IN PRAISE OF OUR NATION'S WORKERS' COMPENSATION SYSTEM

Early in the last century, during America's Progressive Era and the Industrial Age, the first state – Wisconsin, the epicenter of progressivism -- enacted a new social insurance system called "workmen's compensation," in response to the social, financial and human costs of industrial injuries and deaths that were an inescapable product of industrialization. Thousands of workers were injured and died annually by industrial accidents. They were left without any assured means of medical treatment or income for lost wages. Widows and children were left with no means of financial support other than through charity. The only means of legal redress was through the tort system, but this pathway was uncertain, costly, protracted, and often unsuccessful. Employers were often able to defeat injury claims by asserting legal defenses to negligence, such as the employee's assumption of risk, or that the injury was caused by negligence of the employee or another employee.

Workers' compensation was our nation's first social "safety net," predating Social Security by a generation. Such was the broad consensus surrounding workers' compensation that in the decade or so following Wisconsin, almost all other states enacted their own workers' compensation laws. For most of the past century, all states (including the District of Columbia) have maintained workers' compensation programs. There also are federal programs covering federal employees, maritime workers, coal miners, and workers exposed to radiation. These programs are administered by the U.S. Department of Labor. Their structure remains fundamentally unchanged: In a *quid pro quo* ("Grand Bargain") employers were required by law to provide medical treatment and income support for lost wages. In the case of death due to the accident, benefits were owed to the spouse and any dependent children. These benefits were payable regardless of fault – the fault of the employer, employee, or a co-employee. In exchange, employees relinquished their right to sue the employer for damages, including pain and suffering.

In the century since, workers' compensation coverage has expanded significantly. Virtually the entire private and public workforce is now covered; exemptions are narrow and few. What is covered also has broadened, to incorporate occupational diseases and other health conditions not even contemplated a century ago.

Workers' compensation is now so deeply embedded in our social fabric that this social insurance protection is often overlooked or taken for granted, if only because it has also been for most of its history, stable and not subject to wild swings in scope. It thus reflects a long and durable societal consensus (today's debate over universal health insurance is occurring in a universe apart from workers' compensation). It also has been enormously successful, reliably providing medical treatment and income support for thousands of injured workers, and survivor and dependency benefits in the case of a job-related death. According to data published by the National Association of Social Insurance (NASI), in 2012 (the most recent year available), workers' compensation covered almost 128 million workers, over 90 percent of the workforce, and $6.3 billion in wages. That year, it paid almost $31 billion in medical benefits and an equal amount in wage replacement benefits, a total of $61.9 billion. Employer costs were $83.2 billion. This is what employers spend on insurance premiums and the benefit and administrative costs for employers who self-insure.

A few more details about the workers' compensation "promise": All states require employers (or their insurers) to provide full medical care – all medical treatment "reasonable and necessary" to heal the worker and return to productive employment as expeditiously as possible. Although medical advances and medical cost inflation prevalent in our society profoundly affect workers' compensation, covered medical treatment differs from care covered under group health. Workers' compensation is a disability program, not a medical plan, and treatment is geared to returning the injured worker to work. Consequently, it may entail treatment of a different nature and greater intensity than covered under a group health plan. Unlike group health, workers' compensation also covers attendant care and nursing home stays, where needed. Workers' compensation medical treatment also differs in that it is first-dollar coverage, without co-pays and deductibles and duration or total expenditure limitations typical in group health, and with no employee contribution to the cost of insurance. In this environment, where the patient has little financial incentive to be a prudent consumer, states are increasingly incorporating into their workers' compensation programs a requirement that medical treatment be "evidence-based," that is, reflecting the best treatment available based on what medical science knows. There are national treatment guidelines now available, developed by medical experts, that states have begun to expressly recognize. These are some of the advances in occupational medicine in recent years, and injured workers will benefit from them.

Workers' compensation also provides income benefits, to replace a major portion of lost wages, during the period immediately following the injury (the healing period), and thereafter, if necessary, in the small percentage of cases where the injury results in a permanent disability. Where there is permanency, it is usually "partial," but there are some serious injuries resulting in permanent total disability; and those benefits are paid for life.

Virtually all states pay these benefits at 66 2/3 of a worker's pre-injury gross wages to a maximum based on the state-wide average weekly wage (SAWW), typically 100 percent. The maximum is normally indexed annually, so injuries occurring in any year are subject to an updated maximum benefit. Because of our progressive income tax system, replacing 66 2/3 percent of pre-injury wages means workers' are receiving a benefit that often approaches and in some cases exceeds pre-injury after-tax income.

If a worker dies because of the work injury, workers' compensation provides wage replacement benefits to the surviving spouse, normally based on the deceased employee's average weekly wages. These benefits in a number of states are uncapped and payable for life, or until remarriage. Other dependents, typically children, also are covered. Minor children receive income benefits till age 18 or, if enrolled full-time in a higher education program, till age 22, though some now pay till age 23 or higher (e.g., 25).

Workers' compensation also provides benefits for rehabilitation – vocational and, of course, physical. If there is a need for job retraining or job modification, workers' compensation provides for that.

This is the workers' compensation "promise." It is as comprehensive as it is astounding, considering its century-plus age and the current divisiveness over the fundamental architecture of other social benefit programs. Not that there isn't plenty of disagreement about workers' compensation, and sometimes criticism may be justified. But, those disagreements are not over its fundamental structure. They typically entail the generosity of benefits, differences of opinion over medical treatment and reimbursement rates for medical providers, as well as the optimal system for dispute prevention and resolution.

The workers' compensation system also has played a significant role in improving worker safety. All but the smallest employers are subject to "experience rating," in which their individual accident experience is considered in establishing the insurance rate. The methodology is complex, but the policy objective is simple: To require less safe employers to pay more and for safer employers to pay less. In effect, employers are rewarded for having a safer workplace and are not required to subsidize the losses of their less safe counterparts. The cost differential can make a significant difference to an employer's bottom line. Studies have affirmed experience rating's beneficial effects on safety. Aside from the rating system, which includes additional pricing mechanisms tied to an employer's safety, insurers maintain substantial "loss control" resources, with staffs of safety experts who work with their policyholders to detect hazards and reduce risk. After all, the insurer has a direct financial interest in preventing loss.

Workers' compensation's successful role in improving worker safety is reflected in the falling rate of lost-time claims frequency – a multi-decade phenomenon extending back well into the last century. According to the National Council on Compensation Insurance (NCCI), from 1991 to 2013, the cumulative drop in lost-time claims frequency is over 58 percent and, but for an anomalous up-tick in one year (2010), frequency has dropped every year during this period. Although other factors have contributed to this positive trend, the role played by workers' compensation should not be dismissed. Our workplaces are far safer now than ever, and workers' compensation has played a significant role in that evolution.

That our workplaces are safer is also borne out in Bureau of Labor Statistics (BLS) data (as reported by NASI).

- Over the last two decades, the annual number of work-related fatalities is down more than 25 percent, and the number of non-fatal work-related injuries, down by over 55 percent.

- The incidence of all reported non-fatal occupational injuries and illnesses declined steadily beginning in 1992 through 2012 (latest available data), from 8.9 per 100 full-time workers to 3.4.

- The incidence of injuries and illnesses *involving days away from work* also declined steadily from 1992-2012, from 6.8 to 3.0. This statistic is consistent with NCCI's reported reduction in lost-time claims frequency cited above.

There also is some positive news in system cost trends, important for financial stability. According to NCCI:

- The cost of lost time indemnity (wage loss benefits) claims has dropped and remained substantially lower over the past 5 years. This is important because these claims involved the more serious injuries.

- The average medical cost per lost-time claim – those claims with potentially the greatest cost potential -- while still climbing, has moderated over the past 4 years. Where cost growth since 2010 has ranged from1 to 3 percent per year, the growth in prior years was far steeper, with 7 to 10 percent (or higher) annually typical. This cost has dropped in sync with the decline in the rate of growth of the Medical CPI and even trailed the Medical CPI growth in 3 of the last 4 years.

This is good news for the financial stability of the workers' compensation system, for employers who pay for it and for workers because, with a more stable system, employers can more readily afford improved workers' compensation benefits (not to mention expanded hiring and other economic benefits associated with lower employment-related overhead costs). The 2012 California reform law, for example, incorporated system improvements that allowed an annual benefit increase of $750 million.

The nation's workers' compensation system was confronted with a financial crisis over 25 years ago. Virtually all state systems were in a relative state of instability, caused by exploding benefit delivery system costs and inadequate insurance rates. The result was an insurance availability crisis that drove many employers into state residual markets, but losses in those markets had to be covered by the same insurers participating in that state's workers' compensation market. Insurers lost billions during the late-1980s and early to mid-1990s. Employers and insurers worked together, with state legislatures and governors – Republican and Democratic – as well as with organized labor in several instances (e.g., California, Oregon, Rhode Island) to reduce system costs and to deregulate insurance pricing. These system cost reductions did not involve cutting benefits. What was cut were the maximum benefit in a handful of northeastern states, but back to what was prevailing in the rest of the country. By the mid-1990s, the workers' compensation system had recovered its financial footing. In the 20 years since, despite on-going challenges in individual states, there has not been a systemic financial crisis, not close.

There are lessons from this experience that should guide our path in confronting future challenges to the workers' compensation system. First, it was critical to success that employers, working with insurers and others, and state legislatures and governors of both parties, as well as labor in several key states, all came together to address what was an economic crisis in their states. Exploding workers' compensation costs and an evaporating insurance market was toxic for economic growth, the jobs and wages of workers. It took courage against long odds for legislatures and governors to confront reform's opponents. Second, this experience illustrated again the durability of this social insurance system and, if anything, strengthened it.

Third, the states' rapid response to what was a "gathering storm" by the mid- to-late 1980s reflects the genius of our federal system. With the state-based workers' compensation system, authority over public policy is dispersed to 51 independent governments, not centralized in Washington. State problems remained state problems for those state policymakers to address; and state solutions to those problems served as laboratories, whose solutions other states could emulate or avoid. Any mistake would remain a state mistake, not a national financial catastrophe, as is today's Social Security Disability Insurance program, teetering on insolvency. This is an important reminder should there ever be renewed interest in federalizing state workers' compensation.

The nation's workers' compensation system is imperfect, but while those criticisms are not to be taken lightly, there is no social insurance program in the country that isn't beyond rebuke. That is why a dose of perspective is useful. In recent days, the workers' compensation system has come under harsh and unfair attack. These charges are mostly distortions, and in some cases outright inaccuracies, and the narrative is one of a collapsing workers' compensation system. Nothing could be farther from the truth. There is room for legitimate disagreement over policy -- and the insurance industry understands at its core these criticisms are over policy – but the tenor of the criticism has been unfortunate and off-base.

Amidst the cacophony of the daily news cycle, we wanted to share this dose of perspective and to tell the positive story of our nation's state-based workers' compensation system, our nation's oldest social insurance system.

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