

NATIONAL  
ACADEMY  
OF SOCIAL  
INSURANCE

*Health and Income Security for Injured Workers:  
Key Policy Issues*

**Panel II: Issues and Innovations in Wage-Replacement  
Benefits**

**Thursday, October 12, 2006**

This session convened at 10:30 AM in the Ballroom of the  
National Press Club, 529 14<sup>th</sup> Street, NW, Washington, DC.

**Moderator and Introductions**

Virginia P. Reno, Vice President for Income Security, NASI.....2

**How Adequately do Benefits Replace Lost Wages for Injured Workers?**

H. Allan Hunt, Assistant Executive Director, Upjohn Institute for Employment  
Research.....4

**New Empirical Methods to Tie Partial Disability Benefits to Lost Wages**

Frank Neuhauser, Researcher, Survey Research Center, University of California,  
Berkeley .....9

**Commentary**

Angie Wei, Legislative Director, California Labor Federation, AFL-CIO .....15

**Commentary**

Bill Zachry, Vice President, Corporate Workers' Compensation, Safeway, Inc.....19

Discussion.....23

## **Introductions**

Virginia P. Reno, Vice President for Income Security, NASI

VIRGINIA RENO: If everyone will take his or her seat, we can get started with our second session. Welcome to our second session at this symposium, *Health and Income Security for Injured Workers*. I'm Virginia Reno. I'm Vice President for Income Security at the National Academy of Social Insurance.

For this session, we have two presenters and then two panelists who will be reacting to what they've heard. Our first speaker is Allan Hunt. He is the Assistant Executive Director of the W.E. Upjohn Institute for Employment Research in Kalamazoo, Michigan. He has done extensive research on disability and worker's compensation. He chaired our Academy's study panel on adequacy of worker's compensation wage replacement benefits. And that report now is available from the Upjohn Institute Live Example. And his presentation will address exactly that question. That is, how adequately do benefits replace lost wages for injured workers?

Our second presenter was to be Bob Reville who is the director of the Institute for Civil Justice at RAND. He unfortunately is suffering a job-related illness and is not able to be with us today. And furthermore, that illness is not compensable under worker's comp, because the job is being a dad; his kid brought home germs from daycare that has laid him absolutely low. But we are fortunate that in his place, we have Frank Neuhauser who worked with Bob Reville on the research they have done assessing the worker's compensation changes in disability benefits in California.

Frank is on the faculty of the University of California at Berkeley at the Survey Research Center. His research covers a range of issues on worker's compensation, occupational safety, services for the aging, and benefit forecasts for the state of California. He will present the new research on the California methods for compensating partial disabilities in that state following the reforms.

And here, I would just like to make a personal comment. I came to worker's compensation white-eyed and innocent, but with a background in Social Security disability. Social Security is very different from worker's comp. It pays only for long-term disabilities that generally preclude gainful work. Worker's comp does two very important other things. First, it pays for temporary disability when workers are unable to go to work at all for a few weeks because of a condition that is expected to be cured and they will go back to their regular jobs.

Also, unlike Social Security, worker's comp pays what it calls permanent partial disability. It's the largest cost segment of the worker's compensation cash benefit program. In this case, workers reach their maximum medical improvement, but they have some residual loss in terms of impairment or earning capacity, and this is one of the most contentious and expensive parts of worker's comp, because that partial disability can be anywhere from 1 or 2 percent to 99.5 percent, so the range is huge. And trying to

figure out where in that range a particular worker fits is exceedingly difficult. I know for many of you in worker's comp this is obvious and old hat. For people who don't know comp, this is new.

Commenting on our two presenters are two panelists. First, Angie Wei. She is the legislative director for the California Labor Federation with the AFL-CIO. Her state federation represents about 1,200 unions and over 2 million workers in collective bargaining agreements. She also served on the California Commission on Health, Safety, and Worker's Compensation. William Zachry is the vice president for corporate worker's compensation for Safeway, Inc. He oversees the nationwide self-insured and self-administered worker's comp for Safeway. He is also chair, as he mentioned in the first session, of the California Fraud Assessment Commission.

More complete bios for all of our speakers are in your folders, and just to do a little commercial for what is in there, the bios are the blue sheets and they tell a little bit more about each speaker. The green is an evaluation form and we hope that you are filling this out as the symposium goes along, because we really do rely on the information in these to plan future events. One of the key questions on the back is what other issues might it be useful to have this kind of seminar focus on.

And before I give up my chance to do commercials, two other items in the packet are the orange is the latest of the annual reports that our academy does on worker's compensation, benefits, costs, and coverage. This is just a piece of it. The real thing is yellow and it's available on our website. And a new innovation this year, we have a state-level brief on the state of California, and it provides the data we produce and compares the state to the national trends. And one of the interesting things you find here is that California in the most recent year is between 20 and 25 percent of total benefit spending on worker's comp, so it's big and it's important.

Without further ado, I would like to turn it over to Alan, and then each speaker will go in turn.

## **How Adequately do Benefits Replace Lost Wages for Injured Workers?** Allan Hunt, Assistant Executive Director, Upjohn Institute for Employment Research

ALLAN HUNT: Thank you, Virginia.

I have a couple of preparatory comments that I want to make. First, after 30 years in this business, I'm going to ask more questions than I'm going to answer. That's comment number one. Comment number two is that I did chair the NASI panel on benefit adequacy, and that was the start of an odyssey that led me to this place today, and I hope to recount some of that journey for you. Comment number three is that if you're not one of the worker's comp aficionados, I'm sorry, but you're going to have to try to follow along with the written version, because I'm going to go very fast and cover more material than I should. Part of that is because I want you to get the flow of this, and I will try to wave my hands when I'm making a big jump so that you are forewarned.

Fourth, I want to mention that, like my friend Ed Welch, my interest in benefit adequacy continues to be piqued by the fact that we recently both were shocked to discover in the latest Workers Compensation Research Institute study that Michigan has the lowest benefits among the 13 or 14 states. And actually I was pleased to talk to Ed about this, because I thought I was the only one who was surprised. I've lived in Michigan for 28 years – Ed longer than that – and we were both surprised to hear this. But it tells me something about how worker's comp reform goes and how basically it's easy to be lulled to sleep. And I am on the side of those who suspects that workers have not gotten a good shake out of worker's comp in the last 15 years, so I want you to understand that up front.

I want to make just a couple comments about the origins of the benefit adequacy issue, and I know that's a misnomer because there probably is no such thing as an origin. Then, I want to pay my respects to some of the wage loss studies that have been done that we depended upon when we did the NASI Study Panel. And then, I want to tell you what we've been doing in the two years since that publication, and how much confusion that has caused, at least for me.

And again, I'm not going to give you any instruction about worker's comp programs, but just so that you have a few facts in front of you. Most states pay two-thirds wage replacement, at least for temporary disabilities, after a waiting period and with a maximum and minimum; so those things are all in the mix. Benefits are, of course, tax-free. They may or may not be limited in time. There are lots of variations on these themes, and there's almost nothing you can say precisely that will apply to every state, so it's always a challenge, unlike the Social Security program as Virginia suggested.

But permanent partial disability benefits, which are the ones that seem to be getting most of the concern in the empirical work, are even more difficult. And I want to illustrate that with some numbers – pardon that, but there's going to be a lot of numbers here and some pictures to make the numbers easier. This was from a Workers

Compensation Research Institute study that wasn't aimed at this, but I just took it for the sample of six states, giving the average weekly wage, the average weekly PPD benefits – those are the permanent partial disability benefits – on a weekly payment basis. This gives what you could call a very primitive measure of benefit adequacy, the PPD weekly benefit as a percent of the former average weekly wage. And you see those numbers range from 26 to 58 percent.

But what I want to call your attention to is the bottom line also, which gives the average incurred PPD benefit, not necessarily weekly but the total estimated cost, and you'll notice that it's almost perfectly inverse to the weekly replacement rate. So again, we're not maybe getting it on a weekly basis, but we're making it up in the lump sum or some other form, and that's what makes PPD really difficult to understand.

The worker's compensation benefit adequacy panel from NASI was conceived as a way to provide some qualitative findings around the empirical research that had been done in the mid- to late-90s. I happened to chair that group of about a dozen of our colleagues who represented the whole spectrum of opinion, although we did not have a doctor on that panel as I recall. And the report was created by volunteers who offered to write particular chapters, and then the whole study panel evaluated those through several years of discussion and meetings, which I don't want to get into. But it was agony!

The final review occurred through the normal NASI board review, which means an external peer review, and then it was published by my organization, the Upjohn Institute, in 2004. We built upon the original wage loss study by Berkowitz and Burton, which was really path breaking and followed the national commission in the early '70s. The Bob Reville, et al. work at RAND, which I think you'll actually hear a little bit more about this morning, burst on the modern scene like a thundercloud in terms of defining benefit adequacy in a way that we all could understand and relate to, particularly using the matched worker design. This involves looking at the subsequent earnings of injured workers compared to earnings of workers in those same firms at roughly the same earnings level at the point of injury. I'll use that a little bit in my presentation, but not as much as I would have guessed two years ago.

And then Les Boden really re-started this line of work with a path-breaking study in Wisconsin, and was the first one to look at temporary disabilities as well as permanent disabilities, where I think more attention should be paid. Jeff Biddle also did a wage-loss study with Ed Welch in the state of Washington as part of a legislative audit. And then, thankfully for the panel that I chaired, those three authors pulled this all together with funding from the New Mexico Worker's Compensation agency, and RAND did a study that pulled the three states that had been done previously, plus New Mexico and Oregon together in one common presentation with identical assumptions and methods.

Here's the first, and almost last, thing I want you to see from this report, and you'll see why later. This figure, adapted from the New Mexico study, shows the relative earnings of PPD claimants – and we're going to confine our attention to that group for now – as a proportion of comparison worker earnings for 11 quarters before their injury

and roughly 15 to 20 quarters following injury – so two to three years before injury and four to five years following injury. And it shows basically, as you would expect, that the earnings before the point of injury are pretty much the same, although there is a blip for Wisconsin for some reason that never has been investigated as far as I know. And then, at the point of injury, there is a big drop in earnings, because there is absence from work as the result of the injury. These are PPDs, so they are fairly serious injuries – and then some recovery in earnings, but not much. So while wages drop something like 25 to 35 percent in that first quarter following the injury, they recover only to about 75 to 85 percent of the pre-injury earnings, as represented by the amount that the matched workers continued to earn. That was very troublesome to a lot of people who consumed this research and tried to design some sort of policy response to it.

The next slide shows, the consequences from the worker's comp side. Taking a ten-year window after the injury, looking at the earnings of those matched workers for the ten years, comparing the earnings of the injured workers, and computing that ten-year projected loss. Now, they did not have ten years of post-injury observations, so they basically used four or five years and then projected those losses out to ten years. The proportional wage losses were from 16 to 25 percent depending on the state. And then, taking the total worker's compensation benefits paid for that period of observation and projecting out to a ten-year level, they derived pre-tax replacement rates ranging from 29 percent to 46 percent for the five states. Our NASI Study Panel measured this against a two-thirds replacement rate and said, you know, there might be a problem here. We didn't say we were certain there was a problem because of several issues.

Some were analytical issues. How do you treat missing data, those with zero earnings? Are they missing or are they out of the labor force? If they're out of the labor force, why is that? Is it because of the injury, or for some other reason? The two-thirds standard itself was under some question. The ten-year term was an issue. TTDs versus PPDs was a major issue. And there are lots of others that I am not going to go into.

What I'm going to do now is to switch to Oregon, and try to present to you what I've been doing with a small team at the Upjohn Institute for the last two years since the publication of that book. We chose Oregon primarily because none of those other authors had published anything about Oregon, and it was in that RAND study. So I knew data existed, and in particular that they had matched worker's comp claims out to earnings data, which is not an easy thing to do. So I said, well, I'll just grab the Oregon data and do some sensitivity analysis and publish it. Two years later, we're still doing analysis and we haven't published anything yet, although I have made a couple of other presentations.

What this slide shows is the earnings of uninjured workers – a 10 percent sample from the state of Oregon. It's hard to see but it's that blue-green line that doesn't have the data points plotted on it. And then I array those that suffered three to seven days lost time (this is payment of three to seven days lost time); eight to 30 days; 31 to 60 days; more than 60 days; and PPDs. And it's pretty clear, I think, that they line up hierarchically. The 60 days and greater group apparently suffers greater earnings losses

than the PPDs. But like the RAND study, what this shows is that the earnings never do recover to what the uninjured group earns. In other words, there has been some slippage at the time of injury, and then there is a parallel growth here for all the groups, but the earnings gap is never closed. So somehow, that time that is lost from work is never recovered, so that those workers are always suffering wage loss.

To make that clearer, this slide shows you the difference in earnings for these various groups by injury duration. It's not huge, but we're talking about \$350 to \$400 per quarter five years after the injury, for people who were off work for 30 days due to a compensable injury. That just doesn't seem rational to me. It seems too large. And just a quick look at the medians, because there is one suspicion that it is just a few people who are suffering huge losses and they are pulling the whole distribution up. But the medians look very similar; so it's not just a few outliers.

I don't want you to spend much time looking at these real replacement rates, but I will just make two quick notes about it. Oregon spent a lot of time in the late '80s trying to adjust the worker's compensation benefit formula to make sure that workers with more serious injuries got more benefits, and that others didn't. And that is reflected here in terms of the replacement rates. These PPD replacement rates of 153 percent, remember these are the same workers that got 42 percent in the RAND study. And that is the same result except that this is a five-year group and the match was not done exactly the same way.

But here's the point that I want to make in three different ways. The first column here shows the percent of those injured workers who had no earnings losses, when you take that five-year window. Now, this is giving the worker's compensation system the benefit of the doubt, saying let's just take what they were earning before they were injured. Let's look at what kind of earnings they had in the subsequent five years. Forty-four to 60 percent of them had no earnings losses when we take that generous perspective. Let's look at the other side – what percent of all those injured workers had earnings losses that were replaced by the worker's compensation system at least at the 65 percent level? That's the right-hand column, which I guess shows that Oregon was successful in pushing benefits up to the more serious injuries, but it doesn't show very good results in my opinion.

A quick look at another issue from WCRI. This graph shows for a small sample of seven states the percent of workers who never returned to work for more than 30 days in the three years following their compensable injury. The red row here shows that number ranges from 10 percent to 20 percent – I'm not mentioning Texas because there were some special problems there - but 10 to 20 percent of injured workers did not go back to work in the three years following an injury.

In Oregon, we looked at labor force participation rates before the injury –and because of the sampling method, everybody had to be in the labor force at the point of the sample, so there is always this dip before and after. But after the injury, the dip is significantly greater, and again it seems to array by the seriousness of the injury. Here

are the gross differences; those with more than 60 days off work in their original injury spell are suffering about a 10 percent long-term labor force participation rate reduction.

My last comment, because my time is up, is that I don't feel very comfortable in saying much of anything about benefit adequacy at this point. I am concerned that workers' compensation benefits may not be adequate for either temporary or permanent injuries. I am even more concerned that many injured workers seem to be leaving the labor force. Getting people back to work has come to be a bigger issue in my mind. And what we don't know, of course, is exactly why, and we really need more investigation into this. Are these voluntary retirements – to some degree – or are these people who are forced from the job because of their work-related injury.

Thank you and I'll be happy to take your questions when we get to that point.

(Applause.)



## **New Empirical Methods to Tie Partial Disability Benefits to Lost Wages**

Frank Neuhauser, Researcher, Survey Research Center, University of California, Berkeley

FRANK NEUHAUSER: Good morning. Thanks for the opportunity to be here. I know most of you thought you were going to get the young, cool, handsome Bob Reville – spiky hair, \$1,200 suit, cool glasses, and you got stuck with me. But Bob assured me that this was NASI and it was substance over style. (Laughter.) So you could have Bob or me – Angelina Jolie/Katherine Hepburn – young, vibrant, lovely – sophisticated, intelligent, dead. (Laughter.) Now, the advantage, of course, is dead people give very short presentations.

Also, one qualification: Bob agrees with everything on the slides, but not everything that I would say, so you know, if I make a political faux pas, that's not Bob speaking; that's just me speaking. So he wanted me to be sure to be careful, and I'm not always careful. So nothing I say can be taken as Bob's words.

RAND did this work. I helped RAND with some of the work. The Commission on Health and Safety was instrumental in funding this work, and it began quite a while ago, even before the crisis that we had in the worker's compensation system in California. And the driver for that, as people have made clear already, permanent disability is a very important part of the worker's compensation system, and it's meant to protect the most seriously injured workers. These people have the long-term disabilities that we see, the substantial wage losses, and often-substantial non-economic losses such as pain and suffering. And that's what the system is meant to help compensate.

At the same time, these are the cost drivers, especially in California. Permanent disability cases represent about 90 percent of all the indemnity costs and 80 percent of the medical costs. In California, permanent disability was about 30 percent of the total benefits paid before the reforms, which is substantially higher than most states. I think it's also the most controversial area of worker's compensation and benefit payments. And that controversy was really coming to a head in California, partly because our benefits were high and the outcomes were poor.

The commission funded work to look at how we evaluate and compensate permanent disability. Most permanent disability systems convert the permanent disability by rating the disability between 0 and 100 percent. That measures the extent to which the person is impaired or disabled. And then, these ratings are used to determine one, whether somebody is eligible for permanent disability; and two, to try to target benefits at those that are the most disabled. And here, let's distinguish between disability and impairment. The ratings systems, at least in the RAND's perception, and I think many of the people here, are meant to compensate disability. So how does somebody's impairment interact with the workplace as opposed to how much of the range of motion have they lost? What is the consequence of that loss of range of motion on their ability to earn a living?

And finally, a good rating system might be seen as one that reduces disputes. So if we can simplify the rating system and reduce disputes, I think most people would consider that a good thing.

Well, let's look at worker's compensation in California prior to the reforms, and this is the work that the commission and RAND did in the late '90s and early part of this century. This is a look at the percent of time lost cases that received permanent disability across the five states that Allan Hunt referred to – California, New Mexico, Washington, Wisconsin, and Oregon. California had by far the highest percentage of cases being compensated by permanent disability. Somewhat over 40 percent of our time lost cases receive some form of permanent disability payment. Oregon is the only state in this group that is close, and the other states come in at half or a third.

At the same time, California had by far the highest fraction of lost time cases that involved an attorney or, we might say, a dispute; this is considerably more than any other state, even Oregon. In California around 30 percent of all of its lost time cases – this is temporary disability as well as permanent disability – involved an attorney in some form. And just going back a slide, let's think about whether the degree to which California compensated a broader range of injuries might have led to this issue of more attorney involvement. Attorneys might be necessary in order to resolve very difficult cases that are at the margin of compensability in terms of agreement between employees and employers. And that might be one of the reasons that California had such a large attorney involvement.

At the same time, California's replacement rate, the proportion of lost wages replaced by worker's compensation benefits was only in the middle among states. You saw in Allan's presentation and some work that John has done have shown that during this time, California had the highest permanent disability benefit payments, but was among lower or middle in replacement rates. And what drives this? This means that our losses related to permanent disabling injuries were substantially higher than other states in the study. So it's not just the benefits you pay; it's the way the system drives losses. And some of that has to do with return to work. California had fairly poor return-to-work rates, and again, that might be because of litigation over worker's compensation issues or the broadness with which we define permanent disability.

In 2004, California had the highest worker's compensation costs in the country, 50 percent above the next closest state. RAND had results showing that benefits were inadequate and return to work in California was particularly poor, and there was increasing stakeholder pressure on reforming this system. And this was where the commission stepped in to fund discussions of exactly how to improve that system.

So I am going to talk about a couple of things related to that study, and the first one is RAND's evaluation of permanent disability ratings in California. There are really two big differences between the 37 states that used AMA guides and California, and actually between California and most states, in general. California had two sets of criteria. The first one was a set of objective criteria such as loss of range of motion,

which you could also add a subjective category that involved pain. And then, these were modified by age and occupation.

And the AMA guides rely largely on objective criteria. And if I had to draw a distinction between these two systems, the biggest one was in this area of work capacity guidelines, so we talk about what the impact of this disability is on your ability to work, and we define that in more general terms rather than medical terms. And one of the biggest areas is California had a substantial number of cases that involved permanent disability for prophylactic work restrictions. This means it is not because you can't do a particular function or that it hurts to do the function, but that if you do this function, you're likely to develop some kind of injury or impairment. So you don't have it now, but doing this could injure you. That would be compensated in California. It's not typically compensated in other systems.

So the RAND study for the Commission involved matching about 300,000 cases. We have permanent disability ratings going back for almost a decade and a half, involving something in excess of a million and a half ratings. And we match these to wage loss. And we think that wage loss should match your level of permanent disability, which is your level of compensation. So we would like to see that permanent disability payments are matched well to the level of disability, and also that there is limited level of dispute over the level of disability.

Here is a look at our results. This is looking at four different types of impairments: shoulder, knee, loss of grasping power, and back. And we divide each of these sets of impairments into groups of about 5 percent ratings, like from 1 to 5 percent disability rating up to 36 percent and above. Fortunately, those groups from 36 percent are fairly small. And you can see that on a first category, higher ratings have greater wage loss, so each of those columns represents the percent of wage loss five years after the injury, experienced by these workers against controls. So we do see that workers that are given higher ratings have greater wage loss.

But where this system fails substantially was that workers with different kinds of injuries – say a back relative to a knee – received very different levels of compensation relative to their degree of disability. So if you look at back injuries that got a rating of 21 to 25 and related compensation had about twice the wage loss than workers with a knee injury that got the same level of compensation. Moreover, it's not on this chart, but psychiatric injuries, which California is fairly generous among states in compensating with a lot of restrictions, looked dreadful in this picture. Not only do they have large wage losses, but they also have consistently large wage losses that are unrelated to the level of compensation or rating.

A second thing that the study looked at was the degree of disagreement between two parties in this system. So this is when there were two ratings proposed by the applicant and defense. The average rating for the applicant was about 36 percent for the same case, and the average rating for the defense was about 27 percent. And that difference is actually larger than these numbers suggest because there are a fair number

of times that the applicant rating would actually come in higher than the defense rating. There was that much ability in this system to differ on the nature of the ratings. So a substantial fraction of cases have higher disability ratings handed in by the applicant's doctor, so some of these cases can have staggeringly large differences in the perceived disability by the two parties.

But let's just look at one very important aspect of the reforms that were championed by both parties that you see on the podium and on the head table here, Angie and Bill. And that is that return to work is key to reducing worker's losses when they suffer permanent disability. This is looking at the average level of permanent disability for people given ratings in these ranges and the average level of disability for workers that return to that at-injury employer for just one year, for just two years, for just three years. And you can see that if you return to your at-injury employer, even if it's just for one year after work, your losses are substantially less – about 20 to 50 percent less. If you are at your at-injury employer two years after injury, your losses are yet less. And if you're at your at-injury employer three years after injury, your losses are much less. And California has very miserable return to work rates, and miserable return to the at-injury employer rates, which accounts for a substantial fraction of why our benefits might be high, but our replacement rates are low.

And again, you might think that a system that requires a great deal of litigation in order to resolve issues of permanent disability might result in problems that we see in California. It's unlikely that a worker that sues their employer over the level of permanent disability or its existence is going to maintain an employment relationship with that employer; at least it's much less likely. I mean, anybody here who sued a friend or relative or business partner knows that relationship is pretty much over. (Laughter.)

So RAND recommended to the Commission that we adopt a consistent underlying basis for the ratings, one that would pay different types of impairment and disability the same level of indemnity if they suffered the same consequences. So knees and shoulders should receive the same level of benefits if they have the same consequences. And it has recommended that a change in the rating system be combined with a two-tiered benefit system giving incentives for employers to bring workers back, and incentives for workers to go back to the employers. So an employer paid less in permanent disability if the worker was back at work. We've heard this a million times. The worker never lost a day of work; I've paid him disability benefits. Why is that? In this case, there is a substantial premium – when the law was enacted, they pay 15 percent less if the worker comes back to work and they pay 15 percent more if the worker doesn't come back to work. So there is a differential of 30 percent, which turns out to be approximately the differential between workers that return to their at-injury employer and those that don't in terms of their subsequent wage loss. That wasn't by accident, by the way.

So there are two approaches to defining permanent disability payments that are typically used. The first one is what California was doing, which would have been a prospective payment system. We decide that if you have a particular type of injury,

we're going to pay you x dollars. That's often criticized as being unfair to workers, because there's a lot of differentiation in the way in which a worker's injury may interact with their particular job. And often, we have litigation trying to resolve that issue in California, and that's a criticism of this one-size fits all approach. Another approach is the wage loss approach that retrospectively or concurrently pays people disability benefits if they're suffering losses. The criticism for that is that it tends to encourage people to not return to work. Their benefits go down if they're back at work. There is sort of a negative incentive there.

But RAND's recommendation was that they could improve both of these systems by using wage loss data, especially from large samples like this, to craft a system that more accurately paid disability benefits based on the kind of disability the person had and the nature of his or her work. And that was the basis for these very large disability data sets and the work by the Commission.

Now, one question is, what happens when you actually take these data and you go to the legislature and a law is enacted? This is the law that was enacted in California. And one thing that is unique here is that it actually adopted the RAND findings as a standard for designing a system. It said when you design a system, you're going to base it on RAND's data plus other data that would be appropriate. And it was meant to pay for diminished future earnings capacity, and it adopted return to work.

Unfortunately, and I think that Angie and Bill Zachry will deal with this in their discussion of this, I think that there was a good deal of misunderstanding and imprecision in this legislation and the legislature didn't provide complete guidance as to how to implement this. So one question is, did they mean to peg permanent disability payments in the old system to where they were prior to the introduction of legislation, but maybe change the way they were distributed among workers? Did they want maybe to peg them to proportional wage loss and make them equal to proportional wage loss?

I kind of disagree with Ed Welch on this point. He has this orotund voice that is absolutely convincing when he is talking, and I always nod my head. But in fact, I think there is a great deal of disagreement about what is adequacy in terms of permanent disability payments. Is it 80 percent? Is it 80 percent of five years loss; 80 percent of ten years of loss? Should it be greater than their loss? I mean, these workers not only suffer economic consequences; they suffer physical consequences. I think there's still a great deal of disagreement about what adequacy should be. And as an empiricist, I can't answer this question until the political folks answer the question of what they think is adequate and how they want to map these systems. And I think that's the basis for a lot of lively discussion, and I hope we hear something from Angie and Bill on it.

Also, there was no crosswalk between the AMA guides to accurately peg these wage losses, and the timelines for the implementation were quite short. The legislature set very difficult timelines for the regulatory agency to meet.

So now let's look at what those reforms did in terms of the adequacy of benefits. Remember that we were in the middle level of adequacy prior to the reforms. Well, first, they did reduce employer's costs by 60 percent. The average premium was \$5.39 in January 2004; it's now \$2.03, at least for the pure premium rate for administration costs. This is a substantial reduction in employer costs. The rating bureau estimates that there was a 38 percent reduction in the payment of permanent disability benefits. I disagree with this estimate. I think you'll see why. I think the reduction in permanent disability benefits is closer to 65 percent.

The average rating given to an injured worker with a permanent disability, when they received a rating, was a little over 40 percent less. Under the pre-2005 schedule before reform, workers that were unrepresented by a lawyer got close to a 20 percent average permanent disability rating. Now, they get approximately 11.5 percent, about a 40 percent reduction in the average. And we see that for represented workers as well. That's the difference between a summary and a consult. In terms of dollars, we pay progressively more dollars for higher percent disabilities, so the dollar impact of this is larger. We've seen almost a 55 percent reduction in dollars paid to the average worker receiving a disability benefit that is not represented by attorney, and 50 percent reduction for those represented by an attorney. Very substantial reductions, this is now over almost 18 months of research the commission has done in connection with the rating bureau and the division of worker's compensation.

I want to say one more thing that was touched on this morning related to this. California did something very unique when they adopted this new schedule. They adopted apportionment of permanent disability to causation, meaning that when we establish permanent disability for a case, the doctor is also supposed to apportion that disability to non-occupational causation if that's appropriate. This is a very unusual, and is, I think unique, to California. And it's meant that about 11 percent of workers are getting their disability benefits reduced even more than you saw because of apportionment. And the outcome of that is a reduction of about 5 percent in their overall benefits. This is particularly contentious. I think the parties that negotiated this will have something to say. I think it had something to do with not setting causation as the threshold level for getting in the worker's compensation system, but still giving employers some release from this issue of non-occupational causation.

So I know my time is up. California is leading the way in this process. There are many issues that remain to be resolved. One of the most important issues is the extent to which these reforms, by simplifying the system – I think that's clear – has reduced litigation, disputes between employers, and maybe return to work. If it improves return to work, that means we've reduced the losses workers face and consequently, the cuts in benefits might not have been so dramatic in terms of replacement rates. Thanks very much.

(Applause.)

## Commentary

Angie Wei, Legislative Director, California Labor Federation, AFL-CIO

ANGIE WEI: Good morning. I've always wanted to say this. I want to thank the academy for having me this morning. (Laughter.) I also want to acknowledge, off the top, Christine Baker, the executive officer for the Commission on Health and Safety and Worker's Comp. Christine, in my opinion, is one of the hardest working and most effective public servants in California, and I want to thank you for having me here. I have to acknowledge, of course, Tom Rankin, a past president for the state labor federation in California, who was the font of knowledge in representing workers and injured workers in our state.

One of the things that Tom Rankin taught me as I started trying to pick up the expertise he had in worker's comp is that we have to be data-driven; too often anecdotes drive our public policy. And anecdotes are very powerful, but what really should drive our decisions and the positions that the state labor federation takes on legislation and policies are the data, and that's why I feel especially grateful to be here at the academy and sit on the commission, because the data that you provide and the research that you do really help illuminate the policy discussions in which we're engaged.

I want to start by saying in California, we at the State Labor Federation really believe in worker's comp; maybe not in a lot of other issues. But in worker's comp, the employees and the employers do share the same goals for worker's comp outcomes. We think that these two parties are the two principals in a worker's comp system. Everybody else is a vendor. It doesn't mean that they're bad people. But let's face it; they have a financial interest in the system. So we want to do as much as we can to work with the employer community because we do think that we have shared goals.

Bill and I worked hard this year to regulate and impose a fair fee schedule on doctors dispensing prescription drugs, and after a good two years of hard work – why we had to work so hard on such a clear issue is still kind of beyond me – we are going to get to a point where we will have a fair fee schedule for doctor-dispensed prescription drugs. Bill, I want to acknowledge also, was also critical on behalf of some employers to help us maintain our own right for some of us in California to see our own doctors under the pre-designation system. And while that right was supposed to sunset in April of '07, we did get Governor Schwarzenegger to assign a bill to extend that right to December of '09. And there are parts of the employer community who I think are reasonable who helped us make that happen. And I want to acknowledge and thank him for that. Bill and I will likely disagree from here on out on permanent disability. (Laughter.)

Two other final opening comments from me: we live in a term limited situation in California and probably in a lot of your different legislatures, and on term limits, there is a lot of churn, both at the legislator level as well as the staff level. We've lost tremendous expertise in social insurance programs and in worker's compensation. And these new legislators come to town, they hear a lot about worker's comp and they all want to bang a home run with big changes in comp, based on anecdotes. And that's why

we need the data to make rational and reasonable decisions, because we've lost so much expertise in our state house, I believe, in social insurance programs.

For the state labor federation, we like to consider ourselves as leaders in helping contain costs in worker's compensation. I talked about vendors in the system. We have all kinds of vendors who try and introduce bills to increase the reimbursement rates and the fee schedules. You know, they provide durable medical equipment, specialty doctors, pharmacists. You name them; we've got them – probably like you do in every other state. And we try to be very consistent on the positions that we take on legislation that is introduced by some of these stakeholders. It has to be data-driven. If you want change in the system, if you want to justify a fee increase or change in your reimbursement rates, show us the data for why it's needed and then we'll make an informed decision.

I think that there are certain employer trade associations that have big tents, and represent a variety of interests, not just pure employer "I-pay-the-premium" interests. They represent the insurers. They represent the durable medical equipment providers. They represent the doctors. And so, in my opinion, some of these trade associations, like the chamber of commerce, don't take the right positions on these issues that drive up costs. We want to stand in the way of cost drivers in the system because we want the system to be fair and for employers to pay fair premiums, but we also know that as costs go up, in the end it comes off our backs. As costs go up, the first place people often look is at injured workers' benefits and how to slash those benefits to retain costs. So we want to play an important role to make sure that people are getting paid fairly – people, the vendors – so that in the end, it tries to save the benefits of the injured workers and we have to look beyond some of these employer trade associations. We're lucky to have Bill who represents an employer, a single employer, as opposed to some of the larger, big umbrella, big tent, trade associations who may not have the best employer interests at heart.

With that being said, I want to start talking a little bit about permanent disability. And I'll talk about the policy and about the politics. To put the permanent disability new system that we have adopted in context – Frank started on this – we see in total about 65 percent cuts in total dollars in permanent disability, 5 percent from apportionment that Frank described earlier; we've cut the number of weeks on the low end of the rating system and that equates about 9 percent of the dollars in the system. We haven't talked anything about the zeros, those claims that don't get rated under the AMA and fall out of the system altogether. And that's going to total about 15 percent of the total dollars in the system. And then we have the actual permanent disability ratings schedule, which as Frank closed his presentation, it's about 50 percent cuts in total dollars.

Aggregate those four changes in permanent disability – I'm not a mathematician – it adds up to something in the 70s for me, but Frank tells me it's 65 percent cuts in dollars because of cumulative impacts across the board or something. But if you take all those factors into place, the total is 65 percent cuts in dollars in permanent disability.



The labor movement in California was neutral on the Schwarzenegger reforms adopted in 2004. We would have never been neutral on a bill that would have taken 65 percent of the dollars out of the system. Governor Schwarzenegger and his negotiators told us that they did not mean to cut benefits to the severely injured workers, to the permanently disabled workers. And Schwarzenegger made those promises, and that's why we and Tom Rankin insisted that we write into the labor code statute, the reference of the RAND study; if we base things on real, empirical data and wage loss data, we would have a fair system. We recognize some benefits would go up and some benefits would go down based on the type of injury. But we never anticipated a 65 percent cut in the dollars in the system. And when the administration was putting together the new rating system, they told us, oh, this will not end up in 50 percent cuts that you guys are estimating. And I was taught to never say, I told you so; but on this one, we told them so. We told them it would be 50 percent cuts, and actually we were right.

As we look at permanent disability, a couple of things that I was reminded listening to Frank and Mr. Hunt. For us, return to work is the best outcome for injured workers. That's the way that we can get maximum wage replacement. We don't support keeping injured workers off the job. If they can and are ready and able to go back to work, we think that is the best outcome for them.

Secondly, as Frank outlined in his presentation, and I'm remiss that I didn't bring a copy of it with me, the labor code was amended to take into account the RAND study. We went to the AMA guys and we had adjustments – age, occupation, and this notion of the future earnings capacity, the FEC factor. And that future earnings capacity was supposed to be based on the empirical data of the RAND study and to do the crosswalk to wage loss. The regulation that was adopted by this Schwarzenegger administration never did that crosswalk, never tied it to the empirical wage loss data, and that's why we see the 50 percent cuts in the rating schedule.

Let me say this: at the end of the legislative session, the president of our state senate, Don Perata, moved a piece of legislation that would have increased the number of weeks of benefits for permanently disabled injured workers. It was a bill that we supported even though it might not have been, in our opinion, the best approach to restore fairness in the permanent disability schedule. We saw it as increasing the number of weeks for extremely low benefits. The better solution we would have liked was to actually adjust the future earnings capacity. But we supported it. Partially why I think our legislative leadership took that approach is because Stanley Zax of Zenith Insurance Company supported this piece of legislation. He thought that if we restored and increased the number of weeks for injured workers that the system could absorb that amount, and maybe decreases in the employer premiums may have slowed down by less than 5 percent. So we actually had an insurer support this legislation with respect to the AMA guide with these adjustors for age, occupation, and the future earnings capacity, because we agreed with the notion that we wanted a more consistent and more predictable permanent disabilities system.

But with slashes in benefits this deep, I think we're moving away from that stated goal. We're not going to get consistency and predictability because I think some of the permanent disability raters themselves think that these cuts are too deep, and may be trying to find ways to adjust them as much as they can. The lawyers who represent the injured workers think that these cuts are too deep and are going to find every methodological way to try and get the ratings increased. Some of the judges in the comp system are going to think that these cuts are too deep and find ways to adjust upwards as well. So while we try to get to the goal of consistency and predictability, having such deep cuts in the system I think actually works against that goal.

I see the time clock ticking so let me just close in terms of the politics of the situation. You know, Governor Schwarzenegger kind of pushed the legislature and all the different stakeholders to a position of having to face this reform by kind of holding up the threat of a ballot initiative over our heads. And he used that way to get to this deal. And, I would argue that this was his only legislative success in the first two years of his administration. Everything else failed; we killed everything else or it never got off the ground. And so, to be able to tweak the permanent disability system meant that they would have to admit that they made a mistake, and that's a pretty uphill battle to push to get the administration to admit that they made a mistake when he's up for reelection. And for us, it became his first promise broken. He promised not to cut benefits for severely injured workers and clearly that has been broken. So Governor Schwarzenegger is out on the campaign trail now touting his worker's comp reforms in every commercial and every piece of mail that they have. We, of course, are touting the 50 percent cuts in permanent disability benefits as another reason why we should not send this guy back. And in the end, injured workers are suffering.

Now, I understand that the administration's division of worker's comp is undertaking some studies to try and tie wage loss to return to work rates to look at whether or not in their opinion the permanent disability system needs to be tweaked. And for us, the CHSWC commission in California has come up with a methodology that takes baby steps to bring some justice back into the system and some fairness back into it. The policy question in our minds is should we let injured workers suffer these deep cuts for as long as it takes to do these studies or should we make minor adjustments on a regular basis so that we can bring a little bit more relief to them? And we think that it's important to make the investment now and make these changes rather than wait for however long it's going to take to get these empirical studies done. I understand the RAND study based on ten years of data. We don't have time to wait. We can't wait ten years to try and restore some of these benefits. So we'll come back next year, regardless of who is in the governor's office and try and do both regulatory and legislative work to restore these benefits. Again, I thank the academy.

(Applause.)

## **Commentary**

**Bill Zachry, Vice President, Corporate Workers' Compensation, Safeway, Inc**

**BILL ZACHRY:** I would also like to thank everybody for the invitation to be here. I certainly appreciate the opportunity. Frankly, I find this group rather intimidating because I really consider myself sort of a claims geek. With all the academics and other esteemed folks here, speaking before you is something that I was quite nervous about.

I want to complain to Angie Wei a little bit. I was going to use the immediate provision of benefits as part of the incentive to get labor to work with Safeway to implement an alternative dispute resolution. Labor took it away from me when it was implemented as part of SB-899; I am a little miffed that I don't have that as an incentive to get our alternative dispute resolution up and running.

It was the right thing to do, and I think it's very important that we do the right thing for the injured workers.

Out of curiosity, how many here have been injured on the job? One, two, three – a few of you. I started my career as an injured worker. I was a playground director and I went to break up a fight between two girls. Eight guys attacked me. The knife went through my back, through the lung, through the diaphragm, and through the spleen. I was in the hospital for a week.

I know what it's like to be an injured worker. It's ironic to me that I end up as a workers' compensation claims professional. I know and handle a lot of claims. It is personally extremely very important for me that we do the right thing for the injured workers.

I agree with Angie in terms of anecdotes driving public policy. Research should drive it. I am learning more and more about research as the Chairman of the California Fraud Assessment Commission, because we're trying to research how much fraud is in the worker's compensation system. You can't really do that kind of research on a straightforward basis, because if you go into a room – we'll try it here – all right, how many of you are committing worker's comp fraud; raise your hand. (No one raised his or her hand)

The research is pretty difficult. Professor Malcolm Sparrow out of the Harvard Kennedy School of Government has a process in place to identify fraud, and we're trying to use his process to research the over and under payments on the medical arena in workers' comp in California. Frankly, it's amazing how difficult it is to get consistent and accurate data even though there are some groups who have been working very, very diligently on data collecting. So I am getting educated on that piece of the puzzle.

The word that has been bantered about a little bit here that I want to talk about (or focus primarily on) in terms of worker's compensation is the word **incentive**. I think that is the key concept for worker's compensation that is undervalued.

You need a balance between the adequacy of the benefits with the incentives in the right place to get the right outcomes. I'll give you a specific example of that: We had a presentation here that talked a little bit about the 15 percent permanent disability up and down as an incentive for the employer to provide permanent modified work. The incentive should work both ways. If the employer offers a permanent modified position, then they get to pay 15 percent lower PD. If they don't offer that position, it's 15 percent higher. There are, incentives both for the employer and the employee with this process.

I would submit to you that even though the charts up there showed that it's a 30 percent net, the way the 15 percent process works is not good enough. I think it should be much, much higher up and down, because you need to get the incentives to the employers. Insurance companies provide a barrier between the process and the incentives. Incentives have to go all the way down to the employer level.

I have another comment on incentives. The incentive for the applicants' attorneys – hi, Doug – (laughter) – is to make sure that their client is as disabled as possible in order to increase the amount of benefits that are paid. And that's absolutely wrong. We have to figure out how to do a process that doesn't have incentives not to return to work, and right now, the way it works nationwide is the incentive is for the applicants' attorneys to make sure that their clients are disabled. We've got to fix the incentive process so that people are encouraged to go back to work and employers are encouraged to take them back. And we're missing the boat on that.

The other piece of the puzzle is that there is an inherent assumption that small employers can't or won't do the return to work process. And I'm going to go back to my first comment, which was anecdote versus research. I don't have any research on that, but I haven't seen anybody's research supporting the assumption that smaller employers cannot physically accommodate injured workers back at work. My anecdotal discussions with small employers indicate they have a closer relationship with the employees, and they bring them back. We're potentially missing the boat on that one. We need to bring people back to work and then everything else becomes moot in terms of benefit adequacy, unless you really are severely disabled.

I want to talk a little bit temporary disability. It's very interesting. In California, the public safety officers have a law that allows them one year of salary continuation. Incentives are in the wrong place again to get some of those folks back to work.

I have found, in my experience of administration of cities and counties and public safety officers, is that the younger folks who get injured, generally speaking, come back to work fairly well. The real problem is when the employees get later on in their careers and they're just tired.

I'm not going to get into the question of why is it good to get exercise but bad to go to work because you break your body down. I still haven't figured that part out yet, but that's a secondary issue.

At Safeway we have what our medical director calls "a bolus of claims," which are, frankly, the most difficult claims we have. These are the claims by employees who are within three to five years of retirement and just are tired of working. They are looking for a bridge so that they can get into their retirement.

With regards to the issue of PD replacing lost wages. Does anybody remember the Batman show? All right, riddle me this, Batman. How much are women paid compared to men in today's marketplace? Seventy-seven percent; it was in the Wall Street Journal. The question is, are women paid less because they're pulled out of the marketplace for child bearing, or are they paid less because they're just not paid for the same work that men do? I think there's a lot of social issues on that in terms of all of the statistics we saw in terms of the overall uncompensated wage loss from industrial accidents. There are many, many reasons behind the numbers. Some of the people pull themselves voluntarily out of the marketplace because they don't want to be in the marketplace. Some people are at retirement age, and I think that information was not considered.

I think these are the issues that we need further research on. We have to find out what are the causes for the alleged dip in earnings post injury.

More importantly though is we have to focus in on where are the incentives and how do we fix the incentives so that the entire system is focused on getting the people back to work.

The large increase in workers compensation costs over the past few years caused employers to focus on safety. It scares the tar out of me that with a significant drop in costs might result in less of an attention to safety. That's something we need to keep an eye on, as well.

In terms of the AMA guides in California, we've had a significant problem with implementation because it was such a radical change. We have most of the doctors who have no idea on how to rate. I've seen some reports that say 80 to 90 percent of the reports coming in are inaccurate. We still have a long ways to go to create consistency. I can tell you on the front lines, when we're rating out reports, it's a very, very hard thing to do when the doctors don't know how to write up the reports and the claims adjusters don't know how to rate them. It's a learning process that will take at least another year, probably two or three more years for us to really get consistently good at rating the PD system.

The governor and his team are doing research. I don't think they're going to wait too long in terms of making necessary adjustments for the more severely – not injured, but disabled workers in terms of the reimbursement rates in that level.

As far as adequacy is concerned, the way to create adequacy within this entire system is to get people back to work, and we all need to focus on that. I think that's one of the areas that we need incentives in terms of the indemnity rates, in terms of the way we pay things. As far as I'm concerned, the PD system in California should be about 65 percent up or down depending on if the employer brings him back to work, and we need some way to bypass the insurance company, and get the incentive straight to the employer's bottom line, so that they'll see the benefit one way or the other in terms of making return to work a process that works.

We've got to put incentives in the right place to get people back to work and we don't have it yet. It's a good start; it was a great start. But I think that the 15 percent just doesn't cut it as far as really providing employers the fiscal incentive to make that happen. Thank you.

(Applause.)

## Discussion

MS. RENO: Wow, what a fabulous panel. We do have some time for questions or comments. And please step up to the mike and introduce yourself.

Q: Kalman Rupp, Social Security Administration. First, I would like to congratulate both of the authors. I'm not sure whether it's Frank or just Bob, but both of them were very good papers. And one of the reasons is that both papers used longitudinal data and earnings records and, in your case, a comparison group methodology. The only kind of general comment that I would have is that there are other outcomes you can look at, for example, mortality, which is a very objective indicator, or have outcomes that would be useful as far as future program participation in DI and SSI and other programs.

I have a more fundamental kind of question with respect to the RAND study. As much as I liked what you did, throughout your presentation, I was thinking about a way of looking at classification errors as two different types, one is incorrectly screening in someone who should not get the benefit; another is incorrectly screening out. And one, it seems like maybe you have looked at these two perspectives in the more detailed story, but insofar as policy implications are concerned, ideally, you would like to reduce both sources of error. But often time, when you change a system, then what you actually do is reduce one type of error at the expense of increasing the other. It's interesting that Social Security has gone through some changes where they have moved from a more medical, more quote "objective" model, to a more judgmental system, and that has been looked at by several studies as a major source of growth in the program.

But in California, let's say you have a mental impairments issue. It's very difficult to find objective criteria to correctly screen in someone with a severe mental impairment. So I was wondering whether in your follow-up studies of the new system, whether you look at this tradeoff or not?

MR. NEUHAUSER: There have been some efforts to look at this already, and you're absolutely right. And I think Allan is going to address this, and I'm going to use some of his data. We compensated substantially more cases that had temporary disability than virtually any other state. And the question is, was that wrong or were all the other states wrong? I mean, the difference was, it cost us more and there were probably a lot of disputes connected with it. But if you look at Allan's data, and some of the work that's been done by Bob Reville rather than me and some of his other co-authors, people that have long-term temporary disability, but did not have eligibility for permanent disability, turned out to have just as serious or sometimes more serious wage loss than people that were compensated for permanent disability. So they certainly had permanency of wage loss, but the criteria we used didn't define them as permanently disabled. And you saw that in Allan's data, people that had greater than 60 days temporary disability had wage losses on the long term that were equivalent to the average permanent disability case.

There's two ways to go here. It's an error where we're not giving benefits to people that have permanent disability. But it may be that it's just too expensive to deliver

permanent disability benefits to cases that are on the borderline. And that's, again, a political and social question for the people to our right.

MS. RENO: Okay, we had another comment or question here?

Q: Bryon McDonald from the World Institute on Disability. If you could comment as a panel, we all agree in this room that the nature of the systems of both worker's comp and social security is that if you show increased signs and symptoms, you get a bigger benefit. We actually induce people to leave the workforce. The other major piece of your panel is that data should drive the policy not the anecdote. The facts are we don't have return to work data that supports the incentives that you guys want to return to work. I would argue we're never going to get that data in the current environment because the systems are built to pay – and should pay – increased benefits to people with increased impairment. If we're not going to have that return to work data and we realize that the longer the separation from the workplace, the longer likely they're going to stay there, how do we move forward to reduce that detachment from the workplace without probably having that data in hand for the kinds of levels of reform that we need?

MR. NEUHAUSER: Big question. I'll start just on one side. We are trying to put together studies that identify the impact of increasing the speed with which people return to work or the likelihood that they return to work at all. Those studies are difficult, but we've made substantial changes in California along the lines, and maybe we can use those changes to get at this issue. And maybe if we highlight the importance that it's very important, then more states will use incentives.

MS. RENO: Allan?

MR. HUNT: I'd just like to add that we are like the guy who lost his car keys in the parking lot, and he's looking under the light because that's where he can see as opposed to where his car was or where he dropped the keys. We are victims of the availability of data, and this also goes back to Kalman Rupp's comment. So we have measurements of earning, because it's of necessity in an unemployment insurance system, and that conditions the research that we do because we've got to have something empirical to do empirical work on. But it's a terrible tragedy, and someone ought to be designing the ideal study, or at least a more ideal study to get at some of these things. We have very few studies of return to work really. The National Academy might be once place. And we need to understand this process much better than we do.

MS. RENO: Thank you. Bob?

Q: Bob Steggert, two part question. The first one is for Angie and Bill, and the second part is for Bob. Angie and Bill, with respect to the 65 percent PPD decrease in California, how much of that PPD was related to what is classically called the four-by in California? It doesn't happen anywhere else in the country. And for those that are uninformed, a four-by is essentially permanent partial disability stacking. The case starts as an orthopedic case. They get a forensic exam; it turns into a neurological case. They



get another forensic exam; it turns into an internal organ case. And then, they add the psych element on top of it. You've got four element of PPD stacked up for the PPD award. First part of the question.

Second part of the question for Frank, is that going to be studied from the standpoint of data in terms what we would consider to be abuse and excessive litigation and wasteful medical expenditures? Thank you.

MR. ZACHRY: Bob, I don't want to speak for Stanley Zax, but I was talking to him about projected savings out of the comp system, and he said even in his annual reports, he did not project very much permanent disability savings over the long run because he thought that the applicants' attorneys would figure ways to game it, and one of the ways is the multiple parts of the body under the new permanent disability system. You know, I've not seen a lot of that yet in the front lines in my particular operations, both northern and southern California, because I think it's a little harder to get the medical evaluations and the doctors who really understand that piece of the puzzle. And particularly when you have medical control through the medical provider networks, it really limits some of the mischief that used to be in the system.

MS. WEI: I don't want to be in a position, because Doug Kim is here for the applicant attorneys, to defend the applicant attorneys, but I feel that something has to be said. We're seeing more and more problems and we'll have a panel this afternoon on medical treatment and lack of access to medical treatment in California. And it's a shame that applicant attorneys have to put in a lot of time now to try and gain access to medical treatment for the injured workers and they don't get compensated for that. And so what we're seeing – as a business decision from them, I believe – is that more and more applicant attorneys are having to come out of the marketplace because they can't afford to do the work, because they're not getting reimbursed or paid for something that's a bigger part of the system, which is access to medical care.

MR. NEUHAUSER: And that final question was about disabilities that involve multiple body parts and Bob's description, stacking. The database that we used had a substantial number of claims that had disabilities to more than one part of the body or psychiatric and a physical disability, and we didn't look at those yet. We have done some preliminary work. It's a little more difficult to look at every possible combination because the data sample just gets smaller. It is large enough to do some of that.

As to a first approximation, people with more than one disability suffer more wage loss than two people with the separate disabilities. They seem to be more than additive. But there's a lot of work that needs to be done to look at exactly how that works.

MS. RENO: We have one final question. I hope it's short, because we are running a little bit over time. Is this one that can wait for another panel?

Q: This is a rhetorical question. (Laughter.)

MS. RENO: Great, the shortest of them all.

Q: I'm Jennifer Christian. I'm going to be speaking at lunch, but I'm not going to be speaking about this. I'm the project director right now for an expert panel for social security on how to make better use of functional and vocational expertise in the disability determination process. And one of our expert panelists' advice to social security, which I'm now realizing ought to be advice to this particular group, is have you considered what effect the system itself has on the perception of the applicants, about who they are, and what their future looks like? And that when you were showing the slides about the length of TTD correlating very much with long-term economic loss, if someone has decided that they are disabled, that's going to have a profound impact on the way they perform at work and their job-seeking behavior. And for us to think that these questions are merely benefit entitlement or financial questions is taking a tremendously too superficial look at the impact that we're having on people and their expectations.

MS. RENO: Thank you. And a nice lead-in to our luncheon.

Last word then, Doug?

Q: I'm Doug Kim with the Applicants' Attorneys. We represent the injured workers in California. I think Mr. Malooly from the Washington State Fund made the fairest comment about what our people do. And that is that we deal with individual people with individual problems. We are not looking at macro-data to make our decisions. And because we are looking at individual people, our job is to get them the benefits to which they are entitled. We can't change the rating they get. All we can do is make sure that they are appropriately rated, and they get the benefits to which they are entitled. I don't think it's fair to call that gaming the system.

I also want to point out that in California, because we have such an incredibly contentious system, and as Mr. Zachry points out, there is so much litigation; there are so many disputes that very frequently the process of prosecuting a claim for an injured workers leads to additional compensable consequences. And we believe that it's fair that the workers are appropriately compensated for additional disability caused by the problems in going through the system.

I have a lot more to say about California. I'll do that on my panel. Thank you very much.

MS. RENO: Thank you. Thank you for your brevity. We now have a break for lunch. And let me just tell you the ground rules are we have about 25 minutes for networking while the Press Club staff comes in and set up these tables for lunch. So you can leave your materials here, but leave them on the chair; don't leave them on the table. And be back at 12:30 sharp. And join me in thanking our panel, of course.

(Applause.)

(End of panel.)