

WORKERS' COMP 101

Lunch-and-Learn
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WORKERS' COMPENSATION

Policy Foundations and Contemporary Challenges

WORKERS' COMPENSATION IS A VERY IMPORTANT FIELD OF THE LAW, IF NOT THE MOST IMPORTANT.

IT TOUCHES MORE LIVES THAN ANY OTHER FIELD OF THE LAW.

IT INVOLVES THE PAYMENTS OF HUGE SUMS OF MONEY. THE WELFARE OF HUMAN BEINGS, THE SUCCESS OF BUSINESS, AND THE POCKETBOOKS OF CONSUMERS ARE AFFECTED DAILY BY IT.

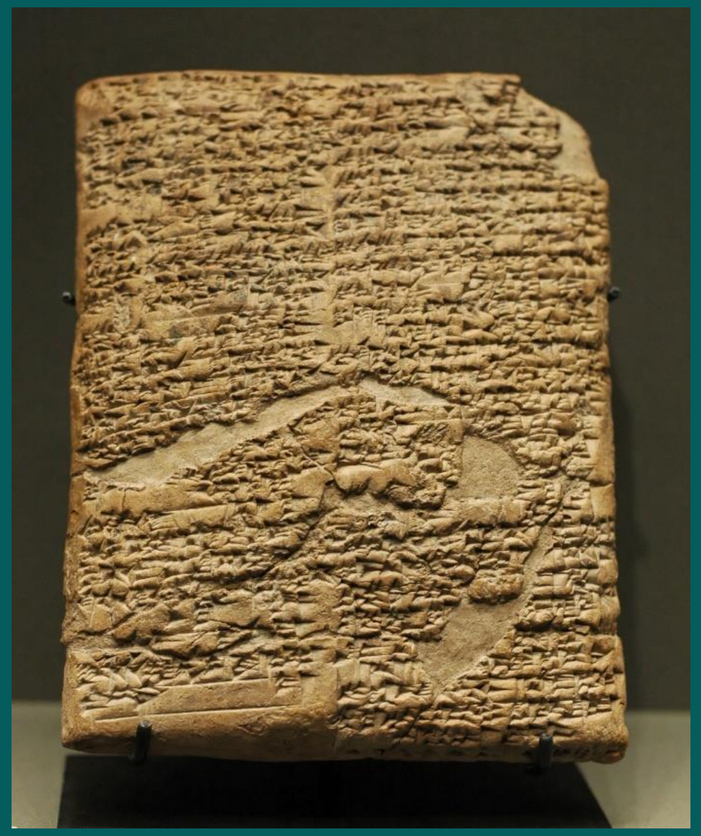
Judge E.R. Mills: Singletary v. Mangham Construction 418 So. 2d 1138

SCRIPTURES

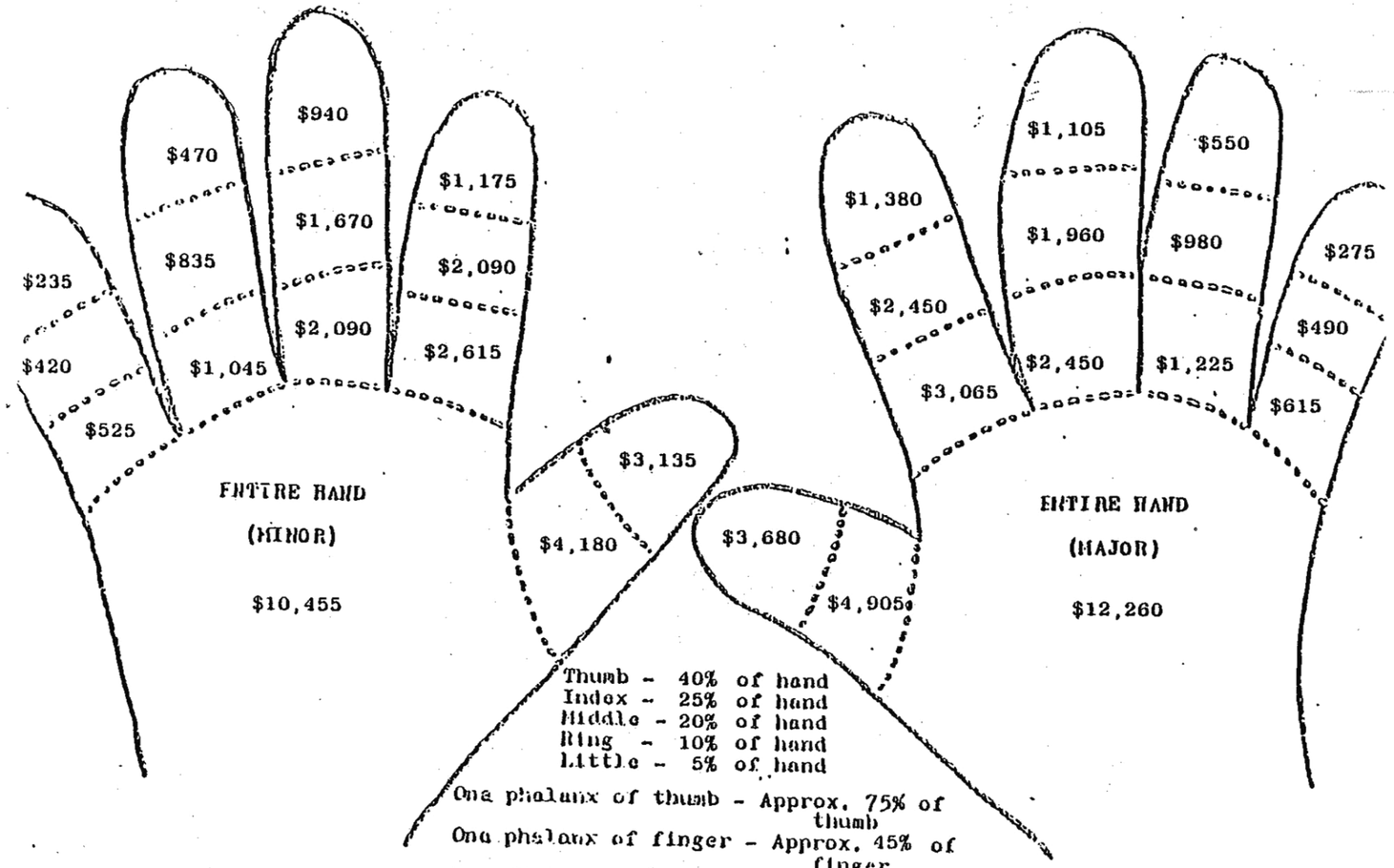
- Genesis: “On the sixth day, the Lord made the Heaven and the Earth, and all living things upon the Earth, and rested on the seventh day of that first week.” (Genesis 2:2-3)
- Hammurabi Code (c. 1754 BCE): Specified payment for specific injuries with different rates based on worker status.
- Hinduism: “… if a worker is harmed in service, he must be cared for.” (Manusmriti 8:291)
- Confucianism: Employers should care for injured workers as part of their duty to maintain social harmony. (ren, or humanness)
- Islam: “If anyone is killed by mistake, compensation is due…” (Qur’an 4:92)
- Judaism: If a man hits a servant and causes injury…he shall let the servant go free as compensation. (Exodus 21: 18-27)

According to Gregory Guyton in *A Brief History of Workers'* Compensation, Iowa Orthopedic Journal, 1999, in approximately 2050 B.C., in ancient Sumer (now Iraq), the law of Ur contained in Nippur Tablet No. 3191 provided for compensation for injury to a worker's specific body parts.

Under ancient law the loss of a thumb was worth one-half the value of a finger.



Chapter 572 - EFFECTIVE AND APPLICABLE
TO INJURIES OCCURRING ON AND AFTER
JANUARY 1, 1986



Thumb - 40% of hand
Index - 25% of hand
Middle - 20% of hand
Ring - 10% of hand
Little - 5% of hand

One phalanx of thumb - Approx. 75% of thumb
One phalanx of finger - Approx. 45% of finger
Two phalanges of finger - Approx. 80% of finger


Captain Morgan
ORIGINAL
SPICED RUM
Puerto Rican Rum with Spice
& Other Natural Flavors
RUM PRODUCED BY CAPTAIN MORGAN RUM CO., PONCE,
PUERTO RICO • 35% ALC BY VOL (70 PROOF) • 1.75 L


S.r HEN: MORGAN

PIECES OF EIGHT



Loss of thumb was worth one half of a finger, etc.

HISTORICAL DEVELOPMENT

The Grand Bargain

- Industrialization
- Limits of tort law
- No-fault systems emerge
- Employer liability tradeoff

CHANCELLOR OTTO VON BISMARK
Workers' Accident Insurance Institute for the Kingdom of Bohemia in Prague

Credited for first "modern" workers' compensation system, which also included relief from civil suits (exclusive remedy).



Franz Kafka, Senior Secretary of the Institute



Wrote about the absurdities of bureaucracy


STIHL



TRIANGLE SHIRTWAIST FACTORY FIRE

March 25, 1911



York Times.

THE WEATHER.

PRICE FIVE CENTS

141 MEN AND GIRLS DIE IN WAIST FACTORY FIRE;
TRAPPED HIGH UP IN WASHINGTON PLACE BUILDING;
STREET STREWN WITH BODIES; PILES OF DEAD INSID

The Flames Spread with Deadly Rapidity Through Flimsy Material Used in the Factory.

600 GIRLS ARE HEMMED IN

When Elevators Stop Many Jump to Certain Death and Others Perish in Fire-Filled Lofts.

STUDENTS RESCUE SOME

Help Them to Roof of New York University Building, Keeping the Panic-Stricken in Check.

ONE MAN TAKEN OUT ALIVE

Plunged to Bottom of Elevator Shaft and Lived There Amid Flames for Four Hours.

ONLY ONE FIRE ESCAPE

Coroner Declares Building Laws Were Not Enforced—Building Modern—Classed Fireproof.

JUST READY TO GO HOME

The Burning Building at 23 Washington Place.

Deaths of 146 garment workers one day after New York's Court of Appeals held its Workers' Compensation law as unconstitutional.





Scene of the fire

WISCONSIN NUMBER 1



CONSTITUTIONALITY UPHELD BY UNITED STATES SUPREME COURT

New York Central R. Co. v. White, 243 U.S. 188 (1917)

- The New York Workmen's [sic] Compensation Law (1913) upheld the Workmen's Compensation Statute.
- Issues:
  - Due Process
  - Arbitrary and Unreasonable
  - Equal Protection
  - Abrogation of Common Law
  - State's Police Power
  - Denial of Trial by Jury

THEORETICAL MODELS OF COMPENSATION

Tort, Social Insurance & Hybrid Approaches

- Tort model
- Social insurance model
- Hybrid model
- Tradeoffs

CORE OBJECTIVES

Income replacement, medical care, rehabilitation

- Income replacement
- Medical benefits
- Rehabilitation
- Administrative efficiency

REQUIREMENTS FOR A WORKERS' COMPENSATION CLAIM

- Employer/Employee relationship
- Personal injury
- Arising out of and in the course or scope of employment
- Disability (total or partial loss of earning capacity)
- Medical treatment
- Injury, disability, and medical treatment must be causally related to the injury.

BENEFITS

- Medical
  - Reasonable, necessary medical treatment subject to fee schedules, treatment guidelines and/or Utilization Review pre-approval.

- Indemnity (Wage Replacement)
  - Temporary Total Disability (TTD)
  - Temporary Partial Disability (TPD)
  - Permanent and Total Disability (PTD)
  - Permanent Partial Disability (PPD)
  - Impairment Rating for Loss of Bodily Function
  - Bodily Disfigurement
  - Surviving Spouse/Dependent Child Benefits in case of death from the injury

WAGE LOSS VS. EARNING CAPACITY

Competing models of compensation

- Wage-loss: based on actual earnings
  - *Problem: no post-injury wages*
- Earning-capacity: future potential
  - *Problem: speculative estimates*

CAUSATION AND PROOF

The central requirement for compensability

- Burden of proof
- Medical evidence
- Expert testimony
- Causation remains central

THE PROBLEM OF ADEQUACY

Does workers' compensation provide sufficient compensation?

- Anti-destitution purpose
- Benefits below tort damages
- State variation
- Persistent adequacy debate

SOCIAL AWARENESS OF GAPS?

Lessons from COVID-19 and Extreme Weather Events

- Few states have non-WC “disability” systems
- COVID presumptions adopted widely (shock absorbers)
- Partial disability gaps remain
- Future preparedness questions

EMERGING CHALLENGES

Causation, epidemiology, and Gig work

- Causation and “proceduralism” limit recovery
- Epidemiology skepticism (OSHA, too!)
- Worker misclassification
- Cost shifting to other programs

CONCLUSIONS AND DISCUSSION

Future directions

- Adequacy remains contested
- Mega risks strain the system
- Gig work challenges coverage
- Reform questions remain – Federalization?
- Opt out?: ERISA complexity

Q&A