek partnering opportunities with commercial clients (Faga).

The unbundling or charging clients for risk control services brought about negative and positive changes.

Negative changes:

- Clients with poor records and underfunded clients did not receive help since they could not afford to pay for risk control services.
- Clients that had limited budgets for consulting "got as much safety as they could afford, but not necessarily as much as was needed."
- The quality of risk control work became dependent upon what the client could afford.

Positive changes:

- Risk control was driven by client request rather than underwriting allowing for greater customization of services and accountability for service providers.
- Risk control met client needs as the clients perceived them rather than underwriters determining needs.
- Risk control operated only for the client thereby eliminating split loyalties between the client and underwriters.
- Risk control is, at times, restricted from communicating negative factors to underwriting.

This work will document the origins of workers' compensation, then compare changes in insurance risk control or safety services, also known as EHS, to internal and external clients that have occurred in the insurance industry since risk control departments were changed to profit centers and services unbundled from policies. It will use interviews to examine several approaches to risk control from the pre-1985 version of "underwriting or single-policy year," bundled approaches in which risk control was a hidden part of the premium, and "inspectors" were known as the "eyes" of the underwriter, to current "unbundled" service contracts in which the client will pays a la carte for services provided by the "consultant." It will also examine the "billable hours" concept and the change to revenue based performance standards for EHS. Further, it will investigate the current practices of consultants who are often oriented to management systems type evaluations and not to the "account management" method which in which outsourced vendors and brokers within downsized Risk Control Departments are employed.

Recorded interviews were conducted with five experienced risk control consultants to document the status of risk control departments in recent years. One other brief and unrecorded interview was conducted with the National Sales Manager of a company for its risk control department. The interviews garnered the opinions of these consultants regarding the impact of large deductibles on risk control. Such deductibles often have the effect of eliminating the need for risk control. Further, under such policies the practical meaning of the word "safety" becomes confused with concepts of risk transfer. Now an account is unsafe only after a loss has consumed enough of the deductible to bring the policy into play. The severity or frequency with which employees are injured is not important, unless associated costs surpass the deductible. Money becomes the bottom line, not safety.

1.1 Significance of the Topic and Significant Questions

The economic impact of the decisions that businesses make regarding EHS is undeniable. Unfortunately, companies do not always do the right thing. They sometimes do the affordable thing, which often means doing nothing for a specific budget cycle. The economic impact of workers' compensation on a business' bottom line is undeniable: less is more as far as a business is concerned, despite the impact on health and safety issues.

From the "bundled" workers' compensation insurance packages that included claims and risk control services through the late 1980's when workers' compensation premiums were unbundled from claims services and risk control, the impact of risk control on workplace safety has changed dramatically (Farren). Risk control services often parallel the budgetary decisions made by financially stressed companies.

Some critical questions this thesis will attempt to explore are as follows:

- What are the ethics of "as much safety as can be afforded"?
- What is the role of the EHS professional when hazards are noted, but the client cannot afford to have the EHS consultant address them? Does this present an ethical challenge to the safety professional?
- In an "unbundled" environment, quality is defined by how much quality the client can afford. Does as much safety as can be afforded equal 100 percent compliance and for situations involving life and safety issues is anything less than 100 percent compliance adequate?
- What are the positive and negative impacts of downsizing? Downsizing impacted EHS Departments as well as other industries. EHS staffs are now all seasoned, credentialed, 20-year employees (Montagna). This is not necessarily a positive because a staff needs to be balanced in terms of age, experience, and pay scale to manage and service clients profitably.
- Where will the next generation of insurance EHS consultants come from? Is insurance EHS a secure field at this time? Persons that understand EHS and all of the associated insurance implications usually must be developed from within the industry and less talent is being developed now.
- When the risk is transferred through concentration on deductibles or cost methodologies and the calculation becomes "how much safety can we afford," does the goal of zero defects become antithetical to "safety"?
- Has improvement become the actual goal rather than zero defects? Is improvement inordinately rewarded over zero defects?

- What is the impact of revenue-based performance goals (billable hours) on risk control decisions?
- What has been the impact of downsizing on the upstream of EHS expertise and jobs within the insurance industry?
- What has been the impact to workers' compensation and risk control as a result of deductible policies and unbundled services?

Sometimes, the origins of where we began may say something important about where we are. In researching for this thesis, it appears that little has changed over the years.

1.2 Reason for Interest in this Topic

I have been employed in the field of risk control for companies related to the insurance industry since 1977. During this time, the role of the risk control consultant has changed significantly. The role has progressed from the inspector who was the "eyes and ears of underwriting" and paid for by underwriting, to consultants that are part of a third- party administration platform in which the client pays for all claims management and risk control services, sometimes without any policy. During this time, workers' compensation policies started to be written with deductibles. Deductibles transferred the risk and complicated the role of the risk control consultant. For example, I was assigned a large aluminum foil producing company, which is now defunct; the company's workers' compensation policy had a $1,000,000 deductible *per occurrence*. The insurance company was in no jeopardy of paying money on any loss until the loss claim exceeded the $1,000,000 deductible. Such a high deductible is actually a way of being self-insured and using the insurance company to do so. However, once the deductible policy was

written, no work was conducted with the account because underwriting had no impetus to pay for safety services. Specific claims that exceeded the $1,000,000 deductible were rare and when they did occur, the insurance company paid only the amount that exceeded $1,000,000 deductible. There was no longer any motivation for the insurance company to get involved. My motivation also ended and the pressure on the client was eliminated as well. Safety became associated with the cost of the deductible.

To many, the EHS field contains a largely moral element. Historically, the goal was to save life and limb, regardless of the financial or legal arrangements. Of course, the symbiotic relationship between EHS and profitability has been a driver for the insurance industry, so much so, that it was given great credit for safety progress.

1.3 Definitions

Billable hours – Refers to hours expended by risk control consultants to provide services; the hours are then billed to a client at a specified rate per hour.

Bundled – Refers to insurance services such as claims handling and risk control that are hidden in the insurance premium without obvious cost to the insured.

Unbundled – Refers to insurance services that are detached from the cost of the premium and for which insureds will pay a separate fee.

Deductible(s) – A method of transferring risk from the insurance company back to the insured for a predetermined amount. The insurance company will have no financial exposure below the limits of the deductible.

Downsizing – Refers to the systematic and planned reduction in the employee size of a department.

Employer's liability – The responsibility of the employer to exercise due care and precautions. Employer's liability may be enforced by lawsuit from the employee.

Fiduciary – A special relationship of obligated trust for the insurer and/or the insured.

Free labor – Refers to work or employment that is voluntary and for which the employee is paid. The term free labor is used in contrast to slave labor.

Negligence – The omission or neglect of any reasonable precaution, care, or action.

Outsource – A vendor or contractor, hired for EHS services.

Profit center – A department held accountable for profitable revenue production.

Risk transfer – A method of transferring risk and exposure, typically by purchasing insurance or establishing deductibles.

Strict liability – Describes responsibility or liability that is absolute, regardless of fault.

Tort - Any wrongful act, damage or injury, done willfully or negligently or involving strict liability for which a civil suit may be brought. It is a central provision of common law.

Third-party administrator – An entity that will manage and deliver services that are unbundled from insurance policies.

Underwriting – The arm of an insurance company that is responsible for evaluating the businesses for the purpose of insurability and setting an appropriate price for risk -- exposure.

Vendor – A contractor that is hired for risk control services.

Workers' compensation – a no-fault plan to provide medical and wage benefits to employees injured on the job.

2.0 Background

2.1 Historical Perspective

Most surprising was the historical perspective of workers' compensation. The battle regarding workers' compensation began shortly after the Civil War when factories designed for producing war equipment and armaments were changed to textile factories, commonly known as "sweat shops" (Witt). By 1880, more people were dying each year from industrial accidents than in the Civil War. Even the President, Theodore Roosevelt, chose to address industrial accidents as a priority (Witt).

The political battle that raged then is the same that exists today between conservatives who believed in "rugged individualism" and "survival of the fittest" and the progressives who believed in the government doing some things for the "group good." The progressives won the battle, partially because the presumption was that the workers' compensation system would be an incentive to protect workers from safety exposures. The impact of the progressives winning the debate carried over into all portions of American society including group programs such as unemployment insurance and social security. The battle rages on, evidenced by the fact that the United States is the only western country without national health care (Witt).

Not much has been written regarding the insurance risk control position, particularly regarding its differences with traditional EHS. In addition, risk control departments have been downsized significantly over the last 10 years as is reflected in the interviews (Faga, Montanga); in the case of my own company, field staff has been cut from approximately 450 to 50. Ultimately, this paper will reflect on an industry that is critical to insurance company profitability, but has largely been ignored. The transition of

risk control departments to profit centers has impacted staffing. Specifically, the transition has reduced expertise and training budgets, depleted upstream staff, and most importantly, obscured the objective to address safety and environmental concerns in order to save lives. Now, a successful risk control specialist strives to keep losses within the deductibles. This is actually another method of risk transfer, rather than a way of promoting safety.

The integration of EHS with business is the right thing to do, but at times this may negatively impact the simple purity of safety for the sake of protecting human lives and property. As a general principle, we can seek profitability to a degree of diminishing returns. Hopefully, the push for EHS sustainability, will bring us back to our collective senses.

2.2 Origins

On June 10, 1907, Georgia Day and President Theodore Roosevelt were visiting Norfolk, Virginia to speak at the Jamestown Exposition at the World's Fair. The theme of the convention that year was reconciliation as the Civil War was still a vivid memory in the nation's conscience. General Stephen Lee was there, having been elected a state senator in Mississippi in 1878 and being a delegate to the Mississippi Constitutional Convention of 1890 (Witt). Roosevelt himself was half-son of the south through his mother, a native of Georgia, and great grandfather, Governor of Georgia. (Washington Post 1907).

The gravity of reconciliation was the suspected theme of his speech; however, President Roosevelt chose to address a different theme and a problem that neither the founders of the World's Fair nor participants in the Civil War had the vision to see or

address (Witt). His chief subject was the problem of industrial accidents in the new age of industrialization. This dilemma was magnified by hordes of desperately poor new immigrants, inequalities between rich and poor, child labor abuses, and disconnect between the American ideal of "rugged individualism" and the realization that there were some issues that would require "mutual interdependence" (Witt).

In his speech, Roosevelt speech said, "the great increase in mechanical and manufacturing operations means a corresponding increase in the number of accidents to the wage-workers employed therein" (Moseley). At the time of the speech, the United States was in the fifth decade of rapidly increasing accident frequency. One worker in every fifty was killed or disabled for a minimum of four weeks each year in the workplace, contrasted with one death among each one thousand accident among the general population (Hoffman). In dangerous industries such as railroads, one in every three hundred suffered workplace deaths; for railroad brakemen the ratio was one in every hundred (Aldrich). In the coal mines of 1850's and 1860's Pennsylvania, six percent of the workforce was killed, six percent was permanently crippled, and six percent suffered temporary disabilities every year (BLS, Colorado). Estimates for non-fatal accidents for this period are too sketchy to confirm (Witt).

Roosevelt went on to day that, "for the ordinary wage-workers' family, such a calamity means grim hardship" (Witt). Given that the work out of which such an accident arose was "done for the employer, and therefore ultimately for the public, it is a bitter injustice that it should be the wage-worker himself and his wife and children who bear the whole penalty" (Witt). The principles of common law, which generally required the employee to prove the employer's negligence caused his injury, were approximately 70

years old by this time. Judges had decided that workers had to assume the risks characteristic of their occupations (Witt).

In his speech, President Roosevelt suggested, "workmen should receive a certain, definite, and limited compensation for all accidents arising as an incident of the performance of their duties," regardless of the negligence of the employer. He felt this would induce employers to take greater care and thereby reduce the number of accidents. He also thought it would be a step toward equitable treatment for everyone (Proud of His Ancestry, 1907).

Roosevelt's speech raised new and important questions about new risks in the relatively "free labor" country as a result of the Civil War. The next day's newspaper sub-headline, referring to the speech read "Automatic Indemnity for Personal Injury" (Proud of His Ancestry, 1907). The issues that Roosevelt raised during this speech became and remain the substance of business, economics, law, and politics even to this day. In fact, in his book, The Accidental Republic, John Fabian Witt (2000) suggests that industrial accidents gave rise to several experiments in social, institutional, and legal reforms and industries. Witt sees a connection between industrial accidents and the development of tort law, the growth of the insurance industry and industrial labor leaders. Where the end of the Civil War raised questions about the distinctions between free labor and slavery, the industrial accident crisis that Roosevelt spoke of raised the issues of risk, security, and insurance (Witt).

Between 1909 and 1913, twenty-eight states conducted studies of the industrial accident problem. By 1920, compensation systems such as that suggested by Roosevelt

were established in 42 states. In America, accident law was largely experimental and developmental at the start of the twentieth century (Witt).

Unintentional injury received little attention in eighteenth century England and almost none in the United States (Bartrip, Burman). Private contractual relations were the framework on which the legal system was based. At that time, cases considered tort cases today were handled as contractual cases. Of course, there were issues that fell outside the parameters of pure contractual relations such as husband and wife or master and servant relations. Cases were generally categorized as property or contractual, although there were some civil remedies for non-contractual personal wrongs. In fact the Code of Hammurabi, written in 2000 BC, included a schedule of damages that an injurer had to pay the injured:

> ... carelessness and neglect were severely punished, as in the case of the unskillful physician. If the negligence led to loss of life or limb, his hands were cut off, a slave had to be replaced, the loss of his eye paid for to half his value; a veterinary surgeon who caused the death of an ox or ass paid quarter value; a builder, whose careless workmanship caused death, lost his life or paid for it by the death of his child, replaced slave or goods, and in any case had to rebuild the house or make good any damages due to defective building and repair the defect as well. The boat-builder had to make good any defect of construction or damage due to it for a year's warranty. (Avalon)

According to Aristotle's Nicomachean Ethics, "there are two-categories of non-voluntary action. If an action is caused by ignorance, it is non-voluntary. If an action is

caused by ignorance and is regretted, then the action is involuntary. We are responsible for what we do voluntarily, even under duress. We are responsible for our character and for some types of ignorance that arise through negligence" (Aristotle). The early Roman Twelve Tables established compensation for injury. Table VIII.2 of the Roman Tables indicates:

> If one has maimed a limb and does not compromise with the injured person, let there be retaliation. If one has broken a bone of a freeman with his hand or with a cudgel, let him pay a penalty of three hundred coins. If he has broken the bone of a slave, let him have one hundred and fifty coins. If one is guilty of insult, the penalty shall be twenty-five coins. (Thatcher)

Even the Bible's Old Testament reflects a dynamic for restitution, most remembered by Exodus 21:23-25, "but if any lasting harm follows, then you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe." Likewise, Leviticus 24:19 states, "if a man causes disfigurement of his neighbor, as he has done, so shall it be done to him."

These reflections of restitution deal with wrongful harms, generally on an individual basis. Industrial accidents due to the size of industry and the degree of injuries and deaths have caused the restitution issue to rise to societal levels requiring societal remedies. To this day, the theory of torts appears to be built around individual personal remedies rather than the problem of "compensation for unintentional human injuries generated on a mass scale by the regular operations of economic life..." (Witt).

The types of accidents also changed with industrialization and the growth of the railroad and mining industries. Accident rates increased dramatically and catastrophic

incidents became more common. Personal injury litigation was developed and litigation rates skyrocketed (Witt). For the first time, middle and working-class people purchased life insurance on a widespread basis. New insurance companies began to write separate insurance polices for railway passengers. Supreme Court Justice Oliver Wendell Holmes Jr., was a primary developer of the theory of torts and personal interactions in 1881 (Witt). By 1897, Holmes observed that "the torts with which our courts are kept busy today are mainly the incidents of certain well known businesses. They are injuries to person or property by railroads, factories and the like" (quoted in Witt).

2.3 Learning from England

In the book, The Wounded Soldiers of Industry, Industrial Compensation Policy, 1833-1897, by P.W.J. Bartrip and S.B. Burman, (1983) the case is made that there is no recorded High Court case in Britain, in which an employee sued his employer for damages as a result of a workplace injury. This was important because much of the dynamic in the United States regarding the progressivity of workmen's compensation was drawn from British and European experiences. In this work, the political dynamics of workmen's compensation in Britain are described as almost the same as the tortuous transition of the United States and had as great an impact on British society. It was seen as the first installment of social welfare reforms and laid the foundation of the Welfare State in England. Although the political battle began in 1833, the act was not enacted officially in England until 1897 (Bartrip, Burman).

While the debate in the United States was basically restricted to workmen's compensation, England saw the issue more immediately as an extensive program of social welfare reform (Cullen). John Munkman states, "it was based on an entirely new

principle"- that is, no - fault liability (Mukman). A.F. Young (1975) argued that the passing of the Act was the culmination of a debate between two groups. On one side were those who wanted to improve industrial safety by burdening employers with liability in the event of accidents, thereby giving them a financial incentive to improve safety. On the other side were those who preferred to concentrate on providing relief for injured men. Essentially, the debate was between those that saw workmen's compensation as a way to improve safety versus an avenue of relief for injured men. The compensationists prevailed, and the legislation veered towards relief of the injured rather than promotion of safety (Young).

Britain also made several attempts to resolve industry-specific injury and death problems. Those attempts included the establishment of the Factory and Mines Acts, through the Railway Regulation Acts, the Employers' Liability Act of 1880, and the Workmen's Compensation Act of 1897 (Bartrip, Burman). Its beginnings in Britain had more to do with the country's transition from an agricultural society to an industrialized one. As in the United States, pictures of maimed, wounded, and crippled workers and those of destitute widows and children had a major impact on the conscience of the nation (Bartrip, Burman).

The issue of safety in Britain and the United States is credited with the birth of the use of statistics. There was a need to quantify social problems or changes that arose as a result of industrialization (Cullen). In Britain, inspectors were also a part of the workman's compensation plan and were given the authority to classify as dangerous, any machinery that was not fenced in. Inspectors were also authorized to issue fines. Although safety was a primary driver for the establishment of workmen's compensation,

fatality statistics did not verify its effectiveness (Bartrip, Burman). Britain did draw a correlation between workmen's compensation and economic deterrence brought about by the cost of insurance, but the cost was spread such that merit based rating was not confirmed until 1920 (Bartrip, Burman). In the United States, there was much more experimentation with merit rating. The impact of workmen's compensation in the social conscience occurred in Britain as it did in the United States Workmen's compensation was "the pioneer system of social security" (Social Insurance and Allied Services).

The defining characteristics of American systems of manufacturing are high-powered machinery and production of goods with interchangeable parts. The new technology of water and, later, steam-powered machines replaced the older and more labor-intensive methods, increasing production significantly (Witt). Speculation was that these changes worsened the safety of work based on twentieth century loss data. "...In every industry the substitution of mechanical devices for manual methods has introduced corresponding elements of danger" (Travelers Insurance). Business stressed that workmen's compensation would stimulate accident prevention. Magnus Alexander of General Electric was applauded when he indicated that workmen's compensation must be "preventive, punitive, educative and certain" (Schwedtman). More important to business executives was that lawsuits due to employers' liability poisoned relations with their workers and led to class warfare (Aldrich). The National Association of Manufacturers officially described employers' liability as "antagonistic to harmonious relations between employers and wage-workers." America led the world in productivity, but as Commissioner of Labor Charles P. Neill observed when speaking to the National Safety Council in 1913, American industry also was preeminent in the world in the "maiming

and mangling and killing of those who attempt to earn their bread in the sweat of their faces" (Aldrich).

Germany had implemented a no-fault workmen's compensation system in 1884, England adopted in 1897 (Aldrich), and American legislators visited to evaluate their version of no-fault compensation.

2.4 Materialists versus Idealists

In the Accidental Republic, by John Fabian Witt, the case is made for the development of workers' compensation based on the history as described thus far in this document. "When tort liability threatened to become too great, states adopted workmen's compensation statutes at the behest of employers to limit employee recovery in work-accident cases" (Witt). Witt refers to these historians as materialists in their theory because they attribute the changes to responses to economic development. There are other historians that credit the development of workers' compensation to idealists. Idealists explain historical changes based on ideas, sociology, and deep-rooted traditions rather than to the economy. Thus, for the idealist, the law of torts consists of the duty of "reasonable care" that each individual owed to the entire world and shifts toward workers' compensation occurred due to liberalized liability that expanded concepts of causation and responsibility (Bergstrom).

Witt (2003) argues that neither materialist nor idealist approaches recognized the opportunity for change that was instigated by the influx of industrial accidents because both approaches placed too much concentration on the avenue of torts and ignored the dynamic nature of American accident law in the early 1900s. In fact, labor leaders in the United States began to draw on the experiences of Europe during the 1870s and 1880s,

studying German approaches to industrial accident policy, beginning with a study by the Massachusetts Bureau of Statistics of Labor in 1872. German social scientists in turn visited America to study insurance systems (Taussig).

2.5 Cultural Change – Slave Labor to Free Labor

As indicated earlier, the United States had to undergo a mental/cultural change in order to accept workers' compensation as a viable option. To a country built on rugged individualism, the concept of workers' compensation and the group good for betterment of society were quite foreign and many legislators were resistant. The American legal and political landscape were populated by figures ensconced in the problem of work-accident law and reform.

As a New York legislator, Franklin Roosevelt was actively involved in the issue of workers' compensation; Charles Evans Hughes, Chief Justice of the Supreme Court during the New Deal, signed into law the first work-accident statute in 1910, when he was the governor of New York (Witt). George Sutherland, a conservative on the New Deal Supreme Court, chaired a 1912 commission that recommended workmen's compensation for railroad workers (Witt). Pierce Butler, another conservative on that Supreme Court also favored workmen's compensation (Witt). Frances Perkins, Secretary of Labor (New Deal), pushed for workmen's compensation after the 1911 Triangle Shirtwaist Fire that killed 146 employees (Witt). Huey Long began his legal career as an attorney in Louisiana fighting compensation cases as a plaintiffs' lawyer (Witt).

The number of Americans involved in workmen's compensation cases began to grow significantly. By 1917, 68 percent of the nation's workforce - approximately 13 million workers - were covered by workmen's compensation statutes (Witt). By 1930, in

New York alone, over 200,000 new claims were submitted annually (Witt). Witt makes the point that the involvement of millions of Americans in workmen's compensation also changed social policy in the United States. Other innovations such as unemployment insurance paid for by employers to handle company-sponsored layoffs, the Social Security Act, workmen's compensation statutes of the early 1900s, and common actuarial data and techniques were used for many social programs (Witt).

The influence of workmen's compensation on society stretched beyond government programs to influence new human resources philosophies, management of work-accident benefits, and bureaucracies built around benefit management, claims handling, and investigations. The impact on health insurance was also significant.

> The era of accident-law reform thus stood as one of those seminal moments of possibility in American politics, one of those punctuations in the equilibria of normal politics: a critical juncture in which the future of American law and policy was open to a number of different possible lines of development. Its outcomes helped shape the developmental path for American social policy in the century to come. (Hacker)

Interestingly, Witt makes the point that America had to first make the transition of ideology from slave labor to free labor:

> ...[F]ree labor ideology in the mid-nineteenth century organized important areas of American political and legal thought around the polar opposition of free labor to slave labor, marking out a diverse array of virtues that were said to distinguish the former from the latter – virtues such as autonomy,

> independence, efficiency and domesticity. ...free labor came to influence powerfully the politics and law of the United States.

Abraham Lincoln described free labor as "the inspiration of hope," promising opportunity for "advancement and improvement in condition," and ensuring there would be no "permanent class" of laborers, either slave or hireling (1861). Many on the Union side of the Civil War said that the war was "for the establishment of free labor" (Basler). The Thirteenth Amendment, which prohibited slavery and involuntary servitude, was said to be the enshrinement of free labor in the nation's fundamental laws (Witt).

The initial problem with free labor philosophy is that "risk" was not part of its definition. With the advent of industrialization, the inclusion of risk in the calculation of free labor became unavoidable. In his speech before the 1907 Jamestown Exposition, Theodore Roosevelt warned that the nation had outgrown the perils of the founding fathers, "we now face other perils, the very existence of which it was impossible that they should foresee. Modern life is both complex and intense, and the tremendous changes wrought by the extraordinary industrial development of the last half century are felt in every fiber of our social and political being." In 1930, Roosevelt's cousin made security from "risk" a major part of the New Deal (Witt). Witt theorizes that the New Deal changed the issue from free labor as the chief philosophy driving labor regulation to wage earners' risk and insurance, which eventually led to the demise of the free labor paradigm (Witt).

2.6 Civil War

Dr. Isaac A. Hourwich, in testimony before the U.S. Industrial Commission (1900), stated:

> A certain number of lives are inevitably lost in the course of our modern industry-you cannot prevent it...Now,...that being the case the proposition should be treated in a brutally frank manner, in the same way as it would be treated in the old days of slavery. If a slave was injured, it was so much injury to the owner of the slave. Of course, we are today free, but, practically speaking, there is always a certain danger attendant upon industrial employment.

The Civil War was still fresh in the minds of Americans at the end of the nineteenth century and beginning of the twentieth century. During the Civil War, 100,000 Union soldiers died and 400,000 suffered wounds; 50,000 Confederate soldiers died. Disease and sickness during the war accounted for 600,000 deaths. The deaths and injuries from the war led to the nation's first experiments in pubic policy for disability and injury in peacetime. Americans observed that industrial accidents caused more death and injury than the Civil War. President Benjamin Harrison, in his first message to Congress in 1889, announced that American railroad workers were subject "to a peril of life and limb as great as that of a soldier in time of war" (Minnesota Employees Compensation Commission). In 1911, work accident reformers in Iowa concluded that the annual casualty list in peaceful industries "equals the average yearly casualties of the American Civil War, plus all of those of the Philippine War, plus all those of the Russo-Japanese War" (Downey). One reformer observed that the nation seemed to be developing an "army of cripples" (Rubinow).

Workingmen's and labor organizations reasoned that if disabled soldiers received pensions, so too should the soldiers of the industrial army. "Is not the industrial soldier of

more real value to the nation than the soldier?" (United Mine Workers). The first year that the national census counted deaths from accidents in the United States, from burns, drowning, scalding, and other was 1850. The other types of accidents data (railroad, mining, machinery, falling bodies) were collected over the next several decades, therefore accident data is inaccurate and difficult to compare (BLS 1900). However, workplace injuries were the leading category of accidental death and injury by the twentieth century, representing almost one-third of all accidental deaths and one-half to two-thirds of accidental injuries (Rubinow, Hoffman). Accident data for some specific industries such as railroad, mining, and textile were extraordinarily high and received the nation's attention. One United States Department of Labor investigator explained, "the introduction of high power and complicated machinery has resulted in the increase in the number and severity of accidents." In 1864, the Traveler's Insurance Company became the first to start this line of business in the United States (Pitcher).

2.7 Employers' Liability

The degree of accidental injury and death in the United States was significantly higher than in European countries (Rubinow 1913). This was attributed to the influx of immigrants into United States industries, language barriers, miscommunication, unfamiliarity with new machinery and processes, long distances covered by railroads that made inspections difficult, America's less powerful trade union movement, and lax employer liability laws. John Mitchell of the United Mine Workers of America argued "if, as in Europe, it costs more to kill men here in America than to protect them, one half as many would be killed in the dangerous trades" (New York Times, 1910). The Mine Workers' concurred "to us, it appears that lack of organization...together with no

compensation law, or efficient employers' liability law, are the prime factors in our high death rate in mills, mines, and factories" (United Mine Workers, 1910).

Employers' liability was still not a full "no-fault" compensation plan for workers. John Gitterman, a journalist in 1910, explained:

> In contrast to the slave-law approach, the American principle is briefly this: if the workingman objects to some dangerous task, he has the privilege of throwing up his job. He is not a slave - he cannot be compelled to work under hazardous conditions....If he scalds to death under his boiler, or has his head scraped off while attempting to couple cars-he and his widow and orphan children...must suffer the consequences." (Blackstone Commentaries, 2000)

By the close of the century, many economists believed that absent some employers' liability program that imposed significant accident costs on employers, the free play of competition among firms would drive employers to minimize their investments in expensive safety measures. In other words, ***business competition inexorably drove down working conditions.*** Nine of ten employers might seek to uphold decent safety standards in industry. But if the tenth lacked such scruples, the industry would find itself caught in a race to the bottom until all remaining employers in the industry put their workers' lives at risk (Adams). Howell Cheney of Connecticut argued in 1910 that the forces of competition had exaggerated the dangerous pressure and speed of industry, pushing industrial accident rates ever higher (Cheney 1910).

Many employers that supported workmen's compensation over employers' liability did so in spite of overwhelming evidence that it would increase their costs.

Insurance experts estimated that costs would be increased by "two and a quarter or two and a half times." By this time (1911), the railroads already had two years experience under the Federal Employers' Liability Act, which curtailed much of the carriers' defenses. The change to workmen's compensation cost more but a 1912 study of railroad experience showed that payment for death still averaged less than was contemplated by any of the workmen's compensation laws (Dawson). On this matter, Mark Aldrich indicates:

> Workmen's compensation generated safety incentives because of the accident costs it imposed on employers, and these in turn depended on the benefits paid injured workers. Initially benefits were extremely modest, due to the need for employer support and because it was thought that more adequate payments would promote malingering. Thus, most states provided no compensation for injuries resulting in less than one (sometimes two) weeks of disability. Compensation was usually half to two-thirds of lost wages, between maximums and minimums. Compensation for death depended on the number of survivors, but it too was limited, usually to no more than $3,000-5,000. (Aldrich).

At first, the idea was to apply average rates to all firms within a risk category. However, this seemed to present less incentive for accident prevention because a company's premium was independent of its injury rate. As Harvey Kelly, of Washington State's BLS, told the International Association of Industrial Accident Boards and Commissions in 1920, "the careful employer, who cuts his accident cost to the minimum through safeguarding and safety educational work found his efforts nullified by the

careless employer.... Both paid the same rate for insurance" (Kelly). Some type of merit rating was necessary and the State of Ohio pioneered experience rating. Under experience rating, a company's premium depended upon its past injury record. A second form of rating, called schedule rating, gave discounts to companies that followed state safety codes, guarded machines, or made other safety improvements recommended by the insurance carrier. In spite of incentives to correct specific hazards, companies felt that a management systems approach would be more fruitful in accident reduction (Kelly).

Of course, the lion's share of accidents was attributed to worker carelessness. The notion that accidents in the workplace were caused by the negligence of the employee was the favorite refuge of scoundrel employers, often even in cases in which the employer had - or could have had - a significant degree of managerial control over the relevant aspect of the work process (United Mine Workers). Some critics saw in free labor or wage labor "a more perfect compulsion" than was slavery (Fitzbah); others argued that labor markets reduced the wage worker to the dependent condition of "wage slavery" (Stanley).

2.8 Side Affects

Another group felt that greater results in safety efforts would be realized by reinforcing standards with legal requirements. Regulatory commissions were formed in an effort to regulate workplace safety. In 1923, regulations were inconsistent from state to state. North and South Carolina had no legislation at all; Florida and Georgia regulated only the employment of women and children. In other states, most common laws were limited to requiring building exits, electrical code, and mines. Only two states without a commission covered machine tools or punch presses; one state regulated cranes, but none controlled use of compressed air (Fishback, Kantor). State regulations and inspections

followed, but there were never enough inspectors. Iowa had one inspector for 15,000 shops and factories. Indiana had four inspectors for 18,000 workplaces and Minnesota had five inspectors for 11,000 facilities; other states were similarly staffed (Minnesota, Iowa BLS).

Standardization of safety codes remained a consistent problem. Insurance company inspectors needed standard guidelines from which to recommend improvement. In 1918, the National Bureau of Standards sponsored two conferences on standardization of safety codes, then the issue was passed on to the American Engineering Standards Committee (Fishback, Kantor). Most of the codes were voluntary, but companies were reticent about complying with voluntary standards - legislation was necessary. The Bureau of Labor Statistics was engaged to set parameters around what was acceptable when it came to risk, and they did so using a body of statistics (Fishback, Kantor). The Bureau also defined a disabling injury as one that resulted in at least one lost work day (Fishback, Kantor). Then it introduced the method
started by the German Insurance Commission of expressing injury frequency rates in terms of hours of exposure. This method was widely adopted (Fishback, Kantor). The Bureau next started a comparative data program. Companies that paid no attention to safety, took notice when statistics revealed they were in the bottom half of their industry (Fishback, Kantor). Statistics also allowed a rational approach to accident prevention and allocation of resources.

Some state workers' compensation boards began accident prevention activities in response to employer demand for information. The Massachusetts Industrial Accident Board published safety booklets, produced pictures, and advised employers regarding

accident causation and encouraged insurance companies to do the same (Fishback, Kantor). Shortly thereafter, the safety initiative was given to state boards and the activity died out while safety orders became prominent. Nearly everyone acknowledged that workmen's compensation had awakened the interest of corporate management to safety, but most of the individuals who comprised the safety movement were not motivated by costs or profits. Business leaders saw safety as an issue of economics rather than morals (Fishback, Kantor).

2.9 State or Private Insurance

Insurance companies had an interest in accident prevention that raised the issue to levels not seen before, particularly during the employers' liability phase. Insurance companies developed specialized expertise in engineering and inspection services that few employers could match (Aldrich). Insurance companies carried safety specialization to the extreme with "trade mutuals," such as Lumbermans Mutual, formed to compensate only for lumber and woodworking injuries. Hardware Mutual was another; laundry operators set up Empoyers' Indemnity Exchange; Integrity Mutual was an insurer of flour mills. In 1913, Aetna informed the Massachusetts Industrial Commission that "they had increased the efficiency of its inspection service to a considerable degree." In 1915, Travelers had 220 inspectors that performed 235,000 inspections, or about 3-1/2 per day. Shortly, insurers developed safety packages for their clients. On average, from 1923 through 1939, insurance companies spent approximately 2.8 percent of their earned premiums or $4.8 million per year on safety related activities (Cincinatti Study of Workman's Compensation). Carriers also set up clinics and managed health treatments. Integrity Mutual developed industrial surgery in Chicago. Insurers also conducted safety

research, developing machine guards, evaluating chemicals, and providing expertise for those industries within which they specialized (Aldrich).

Most importantly, insurers claimed their safety work obtained results and presented statistics and graphs demonstrating declines in injury rates for companies that complied with their safety recommendations. Additionally, as cause and prevention of accidents was studied, the conclusion that injuries resulted from professional or managerial failure rather than worker carelessness represented a surprising reversal of earlier beliefs (Aldrich).

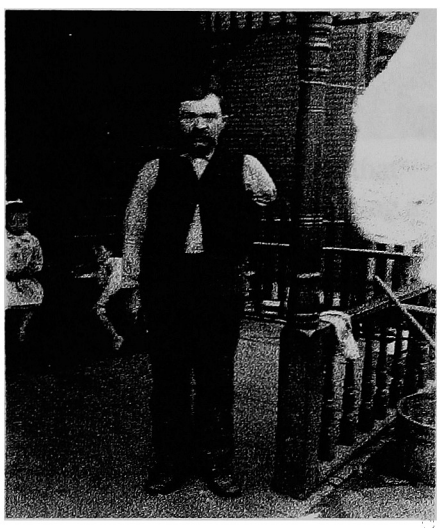

Fig. 1. Photograph of a worker who lost his left arm in a workplace accident (Hines).

2.10 Group Good

At the start of the twentieth century, workplace accidents were the leading cause of incapacity among working-age men in railroad, mining, logging, timber, bricklaying, and masonry work . This was also true of boys and women as shown in the picture by Lewis Hines who created a photographic essay of missing limbs and vacant stares of destitute family members of workingmen in Pittsburgh. Accidents accounted for five times as many deaths among men between 15 and 45 years of age as among women of similar age. Consequently, families were often left destitute by the accidental injury or death of a male wage earner.

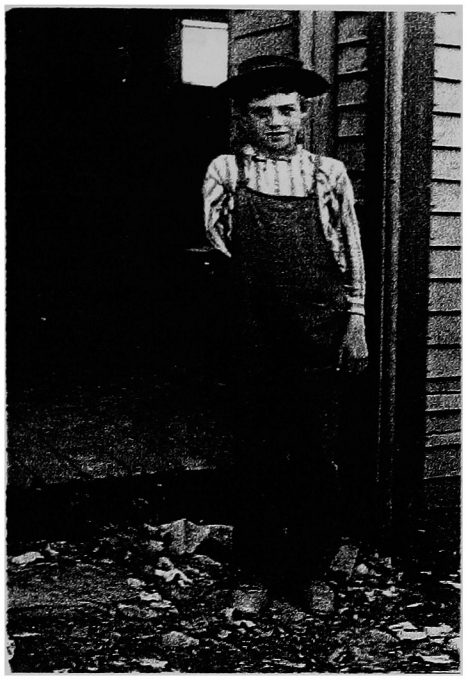

Fig. 2. Picture of a boy that lost his arm while operating a saw in a factory (Hines).

Fig. 3. Picture of a widow and destitute family from a cotton mill accident (Hines).

Photos such as these startled the nation's viewers and increased pressure to change the system. John Mitchell, a United Mine Workers leader, called compensation for industrial-accident victims "the most urgent practical measure" in the field of social reform (Mitchell). Samuel Gompers of the American Federation of Labor asserted that "compensation for the victims of injury, stood above all other issues in terms of its legislative significance; no other issue was of half the importance" (Gompers Speech 1910).

The battle between progressive group good and conservative survival of the fittest found its midpoint in common law. Oliver Wendell Holmes explained in his 1881 The Common Law that, "loss from accident must lie where it falls." The meaning of accident in this case meant "without fault." The law could have opted to divide the damages

between equally faultless or equally at-fault actors. Yet the law allowed plaintiffs to recover damages only when they could prove that the defendant's fault or negligence caused their injury and that they had not contributed to that injury by their own fault or negligence. In other words, "purely accidental harms lay where they fell" (Holmes). The problem here was that there would be many injuries that fell between negligence and strict liability. There were injuries in which the employee was not at fault and the employer had not been negligent. These types of accidents fell into the category of damnum absque injuria, or loss without a legal remedy (the harm lays where it fell) (Holmes).

Many saw an economic problem at the suggestion of strict liability compensation for employers. New York Judge Robert Earl actually said with regard to the economic effects of strict liability or no fault compensation, "we must have factories, machinery, dams, canals and railroads" (Holmes). The suggestion being that the nation's entire economic infrastructure would collapse. This attitude left the remedy of lawsuits to resolve worker accident issues and the number of lawsuits grew. The number of accident cases shot up after 1870; between 1870 and 1890, the number of accident suits in litigation in New York City alone grew almost eightfold. By 1910, the number of related lawsuits grew again by five times. Tort cases in New York grew from 4.2 percent in 1870 to 40.9 percent of the caseload by 1910 (Bergstrom). E. Parmalee Prentice, writing in the North American Review, found an 800 percent increase in lawsuits in Cook County, Illinois between 1875 and 1896 (1907).

Another realization became important in the transition through fault and no-fault concepts. Many lawsuits were from accident victims who, themselves, were faultless. It

became clear that "injuries were the inevitable result of modern industrial production." As Oliver Wendell Holmes would say, "the faultless victim of non-negligent injury." This was a significant departure from the nineteenth century concept of contributory negligence that said any portion of fault by the injured party would eliminate the chance for recovery (Cooley).

2.11 Tort, Strict Liability, and Fault

In between traditional tort and full strict liability, fell cause-based strict liability standards. However, some accidents were bilateral in causation, so the issue of fault was again too difficult to determine. Over time, the traditionally dominant negligence standard began to coexist with mixed levels of strict liability, but never a full no-fault strict liability. By 1911, 25 states had enacted some type of legislation that abolished the fellow-servant rule, thereby modifying the contributory negligence doctrine and limiting the assumption of risk rules (Witt). The Federal Employers' Liability Act of 1906 also abolished the fellow servant rule for railroad workers (Larson). By the 1930's almost every American jurisdiction had replaced tort law with an administrative compensation system for work accidents (Witt). In 1910 and 1911, workmen's compensation statutes cancelled the resolution of damnum absque injuria, replacing it with a scheme aimed at shifting the cost of no-fault injuries to employers (Witt). Workers' compensation, along with changes in insurance pools, actually substituted insurance benefits for tort actions against employers. The insurance element and inclusion of everyone in the workers' compensation plan also eliminated the competitive advantage of companies not participating and rewarded safe workplaces through reduced compensation costs

(Fishback, Kantor). Even more positively, this move seemed to shift the responsibility of safety from the employee to the employer.

Between 1910 and 1920, more than 48 states enacted some form of workers' compensation. In 1925, only five states in the deep South were without a workers' compensation program (Witt). Part of what drove the changes was the concept of protecting the family wage by protecting the income of the wage earner. A workingman free to be injured at work was a workingman at risk of not being able to support his wife and children. Thus, industrial accidents slowly undid free labor's distinction between home and work. In her book Work-Accidents and the Law, Crystal Eastman approached the problem of workplace accidents from the perspective of the "home." This meant describing workplace accidents in the context of widows, children, and families – similar to the photos by Lewis Hines. The United States Department of Labor published studies of "the effect of workers' compensation laws in diminishing the necessity of industrial employment of women and children" (Conyngton). It is ironic that this only referred to women who were widows of working men. In the event of a woman's death at work, the husband could not file a claim. At that time, workmen's compensation was literally *workmen's* compensation, not *workers'* compensation. This asymmetrical gender balance was virtually unchallenged through the 1970s. In 1980, the United States Supreme Court struck this idea down as unconstitutional sex discrimination (Mutual Insurance).

The fight for workers' compensation was not an easy one. Workers' compensation was labeled "revolutionary, radical and collectivist." It was called "a step in the dark"(Minnesota Report 1911) and was viewed as "unjust"(New York Times 1911), "radical"(Tripp 1976), and socialistic. One Washington State merchant even

called it "freak legislation" (Minnesota Report). Subtly, the workplace accident debate shifted from the ideology of free labor towards actuarial evaluation and combined risks.

Importantly for EHS managers, the workmen's compensation movement coalesced with the claims of the first generation of managerial engineers. Scientific managers would best be able to create systems designed to minimize the yearly toll of industrial accidents (Calabresi). Making employers responsible was "the key to the prevention of industrial injuries" (Downey). Ultimately, the mental transformation that the nation underwent to accept the strict liability version of workers' compensation, seems to have led to new conceptions of social responsibility. Other issues such as pensions for soldiers, unemployment insurance, industry specific compensation for railroad workers and miners, social security, and the general "social remedy of insurance," also were impacted (Ohio Report). But although thinking began to change, history has shown that further social insurance and expansion of the workers' compensation paradigm did not occur until after the 1970s (Witt).

2.12 Workers' Compensation

Soon after the enactment of workers' compensation statutes, workplace injuries began to decline. Economists disagree broadly as to the reasons for the reduction. However, whether because of changed employer accident costs or widespread public attention to workplace accidents, workmen's compensation brought in the first widespread safety movement in the American workplace. From 1907 to 1920, workplace fatality rates per man-hour dropped by two-thirds and non-fatal accidents decreased by one-half. At United States Steel, rates fell from 1:4 per year in 1907 to 1:300 by 1939 (Aldrich).

By 1917, 13.5 million American wage earners were covered by some type of compensation program, which was approximately 69 percent of the total paid workforce. By 1917, there were more than 350,000 claims per year (Hookstadt). Lloyd Harger, Division of Workers Compensation for the State of Florida, provides a "history of workers' compensation timeline," as follows:

- 1850 Factories Act (13&14 Vict.., c.54) amended the Act of 1847 by stating the times between which young people and women could be employed in factories and raised the total hours they could work to 60 per week.
- 1855 United States, Georgia passed Employer Liability Act in the state legislature. 26 other states passed similar acts between 1855 and 1907. These acts were simply permission to sue the employer if employee proved a negligent act or omission.
- 1861-1865 United States Civil War, Industrialization in the North for the war effort. When the war ends, factories converted from manufacturing uniforms to regular clothing. Birth of the infamous "sweatshops."
- 1880 England, Parliament passed "Employer's Liability Act."
- 1884 Germany passed "Industry Compensation Act."
- 1897 England repealed "Employer's Liability Act" and replaced it with a "Working Man's Compensation Act."
- 1898 New York, the New York Social Club drafted a bill for "Partial Compensation for Workers." No action taken by state legislature. Largest opponent is labor unions.
- 1901 Maryland passes legislation for a "Cooperative Accident Insurance Fund."
- 1905 Maryland Act ruled "unconstitutional" by state Supreme Court.
- 1908 Massachusetts passed legislation establishing private plans for compensation. Never signed by the governor and passed into obscurity.
- 1908 Coal Mines Inspection Act introduced the appointment of inspectors of coal mines and set out their powers and duties.
- 1908 Federal Employer's Liability Act passed by the United States Congress at the urging of President Theodore Roosevelt. This is the first "workman's" compensation law in the United States. Congress passed the Federal Employees; Liability Act (FELA) in 1908, to provide compensation to railroad employees who

are injured on the job. FELA enabled injured employees to bring claims directly against their employers where it can be shown that it was the railroad's negligence that caused the injury. Unlike "no fault" workers' compensations laws, under which an injured worker does not need to establish any fault by the employer, a claim brought under FELA had to show that the railroad was somehow negligent and caused the injuries. Under FELA, a railroader was not entitled to recover damages from the railroad for an injury merely because of an on-duty. Under FELA, a railroad company had a duty to:

- Ensure that the workplace is reasonably free of unsafe conditions and safety hazards,
- Warn employees of any unsafe conditions and hazards, even in situations where the employee himself should be aware of the danger, and
- Inspect the workplace to make sure it is free of known and unknown hazards.

All injuries sustained in the course of employment are covered by the Federal Employer's Liability Act. There are four basic types of injuries covered:

1. Sudden and traumatic injuries - such as broken bones, back strains, pulled muscles and tendons, and lacerations.
2. Repetitive stress injuries - such as carpal tunnel syndrome, tendonitis, and hearing loss.
3. Aggravation of pre-existing conditions - such as when a workers' accident aggravates or accelerates a pre-existing physical condition or injury, it is considered a new injury under FELA.
4. Occupational diseases - such as lung cancer, skin diseases, and asbestos related diseases.

- 1910 New York, legislature passed a partial "workman's" compensation act.
- 1911 New York Court of Appeals ruled that the Act is "unconstitutional."

2.13 Transition – 1911

1911 was an important year as New York adopted its first safety codes and Wisconsin adopted a true workman's compensation law. Thus, 1911 has been selected as a transition year for this thesis. Importantly, the change in New York appears to have been driven by the catastrophe of the Triangle Shirtwaist Company Fire. Just prior to the

fire, New York resisted workers' compensation legislation, viewing it as unconstitutional.

Harger continues his workers' compensation chronology as follows:

- 1911 New York, Triangle Shirtwaist Company Fire in New York City, over 146 workers jump to their deaths to escape fire in a 10-story building. Exits were blocked, many lawsuits. Entire nation shocked at this tragedy. New York City immediately adopts first safety codes.
- 1911 Wisconsin becomes first state in the Union to adopt a true "workman's" compensation law. Called the "Great Trade Off"; *employers provide coverage, employees give up right to sue.*
- 1912 Four more states pass laws regarding workplace safety.
- 1913 Eight more states adopt legislation regarding workplace safety.
- 1915 Alaska and Hawaii pass "workman's" compensation laws even though they are only territories.
- 1935 Florida passes "Workman's" Compensation Law."
- 1938 First Medical and Surgical Fee Schedule.
- 1948 All states in the Union have "Workman's" Compensation Laws.
- 1955 Special Disability Trust Fund created.
- 1955 Rehabilitation and Medical Services Section established in the Bureau of "Workman's" Compensation.
- 1979 Florida, first major reform since 1935. "Workman's" Compensation now called "Workers" Compensation; many sweeping changes; wage loss concept adopted replacing fixed-benefit system. Division of Workers' Compensation established within the new Department of Labor and Employment Security.
- 1990 Florida, additional reform, Bureau of Workers' Compensation Fraud established in Department of Insurance, Division of Fraud.
- 1990 Florida, Drug-Free Workplace added to law, first in the United States.

1990 Bureau of Safety in the Division of Workers' Compensation upgraded to full division status within the Department of Labor and Employment Security.

- 1993 Florida, Major Reform Act, Wage Loss eliminated, new Impairment Income and Supplemental Benefits, Managed Care, Chiropractic care limits, Employee Assistance and Ombudsman Office created along with other changes.

- 1999 Special Disability Trust Fund abolished by legislation. Division of Safety also abolished effective July 1, 2000.
- 2000 Department of Labor and Employment and Employment Security abolishment begins with various Divisions including Jobs and Benefits and Unemployment Compensation renamed and transferred to other State Agencies.
- 2002 Abolishment of the Department of Labor and Employment Security completed through legislation. Agency for Health Care Administration (AHCA) receives Medical Services Section of Division of Worker's Compensation Bureau of Rehabilitation and Medical Services. Rehabilitation portion transferred to Department of Education. Remainder of Division transferred to Department of Insurance effective July 1, 2002.
- 2003 Department of Insurance and Department of Banking and Finance merge into one new agency, the Department of Financial Services effective January 1, 2003.
- 2003 Major Reform Act, changes to Permanent Total Disability, Permanent Total Supplement, Permanent Partial Benefits, Practice Parameters and Protocols mandatory in medical care, changes to Independent Medical Examinations, Attorney Fee Award structure, Compliance, Exemptions, elimination of Supplemental Benefits and other legislative changes.

The inclusion of the 1911 Triangle Shirtwaist Company Fire, in New York City, which resulted in the deaths of 146 women and girls, was an important moment in the evolution of workers' compensation. It was a factor in New York finally accepting the principle of workers' compensation. Then Secretary of Labor, Frances Perkins suggested that the Triangle Shirtwaist Fire represented, "the first day of the New Deal" (Perkins). Unfortunately, the timing of the change also appears to substantiate the presumption that it sometimes took large losses and deaths to significantly impact change.

The Triangle Shirtwaist Fire also changed the gender focus of workmen's compensation (Witt). Prior to the fire, the industrial accident crisis was limited to the male wage earner. The inclusion of women and children, was important because it slowly brought the issue of families, children and widows into the debate (Witt). Once the issues

of destitute widows and children entered the debate, haunting pictures, such as those of Lewis Hines, became important to the nation's conscience.

Between 1911 and 1948, all states in the United States adopted workers' compensation laws. A more important modern development may be the 1990 upgrading of the Bureau of Safety in the Division of Workers' Compensation to full division status within the Department of Labor and Employment Security. Unfortunately, the time line also reflects the abolishment of the Division of Safety and redistribution of the Department of Labor and Employment Security in 2000 and legislative abolishment in 2002.

The 2003 merging of the Department of Insurance with the Department of Banking and Finance, appears to reflect the validation of the conversion of insurance to a financial apparatus for transfer of risk.

The 2003 Major Reform Act seeks to address the most current problems with workers' compensation – medical care costs and defining what medical options are available to injured employees.

2.14 Mid-twentieth Century – Compensation, Tort, and Legal Summary

Witt suggests four major approaches to the accident problem that emerged in the United States in the second half of the twentieth century: (1) The nation's courts created the common law of torts; (2) workers organized wide-spread, although little known, cooperative insurance societies; (3) some employers developed private employer compensation programs; and, (4) social insurance advocates proposed the compulsory accident-compensation schemes that were largely instituted after 1910.

By the end of the 1930s, there were two systems - workers' compensation for work accidents and tort for virtually the rest of the field. The societal concerns regarding industrialization also influenced the courts' decisions. On January 3, 1916, Louis D. Brandeis, who within a few weeks would be nominated to the Supreme Court of the United States, said in a speech regarding industrial accidents, "the great increase in American productive wealth had come at an enormous cost in human misery." Reformers correlated a number of problems to the growth of industry, and devised various remedies to protect workers, especially women and children, from the malignant effects of factory life. Protective legislation, including the establishment of maximum hours and minimum wages, the abolition of child labor, and the creation of workmen's compensation programs all aimed at redressing the perceived imbalance between the lords of industry and their ill-used workers (Urofsky).

Writing for the Supreme Court Historical Society in 1983 in Myth and Reality: The Supreme Court and Protective Legislation in the Progressive Era, Melvin I. Urofsky agreed with Brandeis' comments regarding the sociological impact of industrialization, stating that "the litany of Progressive complaints derived from a basic assumption that industrialization had so altered traditional economic and social relationships as to endanger not only the health and welfare of laborers, but to undermine the moral and political bases of democracy"(Lieberman). To take but one example, reform investigators discovered that the huge increase in the number of women factory workers correlated with a rise in prostitution, a decline in church-going, and a growing population dependant upon charity. To the investigators, the reasons were clear. An 1884 Boston study, covering more than one thousand working women, found that most factory owners

required them to work more than sixty hours a week and that commercial businesses often demanded eighty-hour weeks, including Sundays, with no extra pay (Lieberman). A New York Labor Bureau study described in horrified terms the inadequate ventilation, filthy sanitary facilities, and dangerous conditions in New York sweatshops. As one immigrant woman sadly told Lincoln Steffens, her young daughters wanted to become prostitutes when they grew up, because the working conditions and pay were better than in the factories (Lieberman, 1931).

A similar concern marked the crusade against child labor, and in fact tied in closely with the fight to improve women's working conditions (Urofsky). Women and children constituted the heart of the family and the quality of America's next generation would be adversely affected by the deprivations visited upon those employed for long hours, in dangerous working conditions, and lacking any opportunity for moral or intellectual growth. In explaining why it backed Progressive reforms, the National Conference of Charities declared that "all we have attempted is to keep the sub-basement floor which we regard as positively the lowest stratum that should be tolerated by a community interested in self-preservation" (1912). While reformers certainly cared deeply about the underprivileged, they also feared the future effects of long hours, low wages, and stunted growth. The preamble to the Oregon Minimum Wage Law explicitly declared that "the welfare of the State of Oregon requires that women and minors should be protected from conditions of labor which have a pernicious effect on their health and morals, and inadequate wages . . . have such a pernicious effect" (Kessler-Harris).

Urofsky indicates that, the common law had developed various doctrines on the relation of master and servant which, while sensible and appropriate in a pre-industrial

society, reformers now claimed placed intolerable burdens on workingmen (Crispin v. Babbitt, 1880). Especially troublesome were three defenses which apparently immunized employers from any liability for job-related injuries to their employees:

1. The fellow-servant doctrine for which each worker stood responsible for the negligence of other employees resulting in his injury, on the theory that he should acquaint himself with the bad habits of his co-workers, and even encourage them to more prudent behavior, perhaps this had made sense in small workshops, but it seemed far divorced from the realities of large mills or factories, where hundreds or even thousands of men labored on different shifts.

2. Contributory negligence served to shift liability if any fault could be found in the conduct of the worker. In Arizona, for example, a railroad engineer had been forced to work thirty hours straight, in violation of a state law, and as a result had fallen asleep on the job, thus causing an accident in which he had been injured. The engineer had continued work only because of the threat of dismissal, but the court held him contributorily negligent. He had a free choice, the judges said, of cooperating or terminating his employment, and by choosing to cooperate became responsible for the results.

3. Assumption of risk. Dangerous or even illegal conditions did not vitiate the defense. If a worker knew of these dangers and still accepted employment, the law held he had assumed any attendant risks. Volenti no fit injuria ran the ancient maxim, that to which a person assents is not an injury. Chief Justice

> Lemuel Shaw of Massachusetts, in a case cited frequently both in England and America, explained, "he who engaged in the employment of another for the performance of specified duties and service for compensation, takes upon himself the natural and ordinary risks and perils incident to the performance of such services, and in legal presumption, the compensation is adjusted accordingly."(Farwell v. Boston) (Weinstein)

Short of gross negligence, employers had practically no responsibility for what happened to their employees.

Urofsky further writes that:

> Reformers thus sought to shift liability from employees to employers, and to change the basis for compensation from causal negligence to strict liability. Because the worker in a modern industrial factory or mine had little or no control over the environment or the actions of fellow employees, the risk should be placed on the employer, who could more easily absorb the costs either through insurance or passing them on to consumers in the form of marginally higher prices. Some enlightened businessmen, especially those in the National Civic Federation, recognized the force of this argument, and also supported it as a means of rationalizing business costs. It would be far cheaper to set up an objective and predictable insurance scheme than to pay litigation fees for hundreds of personal injury suits. Other reformers spoke in terms of social costs. If breadwinners were injured or disabled, they and their families would be thrown upon the public expense. The argument ran that since business

> profited by ignoring worker safety, industry - not the public - should bear the costs. (Urofsky)

This shift from fault-based liability to strict liability represented a huge shift for the United States and upset many conservatives (Wesser).

The Supreme Court history further indicates that shifting liability constituted but one prong of the Progressive program; the other would provide an orderly and rational scheme to compensate employees for injuries and death resulting from job-related accidents. Private employer liability insurance had been introduced in the United States in the 1880's, and premiums rose from about $200,000 in 1887 to more than $35,000,000 by 1912 (Lubove). No one objected to private workmen's compensation programs, and many businesses voluntarily adopted plans in order to rationalize their expenses. Both International Harvester and United States Steel Corporation established compensation programs in 1910. A year later the National Civil Federation proposed a model bill; even the National Association of Manufacturers, which rarely agreed with the reformers, endorsed the principle of workmen's compensation at its 1911 convention (Wesser). Progressives called upon the states and the federal government to establish government-operated workmen's compensation insurance pools and then require all employers to either subscribe to the public plan or secure comparable private coverage. In return, employers would be immune from liability for those accidents covered under the plan, although they would still, as under common law, be subject to suit in cases of gross negligence on their part. By the end of 1910, six states had enacted some form of compulsory workmen's compensation (Freund).

In 1917, several cases involving workmen's compensation reached the Supreme Court; on March 6, three opinions came down upholding the three prevailing types of compensation laws. In a 5-4 decision, the Court sustained a Washington state plan requiring employer participation in an exclusive state fund. It then unanimously upheld the Iowa elective statute, holding that, "the Fourteenth Amendment, does not prevent a state from establishing workmen's compensation without the consent of the employer, incidentally abolishing his defenses" (Harris v. Bleakley, 1917).

2.15 Politics – Welfare State?

The title of Fishback and Kantor's book, A Prelude to the Welfare State: The Origins of Workers' Compensation, portends the nature of the political stakes involved with the institution of workers' compensation in the United States. The title also reflects the typical political sides of the debate, conservative versus progressive. In several instances, the authors refer to persons such as Theodore Roosevelt as the "socialist" President, without being pejorative, but in a matter-of-fact manner. Some areas of conflict were the economics of workman's compensation in comparison to the cost of lawsuits under employers' liability, benefit levels, state versus private insurance, administration of the law, coverage of specific industries, and the right of workers to continue to sue based on employer negligence (MEA 1912).

The players in the debate were made up of broad interest groups – organized labor, employers, insurers, and attorneys – all sharing different views regarding the means of achieving better workplace accident compensation. Disagreements within unions were largely around the best way to achieve the ideal program. Should they accept a basic law of workmen's compensation without state insurance and therefore low benefits just to get

the law on the books, then go for more at a later date? Or should they go for the entire package immediately? On a state-by-state basis, incorporation of workmen's compensation laws was applied at different times and to varying degrees. Some were very resistant to involving insurance companies, but a major question was how the cost of workmen's compensation would be shared by employers and workers. Then the issue became what percentage of wages should be replaced or the maximum weekly amount benefit to be permitted. The next issue was whether workers would have the option of either collecting the guaranteed workman's compensation benefit or suing their employer under negligence liability. Employers were resistant to the option for injured workers because it would subject them to the same legal and financial uncertainty that they were trying to eliminate. The most contentious issue was the choice between state and private insurance of workmen's compensation. Different states accepted different sides of this legislation by joining a state fund or purchasing private insurance (Fishback, Kantor).

Employers, workers, and insurers all supported the general concept of workmen's compensation, but debated the specifics. The dispute over state insurance versus private insurance was intense (see Appendix B describing the type of insurance for each state). Union leaders pushed for state insurance because they were uncomfortable with private insurance profiting by denying benefits to deserving injured workers. Insurers fought to save their business and charged that state-funded insurance was a sign of creeping socialism. Most states allowed employers to contract with private insurers to underwrite the accident risk. Seven states established monopoly state funds; ten others created state funds that competed with private insurers. The strength of workers' compensation was that it was broadly accepted by all factions because it helped resolve legal and

information problems associated with insuring individual workers' accident risk. It was not until the 1970s that benefit rates rose to acceptable levels (Fishback, Kantor).

Fishback and Kantor argue that by the time workers' compensation was accepted, the conscience of the nation was impacted such that progressive politics won out over conservative politics. Therefore, workmen's compensation was seen as a prelude to the welfare state, setting the stage for the dramatic expansion of the government's role during the New Deal and Great Society (2000).

2.16 Incentives

Between 1935 and 1978, changes in workers' compensation systems were minimal. Some states created "second injury funds" to encourage employers to hire workers with disabilities. In 1978, the fixed benefit system of the workers' compensation plan was changed (Harger). There were some lump sum payouts if persons were able to return to work after an injury. In 1979, the name was changed from workmen's compensation to workers' compensation reflecting the application of workers' compensation to all injury claims (Harger). The Bureau of Workers' Compensation under the Department of Commerce was replaced and expanded by the Division of Workers' Compensation under the new Department of Labor and Employment Security (Harger). Premiums for employers were reduced by 23 percent for employers from 1978 through 1982. There was another benefit restructuring in 1990 (Harger). Litigation and medical care continued to be problems at the end of the twentieth century. Return to Work programs got injured employees back to work quickly, thereby reducing costs; costs reduction was furthered by the Americans with Disabilities Act which required that

adaptations be made for injured or disabled workers, within reason. In 2003, another new benefit structure was enacted in several states (Harger).

The safety incentives that workers' compensation creates are complicated. On the one hand, insurance provides employers with a clear reason to reduce safety hazards; their premiums should decrease when they implement safer work practices. On the other hand, it may discourage workers from working safely, since they are guaranteed at least some replacement of their wages if they are injured on the job. As a result, the early years after workers' compensation was implemented were spent working out kinks in the system that had led, for example, to increased injury rates in the mining industry. (A guarantee of income meant that miners, paid by the ton rather than by the hour, had less incentive to spend time on safety precautions.) Most industries, however, experienced injury declines (Fishback, Kantor).

Nearly a century later, several studies by economist Richard Butler and colleagues indicate that as workers' compensation benefits rise, workers are likely both to take more risks while working and to report claims on injuries that they might have let go at a lower benefit rate. To combat some of these effects, state legislatures have tweaked their workers' compensation statutes in recent years. States have introduced changes like increased deductibles for employers, increased waiting times before benefits begin, increased penalties for fraud, and greater incentives to return employees to work as quickly as possible after an injury. But in the end, the incentives that workers' compensation insurance creates today are not much different than they were nearly 100 years ago (Conaway).

What has become more complicated in recent years, however, is how those incentives interact with events outside the insurance system and how those interactions affect workplace safety. In the 1980s, for instance, a spike in reported injury rates led to increased insurance costs, which led to more employers being covered by the state insurer of last resort — both of which ultimately resulted in the only sustained increase in workplace injuries since OSHA began keeping records. Market forces caused these changes, not workers' compensation — but the economic structure of workers' compensation compounded their effects (Conaway).

Actually, workers' compensation has experienced some success as evidenced by appendices A and B. Appendix A shows the long-term trends in workers' compensation coverage and costs from 1940 through 1995. In 1940, 73.6 percent of salaries were covered; this figure rose to 91 percent in 1995. The amount of compensation compared to the employees' salaries was initially a major debate (Fishback).

Appendix C reflects shares of workers' compensation payments made by types of insurer (private, government or self-insurance). Interestingly, self-insured payments rose from 18.8 percent in 1940 to 21.9 percent in 1998, but went as high as 25.9 percent in 1994 and 1995 (Fishback).

Appendix D provides the characteristics of workers' compensation laws in the United States. This document covers the types of carrier between 1910 and 1930. Importantly, policies written with deductibles, such as $1 million per occurrence, are affectively self insured as the likelihood of the loss amount impacting the insurance company is remote (Fishback).

In the mid-to-late 1980s, the United States experienced its only sustained increase in workplace injuries since OSHA started keeping records in 1973 (Fishback). The injury rate increased from 7.6 injuries per 100 workers in 1983 to 8.9 per 100 in 1992, while the number of workers reporting injuries increased from 4.8 million to 6.8 million. Conaway, in her Regional Review article (2003), suggests much of the increase derived from increased attention to a newly identified workplace injury—ergonomic, musculoskeletal or cumulative trauma disorders, often referred to as soft tissue injuries (illnesses).

Previously, most workers viewed the ganglions, tendonitis, and carpal tunnel syndrome they acquired after years of work on factory lines or in offices as a natural part of having a job (Conaway). These problems were rarely reported to OSHA and therefore comprised only a small portion of reported injuries and illnesses. But in the 1980s, OSHA started levying citations and fines against major manufacturers like Hanes Knitware and Samsonite for ergonomic hazards in their workplaces; consequently, workers and employers alike started taking ergonomic injuries more seriously (Conaway). Nearly 750,000 people reported a musculoskeletal disorder due to their work environment in 1992 (Conaway).

A second important factor was the rise of health care costs in general. In the traditional health insurance market, rising costs precipitated a shift toward managed care programs that tried to curb costs by restricting access to specialists and expensive treatments. But workers' compensation insurers could not quickly adopt the same techniques because major changes in workers' compensation benefits and premiums required state legislative action. And since workers' compensation allowed for more

flexibility and choice in treatment, more illnesses and injuries were treated under workers' compensation than might have been (Conaway).

There was also another, more subtle and complicated cause for the increase. Workers' compensation insurers now faced unexpectedly high claims because of the increase in ergonomic injuries and cost-shifting into the workers' compensation system. In the short run, however, regulatory constraints prohibited insurers from either increasing premiums or cutting back on the types of injuries that were covered. (Prices eventually did rise – indeed, employers were paying nearly double the premiums in 1994 that they were in 1986 – but costs were still increasing faster than premiums.) As a result, "insurers began to refuse to cover any companies that they expected to generate significant claims. As a result, the residual risk pool — the group of employers denied traditional workers' compensation coverage and covered instead by the state-established insurer of last resort — grew enormously" (Conaway).

2.17 The Moral Hazard Problem and Accident Compensation

Compensation for accidents has the potential to generate problems with moral hazard. Specifically, people exercise less caution while working because their net losses from injury are reduced by the availability of compensation. Over the course of the century, there have been two trends that have contributed to the potential for increased moral hazard problems. First, the character of the most common injuries has changed. In the early 1900s the common workplace injuries were readily identifiable; most common was the probability of accidents leading to broken bones, lost body parts, and fatalities. Today, the most common forms of workers' compensation injuries are soft tissue injuries

to the back and carpal tunnel syndrome in wrists. These injuries are more difficult to diagnose effectively, which may lead to excess reporting of these types of injuries (Fishback).

The second trend has been a rise in benefit levels as a share of after-tax income. Workers' compensation payments are not taxed. When the workers' compensation programs were first introduced, the federal income tax was first being put into place. Through 1940, less than 7 percent of households were subject to the income tax. Since World War II, however, the number of households subject to income tax has risen substantially higher. As a result, workers' compensation benefits have been replacing a higher share of the after-tax wage. The absence of much taxation in the early 1900s meant that workers' compensation benefits often replaced less than two-thirds of the after-tax wage, and sometimes caps on weekly benefits led to replacement of a substantially lower percentage. Today, with greater taxation of wages, workers' compensation benefits are replacing up to 90 percent of the after-tax wage in some states (Fishback).

Both the trend toward more soft-tissue injuries and the higher after-tax replacement rates have led to improvements in the compensation of injured workers, although there is evidence that workers pay for these improvements through lower wages (Moore and Viscusi 1990). On the other hand, these trends also increase the risk of problems with moral hazard, which in turn leads to higher costs for employers and insurers. Employers and insurers have sought to limit the problems with moral hazard through closer monitoring of accident claims and the recovery process. The tensions

between improved accident compensation and moral hazard have been a constant source of conflict in the debates over the proper level of compensation for workers (Fishback).

3.0 Methodology

The first portion of this work is documentation of the origins of workers' compensation and the political and legal timbre of the country during its origins. The following portion of the thesis is through research of written materials.

Little has been written regarding the differences between traditional safety professional positions and that of the insurance company risk control specialist. Yet one must be acutely aware on an individual basis, that the differences are often quite significant. For example, due to the one-year window of typical policy periods, the risk control specialist frequently may have to seek immediate and drastic change to make a risk profitable for the insurance company while keeping in mind service to the client company. On other occasions, the risk control specialist must make the client company look sufficiently high-risk to justify canceling coverage due to immediate loss potential. It is a fine line that many choose not to address for fear of being on the record.

The methodology for examining the origins of insurance consisted of traditional library, bookstore, and online research. The methodology for capturing modern risk control consultation was through interviews with five people representing different perspectives of the risk control department.

A questionnaire was developed for consistency during face-to-face, or telephonic interviews, with five experienced persons in the insurance industry. The interviews have been transcribed and used predominately to address downsizing impact, fiduciary conflicts for risk control, and philosophical changes of interpretations in recent history. Aside from job title and years of experience, other questions were as follows:

- Please discuss the hierarchy of risk control and the support provided for those positions within your existing company. Has your company been downsized in the past 10 years?
  - How has downsizing affected your job in risk control?
  - Would you estimate the experience level in your department to be balanced (inexperienced to very experienced)?
  - Has your department's training budget been impacted? More or less?
  - Are you using outsourcers or risk control vendors?
  - Is quality affected when using outsourcers? How?
  - How has outsourcing changed your job?
  - Are you on a billable hours system?
  - Does the billable hours system have potential ethical concerns?
  - How many billable hours per week are required?
  - Do billable hours impact the level of service? Why?
  - What are your feelings about this statement, "give them as much safety as they can afford"?
  - As regards quality, "we don't make Cadillacs, we make Chevy's"? What is its relevance?
  - Do you do underwriting surveys?
  - What is the difference between underwriting driven versus consultative service?
  - What percentage of your tasks are bundled versus unbundled?

- What is the focus of bundled work?
- Is it different for unbundled work? How?
- Have you felt a client needed further assistance with safety issues but underwriting indicate there is no money? Is there a moral conflict? How do you rationalize your activity or inactivity?
- What is the impact of workers comp deductibles on your services to clients?
- Policies are typically for a year's duration. How does this one-year window affect the urgency with which you prioritize recommendations? Would that differ if you were EHS for private industry? How?
- Risk control has become a profit center in recent years. How has that impacted the way you function or the culture within risk control?

4.0 Results

It was surprising how little has been written regarding the origins of risk control within insurance companies, aside from the traditional phrase, "risk control being the eyes and ears of underwriting." Over the years, as workers' compensation policies have morphed, the responsibilities of risk control consultants and their fiduciary responsibilities have also had to change. To document the change, interviews were conducted with five persons with significant experience in the field. The interviewees' conclusions are encapsulated in Pat Allen's 2003 speech. Ms. Allen is a 'headhunter' or job placement recruiter who is well known in the industry. Headhunters work for employment search firms, many of which have made a living placing employees for employers. Pat Allen is a major and nationally known recruiter who spoke at the ISO (International Standards Organization) conference of November 2003. In her speech, Ms. Allen presents several informative and interesting facts about insurance risk control positions, "...the insurance loss control pool, which once had 18,000 viable candidates was reduced overnight by almost 50 percent". Her speech places some blame on the upsurge of computer technology and the ease in finding alternative careers, daily rounds of re-engineering (also known as downsizing), and globalization. Interestingly, Ms. Allen makes the point that re-engineering "shook the loyalty of employees everywhere and at all levels." She also cites statistic that one safety management position was put in jeopardy for every five hundred manufacturing jobs lost to globalization (foreign soil) (Allen).

Ms. Allen goes on to identify outsourcing and unbundling of insurance services as thriving, "spurred on by the ever-present desire to increase income and reduce expenses." These issues become dominant in 1999, but the terrorist attack of September 11, 2001,

added a new emphasis for the discipline of disaster recovery and planning which risk control has emphasized. Another issue that has helped is the reduced value of 401-K's during the stock market downsizing which postponed retirements.

In the current environment, previously secure companies such as Kemper, Reliance, Royal, and Alliance have disbanded, leaving a flood of risk control talent on the streets. Ms. Allen specifies seven specific forces that contribute to the situation:

1. Consolidation and the elimination of the major companies. There are now only 8-10 major companies.
2. Lack of systematic multi-line training programs resulting in the median age of the loss control professional advancing by five years. The gap between seasoned professionals and younger candidates has widened.
3. Rapid rise in the use of outsource risk control and independent contractors. As Allen puts it "...from W2's to 1099's overnight."
4. Larger fee companies have grown significantly. The transition has been impossible for many. Using fee companies causes a loss of personal interest and consequently quality.
5. Property emphasis has reduced the demand for casualty-oriented expertise.
6. Only a handful of companies write the large multi-national and global accounts. Middle market business competition is so intense that many will fail soon.
7. The third-partyadministrators with unbundled services are growing.

(2003).

This excellent presentation also includes a study of risk control professionals, for which 1200 requests were distributed with 319 respondents. Interestingly, the issue causing the most difficulty was "uncertainty" at 45 percent. (Allen)

4.1 Interviews

Personal interviews were critical to collecting information, particularly regarding the current status of risk control, the impact of downsizing and changes initiated by risk control becoming a profit center. The interviews were made necessary because research revealed that writings on this subject are sparse. The subject of this thesis required that interviewees were of sufficient age and experience that their work history in the risk control field would span the 1980s and extend through 2005. These decades encapsulated the periods of risk control's transition from bundled through unbundled, the impact of TQM, and current risk control in the world of deductible workers' compensation policies and third-party administration.

Some companies, actually have sales departments within risk control, devoted entirely to sales of risk control consultative services. This is quite a transition for a field that has traditionally been seen as an engineering discipline. (Of the interviewees, Randy Moon is now the National Sales, Assistant Vice President for his company.)

4.2 Interviewees

Andrew Faga is a Senior Account Manager with over twenty-five years' experience in the risk control field with several different insurance companies. Andrew works for a division of his company, which is a third-party administrator for claims and risk control services and recently has been officially allotted 25 percent of his time for sales activities of risk control services.

Joseph Farren is a Practice Leader that came to the third-party administration company from a Fortune 500 client. Joe's input was important because his experience allows him to view safety issues from both the insurance angle and as a broker's risk control specialist that was imbedded with the client. Joe also had to transition to a "billable hours" version of risk control performance standards.

Nick Montagna has more than fifteen years' experience with the same insurance company, with exception of a buyout, after which he remained with the new entity. Nick's input was important as he has transitioned from the traditional risk control position into the role of managing vendors that are used by the third-party administrator or risk control department.

Patricia Negro has been in the field over twenty years and has gone through a downsizing. Pat had to transition from a mid-market type company using traditional accounting for her time, to a largely unbundled approach to insurance and billable hours.

Bill Street is the head of a large film and aluminum company; he has the perspective of using risk control services for over 10 years. He also worked as a field auditor. Bill has his own internal safety department staff and uses the services of a third-party administrator for risk control services. His input was important in discussing differences in service and quality as risk control has transitioned in recent years.

Time constraints, on Randy Moon's part, did not allow for a full interview. However, Randy's change in title is in itself reflective of a significant change in how risk control is viewed. Randy is now the Assistant Vice President in charge of National Sales of Risk Control Services. This is a new position that was created in 2005. Randy has

been with one insurance company for approximately thirty years and has seen its risk control department transition from a purely customer service, bundled environment to a full profit center, a change which has significantly altered the role of risk control. Now Randy is in a sales position with sales revenue goals and a sales staff.

4.3 Changes in the Hierarchy of Risk Control

This progression of risk control title changes over the years was acknowledged by all of the consultants interviewed. The progression was from an inspector – "the eyes and ears of underwriting" (Negro) or "Hector the Inspector" (Farren), an "enforcer" (Faga), to account manager and outsource manager identified by everyone interviewed. Everyone also learned all lines of coverage (workers' compensation, fire, property, security, liability, professional liability, fleet, etc) from training programs within their own companies, but indicate that there is no existing infrastructure for such training now.

All interviewed underwent downsizing, some on more than one occasion. Some downsizing appears to be extreme, in one case, staffing was reduced from approximately 850 in 1990, to 450 in 1996, to about 75 now. In response to questions regarding the impact of downsizing on their career, everyone indicated that the impact has been significant. In the words of Farren, "we became more account coordinators because we weren't actually out dong the servicing, we were actually providing overall oversight. We were the intermediary, providing professional vendors." Nick indicates expertise was lost and many left the industry. Nick now manages the "strategic alliance network," (outside vendors), a position newly created within the past five years. With the increased use of vendors and older experienced consultant employees, there is no one in the pipeline to continue the discipline. Faga has adapted to the use of affiliates (vendors) and

currently manages some large companies for which most services – with the exception of his management duties – are provided almost totally by affiliates.

Pat Negro indicates her job has expanded. Currently, she does risk control surveys and audits in the field (at client sites), safety inspections for underwriting, management of client accounts, and management and quality reviews for vendors. Since she works from the home, she is also responsible for a much higher percentage of the typical administrative/secretarial work than when she worked from an office. She also suggests that now, the 'noisiest' accounts get the attention. Time and underwriting budgets do not permit the same attention to be given to smaller accounts or accounts that do not complain. Most respondents attribute these observations to a downsized staff that is now too small to effectively service all clients.

All of the interviewees concurred that travel time to service clients has increased, and corresponding expenses and inefficiencies have increased in some proportion to the percentage of downsizing. The quantity of work decreased as underwritten (bundled) work, which typically required a risk control visit to each account, diminished and "sold service work,"meaning hours billed directly to a client, increased. Bill Street, who actually purchases risk control services, indicates he sees more specialization and expertise from the risk control department. This may be expected since he would rarely have an inexperienced person servicing his account now, as the entire staff is highly experienced. Everyone indicated that the entire staff is older and experienced, with no younger employees or intern positions available. The impact is that all salaries are high and the staff is unbalanced. In an environment of the risk control profit center, a balanced staff becomes important as indicated by the following composite summary of the

interviewees' comments: The downsizing, with the resulting end to internship and training programs, has caused an imbalance in typical safety staffs. Normally, a group of seasoned professionals, would be a good thing. However, in an environment where risk control is a profit center, a balanced staff becomes important. Where a staff is unbalanced, a higher paid consultant may spend time on clients or issues that do not require his level of expertise. As a profit center and sales organization, a balanced staff in terms of age, experience, and pay scale is important for profitability."

In general, all respondents suggest that training budgets have been drastically reduced or eliminated. In response to questions regarding training, internships, or balanced staffs, a frequent comment was, "in general, we do not hire people that need a lot of training." In the 'billable hours' world, the time needed for appropriate training represents a loss of revenue. Negro makes a particularly cogent remark in this regard, "in this environment, training is seen as an expense rather than an investment. We hire experienced only. The role of the insurance industry as a safety training ground has effectively ended." Nick indicates that "companies just don't have the time nor can they incur the cost to train now."

. Everyone indicated that quality is impacted by the use of vendor services. Faga feels much more time must be spent on quality when using vendors to service accounts, but not necessarily because they are inherently unqualified. He feels that since he does not know them or their work personally, he must review their work more thoroughly and provide more detailed instructions. He reads the vendor reports *before* they are distributed; he reviews the work of internal consultants *after* they are distributed. Farren believes significantly more quality control is necessary when vendors are used. Nick

suggests that "vendors do not seem to have as many systems management type people." This is important because progressive understanding of EHS is that management systems must be addressed for effective, long-term control of workers' compensation or other losses.

4.4 Risk Control as a Profit Center

Montagna associated layoffs and downsizing with becoming a profit center. In his response to questions regarding this issue, Montagna stated:

> All of a sudden, cost benefit analysis is applicable to the actual risk control department. The number of consultants for the first time had to be carefully synchronized with the amount of premium written minus the deductibles. Each person had to show their viability based on profits and their workloads. Before, we were a profit center, even though we kept track of our hours, it wasn't an issue, how many hours you worked. It was more, well, when I first started, how many units you did in a certain period of time. But at some point it became a source of revenue...the risk control department. Once we started offering our services independent of the insurance product it became, now if you're going to sell your service to somebody, then you should have a goal for how much of that service you're going to sell over a period of time.

On the same topic, Faga responded:

> And, of course, where it's going to be a stretch goal, so you've go to do something to sell more this year, than you sold last year, and more next year, than you sold this year. And it 's always got to be more and more

> and more. And so, we've got to keep score and we've to get out there and push to sell service. And so that put more pressure on us. We had people who were counting the money on a regular basis and wanting to know why we haven't met whatever our goals are. So we got more into that realm of being held accountable for a number or a dollar figure in a certain period of time.

All respondents felt that the imperative to fix safety problems has now been shifted to the client, with less responsibility for underwriting or risk control. Faga presented a particularly unique side of this question when he stated:

> We can tell them something is wrong but not provide service beyond allocated resources from underwriting. If additional services are necessary, the client company can purchase them with a separate contract. The question becomes, if the danger is imminent, and the client says they cannot afford to make the problem safe, should I go to OSHA or some other regulating entity. I have never done so in the past, or been faced with that choice, but would like to think I would if necessary.

This dilemma is one that was less obvious when services were unbundled and the budget to provide important safety services was usually given the okay by underwriting. That is, within the parameters of the 4 to 5 percent premium standard for customer service (Farren, Faga, Montagna).

Faga felt that his contacts in private industry had as much timely urgency as risk control. Others interviewed did not consider this to be the case. Farren expressed the pressure for risk control to show or demonstrate a deliverable within nine months of the

policy inception and three months prior to expiration. This sometimes influenced the issues that selected for attention. At times, the more visible issues were chosen over the more substantive, but less visible issues (Farren).

Another factor since risk control has become a profit center, has been how workers' compensation policies are written. In this regard, the interviewees were asked to comment on the impact of insurance policies that are written with deductibles. Farren stated that:

> Bad – well they increased the deductibles to where they put the onus on businesses, themselves. Some companies may increase deductibles and put more onus on the business owner. If you had a $250,000 deductible as a business owner... the insurance company is not providing as much risk control as you once received in the past, you feel a need to protect your own operation from that financial setback that could cost you – I mean can you afford to spend $250,000 on a loss? And you need to provide that protection to your business – you could go out and hire your own risk control/risk management company to provide those services and direct them specifically in the areas you think – a consultant will direct you and help you do an evaluation and tell you what they think the concentration should be, then in addition to just spending the dollar, you can direct it to certain areas as well, where you think you may have problems. Where in the past, if an insurance company was providing risk control services at their cost, they may direct them to certain areas. Where that helps put control back on the owner (the deductible).

Montagna agreed with Farren, stating that, "with their budget, they can direct it in certain areas they want it as well." Montagna went on to say that:

> A part of it has to do with market – I think back two decades ago, you had more traditional insurance products and insurance relationships, and underwriters were underwriters and they put company assets at risk and they appointed a loss control staff to help get definite information to make sure they were pricing and grading risks accurately and then to preserve their assets at the end of the day, thereby reducing claims. Now with the deductibles with these different insurance arrangements that are really financial products, you get away from true underwriting. They are financial – the people from Prudential office sell financial products, where we don't have a lot of work, if it's not to the underwriters' advantage – to help reduce claims could be the largest one. But they don't see any advantage in the risk control staff, contracted to that extent with no payout to them directly. Therefore, I think they maintain a much leaner staff – I think a more highly qualified, more mature – consulting people offer that to the clients and the clients can buy those services or not, but it's up to the client. For that to be the gradual change in the insurance world over the years – even a lot of the companies that I've worked have simply gone out of the traditional insurance market and they are not conveying that thoroughly.

Pat Negro took a similar view, but added an interesting insight, stating that , "there's more of a global impact, which I think changes viewpoints about client/carrier

relationships. It's the way of the consultant now. You get the service if you pay for it... it's not an altruistic thing, we're not just here to make the world a safer place." Negro's issue of altruism as part of the risk control ethic encapsulates a significant change that appears to have occurred over the years. Most interviewees indicated that general safety was a dynamic of risk control prior to the late 1980s, but was lost with the advent of unbundled services and the billable hour requirement,. All felt varying degrees of cognitive dissonance when required to inadequately address visible safety concerns strictly because of a lack of billable hours available. This was particularly true when customer service is negatively impacted because there is no place to account for billable hours.

4.5 Billable Hours

One of the most pronounced changes in the performance measurements of risk control specialists for a profit center is billable hours. Bundled work is for underwriting and costs generally are paid for within the premium charge and therefore transparent to the client. The work may be directed by the underwriter or provided to the client as a value-added service. Fiduciary responsibility rests primarily with the underwriter and time and expenses for customer service are incurred at the underwriter's direction.

Unbundled work is work that the client has requested and is not a part of the premium. In fact, unbundled work need not be associated with a policy at all and may be part of the program as a third-party administrator. The client will be billed for unbundled services at an agreed flat fee or by the hour. In this mode, the consultant's primary fiduciary responsibility is to the client. An underwriter may even be barred from receiving copies of the client's report in this mode.

All of the consultants are partially or totally on a billable hours system, or in some way, have revenue-producing responsibilities. Faga is responsible for 75 percent billable hours revenue, with 25 percent of his time allotted for involvement with sales activities. He works for Randy Moon, the National Sales Assistant Vice President, who is dedicated to developing new revenue for the consulting group. "You can provide only the service they can afford or asked you to do. Billable hours and deductibles ...years ago the insurance industry may have been the champion..." (Farren). Farren also observed that, "I don't think we have lost anything. I think it has evolved. There are different ways to transfer risk today (retentions, deductibles, etc). We are not in the vanguard anymore, but we still contribute. Billable hours make people more accountable (Street, Farren), but they (billable hours) also burn people out".

Faga went further, saying:

> If I'm a consultant to a client and they have an issue of an imminent danger and I point it out to them, then it's their moral responsibility to do something about it. I mean, my obligation is to identify the issue and give them a reasonable solution or suggest a reasonable solution. If they. Let me put it this way, in most cases they are going recognize that and it's their work force that we're talking about. So the moral imperative is really theirs to do something about it. Now, if a client were to completely turn a blind eye to that and say well, that's okay, I don't care that somebody is going to get hurt, there I can't afford to do it. Or I chose not to do it. Then I guess, ultimately I would be faced with, do I go to, for instance OSHA and say, this is an imminent danger and these people are not addressing

> that. I've never really been faced with that choice. Depending on the magnitude of it, if it was an imminent danger of death or of serious harm, I would like to think that I would go that extra step and bring it to the authorities and say, look this is a problem that needs to be addressed. But I haven't been faced with that.

When asked how the changes in the way risk control is driven has impacted the interviewees' perception of modern risk control, Farren responds interestingly:

> I'm proud of what I do, I'm proud of telling my son what I do, because I still look at it like, if maybe nothing more than putting a freaking guard on a machine or something. But I've done something that has helped save somebody from being injured or hurt. And when I look into what these bigger accounts, and you put in these bigger programs, etc., and you're impacting thousands of people's lives by having these programs put in place and etc. I feel good about that and I think sometimes we've gotten away from that. We're looking strictly at dollars and cents and that's how we're instructed. It's how you can sell it...you can sell it...you can sell it. Then maybe you can, and maybe you do have to have the dollars and cents figures there, but I never lost the vision or the sight that basically, the main reason I'm here is to help people.

Along that line, Montagna stated:

> I believe that, under historical terms, not spending what was typically spent for risk control within the local business, is starting with letting you know that money is allocated toward the – companies that allocate –

> insurance companies that lessen the dollar amount allocated towards risk control over the years, over past historical percentage continued reduction in that does affect the overall – one would think that it would affect the overall quality within that book of business. Does it affect the overall quality delivered? By risk control, by the locations that they're looking at, I don't think that on an individual basis those locations get less of a quality evaluation unless, they're only asked to provide facts on a bare minimum. I want the level of service they used to receive in the past, but give it to me for 25 percent less costs, if not more than 25 percent less costs and, you break even – or who is going to suffer – is it the company who's providing the service – are they going to do it for less costs, or are they going to look to where they can streamline the operation and provide less, maybe more visual and less report or – you know just things like that. But the underwriter is going to say, I still want that same report – I still want all this – they want the same quality, they just don't want to spend what they used to spend for it..

The interviewees were asked for their explanation of two often heard phrases relating to billable hours and customer service, "give them as much safety as they can afford" and "we don't make Cadillacs, we make Chevy's". Andy, who is part of the sales force responded that the first statement means "sell them everything that we have to sell them, whether they need it or not", a philosophy that Andy does not subscribe to." Regarding the second phrase, which actually deals with quality, Nick and Faga agreed that:

> This refers to the level of quality that may be inconsistent. One person could go in and bill the client, do a very good job and bill the client for 20 hours. And have a reasonable report with some pictures and some good technical information in it. And another person may be more, very technically oriented and very detail oriented and may do the same type of work but to a much higher technical degree. Much more numerical or computer analysis. A lot more pictures. A lot more verbiage in their report and they could come back with a 35 hour or a 40 hour, or a 50 hour report. This creates a problem if the expectation of the client who is getting the bill has not been appropriately set. If they think they're going to pay 20 hours for something and they get a bill for 60 hours, now you got a problem. And so, it's a matter of making sure your field staff understands the expectation of the client and the expectation of our company in terms of what the end product should be. Everybody needs to understand that and work accordingly, so that a client who has a reasonable expectation of a 20-hour bill is going to get that 20 to 25 hour bill versus the 50-hour bill. (Faga).

Any time money is collected or used as a measure for services, the question of ethical accounting arises. The interviewees were asked, "does the billable hours system have potential ethical concerns?" Everyone was given the option of interpreting the term "ethical" as they wished. Nick felt the system does create the potential for ethical concerns, "you should not bill a client for more than what you've provided." Faga agreed, saying that :

> Because your money is generated by the amount of hours that you put into a particular job and, you know, if it takes you eight hours to do a job and at the end of the month you need 10 hours to meet your goal, that eight hours may grow into ten hours. Consequently, our time per survey over the years has grown to somewhere in the 16 to 18 hours...and I can remember years ago, when I could do a pretty good piece of work in about six to seven hours.

Farren's response to this question was, "I do not like the billable hours concept as relates to quality. Everybody today is profit-centered and we have not done a good job of promoting ourselves as a value added."

In evaluating the impact of billable hours, one is reminded of the initial workers' compensation debate between the rugged individualism of conservative philosophy and the common good of progressive philosophy. Billable hours as a performance standard will do a good job of improving individual accountability, but makes individual accountability for profit, the only real measure of success. Since customer service is not billable it is often left unmeasured and undone. The quality metric is largely driven by internal standards that are frequently inconsequential to the external client. The client is rarely contacted for a determination of the quality of risk control services and customer service is a known, but unacknowledged issue because it cannot be provided without a billable hours allocation.

5.0 Conclusion

The origins of workers' compensation were a most interesting study. Wisconsin's workers' compensation program of 1911 is most commonly mentioned in this research, but assumptions are that workers' compensation began in earnest in the 1970s along with OSHA and more modern institutions. The level of discourse in the late 1800s was surprising. The average person would be surprised to find that the initial workmen's compensation angle was to provide a forty-hour work week to women and children. but men had to continue to work sixty-hour work weeks. In fact, the initial program was to compensate widows of husbands that were killed, but not to compensate a husband for a wife that was killed...thus, the title, workmen's compensation. Some historians argue that workers' compensation would not have been instituted without the initial pictures of destitute widows and children which were taken and published by Hines. This led to the surprising findings of the dispute between the conservative "survival of the fittest" mentality and the progressives of the day that had a "group good" mentality. Of course they were labeled with the term "socialist" at the time.

The distinction between free labor and slave labor was surprisingly a substantive part of the debate regarding workmen's compensation. Very thought provoking – can one be a slave and still get paid for your work? If one gets paid but is treated like a slave, are you free? Is it money or pay that defines an employee or is it autonomy and growth potential, etc.? Workers were injured at an alarming rate without substantial concern from business owners until employers understood the autonomy of employees and the right for decent wages, working hours, family considerations and safe working conditions. This is why the workers' compensation question was so controversial. The

answer to these questions would radically change the working dynamics of employer and employee relations. Many employers felt that the only difference between slaves and employees is that the employees were paid. They felt they had the right to literally treat their employees as slaves, as long as they were paid. The number of poverty-ridden immigrants to the United States made it possible to treat people like slaves and still retain them as workers. When one's family is starving, the job is apparently more important than workers' rights. Workers' compensation was force feeding the country an entirely different work ethic and code of responsibility.

At first the employee was responsible for his/her injuries under the concept that an employee knows the hazards of the workplace and is therefore accepting of the dangers, whatever they may be. There was also a doctrine that held employees responsible for other employees. With this concept, employees had little chance of winning lawsuits against employers. Of course, this is aside from the fact that people were too poor to sue anyway.

The political debate between progressives and conservatives rages on. The language and words are the same now regarding issues for which doors were opened during the workers' compensation debate. Issues such as unemployment insurance, Social Security, and national health care planning were opened for discussion by the workers' compensation issue. Even today, it is broadly the conservative view of "every man for himself" versus the progressive "common good" when considering such issues as Social Security and national health care.

Modern risk control has been severely impacted by a downsized world. Strangely, in my opinion, the downsizing seemed to follow application of Demings' TQM

philosophy. In an effort to make everyone accountable, all departments were made profit centers. In the case of pure customer service type departments, there was no viable place to hide these charges. It was common knowledge and practice that risk control was at one time considered a customer service expense, for which up to 5 percent of premiums were set aside, although unknown to the client. This was a time when insurance companies' risk control departments were the vanguard of the safety movement to protect the assets of the insurance company. Often, the risk control consultant is much tougher than OSHA or the fire department and the client will ask "why?" The answer is that the fire department only has to put out the fire, the insurance company has to pay for it.

The positive side of the workers' compensation debate was and remains, although less so, an incentive to make facilities safer. At its origins, workers' compensation was instituted for that very reason and in response to accidents correlated to the Industrial Revolution. In fact, the management system approach was chosen as a direction in its originating formation. Ultimately, there is a morality to safety professions that are not evident in some other professions. It is likely that most EHS professionals take seriously the goal of establishing management systems to correct EHS problems. However, it seems that companies have become accepting of simple improvement, despite stated goals of zero defects. Unfortunately, this may mean that continuing to hurt a lesser proportion of the workforce has become acceptable. Slowly, but inexorably, the real goals often moved from zero defects to the 'most improved award.'

Few historians give the development of worker's compensation credit for accident reduction, but most credit worker's compensation for the development of safety programs. One may perceive this to be due to a continuation of the political

interpretations. Assuming that safety programs have an impact on safety, how can the correlation between worker's compensation, improved safety programs and consequential accident reduction be denied? Although in the latest years, industrial safety is probably impacted by the liability incentives for overall safety. The reduction in workplace deaths has occurred in the context of extensive changes in U.S. economic activity, the U.S. industrial mix, and workforce demographics. Society wide progress in injury control also contributes to safer workplaces--for example, use of safety belts and other safety features in motor vehicles and improvements in medical care for trauma victims.(Weitz and Luxemburg) This has impacted workplace exposures and industrial accidents. It is this merging of worker's compensation and liability concerns that has maintained safety reduction in recent years, although correlating proactive actions by the insurance industry have been reduced. If today's workforce of approximately 130 million had the same risk as workers in 1933 for dying from injuries, then an additional 40,000 workers would have died in 1997 from preventable events (CDC, unpublished data, 1999).

The National Safety Council estimated that in 1912, 18,000-21,000 workers died from work-related injuries.(National Safety Council 1998) In 1913, the Bureau of Labor Statistics documented approximately 23,000 industrial deaths among a workforce of 38 million, equivalent to a rate of 61 deaths per 100,000 workers. (BLS 1999) Under a different reporting system, data from the National Safety Council from 1933 through 1997 indicate that deaths from unintentional work-related injuries declined 90%, from 37 per 100,000 workers to 4 per 100,000(National Safety Council 1998). The corresponding annual number of deaths decreased from 14,500 to 5100; during this same period, the

workforce more than tripled, from 39 million to approximately 130 million.(Weitz and Luxemburg)

This improvement occurred prior to OSHA and other such regulatory standards. The main program incentive was workers' compensation.

In the interviews for the second part of this thesis, most of the concerns were affirmed. The speech and survey conducted by Pat Allen concurred with most of the views of those interviewed. It is merely a matter of logical deduction that when policies are written with million dollar deductibles per occurrence, underwriters are unconcerned with safety until it gets close to a million dollars for any single incident. Deductibles serve to provide a safe zone for insurance companies, within which they no longer have to do anything. It defeats one of the original purposes for establishing the entire workers' compensation system. Only in the event of a major catastrophe, will risk control be allowed to assist that client, unless the client asks to purchase risk control services separately. Unfortunately, many (maybe most) business managers are not aware of how deficient their programs are. If one does not realize the deficiency, then he will likely not ask for help and certainly will not spend money on consultants.

The clarification of the history and politics of the workers' compensation issue reflect issues that are ensconced in the same jargon, pejoratives, and passion as the 1880s. The impact of workers' compensation dynamics on the rest of society, including major initiatives in 2005, such as healthcare and Social Security is part of the workers' compensation continuum. The country's confusion regarding free labor versus slave labor was surprising and thought provoking. The excess profit motive was just as onerous then as it is now. The interviews indicate other risk control consultants to have

problems with trends towards downsizing. Some, including myself, thought the misapplication of TQM led to reorganizations within companies that made every department a profit center. This means that everything must be cost or profit justified, even when servicing other portions of the same company. Knowledgeable persons understand that not everything is billable. Some things are a cost of customer service, yet the command to "bill everything" is the new standard. Since this standard cannot possibly be met in a customer service environment, TQM has allowed employees the 'freedom' to work extra hours due to their professionalism, without charge to the insurance company. As one interviewee indicated, "work 50 hours in order to bill 40 hours." Because of this, a customer is often given "as much safety as they can afford." How ironic that a primary driver of Deming's philosophy – customer service – has been minimized based on the misapplication of TQM principles for accountability and the transition of risk control to a profit center. The more money the insurance company makes, the less customer service or value added, is provided to the customer.

Interviewees also agreed that risk control service is subject to a change in ethics based on application of deductibles. This is true of fiduciary responsibilities as consulting has transitioned from "the eyes and ears of underwriting," to being paid as third-party administration consultants. Everyone seems to have found a comfortable place to store the inherent cognitive dissonance associated with tying safety so directly to how much money is available. Everyone seemed to concur that the concept of safety has shifted to financial risk transfer. If the underwriter can transfer the cost of risk to another party, particularly through deductibles, then they no longer provide a budget for EHS concerns.

Many in the risk control community are reticent to speak about the ethical challenges of the current risk control discipline and the requirement to find a way to bill for all of what was formerly customer service. The origins of workers' compensation and the politics involved were surprising in that they appear to mirror the conservative and progressive debates of 2005…rugged individualism versus common good. It is the coalescence of the TQM- related conversion to profit centers, downsizing at unparalleled rates, the emphasis on performance by billable hours, the use of deductibles for risk transfer and self-insured programs, the takeover of Risk Control by financial managers and untenable profit standards that have altered the objectives of insurance and Risk Control.

All of the interviewees expressed varying degrees of concern that there is no pipeline in the insurance industry for introducing new blood. In response to Pat Allen's survey, many indicated they would not suggest a young person seek this field for employment – a belief that was verified during the interviews for this project. As one interviewee indicated, "training is now considered an expense, while it used to be considered an investment." Pat Allen indicates over 50 percent of risk control professionals are preparing for retirement due to age and burnout. Much of the burnout has to do with charges being based on billable hours. Because there is a direct bill to the client, only the clients with money get serviced. A consultant cannot perform what used to be customer service, as it may result in an unexpected bill to the client.

A major part of the problem is that since risk control has become a profit center, it is not being led by risk control people. Instead, financial people are giving the orders and setting the performance standards. The standards are mostly related to the number of

billable hours revenue for which a consultant is responsible. The issue has become the amount of profit possible from risk control services, rather than customer service or even safety. This appears to be particularly true when deductibles are involved. In fact. one must either avoid traditional, non-billable customer service or "eat" the hours to the consultant's detriment.

A final observation has to do with the importance of 'change management,' but from the perspective of senior managers. Ultimately, many have the objective of profitability, which everyone must accept as an honorable and legitimate objective. The issue becomes difficult when senior management retains the profitability goal without consideration to the tasks performed. Frequently, accomplishment of goals is managed by across-the-board mandates such as "a 10 percent reduction from every department" or "a 25 percent increase in revenue." As one interviewee stated, "there is a progression...25 percent revenue increase this year...then next year too...then next year after that, then... Yet there had been no appreciable increase of employees or clients correlating to the 25 percent mandate in order to increase the revenue." The result is unrealistic goals, set by persons that do not understand the job parameters. If the hierarchy is of the command and control variety, it is likely that the department manager will be reticent to firmly let senior management know when they issue an edict that is untenable.

Deming would likely be astonished by the apparent misapplication of his customer service and TQM principles. What would he say if one were to inform him that a company used his principles and now has no budget for customer service? Or how would the statement, "give them as much safety as they can afford" fit into TQM? Would

ignoring safety issues up to the point of insurance deductibles be acceptable? Is there an acceptable ratio between company profits and loss of customer service?

An education for those financial leaders that have overall responsibility for risk control, would be helpful. Across-the-board edicts for cuts or revenue enhancements are the lazy person's method of management. They do not account for human and management variables. For example, such edicts may not consider the manager that already is operating as efficiently as possible. Instead, the good manager and his staff will be punished as if they were poor and poor managers will be rewarded as if they were efficient. Employees are expected to work through change and answer the ambiguities or other problems that change inevitably brings. Upper management must do the same and particularly take the time to educate themselves about the specifics, otherwise intelligent people will make decisions that contradict their very goals.

I believe that if senior management was asked the same questions as those suggested to be asked of Deming, they would respond similarly. It would be difficult to believe that they would accept the fact that customer service is not a priority in a billable hours and high deductible environment, yet do nothing to change. Somehow, mid-management has done a poor job communicating to senior management regarding the real world within which customer service groups, such as risk control, operate. They simply need to educate themselves so they know that the questions are pertinent. Until then, goals such as sustainability are seldom discussed, are often unheard of, and certainly receive no expense allocation. At some point, the liability of ignoring important liability-related safety issues will catch up to the willful ignorance that is motivated by excessive profit motive.

Coda; The question of what to do about the issues addressed in this work is important to answer:

1. In keeping with the management systems and organizational approach to business decisions and losses, financial leaders must bring risk control leaders into the equation for setting profitability goals. The goals must correlate to actual sources of revenue, otherwise there is a motivation for development of gimmicks to make money rather than effective risk control. Gimmicks destroy the credibility of risk control and sometimes turn an engineering discipline to something akin to used car sales.
2. Engineers must be allowed to be 75% engineers, and 25% sales persons. In fact, some engineers are not capable of cold sales.
3. The sales element should come from excellence of work product and resultant requests by clients for additional assistance, not knocking on doors.
4. TQM and customer service must be revived. A realistic budget for customer service, within risk control must be established.
5. The risk control staff must be balanced so that there is a range of pay scales to handle the range of client types. A range of pay scales aligned to experience, beginning at around $30,000, should be maintained for cost-effective use of staff.
6. Risk control departments must decide who they are. Will they service clients or will they be account managers who manage outside vendors? The mixture sometimes causes consultants who work under the billable hour system to have to 'eat' time in order to provide excellent customer service.
7. Elements such as training and certifications must return to being seen as an investment in the department rather than expense items.

Ultimately, the professionalism and ethics of the seasoned risk control consultant has proven to be the primary driver of sustained quality and safety. Most will 'eat' time personally, rather than give a client the impression that there is no real customer service budget. A common phrase amongst risk control consultants is "give them 50 to get your 40." The interpretation is that a consultant will have to work ten extra hours in order to bill 40 hours per week. Many complain about this because most are salaried employees even though their standards are to provide billable hours. The company does nothing to significantly reward the employee for the extra customer service hours. Often these hours are not even tracked.

Finally, I hope that the most damaging parts of the current state of risk control are part of cyclical changes. The downsizing element is not cyclical. I doubt that risk control will ever exist in the numbers typical of the 1980s. The profit motive is an honorable one but when customer service is sacrificed to the degree that there is no significant budget, that motive is demeaned. I am particularly concerned that many do not see a future in risk control, a field for which I am immensely proud.

Ultimately, I am convinced that the value of risk control will be proven a necessity and should be part of the management systems approach which is a rising global trend. I trust this will be part of the next cycle.

Appendix A

Long-Term Trends in Workers' Compensation Coverage and Costs

Year	Share of wage and salary payments to workers covered by WC	WC benefits paid in 1996 dollars	Cost of WC programs as percent of covered payroll[a]	WC benefits as percent of covered payroll[a]	Medical and hospital payments as percent of wage and salaries covered by WC	Disability payments as percent of wage and salaries covered by WC	Survivor payments as percent of wage and salaries covered by WC
	Percent	$ (millions)	percent	percent	percent	percent	percent
1940	73.6	2686	1.2	0.7	0.27	0.36	0.09
1941	na	2839	na	na	na	na	na
1942	na	2859	na	na	na	na	na
1943	na	2862	na	na	na	na	na
1944	na	3047	na	na	na	na	na
1945	63.0	3148	na	na	0.17	0.33	0.06
1946	71.4	2997	0.9	0.5	0.18	0.31	0.06
1947	74.3	3000	na	na	0.17	0.31	0.05
1948	77.5	3090	1.0	0.5	0.17	0.29	0.05
1949	76.4	3296	1.0	0.6	0.18	0.32	0.05
1950	77.2	3532	0.9	0.5	0.18	0.32	0.05
1951	76.8	3815	0.9	0.5	0.18	0.32	0.05

1952	76.3	4132	0.9	0.6	0.18	0.33	0.05
1953	77.3	4387	1.0	0.6	0.18	0.32	0.05
1954	77.7	4503	1.0	0.6	0.20	0.33	0.05
1955	79.4	4641	0.9	0.6	0.19	0.31	0.04
1956	79.5	4909	0.9	0.6	0.19	0.32	0.04
1957	79.4	5017	0.9	0.6	0.19	0.32	0.04
1958	79.8	5121	0.9	0.6	0.20	0.34	0.05
1959	80.7	5485	0.9	0.6	0.20	0.33	0.05
1960	80.9	5789	0.9	0.6	0.20	0.34	0.05
1961	81.0	6074	1.0	0.6	0.20	0.35	0.05
1962	80.9	6494	1.0	0.6	0.21	0.36	0.05
1963	81.0	6822	1.0	0.6	0.21	0.37	0.05
1964	80.9	7251	1.0	0.6	0.21	0.37	0.05
1965	80.7	7565	1.0	0.6	0.21	0.37	0.05
1966	80.6	8107	1.0	0.6	0.21	0.36	0.05
1967	80.1	8608	1.1	0.6	0.22	0.38	0.05
1968	80.0	8956	1.1	0.6	0.22	0.37	0.04
1969	80.3	9471	1.1	0.6	0.22	0.37	0.04
1970	80.4	10348	1.1	0.7	0.24	0.40	0.05
1971	80.7	11557	1.1	0.7	0.24	0.44	0.08
1972	80.6	12620	1.1	0.7	0.24	0.46	0.09
1973	82.3	15000	1.2	0.7	0.26	0.51	0.12
1974	83.2	15641	1.2	0.8	0.28	0.53	0.11

1975	84.1	16344	1.3	0.8	0.30	0.57	0.11
1976	84.3	17724	1.5	0.9	0.32	0.59	0.11
1977	84.1	18930	1.7	0.9	0.32	0.61	0.11
1978	83.4	20094	1.9	0.9	0.32	0.63	0.10
1979	84.1	22822	2.0	1.0	0.34	0.69	0.12
1980	82.8	23733	2.0	1.1	0.35	0.74	0.12
1981	82.6	24010	1.9	1.1	0.36	0.74	0.11
1982	82.0	24668	1.8	1.2	0.39	0.76	0.11
1983	82.4	25383	1.7	1.2	0.41	0.75	0.11
1984	82.4	27416	1.7	1.2	0.42	0.77	0.11
1985	81.9	30003	1.8	1.3	0.46	0.81	0.10
1986	82.3	32531	2.0	1.4	0.50	0.83	0.10
1987	82.0	35094	2.1	1.4	0.54	0.86	0.09
1988	81.8	38159	2.2	1.5	0.58	0.88	0.08
1989	81.8	41067	2.3	1.6	0.63	0.91	0.08
1990	89.0	44037	2.4	1.7	0.62	0.87	0.08
1991	90.3	46981	2.4	1.8	0.66	0.92	0.08
1992	90.4	49802	2.4	1.9	0.68	0.90	0.07
1993	90.7	48141	2.4	1.8	0.63	0.84	0.07
1994	91.0	46376	2.3	1.7	0.58	0.86	0.07
1995	91.0	44173	2.1	1.6	0.54	0.79	0.06

a The workers' compensation series on costs as a percentage of the covered payroll (pvf.b.18.10) contains some employer contributions to the Black Lung program while the

benefits series (pvf.b.18.11) does not include benefits associated with the Black Lung program.

Sources: 1939-1967, Alfred M. Skolnik and Daniel N. Price, "Another Look at Workmen's Compensation," in United States Social Security Administration, *Social Security Bulletin* 33 (October 1970), pp. 3-25; 1968-1986, United States Social Security Administration, *Social Security Bulletin, Annual Statistical Supplement*, 1994, Table 9.B1, p. 333; 1992-1993, Jack Schmulowitz, "Workers' Compensation: Coverage, Benefits, and Costs, 1992-93," *Social Security Bulletin* 58 (Summer 1995), pp. 51-57. For 1987 through 1998, National Academy of Social Insurance, "Workers' Compensation: Benefits, Coverage and Costs, 1997-1998 New Estimates." The publication is available at the National Academy of Social Science website: http://www.nasi.org/.

Appendix B

State	Year State Legislature First Enacted a General Law[a]	Method of Insurance[b]
New York	1910 (1913)[a]	Competitive State[c]
California	1911	Competitive State[c]
Illinois	1911	Private
Kansas	1911	Private
Massachusetts	1911	Private
New Hampshire	1911	Private
New Jersey	1911	Private
Ohio	1911	State
Washington	1911	State
Wisconsin	1911	Private
Maryland[f]	1912	Competitive State
Michigan	1912	Competitive State
Rhode Island	1912	Private
Arizona	1913	Competitive State
Connecticut	1913	Private
Iowa	1913	Private
Minnesota	1913	Private
Nebraska	1913	Private
Nevada	1913	State
New York[f]	1913	Competitive State
Oregon	1913	State
Texas	1913	Private
West Virginia	1913	State

Louisiana	1914	Private
Kentucky	1914 (1916)[a]	Private
Colorado	1915	Competitive State
Indiana	1915	Private
Maine	1915	Private
Montana[f]	1915	Competitive State
Oklahoma	1915	Private
Pennsylvania	1915	Competitive State
Vermont	1915	Private
Wyoming	1915	State
Delaware	1917	Private
Idaho	1917	Competitive State
New Mexico	1917	Private
South Dakota	1917	Private
Utah	1917	Competitive State
Virginia	1918	Private
Alabama	1919	Private
North Dakota	1919	State
Tennessee	1919	Private
Missouri	1919 (1926)[a]	Private
Georgia	1920	Private
North Carolina	1929	Private
Florida	1935	Private
South Carolina	1935	Private
Arkansas	1939	Private
Mississippi	1948	Private

Source: Fishback and Kantor, 2000, pp. 103-4.

a Some general laws were enacted by legislatures but were declared unconstitutional. The years that the law was permanently established are in parentheses. New York passed a compulsory law in 1910 and an elective law in 1910, but the compulsory law was declared unconstitutional, and the elective law saw little use. New York passed a compulsory law in 1913 after passing a constitutional amendment. The Kentucky law of 1914 was declared unconstitutional and was replaced by a law in 1916. The Missouri General Assembly passed a workers' compensation law in 1919, but it failed to receive enough votes in a referendum in 1920. Another law passed in 1921 was defeated in a referendum in 1922 and an initiative on the ballot was again defeated in 1924. Missouri voters finally approved a workers' compensation law in a 1926 referendum on a 1925 legislative act. Maryland (1902) and Montana (1909) passed earlier laws specific to miners that were declared unconstitutional.

b Competitive state insurance allowed employers to purchase their workers' compensation insurance from either private insurance companies or the state. A monopoly state fund required employers to purchase their policies through the state's fund. Most states also allowed firms to self-insure if they could meet certain financial solvency tests.

c California and New York established their competitive state funds in 1913.

d The initial laws in Ohio, Illinois, and California were elective. Ohio and California in 1913 and Illinois later established compulsory laws.

e Illinois' initial law was administered by the courts; they switched to a commission in 1913.

f Employees have option to collect compensation or sue for damages *after* injury.

g Compulsory for motor bus industry only.

h Compulsory for coal mining only.

Appendix C

Shares of Workers' Compensation Payments Made by Types of Insurer (E.H. Net)

Year	Private Insurer	Government Fund	Self-Insurance
	Percent	percent	Percent
1940	52.7	28.5	18.8
1941	55.0	26.5	18.6
1942	57.9	24.7	17.4
1943	60.3	22.9	16.7
1944	61.4	22.3	16.3
1945	61.9	22.2	15.9
1946	62.2	22.1	15.7
1947	62.1	22.6	15.2
1948	62.7	22.7	14.6
1949	62.4	23.3	14.3
1950	62.0	24.2	13.8
1951	62.7	24.0	13.3
1952	62.5	24.6	12.9
1953	62.3	25.0	12.7
1954	61.7	25.7	12.6
1955	61.5	26.0	12.6
1956	61.7	25.8	12.5
1957	62.2	25.5	12.2
1958	62.5	25.7	11.9

1959	62.2	26.1	11.7
1960	62.5	25.1	12.4
1961	61.9	25.3	12.8
1962	62.1	24.9	13.0
1963	62.4	24.5	13.1
1964	62.6	24.1	13.2
1965	62.0	24.5	13.5
1966	62.0	24.3	13.8
1967	62.2	23.9	13.8
1968	62.4	23.4	14.2
1969	62.3	23.0	14.7
1970	60.8	24.9	14.3
1971	56.3	30.8	12.9
1972	53.6	33.9	12.4
1973	49.3	39.1	11.6
1974	51.4	36.1	12.5
1975	51.9	35.2	12.9
1976	52.4	33.9	13.7
1977	53.6	31.9	14.5
1978	53.7	31.1	15.3
1979	51.2	33.4	15.4
1980	51.6	31.8	16.6
1981	52.3	30.5	17.2

1982	52.7	29.1	18.2
1983	52.7	28.8	18.5
1984	53.9	27.5	18.6
1985	55.5	25.9	18.6
1986	56.2	25.4	18.4
1987	56.6	24.8	18.6
1988	57.0	24.3	18.7
1989	58.0	23.2	18.7
1990	58.1	22.9	19.0
1991	58.1	23.0	18.8
1992	55.4	23.4	21.3
1993	53.2	23.3	23.4
1994	50.0	24.1	25.9
1995	48.8	25.4	25.9
1996	48.8	25.4	25.8
1997	50.8	24.9	24.3
1998	53.3	24.8	21.9

Sources: See Previous Table

Appendix D

Characteristics of Workers' Compensation Laws in the United States, 1910-1930

State	Year State Legislature First Enacted a General Law[a]	Method of Insurance[b]
New York	1910 (1913)[a]	Competitive State[c]
California	1911	Competitive State[c]
Illinois	1911	Private
Kansas	1911	Private
Massachusetts	1911	Private
New Hampshire	1911	Private
New Jersey	1911	Private
Ohio	1911	State
Washington	1911	State
Wisconsin	1911	Private
Maryland[f]	1912	Competitive State
Michigan	1912	Competitive State
Rhode Island	1912	Private
Arizona	1913	Competitive State
Connecticut	1913	Private
Iowa	1913	Private
Minnesota	1913	Private
Nebraska	1913	Private
Nevada	1913	State
New York[f]	1913	Competitive State

Oregon	1913	State
Texas	1913	Private
West Virginia	1913	State
Louisiana	1914	Private
Kentucky	1914 (1916)[a]	Private
Colorado	1915	Competitive State
Indiana	1915	Private
Maine	1915	Private
Montana[f]	1915	Competitive State
Oklahoma	1915	Private
Pennsylvania	1915	Competitive State
Vermont	1915	Private
Wyoming	1915	State
Delaware	1917	Private
Idaho	1917	Competitive State
New Mexico	1917	Private
South Dakota	1917	Private
Utah	1917	Competitive State
Virginia	1918	Private
Alabama	1919	Private
North Dakota	1919	State
Tennessee	1919	Private
Missouri	1919 (1926)[a]	Private
Georgia	1920	Private

North Carolina	1929	Private
Florida	1935	Private
South Carolina	1935	Private
Arkansas	1939	Private
Mississippi	1948	Private

Source: Fishback and Kantor, 2000, pp. 103-4.

A Some general laws were enacted by legislatures but were declared unconstitutional. The years that the law was permanently established are in parentheses. New York passed a compulsory law in 1910 and an elective law in 1910, but the compulsory law was declared unconstitutional, and the elective law saw little use. New York passed a compulsory law in 1913 after passing a constitutional amendment. The Kentucky law of 1914 was declared unconstitutional and was replaced by a law in 1916. The Missouri General Assembly passed a workers' compensation law in 1919, but it failed to receive enough votes in a referendum in 1920. Another law passed in 1921 was defeated in a referendum in 1922 and an initiative on the ballot was again defeated in 1924. Missouri voters finally approved a workers' compensation law in a 1926 referendum on a 1925 legislative act. Maryland (1902) and Montana (1909) passed earlier laws specific to miners that were declared unconstitutional.

B Competitive state insurance allowed employers to purchase their workers' compensation insurance from either private insurance companies or the state. A monopoly state fund required employers to purchase their policies through the state's fund. Most states also allowed firms to self-insure if they could meet certain financial solvency tests.

C California and New York established their competitive state funds in 1913.

D The initial laws in Ohio, Illinois, and California were elective. Ohio and California in 1913 and Illinois later established compulsory laws.

E Illinois' initial law was administered by the courts; they switched to a commission in 1913.

F Employees have option to collect compensation or sue for damages *after* injury.

G Compulsory for motor bus industry only.

H Compulsory for coal mining only.

APPENDIX E

PAT ALLEN ASSOCIATES, INC.
LOSS CONTROL SURVEY, OCTOBER, 2003

INTRODUCTORY STATEMENTS:

- This survey and speech were prepared for presentation to the attendees of the ISO, E&S Loss Control Executive Forum in Anaheim, California on November 6, 2003.
- The object of the survey was to collect an accurate account of what today's loss control professionals are thinking, feeling and anticipating about the future of their profession.
- A link to the survey was emailed to 1,200 loss control professionals and found its way onto several newsgroups. It was available on our website http://www.patallen.com for approximately 6 weeks.
- The number of respondents totaled 319, which seems to represent approximately 3percent of the candidate pool. We, also found that throughout the collection process the answers remained surprisingly consistent. Therefore, we feel the results offer reliable insights.
- The survey was intentionally geared to the field loss control consultant.
- We formulated survey questions with input from various managers, consultants and human resources professionals.

We wish to thank all the people who were so helpful to us. We truly enjoyed the experience. We hope that this information provides a tool that can be used in your planning when facing loss control issues. Hopefully, it will clarify your approach to the development and success of your loss control department.

Sincerely,
Pat and Dennis Allen

INSURANCE LOSS CONTROL
FROM 1999 TO TODAY AND BEYOND
AND
SURVEY RESULTS FROM THE FIELD
PRESENTED TO
ISO, E&S LOSS CONTROL EXECUTIVE FORUM
ANAHEIM, CALIFORNIA NOVEMBER 6, 2003
WWW.PATALLEN.COM

PAT ALLEN ASSOCIATES, INC. BOX 716, 40 INDIAN HILL ROAD GOLDENS BRIDGE, NY, 10526	PAT ALLEN, CPC, (914) 232-1545 DENNIS ALLEN, (518) 284-2972 DENNIS@PATALLEN.COM

PAT ALLEN SPEECH, NOVEMBER 6, 2003

Four years ago in April of 1999, I stood before this group in Hutchinson Island, Florida and spoke about the current state of staffing in the loss control industry. I had never given a presentation before, and truthfully in 25 years of recruiting, I had never attended an ASSE conference or any industry meeting. I was only a voice on the phone. It was the managers from Reliance Insurance who convinced me to take that step. Today, more than half of the people who were in that room are not with us now. Most fell victim to the industry consolidation. At times, I wondered if I would weather the storm myself and I am sure half of you sitting here wondered the same. I wasn't really sure if anyone listened to what I said that day, but someone must have been because one of my statements spread from coast to coast like wildfire. What I said was that the insurance loss control pool, which once had 18,000 viable candidates was reduced overnight by almost 50percent. This statement became the wake up call for our industry and the reality that our candidate pool was in crisis and quickly disappearing hit home. It created such a stir that I promised myself that I'd be more careful about what I say to you this time.

For those of us with short memories, 1999 was the dawn of the Internet age and getting on line was critical. The Internet made job searching a simple process. Internet job boards increased employees' awareness of immediate alternative career options while email pink slips were making a debut as the newest form of layoffs. The daily rounds of re-engineering shook the loyalty of employees everywhere and at all levels.

Globalization was the major focus of the world. NAFTA contributed to the start of the mass exodus of manufacturing jobs outside of the United States For every 500 manufacturing jobs lost to foreign soil, one safety manager's career was put in jeopardy. While this was going on, outsourcing and the unbundling of services were thriving in the loss control industry spurred on by the ever-present desire to increase income and reduce expenses. Field positions were evaporating and those who were left were doing more for less. IT and on-line reporting promised untold freedoms with more time in home-based virtual offices and increased productivity. However, the new method of preparing reports often became burdensome as companies and employees struggled to implement systems that never existed before. The sum total of these forces left a diminished applicant pool confused, depressed and concerned about their survival.

From that point in 1999, some of these trends have continued to accelerate and most of the issues we faced ten years ago have not gone away. But two new issues had a major impact on everyone. The first one was the surprise attack on the world trade center that raised the public's awareness of terrorism and hazard exposures. Corporate awareness of disaster recovery moved into the forefront. The second was the rapid decline of the stock market, which put additional pressure on underwriters to produce profits. It also reduced the value of 401k's that postponed the retirement of many employees. Within the insurance industry, there are 7 specific forces that shape the profile of today's applicant.

1) Consolidation continues to dominate our industry and the elimination of Reliance, IRI, Royal Sun Alliance and one of the biggest surprises; Kemper Insurance has put our dream of working in a secure environment on hold. The advance to only 8

or 10 major players as predicted years ago moves closer to reality. The flood of talent released by these companies gave us a reprieve in the bench strength that we lacked over the last ten years. Of the 85 Kemper engineers that were reengineered, 90percent of them already had new positions in the Insurance industry before their last day of work. This was due to a concerted effort on the part of Bob Hiltz and his loss control managers to make every effort to help place their people and to the desirability of the skills possessed by Kemper's engineering staff. They were gobbled up by an industry desperate for good people and at salaries in the high 70's and 80's. Now, with the addition to our pool of about 175 Royal engineers who are mostly casualty driven, the market in my opinion is temporarily flooded.

2) The lack of systemic multi-line training programs by the insurance industry continued until just this last year. With the passage of time, the median age of the loss control professional advanced by five years, and the gap between the seasoned professionals and the younger candidates widened.

3) The rapid rise in the use of outside loss control services has fostered the emergence of three distinct groups; the empowered self-employed safety professional providing consultative services, the large fee companies and the one man shops concentrating on contract survey work. This coincided with the decline of in-house loss control departments. It is not unusual for an employee re-engineered on Friday afternoon to emerge on Monday morning as an independent many times with their old employer as their biggest client. From w2's to 1099's overnight and one more expense off the books. Many consultants, reaching an age in their lives when career development was no longer the main priority, were tired of all the uncertainty and welcomed the opportunity to negotiate packages, take control of their future and productivity goals. They welcomed the chance to integrate their skills with their business expertise. They have developed a direct client base and are providing personalized safety consulting in a work place that they can impact. However, if they decide they want to work for a company again, it is almost always true that a loss control manager will gladly hire a proven consultant with proactive skills and good business sense. (So find one that wants to come in from the cold.) Until recently these independents have been busy and were reluctant to give up their new venture. However, we are starting to hear from more of them that their opportunities are drying up. They may be more receptive to the idea of returning to an insurance position with salary and benefits.

4) The one market that has experienced tremendous growth is undoubtedly the larger fee companies. Formerly, contract employers, these companies are developing national loss control staffs with branch offices in most of the major cities. Some are hiring trainees and trainers for staff development. Quality control report reviewers are making sure the finished report meets higher standards. With this new talent in place, these companies are expanding from basic surveys to service and consulting providers. They realize that timeliness and quality have been their two biggest challenges, and they are working very hard at improving both. In the insurance industry, senior management has always looked for ways to take the cost out of doing business and outsourcing has always been one solution. With their competitive pricing, fee companies are becoming a major threat to

established loss control departments, and they are also becoming a viable career option. This industry has absorbed more applicants from our pool than any other. One reason is that they are very flexible and able to offer a broader range of options to potential candidates than their competition. Full- time positions with benefits, and car allowances are commonplace. Part-time or 100percent commission basis are also options. Many times, they are able to provide enough work in most geographic locations to justify an additional employee, eliminating the need for unwelcome relocations. As recruiters, we always thought the biggest problem for engineers transitioning to fee companies would be in the lack of technical challenge. But this has not been the case. The transition for many candidates is very difficult, and many do not make it at all. Productivity expectations are demanding and the range of reports and product lines is much more complex. Not much lead-time is allowed and new hires who fall behind schedule quickly find themselves out on the street. The situation is different for many traditional loss control managers and directors who have found that applying their experience in this arena works very well. They enjoy having the freedom of combining their management skills and technical knowledge with the ability to impact the bottom line of an organization. The migration of many well thought of professionals to this sector has helped to elevate the image of the fee company as an attractive career option. Whether or not fee companies will gain more ground and replace traditional loss control departments remains one of the biggest open questions. It is critical for Insurance loss control managers to prove the value of their departments if they are to survive and prevent outside sources from replacing them. An out-sourced report is only economical if it is accurate enough for its conclusions to be counted upon and insurance professionals have an on-going commitment to their accounts and a long-term goal of lowering losses. When an account is out-sourced, this personal interest is gone. Until human behavior changes, there will always be a need for expert verification of the existing status of the insured. Another consideration with regard to fee companies is that we have started hearing from various managers that it may be time for them to start thinking about their replacement. Certainly proven management and experience with outsourcing will be the major qualifications. If insurance companies do not revive working supervisor roles for younger consultants then the fee company sector may very well become the preferred management talent source of the future.

5) The emphasis on property/package underwriting drove loss control needs and staffing for the last four years. Carriers scrambled to find HPR engineers or qualified multi-line candidates with better than average property skills. This domination of the market by property driven forces seriously reduced the demand for casualty oriented service types. Years have passed since we did a search for industrial hygiene or ergonomics specialists. Even demand for casualty driven field people has dried up. Only portfolio or account managers to handle the service to select national accounts penetrated the need for property specialists.
6) The number of nationwide insurers writing large national/global accounts diminished to only a handful. Meanwhile the competition for middle market

business has become so intense that we all know it is only a matter of time until more companies fail. The downgrades by A.M. Best keep coming. Any training efforts at all by the carriers, whether nationwide or regional, were focused mainly on servicing small packages or BOP accounts that filled the needs of this growing market. At least these candidates have a broad enough foundation on which to build in all the lines of business.

7) Years ago, we had the enterprising workers comp carriers emerging as the new comers to the Insurance industry. Many of these have since fallen by the wayside and today it is the regional carriers and niche companies that are picking up the slack left by these and other industry consolidations. They are quickly spreading and increasing their geographic reach and share of business at a fast rate. Some of these companies have tripled their premiums in a few short years. They have been hiring loss control engineers at a consistent pace, including trainees. Regional companies, with their growth prospects, do represent an attractive career alternative. PEO's have become a specific, fast growing niche market for the workers' comp safety professional but to date seem unwilling to be competitive salary-wise. One final group, the TPA is facing a potential growth opportunity due to the amount of run-off business that needs addressing. These may prove to be a developing arena for the loss control professional but we have not had enough exposure to determine their potential.

So what is the profile of the typical candidate we encounter today? I believe we have all had enough exposure in the last few years to know that they have two dominant attributes. They are recycled and graying. They also are at the higher end of your salary scales. It is possible that almost 50percent of the loss control pool will surpass 55 years of age in the next six years. But because of the decline in their retirement plans, they will be working longer. The good news is they will still be active in our labor pool and provide much needed experienced talent for the next ten years.

Since 1993, the lack of training of college graduates has been key to a shortage of younger candidates. However, the best news is that companies are reinitiating structured training programs. This is our only hope and within 3 years our tired applicant pool should be flush with bright, young candidates. It usually takes longer than we think to train and shape a truly productive loss control engineer so it could take longer. CNA, St. Paul, Travelers and Wausau are only a few companies with aggressive training goals. I checked with placement counselors from several of the schools that offer degrees in Occupational Health & Safety so that I could tell you where all these students have been finding employment in the last 5 years. 40percent of the graduates went to private industry with the construction industry taking the largest share. Many went to small consulting companies with fewer than 40 employees and 20percent went to governmental positions. 20 to 30percent of their graduates were recruited and trained by the insurance industry. The numbers going to both insurance and manufacturing declined. The other 10percent are still living off their parents and traveling around the world.

So it appears that a good number of recent graduates are a qualified addition to our loss control pool. But is this really true? The MTV generation has a short attention span. They are materialistic. They live at a hectic pace. To this generation, loyalty is a subjective

concept. They keep their options open and make decisions based on the prospect of opportunity. As one college placement counselor put it, they change jobs readily and often for a variety of reasons. Their computers are constantly in touch with the Internet community, their instant messenger buddy lists are long and their cell phones never stop ringing. Without a revitalized, dynamic anD viable career path, can the insurance industry really expect to corral this energy for the long term?

Public awareness of safety professionals has increased. When people I encounter ask me what specialty I recruit and I say "safety" I still get many inquisitive looks followed by "What's that?" But it happens less often now. TV ads such as Liberty Mutual's have done a lot to educate the consumer on the function of good safety professionals. Public awareness of hazard exposures, especially in the crisis related areas, coupled with security, terrorism and disaster preparedness has increased. As consumer products become more complicated, safety analysis becomes a more public issue.

Many professionals believe there has never been a greater opportunity for loss control in the business world than now. As businesses consolidate, automate and streamline their operations, we find a greater demand for the loss control engineer's ability to insure that safety requirements are met. More corporate managers perceive the real value of loss control as an essential piece in keeping expenses down, including the cost of insurance coverage, terms and pricing. Even in the middle market, a trend is emerging where these accounts are becoming more sophisticated and realize finally, that losses can be managed. However, insurance loss control managers must prove the value of their departments. This is critical to the survival of their loss control departments. Senior management is still looking for ways to take the cost out of doing business and outsourcing has always a been a solution in that type of environment. But an out-sourced report is only economical if it is accurate enough for its conclusions to be counted upon. An insurance loss control staff has an on-going commitment to its accounts and a long-term objective of lowering losses. This cannot be done with poor reports. Momentarily, service and quality reports are still predominantly produced by in-house loss control departments but the better outside sources are closing the gap and are becoming an increasing threat to the survival of traditional loss control departments. From an underwriting point of view loss control may be back in vogue again. We have been in a market where risk selection has become more important than risk improvement. But market forces have created a renewed focus on quality underwriting and the use of loss control not only provides a good evaluation as to the worthiness of an account but also a more precise criterion for the calculation of premium. Until human behavior changes, there will always be the need for expert verification for the risk of the insured.

Today's loss control engineers still have an authentic commitment to their profession and to keeping people safe and losses under control. The best of them are not bean counters. They want to be engaged and a valued part of the team that makes the important decisions. As Richard Hughes stresses in his poignant work, Bringing Down the Safety Guy, the loss of human contact is the loss of the soul of the safety profession. Underwriting surveys and service plans produced from desktop based OSHA logs and loss records have a place, but they cannot replace the safety persons intimate connection to real faces and real life circumstances.

Our safety professionals have not given up. In spite of all the negativity and obstacles that have been handed to them every day in our struggling industry, they are truly resilient and still dream of working for a company that appreciates them and lets them do their job. Before we saw the optimism expressed in this survey, we were questioning the state of mind of the loss control community and the future of loss control as a profession. We were truly encouraged by the results.

APPENDIX F

CATEGORY RESULTS EXPRESSED IN percent OF TOTAL RESPONDENTS TOTAL NUMBER OF RESPONDENTS WAS 319.

PERSONAL/INDIVIDUAL QUESTIONS:	
How many years have you been in insurance loss control?	
1-5 Yrs	9.09
5-10 Yrs	15.36
10-15 Yrs	21.00
15-20 Yrs	18.81
20 Plus Yrs	35.11
How many companies have you worked for?	
1-2 Companies	30.41
3-4 Companies	48.90
5-6 Companies	15.99
7 Plus Companies	4.39
Have you ever been downsized?	
Never Downsized	38.24
Once Downsized	30.41
Twice Downsized	21.32
More Than Twice	9.40
How many more years do you plan on being an active candidate for opportunities in the insurance industry?	
1-5 More Years	13.17
5-10 More Years	21.32
10-15 More Years	30.72
15-20 More Years	18.81
20 Plus More Years	15.05
How would you classify your current position?	
Management	23.82
Account Management	9.09
Consultant	56.74
Field Representative	26.65
What type of car package do you have?	
Company Car	50.78
Car Allowance	14.73
Reimbursement	19.44
No Car Package	17.55

How has your car package changed over the last five years?	
Costs More	44.20
Costs Less	6.90
No Change	32.60
Cars Costs N/A	13.48
JOB SPECIFIC QUESTIONS:	
How many visits are you required to make in a week?	
None	17.55
1-5 Visits	33.23
5-10 Visits	32.29
10-15 Visits	9.09
More than 15 Visits	6.58
Has the required number of visits increased over the last five years?	
Increased Visits	39.81
Decreased Visits	46.71
Not Sure	8.78
If you are on a billable hours system, how many hours per week are you expected to bill?	
Not Applicable	46.08
Less than 35	10.34
35-40	25.08
40 Plus	11.29
How would you characterize your company's productivity expectations?	
Easy	3.45
Realistic	42.95
Ambitious	36.05
Unrealistic	15.36
What percentage of your time is spent at your desk writing reports?	
25 Percent	11.91
35 Percent	28.21
50 Percent	43.89
75 Percent	12.85
75+ Percent	1.25
On average, how long does a report take from start to finish?	
1 Hour	6.58
2 Hours	29.15
3 Hours	19.12
4 Hours	16.30

4+ Hours	26.96
How often are you required/expected to go into a branch office?	
Never	29.78
Once a Quarter	13.79
Once a Month	15.36
Once a Week	21.63
More than Once/Week	15.99
Would you prefer to be spending more time working directly with clients?	
Yes	79.94
No	5.02
Not Sure	5.64
Don't Care	6.27
Has computerization made your job easier?	
Yes	68.03
No	24.45
Not Sure	5.02
Has email helped your relationship with your supervisor?	
Yes	52.35
No	24.14
Not Sure	7.21
No Change	15.05
Besides computer skills enhancement, when was the last time your company sent you to a training session?	
Within the last 6 Months	45.77
Within the last 12 Mos.	21.94
Within the last 24 Mos.	9.72
Within the last 36 Mos.	5.64
More than 3 years ago	12.23
Has your company hired any trainees in the last 2 years?	
None Hired	64.89
1-2 Hired	20.69
3 Plus Hired	10.66
What categories are creating the most difficulties for you?	
Reports	27.59
Technical Difficulties	2.82
Uncertainty	45.14
Management	25.08
Other	15.67
CAREER:	

Where do you feel future opportunities exist for you?	
Private Industry	38.24
Insurance	51.72
Independent	41.07
Fee Companies	17.87
Government	11.60
Other	6.58
Do you feel loss control has a future in the Insurance industry?	
Yes	69.59
No	10.03
Not Sure	19.75
Is your current job addressing your passion to do effective safety/injury prevention work?	
Yes	43.57
No	47.02
Not Sure	7.84
Do you feel that you are "burned out" on the industry?	
Yes	26.02
No	58.31
Not Sure	13.79
Do you feel you are making a difference at your accounts?	
Yes	69.59
No	17.87
Not Sure	11.60
Over the last ten years, do you feel the perception by upper management of safety as a value-added product has changed?	
Increased	38.24
Decreased	32.60
Not Changed	21.00
Not Sure	5.33
As companies outsource their work, do you feel that independent professionals have become a significant threat to your security?	
Yes	27.27
No	55.17
Not Sure	15.05
Do you consider fee companies a viable option for your career?	
Yes	42.63
No	40.44
Not Sure	14.73

How often do you search the Internet to research the job market?	
Daily	15.05
Weekly	31.03
Twice Monthly	9.40
Monthly	31.97
How would you characterize your current efforts towards a job search?	
Unemployed Active	8.78
Employed Active	27.27
Passive	39.50
Not Looking	23.82
Would you leave insurance if you had the chance to do safety in a different environment?	
Yes	66.77
No	11.29
Not Sure	19.12
Would you leave safety entirely if you had an option?	
Yes	40.13
No	32.92
Not Sure	25.39
Would you recommend loss control as a career choice to a trainee prospect?	
Yes	47.65
No	34.17
Not Sure	15.99
Please rate the overall tone of your comments.	
Optimistic	36.99
Pessimistic	24.14
Neutral	34.48

Loss Control Survey, October 2003 Pat Allen Associates, Inc.

APPENDIX G

SALARY RESULTS

1. 286 of the respondents wrote in the actual dollar amount. (In some cases ranges given as i.e. 50K-70K were logged in at the average, in this case, 60K.)
2. 80percent of all 319 respondents regarded their location as "Urban" vs. "Rural".
3. 48.26percent of all the respondents fall into the $60,000 - $79,000 range.
4. More people earn over $100,000 than under $40,000!

DOLLAR RANGE	NUMBER IN CATEGORY	PERCENTAGE OF TOTAL
25,000 – 39,000	7	2.45percent
40,000 – 49,000	24	8.39percent
50,000 – 59,000	45	15.73percent
60,000 – 69,000	69	24.13percent
70,000 – 79,000	69	24.13percent
80,000 – 89,000	41	14.34percent
90,000 – 100,000	19	6.64percent
100,001 +	12	4.20percent

Loss Control Survey, October 2003 Pat Allen Associates, Inc.

THE FOLLOWING REFLECTS INSTANCES OF IDENTICAL PERCENTAGES TO UNRELATED QUESTIONS. (THESE MAY BE PURELY COINCIDENTAL.)

69.69 percent	Loss Control has a future.
Yes, doing satisfying loss control.	
23.82 percent	Defined their position as Management
Not looking	
38.24 percent	Never been downsized
Management's perception of loss control has increased	
Private industry is an option	
17.87 percent	Fee companies are a career option
Not making a difference with their accounts	
27.27 percent	Independents are a threat
Employed and actively looking	
21.00 percent	10 – 15 Years in Loss Control
Management's Perception of Loss Control has not changed	
15.36 percent	5 – 10 Years in Loss Control
Unrealistic Goals	
In the office once a month	
15.99 percent	5 – 6 Companies
In the office more than once a week	
Not Sure if they would recommend the career	
24.14 percent	Email has not helped with their supervisor
Rated the overall tone of their comments as pessimistic	
30.41 percent	1 –2 Companies
Once Downsized	
17.55 percent	No Car Package
No Visits per week	
15.05 percent	20 Plus years as a candidate
Daily Job Search	

Not Sure if independents are a threat
Email has produced no change in supervisor relationships

Loss Control Survey, October 2003 Pat Allen Associates, Inc.

Notes and References

Origins.....12

Witt John Fabian, The Accidental Republic: Crippled Workingmen, Destitute Widows, and the Remaking of American Law, 2004. "Proud of His Georgian Ancestry", Washington Post, June, 11, 1907, p.11

Moseley Edward A., "The Penalty of Progress", Independent, June 11, 1908

Hoffman Frederick, Industrial Accident Statistics, pp. 5-6, 1915

BLS, Colorado, 1889-1890, pp. 19-20.

Thatcher Oliver J., ed., The Library of Original Sources (Milwaukee: University Research Extension Co., 1901), Vol. III: The Roman World, Twelve Tables pp. 9-11. *The text is modernized*

Aristotle's Nicomachean Ethics, Involuntary (ignorance and regret) versus non-voluntary (ignorance) actions

Johns Rev. Claude Hermann Walter. The Avalon Project at Yale Law School. Babylonian Law-- The Code of Hammurabi. Eleventh Edition of the Encyclopedia Britannica, 1910-1911

Pitcher James R., Accidents and Accident Insurance" 1891, p 131

Learning from

England.....17

Bartrip P.W.J. and Burman S.B.. The Wounded Soldiers of Industry: Industrial Compensation Policy 1833-1897. Clarendon Press. 1983. Uses the term 'Welfare State' for English version.

Bergstrom Randolph E., Courting Danger: Injury and Law in New York City, *1870-1910*, 1992

Young A.F., Industrial Injuries Insurance, London, 1964, pp. 59-60

Cullen, The Statistical Movement

Interdepartmental Committee on Social Insurance and Allied Services Rept., p156

Munkman J., Employers' Liability at Common Law, 1971

Aldrich Mark. SAFETY FIRST: Technology, Labor and Business in the Building of American Work Safety 1870-1939. 1997 Baltimore and London: Johns Hopkins University Press.

Schwedtman. Co-operation or What? American Industries. 1912, Defining the need for Workers' Compensation to be well rounded (preventive, punitive, educative, certain).

New York Times, Speech by John Mitchell, "Thinks Employers Evade Liability Law", Oct 21,1910. 'If as in Europe, it costs more to kill men here in America than to protect them, one half as many would be killed in the dangerous trades."

Materialist Versus

Idealist.....20

Witt John Fabian, The Accidental Republic: Crippled Workingmen, Destitute Widows, and the Remaking of American Law, 2004. Materialist = economic interest; idealist = sociological

Boston, Wright and Potter, Third Annual Report of the Massachusetts Bureau of Statistics Labor Embracing the Account of Its Operations and Inquiries from March 1, 1871 to March 1, 1872, 1872

Taussig F. W., Workmen's Insurance in Germany, 1888

Cultural Change-Slave Versus Free

Labor.....21

Adams Henry Carter, "Relation of the State to Industrial Action", 1954, Competition inexorably drives down working conditions. 9 of 10 employers may do good, but the tenth, due to competition, can eventually start a race to the bottom.

Basler Roy P., Fragment on Free Labor, The Collected Works of Abraham Lincoln, 1953

Stanley Amy Dru. From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation. 1998.

Gould Stephen Jay, The Structure of Evolutionary Theory, 2002

Hacker Jacob S., The Historical Logic of National Health Insurance: Structure and Sequence in the Development of British, Canadian and U. S. Medical Policy, 1998

Civil

War.....23

Minnesota BLS, Iowa BLS. 1901-1902, Railroad 'soldiers' in danger.

Lyon James B., Seventeenth Annual Report of the Bureau of Labor Statistics of the State of New York for the Year 1899, 1900

Employer's

Liability.....25

Bergstrom Randolph E.. Courting Danger: Injury and Law in New York City.1870-1910.

Mark Aldrich. *Safety First*

Cheney Howell, Work, Accidents and the Law, 1910

Minnesota Report. Employers; Liability, Workmen's Compensation and Insurance. Accident Liability Reform Advocated.

Blackstone William, *Commentaries*. 2000

Hookstadt Carl. Comparison of Workmen's Compensation Laws in the United States up to December 31, 1917.

Fishback Price V.. Workers' Compensation. University of Arizona.

Side

Affects.....2

8

Conyngton Mary K.. Effect of Workmen's Compensation Laws in Diminishing the Necessity of Industrial Employment of Women and Children. 1918

Minnesota, Iowa BLS

State or Private

Insurance.....30

American Association of State Compensation Insurance Funds. State Funds: Their Role in Workers Compensation: State Funds Emerge,

Harvey Kelly. The Safety Movement in the State of Washington. BLS Bulletin.1920

Cincinatti Chamber of Commerce. Study of Workers Compensation

Group

Good.....31

Mitchell John, The Wage Earner and His Problems, *1913*

Cooley Thomas M., Treatise on the Law of Torts, 1879

Hines Lewis, Photographic Essay, Pictures 1,2,3

Gompers Samuel, "An Address before the Uniform Legislation Conference of the National Civic. Loss must lie where it falls *Federation". The Samuel Gompers Papers.* Industrial accidents the foremost family problem.

Holmes Oliver Wendell

Eastman Crystal. Work-Accidents and the Law. 1910.

Tort, Strict Liability, and

Fault.....34

Holmes Oliver Wendell Jr., The Common Law, Theory of strict-liability

Mitchell John New York Times, Speech by l, "Thiks Employers Evade Liability Law", Oct 21,1910. "If as in Europe, it costs more to kill men here in America than to protect them, one half as many would be killed in the dangerous trades."

Berkley Law School. Topics in the Economics of Tort Liability. Chapter 9

Larson Arthur and Larson Lex K., Larson's Workers' Compensation, 2002

Minnesota Report, *Employers' liability, Workmen's Compensation and Insurance*, 1911 New York Times, *Accident Liability Reform Advocated*, 1911; Joseph Tripp, *An Instance of Labor and Business Cooperation,* 1976; Maurice Low, *Shifting the Burden,* 1907

Workers'

Compensation.....36

Harger Lloyd. Workers' Compensation, A Brief History. Division of Workers'

Compensation.

Transition –

1911.....38

Soltow Martha Jane and Gravelle Susan. Worker Benefits: Industrial Welfare in America 1900- 1935. The Scarecrow Press. 1983. This is an annotated bibliography

Urofsky Melvin I., Myth and Reality: The Supreme court and Protective Legislation in the Progressive Era, Supreme Court Historical Society, 1983.

Perkins Frances, *The Roosevelt I Knew,* 1946

Compensation, Tort, Legal

Summary.....41

Urofsky Melvin I. Myth and Reality: The Supreme Court and Protective Legislation in the Progressive Era 1983

Weinstein James, "Big Business and the Origins of Workmen's Compensation," 1967.

Kessler-Harris Alice, "Women, Work and Social Order," 1976

Losee v. Buchanan, 1866, (arguing that in a country where we must have factories, machinery, dams, railroads, a standard of strict liability would bankrupt the country.

Farwell v. Boston & Worcester Rd., 1842

National Conference of Charities, Proceedings, 1912

Wesser Robert F., "Conflict and Compromise: The Workmen's Compensation Movement in New York, 1890s-1913," 1971

Freund Ernst, "Constitutional Status of Workmen's Compensation," 1912

Crispin v. Babbitt, A classic statement of these doctrines may be found in 81 N.Y. 516 1880

Bergstrom Randolph E.. Courting Danger: Injury and Law in New York City.1870-1910.

Liberman Jacob, "Their Sisters" Keepers: The Women's Hours and Wages Movement in the United States, 1890-1925," 1931

Hawkins v. Bleakley, (1917).

Politics – Welfare State?

.....47

Fishback Price V. and Kantor. Shawn Everett A Prelude to the Welfare State: The Origins of Workers' Compensation. University of Chicago Press. 2000.Comments on workers' compensation being the start of the welfare state, leading to social security, unemployment, etc

Minnesota Employers Association, Minute Book. 1912

Howard Christopher. Workers' Compensation, Federalism, and the Heavy Hand of History,Department of Government, College of William & Mary.

Incentives.....

.....49

Barkume Anthony and Riser John. *Open Competition, Workers Compensation Costs and Injury Rates.* BLS. The impact on price and one dimension of quality, loss control as measured by injury rates, is evaluated. "...may not lead insurers to invest in the least cost scale of injury prevention. In one case regulatory change lowers workers' compensation premiums but raises injury rates..."

Conaway Carrie Accidents Will Happen. Regional Review. Quarter 3. 2003. This article provides an excellent summary of workplace injury statistics over a period ranging from 1890 through 2003.

Fishback Price. Workers' Compensation. E. H. Net Encyclopedia 2001

Wengler v. Druggist's Mutual Insurance Co. 1980.

Harger. Workers' Compensation, A Brief History. 2003

Bellamy Paul B.. The History of American Labor: 1898-1915. Garland Publishing, Inc. 1997. Discusses workers compensation and the industrial revolution as part of the Age of Reform, in spite of its socialistic aspects

Shapiro Sidney. Occupational Safety and Health Regulation. 1999. "An employer will determine whether to prevent workplace accidents or illnesses by comparing the cost of prevention with the cost of not taking such action.

Perrin Towers, Tillinghast, by Atul Malhotra. Reserving in a Changing Environment (Reserving or Workers Compensation for Self-Insured Entities During Plant Closures, Downsizing Layoffs).

Insurance Information Institute. Recent Developments. Feb 2005. About nine out of 10 people in the nation's workforce are protected by workers compensation insurance, which is compulsory.

Pat Allen Speech, November 6, 2003, ISO conference. This speech and survey make up the major documentation for the final part of this thesis.

American Academy of Actuaries. The Workers Compensation System: An Analysis of Past, resent and Potential Future Crises. Spring 2000.

State Employment Security Agencies (SESA) has completed a study and Executive Summary as regards the impact of downsizing on the use of independent contractors (IC's).

Weitz and Luxemburg, History of Work Accidents:Achievements in Public Health, 1900-1999: Improvements in Workplace Safety -- United States, 1900-1999

National Safety Council. Accident facts, 1998 edition. Itasca, Illinois: National Safety Council, 1998.

Corn JK. Response to occupational health hazards: a historical perspective. New York, New York: Nostrand Reinhold, 1992.

CDC. Fatal occupational injuries--United States, 1980-1994. MMWR 1998;47:297-302.

Stout NA, Jenkins EL, Pizatella TJ. Occupational injury mortality rates in the United States: changes from 1980 to 1989. Am J Public Health 1996;86:73-7.