



National Academy of Social Insurance (NASI)

Wednesday, January 27, 2016

Panel Discussion: “Opt-Out” in Workers Compensation

Washington D.C. – National Press Club



Fundamental Principles of Workers' Compensation

- A moral commitment for a better system.
- Private sector liability.
- An Agreement between Business & Labor:
(aka: The “Grand Bargain”)

For a **“no fault”** system and a **“Quid Pro Quo”** providing employer tort **immunity** or “exclusivity” in exchange for a **system of adequate and reasonable benefits** providing medical treatment and a wage substitute - **in effect, a balanced system of employer and employee interests.**

Humanitarian Purpose Concept & Intent

In short... American common law remedies were inadequate to meet modern industrial conditions and conceptions of moral obligations, and should substitute therefore a system based on a higher conception of man's moral obligation to his fellow man.

Private Sector Liability Concept & Intent

*“The American workers’ compensation system is distinguishable from public social insurance in its essentially private nature...and in its mechanism of **unilateral employer liability**..”* (Larson, WC Law, sec 3)

- In short, employer’s who benefit from the labor of their employees are in the best economic position to pay liability for injuries or death sustained in the course and scope of an employee’s labor, and the employer can pass the cost of that liability along in the costs of their products, commodities and services.

Constitutionality of The “Grand Bargain”

.....the use of workers compensation laws in place of constitutionally guaranteed tort remedies, must provide ***“significant”*** benefits and any substitute considerations must provide a ***“reasonable amount, and according to a reasonable and definite scale, by way of compensation for the loss of earning power incurred in the common enterprise...”***

New York Central Railroad v. White, 243 US 188, 37 S.Ct. 247, 61 L.Ed. 667 (1917)

1970 OSHA Act

- “ ...the vast majority of American workers, and their families, are dependent on workers’ compensation for their basic economic security in the event such workers suffer disabling injury or death in the course of their employment; and that the **full protection of American workers** from job-related injury or death **requires and adequate, prompt, and equitable systems of workers’ compensation** as well as an effective program of occupational health and safety regulation...”

1972 Report National Commission on State Workers' Compensation Laws

- “...We have considered implications of abolishing WC and reverting to negligence suits, a remedy abandoned some 50 years ago. **This option is still inferior to WC:** its deficiencies include uncertainties for both employer and worker and the substantial costs arising from litigation over the degree and source of impairment. Such litigation also has serious adverse effects on efforts at rehabilitation...”

Some Essential Standards of the '72 Commission

- Compulsory coverage .
- Elimination of all numerical and occupational exemptions to coverage.
- Full coverage of work-related (occupational) diseases.
- Full medical and physical rehabilitation services without arbitrary limits
- Elimination of arbitrary limits on duration or total sum of benefits for both medical and indemnity.
- Employee initial choice of physician.
- State oversight of medical care and rehabilitation services.

Nationwide Corrosion of Workers' Compensation

- “...In my view, the state workers’ compensation system(s) is in its most dire situation in at least the last half-century...”*

*Concluding remarks made by **Prof John F. Burton, Jr**, Emeritus Prof. at Rutgers Univ. and Cornell Univ., in a Keynote address for the **Centennial Celebration of the Pennsylvania Workers’ Compensation** program. **June 1, 2015** , Philadelphia, PA.

Thank-you !

For further information about WILG go website:

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