

**Workplace Injuries
and Diseases**
Prevention and Compensation

Essays in Honor of Terry Thomason

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Introduction

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The chapters in this volume were originally presented at a conference to honor Terry Thomason, held at the University of Rhode Island in March, 2004. This volume is designed to be a tribute to Terry in several ways. It is about workplace safety and health and issues related to prevention and compensation for occupational injuries and illnesses, a topic to which Terry devoted much of his research life. All of the authors in this volume are recognized experts on various areas of workers' compensation, but more importantly had known Terry, perhaps been able to work with him, and admired his work. The volume is intended to serve as a detailed introduction to the workers' compensation novice but also provide insights to those more familiar with the area. We hope this mirrors Terry's own approach to his research, clear and insightful, but also accessible to those less familiar with workers' compensation than he. The second chapter of this volume is a reprint of a book chapter Terry wrote on economic incentives in workers' compensation. This chapter is demonstrative of some of Terry's best qualities as a workers' compensation scholar—his instinct for the important policy and welfare questions and his ability to communicate the key issues clearly to the reader.

Since its inception, workers' compensation systems have wrestled with questions about how to best structure benefits. Traditionally, there has been a triumvirate of criteria used to evaluate benefits of workers' compensation: adequacy, equity, and efficiency. Chapters 3 and 4 deal with this problem of benefit structure and evaluation. In Chapter 3, Boden, Reville, and Biddle examine the adequacy and equity of wage replacement benefits. They frame their discussion in terms of the trade-off between benefit adequacy and cost to discuss the nature of the data that would be necessary to inform the policy discussion about benefit

levels. They begin with the topic of how to define “adequate” benefits, citing the debate and logic behind the commonly used two-thirds of gross preinjury earnings. They then move on to the challenge of measuring the unobservable lost earnings and describe the approaches in use in most of the literature. They then review the literature on benefit adequacy for all cases and permanent disability cases, showing that most studies find that the benefits fall short of adequacy norms.

Finding that the real replacement rates tend to be inadequate, Boden, Reville, and Biddle then examine the question of benefit equity—both horizontal (similar losses should receive similar benefits) and vertical (different losses should receive benefits proportional to those losses). They note the empirical difficulty of determining benefit equity but do cite examples of useful policy data, including comparing whether or not cases with similar temporary benefit durations receive permanent disability or other benefits, and the examination of whether benefit differences are proportional to loss ratings in permanent partial disability (PPD) cases. They conclude their chapter with several policy suggestions designed to improve benefit levels for those at the bottom of the benefit scale, thus at a minimum improving benefit equity, and a set of questions that, if answered, would lead to better policy.

Permanent partial disability is the most vexatious type in workers’ compensation. It is by nature complex because of the variability of the degree of injury and the effect of injury on the ability to work. Compensation for PPD is even more complex, as states vary considerably in their approaches to this sort of disability. In Chapter 4, John Burton presents a detailed discussion of the various models used in the different states for evaluating disability and structuring benefits, and then discusses a list of criteria that might be used to evaluate these different models.

Burton begins with a presentation of a conceptual framework for understanding PPD that discusses the nature of permanent injuries, possible compensation schemes, and the determination of which types of permanent injuries should be compensated, with particular emphasis on whether compensation should be for the impairment or the earnings loss and whether noneconomic losses that do not directly affect earning capacity should be compensated. Following that, Burton describes how this framework is implemented by the states. He discusses three basic approaches: 1) the permanent impairment approach, 2) the loss of

earnings capacity approach, and 3) the wage loss approach. He then discusses how the states structure benefits for these various definitions of loss. The complex set of potential PPD benefit systems begs the question Burton raises next: What criteria should be used to evaluate these different benefit delivery systems? He presents five: 1) benefit adequacy, 2) benefit equitability, 3) delivery system efficiency, 4) prevention and rehabilitation efficiency, and 5) affordability. Burton raises several research questions including whether or not these criteria are the right ones and, assuming that they are, how the different state approaches measure up.

The chapters on benefit structure serve as a good preamble to Douglas Hyatt's chapter on dispute resolution in workers' compensation, as they provide ample discussion of benefit features that could easily be disputed by the various parties. One of the initial motivations behind the passage of workers' compensation insurance statutes was to eliminate the need for tort as the sole remedy in determining whether and how much occupationally injured individuals would be compensated. For most cases, workers' compensation has succeeded in that goal, but for a significant minority, resorting to formal dispute resolution systems is necessary. In Chapter 5, Hyatt tells the story of two Canadian commissions charged with investigating and evaluating dispute resolution in workers' compensation to illustrate why cases end up in disputed status and what sort of research is needed to address those causes. His primary argument is that stakeholder discontent with the dispute resolution system cannot legitimately be seen as resulting solely from poor execution. Rather, he argues that difficulties with dispute resolution in workers' compensation and periodic increases in dispute activity arise from multiple sources: increasing complexity of work-related injuries, rising worker rights as evidenced by expanding appeal rights, the increasing awareness of inconsistencies in adjudicative decisions at the initial level, and growing use of experience rating that increases the sensitivity of employer costs to claims activity.

Hyatt describes a vicious circle at the appeals level: an efficient appeals system motivates those at the initial hearing level to pass off the more difficult cases to the appeals level, clogging that system and converting an efficient system into one that malfunctions. He suggests that more research is needed to better understand how many levels of dispute resolution is most efficient, and how alternative dispute resolution

or resorting to the court system might ameliorate current problems.

While interest in performance management and the development of good performance measures has increased in both the public and private sectors over the last several decades, workers' compensation administrative agencies have lagged behind in this area. The two chapters on benefit structure and the one on dispute resolution all highlight the need for good information with which to identify where the workers' compensation system is succeeding, needs adjustment, or is failing. Chapter 6, by Allan Hunt, provides an overview and description of the current state of performance measurement and management information systems in workers' compensation. Hunt begins with a description of the history of performance evaluation in workers' compensation, and while applauding past efforts, he notes several weaknesses, including inconsistent measures across states, the inclusion of some measures that are beyond control of the state agencies, and data that only permit comparison with a limited number of states.

Noting that performance measurement is more highly developed in the publicly administered jurisdictions in Canada and Australia, Hunt demonstrates how the combination of descriptive information can paint a telling picture of strengths and weaknesses of a claims system by combining basic descriptive statistics that make interjurisdictional comparisons. The chapter concludes with a discussion of state-of-the-art programs under way in both the United States and Canada. One such program, from the Nova Scotia Workers' Compensation Board, shows a well-conceived multistep system linking organizational goals to organizational outcomes.

Workers' compensation is primarily designed to compensate injured workers during their recuperation and pay for their medical care. However, it is also often described as providing safety incentives through its pricing structure. In Chapter 7, Karen Roberts examines how workers' compensation insurance is priced and what incentives are embedded in that price structure. The chapter begins with a description of how premium is determined. She contends that while the pricing structure is commonly presented as containing safety incentives to employers, because profit-maximizing insurers rather than welfare-maximizing government determines the pricing structure, there is reason to question the effectiveness of pricing as a safety-promotion tool. In the next two sections, Roberts examines the incentives this pricing structure is

intended to have on employers and the insurer perspective on pricing, respectively.

Although there is evidence that experience rating may have an effect on employer safety behavior, Roberts discusses several of the weaknesses in the relevant research, in particular, the use of proxy measures for experience rating and evidence that employers may not understand pricing sufficiently well to respond to its incentives. She uses the insurance literature to bolster her initial contention by showing that from the insurer's perspective, the objective of pricing is to adequately cover expected indemnity, rather than to change employer safety behavior. In the final section, Roberts reviews the literature on the effect of regulating workers' compensation insurance pricing on employer incentives, in particular, how those incentives are distorted. She concludes with the question of whether it is sound policy to rely on the private insurance sector to provide workplace safety incentives.

Chapter 8 examines a contributor to cost variation—health care. One of the benefits under workers' compensation is full health care coverage for the work-related injury or illness. The vast majority of workers' compensation claims are for medical care only, and in the United States, increases in the cost of health care are important drivers of overall workers' compensation cost growth. Two Canadian researchers, Cameron Mustard and Sandra Sinclair, explore an observed but poorly understood phenomenon, specifically, that workers' compensation health care costs are lower in Canada than in the United States both in terms of real dollars per claim and as a share of total premium costs. Mustard and Sinclair identify three factors that they argue explain the difference between Canadian and U.S. costs: 1) lower medical care prices in Canada, 2) lower rate of medical care inflation, and 3) higher intensity of health care service provision in the United States.

Mustard and Sinclair frame their discussion by contrasting the predominant privately financed system in the United States to the single-payer public system in Canada. They note that the private health care system in the United States has a substantially higher rate of overhead, indicating that this market-driven system has not led to more cost-efficient delivery of care; they then discuss in what ways the market in the United States has failed. The authors explore the possibility that the higher intensity leads to better health outcomes for U.S. workers, thus justifying the higher costs, but can find no evidence of better U.S.

outcomes. Their study provides lessons about how to structure health care delivery and financing in workers' compensation as well as in the general health care system.

Workers' compensation is a multidisciplinary subject, examined through multiple lenses: economic, legal, medical, psychological, and as a form of insurance. Most of the chapters in this book take a traditional economic approach. In Chapter 9, Seth Seabury, Robert Reville, Hilary Rhodes, and Leslie Boden examine the behavioral economics perspective and how it may contribute to a better understanding of workers' compensation. Standard economic theory frequently relies on the assumption that economic actors have perfect information and behave rationally. In the context of occupational health and injury, behavioral economics departs from this assumption and focuses on how individuals accumulate and process information about risk and uncertainty. After presenting and summarizing the research on compensating wage differentials, the standard economic approach, they present prospect theory, a behavioral economic framework.

Prospect theory postulates about the decision rules individuals use when faced with imperfect information and the systematic errors people appear to make in assessing risk. Specifically, Seabury and his coauthors examine three biases: 1) the availability bias, 2) the optimism bias, and 3) the accumulation bias, each of which distorts individual understanding of risk and subsequent behavior. Following this discussion, the authors detail the nature of irrationality as presented by prospect theory, where individuals fail to accurately match risk to potential gains and losses. They then discuss the implications for prospect theory for the use of the standard model. Their discussion generates a wealth of ideas for future research. Examples include incorporating how individuals perceive risk, as opposed to actual risk, in determining compensating wage differentials, examination of how worker learning about risk affects bias and decision making, and the use of risk perceptions in providing safety incentives and promoting safety.

Most workers' compensation programs are state-based, and although they all share certain basic features, there is considerable diversity across states. On occasion, the policy suggestion is made that workers' compensation could be more simply and fairly administered if it were a federal program. In Chapter 10, Peter Barth's description of the Black Lung Program, a federally administered program designed

to provide compensation to workers with occupational disease due to coal dust exposure, is a cautionary tale for advocates of federalization of workers' compensation. Barth's chapter chronicles the legislative history of several programs collectively referred to as the Black Lung Program.

Barth's description details policy formation based on insufficient understanding of the scope of the problem, inadequate understanding of the state programs with which the federal program was to eventually coordinate, and changes in federal government administrations that brought significant changes in ideological perspectives on how best to address problems of occupational disease. Barth notes that, despite the long history, the problems emanating from this program are relevant today: the Black Lung Trust Fund is currently in serious debt, and a new federal occupational disease program for energy employees has just been created. The chapter concludes with a set of lessons learned from the Black Lung Program, which is of great value to policymakers.

The final chapter in the book, Chapter 11, tells a political success story, one where contention in the workers' compensation system had brought the state to the brink of collapse, but where vision and courage by stakeholders who had been adversaries turned the situation around, making the state system a model of cooperative problem solving. Matthew Carey begins his chapter with a description of the Rhode Island system leading up to its 1990 crisis, when the dispute system had bogged down and the National Commission on Compensation Insurance had proposed a 132 percent increase in rates to cover expected benefit and claims costs. Carey then goes on to describe specific reforms in the critical areas of the Rhode Island workers' compensation system: implementation of a pretrial conference to streamline adjudication, use of nonprejudicial agreements for benefit payments and settlements, installation of penalties for fraud for both parties, a change in partial disability compensation, designation of Beacon Mutual as a competitive state fund, and the creation of a multistakeholder advisory council. Perhaps the most significant of these is the latter, as it has proved to be a forum for cooperative problem solving for nearly 15 years.

For a variety of reasons, workers' compensation has been declining as a share of the total wage bill for over a decade. Nevertheless, approximately \$50 billion worth of benefits are paid annually to injured workers. Real costs are higher than that because of the cost of program

administration, disputes, and profit. This volume provides an overview of most of the central features of workers' compensation and some of the research gaps that need to be filled for this type of social insurance to be more efficiently and equitably administered. Approximately 1 in 20 full-time equivalent workers becomes injured at work per year, so the need for effective disability insurance will continue. This volume is intended to contribute to the ongoing effort to improve workers' compensation.