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REFORM OF WORKERS' COMPENSATION IN CALIFORNIA—PART II

Representatives of various unions and community committees recently organized the California Workers' Compensation Reform Coalition, to develop broader public support for long overdue improvements in our Work Comp system. Six important recommendations developed by the Coalition were also adopted as a part of the California Labor Federation's current legislative program. *Labor Center Reporter* 136 (January 1985) reviewed two of these proposals: to improve occupational disease protection and to establish an exclusive California state compensation insurance fund. This article analyzes the Coalition's proposal to require more expeditious action in the processing of Work Comp claims and in the delivery of wage loss benefits to injured workers. The CLF adopted part of the Coalition's proposal on this subject.

Delay Is Built Into The Present System—The following data shows the source of \$1.8 billion in cash indemnity and medical benefit payments made to injured California workers in 1981 (from *Social Security Bulletin*, April 1984):

source of payment	billions of \$	% of total \$
private insurance companies	1.05	59
self-insured employers	.50	28
state insurance fund	.24	13

This total of \$1.8 billion benefit payments is not the total Work Comp bill paid by California employers. Their annual insurance costs are about twice that amount, because they also pay for a vast legal and administrative bureaucracy, which creates a vast backlog of delays in the California system.

Disputes between the injured worker (who is the claimant) and his employer (or more often, the insurance carrier representing the employer) are the major source of delay in the California Work Comp system. These disputes involve (a) whether or not the worker's injury (or disability or death) arose "out of and in the course of employment," (b) which employers or which places of employment caused or contributed to the worker's injury, (c) the exact nature and extent of disability arising from the worker's on-job injury, and (d) the origin and nature and extent of any long-term occupational disease which might lead to disability or death.

In California in 1982, there were 380,000 on-job injuries involving more than one day of lost work time. 30,000 of the workers who suffered these injuries filed Work Comp claims. Their claims went to one of 22 offices in the state, where one of 130 judges of the Workers' Compensation Appeals Board (WCAB) made a first determination of their rights and benefits.

California Work Comp law (Labor Code, Div. 4, Part 4, ch. 1-7) requires an initial hearing within 30 days of the filing of the claim, and requires the WCAB judge to decide within 30 days of the submission of a claim dispute. But in practice, it commonly takes 45-90 days to obtain a hearing, and 90-120 days before the judge decides a disputed claim. It can take six months or longer to get the judge's decision when the employer or the insurance carrier raises a number of disputed issues. In the meantime, the injured worker receives no benefits from the system.

In cases that are litigated, there is at least an 18-24 month delay before an injured worker can obtain a final decision. According to testimony from the California Workers' Compensation Institute, the insurance carriers now litigate 50% of all cases of workers who have lost time because of injury or health impairment, and 75% of all cases involving permanent disability. In addition, all but the most routine occupational disease claims of workers are now litigated. Such heavy reliance on litigation results in many workers having to turn to SSI and Social Security and welfare for financial assistance, while waiting months and even years to collect Work Comp benefits.

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The informality of administrative procedures adopted by the WCAB (the primary administrative agency in California) is also an important source of delay, which can occur (a) in the scheduling, postponement and adjournment of hearings, (b) from referrals for further medical examinations; (c) from the referral of issues concerning rehabilitation; and (d) from the WCAB's reconsideration process. Finally, there can be further delays caused by the failure of employers to notify their insurance carriers promptly of on-job injuries, and the failure of insurance carriers to make prompt payments as required after an award or decision or order has been rendered.

Delay Serves The Direct Economic Interest Of The Insurance Industry—The leading Work Comp insurance companies, like Industrial Indemnity Co., or CIGNA Corp., or Fremont General Group, make extremely lucrative profits from employer-paid premiums. The companies also reap huge investment returns on their reserves (or their "float," which is the pool of employer premium payments held by the companies before benefits are paid). Employer premium payments are also set aside by the insurance companies in special reserves to cover long-term risks and contingencies—which often do not materialize, particularly when litigation can head them off. Thus the profit-oriented insurance companies have an obvious economic motivation to promote administrative and litigation delay in the processing of Work Comp claims. This motivation works to the constant disadvantage of injured workers—even in routine situations.

Even worse, in serious cases of occupational disease or permanent disability, the continual referring of a worker's claim to one medical specialist after another, followed by further hearings and disputes about the specialists' reports, has become the final and perhaps the most frustrating source of delay in Work Comp in California. In these cases, more and more injured workers are reporting their firm conviction that "this system is consciously starving us out." Nonetheless it is illegal to sue Work Comp insurance companies in civil court in California for bad faith in their administration of claims.

By virtue of its enormous volume of political contributions and its high-powered lobby, the commercial insurance industry is also the dominant voice on Work Comp issues before the state legislature. Thus, the industry has actively opposed any increase in staffing for the Division of Industrial Accidents and the WCAB. As one result, the caseload of Work Comp judges increased from 562 in 1969 to 970 in 1981. Delay is unavoidable and furthermore justice is impossible under these circumstances, and it is the injured worker who is left to suffer the consequences.

Now Therefore Be It Resolved—The California Workers' Compensation Reform Coalition is urging the legislature to adopt the following improvements in the law, designed to eliminate the loopholes which are exploited primarily by insurance carriers when they follow their economic interest in delaying or denying or litigating benefits promised to workers who have suffered injury or health impairment on the job.

- (a) Provide that the trial of a Work Comp case must be held within 30 days of the request by an injured worker, and a judge's decision must issue 30 days after submission of the case—with no administrative exceptions; and specify that the medical care provided or recommended by the treating physician must be paid within 30 days;
- (b) Provide that benefits initially awarded to an ill or injured worker must continue pending the final outcome of an appeal by the defendants (i.e., the insurance carrier or self-insured employer or the state fund);
- (c) Provide that disability benefits must be paid every two weeks, so that injured workers can count on receipt of financial benefits on a regular basis;
- (d) Provide that attorney fees for an injured worker must be paid by the defendants in cases where these defendants initially deny the benefits;
- (e) Provide that injured workers will have a civil cause of action for bad faith against Work Comp insurers or administrators, in appropriate cases.

The Coalition will also urge the legislature to establish a 1% surcharge on all Work Comp insurance premiums in California, to be earmarked for more adequate staffing of the DIA and the WCAB. This surcharge would be superceded only by establishment in California of an exclusive state compensation insurance fund, designed to eliminate the inefficient, bureaucratic and inequitable administrative procedures which are perpetuated in Work Comp by the dominant influence of the for-profit commercial insurance industry.

-- Bruce Poyer and Kevin McCarthy

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