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Two Rounds of Workers' Compensation Reform in Michigan

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By the mid-1970s Michigan's workers' compensation system for workers disabled by injuries or illnesses arising out of their employment was approaching a crisis.¹ Relative to neighboring states, Michigan's workers' compensation insurance rates had risen alarmingly after 1958 according to John Burton's employer cost statistics. Table 1 shows that from 1958 to 1975 workers' compensation insurance rates nearly tripled in Michigan, while they doubled in Illinois and Ohio and held relatively constant in Wisconsin and Indiana. Over this period Michigan's rates rose from 20 percent below average to 35 percent above average for the 28 states for which consistent data are available.²

Of course there was another reason to be considering reform in workers' compensation systems in the mid-70s. The *Report of the National Commission on State Workmen's Compensation Laws* was published in 1972. The appointment of that National Commission had reflected substantial congressional dissatisfaction with the status of

state workers' compensation systems. The Commission, after due consideration, found that state laws generally did *not* provide adequate, prompt, or equitable systems for compensating disabled workers. It offered a set of 84 recommendations for the improvement of these systems; 19 of these were deemed so important as to be "Essential Recommendations." The National Commission urged that if the states had not complied with this restricted list by July 1, 1975, Congress should take steps to guarantee compliance.³

Table 1
Standardized Insurance Manual Rates for
Workers' Compensation Insurance, East North Central States
1958-1975^a

State	1958	1962	1965	1972	1975
Illinois . . . . .	.514	.609	.624	.657	1.002
Indiana . . . . .	.410	.398	.430	.385	.417
Michigan . . . . .	.450	.694	.715	.914	1.238
Ohio . . . . .	.627	.813	.820	.885	1.109
Wisconsin . . . . .	.523	.556	.603	.505	.581
Region average ^b	.505	.614	.638	.669	.869
28-state average ^c	.571	.630	.676	.692	.914

SOURCE: John F. Burton, Jr., *Workers' Compensation Cost for Employers*, Research Report of the Interdepartmental Workers' Compensation Task Force, Vol. 3, U.S. Department of Labor, Employment Standards Administration, June 1979, table 12, p. 28.

a. For 45 selected insurance classes, weighted by U.S. payroll distribution. Entries represent the standardized percentage of payroll that would be charged for workers' compensation insurance coverage.

b. Unweighted.

c. Unweighted average for 28 states where NCCI data are available for each of the listed years.

This reform atmosphere was reflected in the appointment by William G. Milliken of a Governor's Workmen's Compensation Advisory Commission in 1974 to: (1) review the report of the National Commission and other federal initiatives in the occupational safety and health area;

(2) evaluate the adequacy of the Michigan system; and (3) "recommend legislation to alter or amend the existing laws to ensure a just, fair and equitable workmen's compensation program for Michigan."⁴ Unfortunately, it did not prove to be a feasible assignment. The letter of transmittal from Dean St. Antoine, Chairman of the Governor's Advisory Commission, began with the following paragraph:

It is with regret that I must inform you that your Workmen's Compensation Advisory Commission has been unable to reach agreement upon a comprehensive set of recommendations for the improvement of workers' compensation in Michigan. Every effort was made, but the obstacles were insurmountable.⁵

In essence, the report of the Commission consisted of a discussion of the issues, accompanied by recapitulations of the positions adopted by employer and employee representatives. The document does not suggest a "near miss" on negotiating workers' compensation reform; the parties were far apart on issues ranging from the definition of disability to the statute of limitations.

After this failure to negotiate reform in face-to-face confrontations on the Governor's Advisory Commission, efforts to forge a labor/management compromise on workers' compensation reform continued in the legislature. The most notable of these was Senate Bill 1285, introduced in December 1977 after extensive private discussions. This bipartisan proposal made a broad attack on alleged abuses of workers' compensation as well as altering the benefit formula to reflect after-tax earnings and instituting a retrospective inflation adjustment plan. However, the compromise coalition eventually collapsed when the Senate Labor Committee began amending the package, and no legislation was enacted. As will be seen later, this bill contained many of the elements of the eventual reforms enacted in 1980.⁶

Assessing the situation as it existed in 1978, a number of observations can be made. First, the cost of workers' compensation in Michigan was very high. According to Professor Burton's results displayed in table 2, Michigan ranked 3rd highest nationally in standardized workers' compensation insurance rates for manufacturing employers, more than 80 percent above the average figure for other states. For a group of general employers (table 3), Michigan ranked 7th highest, 44 percent above average.⁷

Manual rates are sometimes viewed with suspicion in Michigan because of the large proportion of self-insureds in the state. In recent years, approximately 40 percent of indemnity payments have been made by self-insured employers. For that reason, it is also valuable to look at total benefit payments in the workers' compensation programs.

Table 4 shows that according to data published by Daniel Price of the Social Security Administration on actual benefits paid by all employers in the various states, Michigan ranked 12th in benefit cost relative to payroll, 21 percent above the average for the nation as a whole.⁸ The cost of workers' compensation in Michigan was undeniably high.

Ironically, Michigan's benefit schedule in 1978 was quite low. In that year, the maximum benefit available to Michigan claimants (if their earnings and number of dependents were sufficient to warrant it) was \$171 a week. As shown in table 5, this maximum benefit ranked 28th highest among the states, i.e., lower than the median. When the maximum benefit is expressed as a proportion of each state's average weekly wage, Michigan actually ranked even lower, 39th in the nation.⁹ Results from the Michigan Closed Case Survey (an Upjohn Institute data base of 2,200 Michigan workers' compensation cases closed in 1978) confirm these figures on income replacement levels in Michigan's system. The average weekly payment case in 1978

received 58 percent of weekly earnings, not the nominal 67 percent called for in the statute.¹⁰ Thus it is also undeniable that benefit levels in Michigan, at least as measured by weekly payments, were low.

Table 2
Adjusted Manual Rates (per \$100 of payroll)
25 Types of Manufacturing Employers-1978

State	Rank	Adjusted manual rate (\$)	Ratio to unweighted average
Alabama	36	1.674	0.60
Alaska	20	2.857	1.03
Arizona	5	4.548	1.64
Arkansas	25	2.479	0.89
California	6	4.241	1.53
Colorado	23	2.590	0.93
Connecticut	21	2.816	1.02
Delaware	19	2.906	1.05
District of Columbia	1	6.612	2.39
Florida	4	4.701	1.70
Georgia	28	2.366	0.85
Hawaii	8	4.149	1.50
Idaho	30	2.307	0.83
Illinois	27	2.431	0.88
Indiana	47	0.910	0.33
Iowa	33	1.734	0.63
Kansas	35	1.690	0.61
Kentucky	17	3.064	1.11
Louisiana	13	3.302	1.19
Maine	18	2.929	1.06
Maryland	26	2.476	0.89
Massachusetts	15	3.226	1.16
Michigan	3	5.035	1.82
Minnesota	7	4.167	1.50
Mississippi	39	1.561	0.56

Table 2 (continued)

State	Rank	Adjusted manual rate (\$)	Ratio to unweighted average
Missouri	41	1.452	0.52
Montana	31	2.280	0.82
Nebraska	45	1.290	0.47
Nevada	-	-	-
New Hampshire	29	2.364	0.85
New Jersey	12	3.484	1.26
New Mexico	16	3.138	1.13
New York	9	3.836	1.38
North Carolina	46	1.077	0.39
North Dakota	-	-	-
Ohio	22	2.697	0.97
Oklahoma	11	3.542	1.28
Oregon	2	6.430	2.32
Pennsylvania	24	2.563	0.92
Rhode Island	14	3.262	1.18
South Carolina	34	1.717	0.62
South Dakota	42	1.414	0.51
Tennessee	32	1.918	0.69
Texas	10	3.557	1.28
Utah	37	1.640	0.59
Vermont	38	1.637	0.59
Virginia	43	1.349	0.49
Washington	-	-	-
West Virginia	44	1.313	0.47
Wisconsin	40	1.519	0.55
Wyoming	-	-	-
Unweighted average		2.771	

SOURCE: Calculated from Martin W. Elson and John F. Burton, Jr., "Workers' Compensation Insurance: Recent Trends in Employer Costs," *Monthly Labor Review*, March 1981, table 1.

Table 3
Adjusted Manual Rates (per \$100 of payroll)
79 Types of Employers-1978

State	Rank	Adjusted manual rate (\$)	Ratio to unweighted average
Alabama	35	1.062	0.62
Alaska	11	2.070	1.20
Arizona	4	3.023	1.75
Arkansas	25	1.560	0.90
California	5	2.655	1.54
Colorado	28	1.486	0.86
Connecticut	19	1.755	1.02
Delaware	-	-	-
District of Columbia	1	4.181	2.42
Florida	3	3.086	1.79
Georgia	29	1.340	0.78
Hawaii	6	2.650	1.53
Idaho	24	1.608	0.93
Illinois	22	1.649	0.96
Indiana	44	0.585	0.34
Iowa	30	1.286	0.74
Kansas	34	1.064	0.62
Kentucky	16	1.816	1.05
Louisiana	13	1.934	1.12
Maine	21	1.671	0.97
Maryland	26	1.526	0.88
Massachusetts	17	1.776	1.03
Michigan	7	2.493	1.44
Minnesota	8	2.296	1.33
Mississippi	32	1.096	0.63
Missouri	41	0.932	0.54
Montana	20	1.692	0.98
Nebraska	42	0.834	0.48
Nevada	-	-	-
New Hampshire	27	1.517	0.88

Table 3 (continued)

State	Rank	Adjusted manual rate (\$)	Ratio to unweighted average
New Jersey	12	1.983	1.15
New Mexico	18	1.775	1.03
New York	10	2.164	1.25
North Carolina	43	0.680	0.39
North Dakota	-	-	-
Ohio	15	1.839	1.07
Oklahoma	14	1.880	1.09
Oregon	2	3.772	2.18
Pennsylvania	-	-	-
Rhode Island	23	1.641	0.95
South Carolina	36	1.055	0.61
South Dakota	39	1.002	0.58
Tennessee	31	1.177	0.68
Texas	9	2.220	1.29
Utah	33	1.083	0.63
Vermont	38	1.039	0.60
Virginia	37	1.052	0.61
Washington	-	-	-
West Virginia	-	-	-
Wisconsin	40	0.963	0.56
Wyoming	-	-	-
Unweighted average		1.727	

SOURCE: Calculated from Martin W. Elson and John F. Burton, Jr., "Workers' Compensation Insurance: Recent Trends in Employer Costs," *Monthly Labor Review*, March 1981, table 1.

Table 4
Workers' Compensation Benefit Costs by State

State	1978 workers' compensation payments ¹ (\$1,000)	1978 UI wage and salary payments ² (\$1,000)	Absolute cost	Rank	Cost relative to U.S. average
Alabama	\$84,624	\$10,879,577	.0078	31	0.80
Alaska	56,924	2,305,023	.0247	1	2.52
Arizona	87,162	7,818,303	.0111	19	1.13
Arkansas	56,283	5,744,458	.0098	23	1.00
California	1,246,813	93,891,538	.0133	10	1.36
Colorado	73,789	10,389,967	.0071	37	0.72
Connecticut	89,033	13,776,612	.0065	42	0.66
Delaware	16,379	2,557,399	.0064	44	0.65
District of Columbia	51,138	3,768,672	.0136	9	1.39
Florida	307,868	26,572,254	.0116	14	1.18
Georgia	129,879	17,378,132	.0075	32	0.77
Hawaii	39,710	3,087,630	.0129	11	1.32
Idaho	29,873	2,607,410	.0115	15	1.17
Illinois	490,010	53,390,139	.0092	26	0.94
Indiana	89,708	22,428,476	.0040	51	0.41
Iowa	71,457	9,578,298	.0075	33	0.77
Kansas	56,210	7,511,565	.0075	34	0.77

Table 4 (continued)

State	1978 workers' compensation payments ¹ (\$1,000)	1978 UI wage and salary payments ² (\$1,000)	Absolute cost	Rank	Cost relative to U.S. average
Kentucky	102,594	10,392,526	.0099	22	1.01
Louisiana	198,838	13,786,265	.0144	8	1.47
Maine	44,494	2,906,767	.0153	4	1.56
Maryland	133,186	13,222,553	.0101	21	1.03
Massachusetts	191,494	23,051,196	.0083	29	0.85
Michigan	496,987	41,928,554	.0119	12	1.21
Minnesota	173,523	15,112,317	.0115	16	1.17
Mississippi	42,074	5,902,652	.0071	38	0.72
Missouri	92,170	18,005,281	.0051	49	0.52
Montana	29,403	1,992,955	.0148	6	1.51
Nebraska	28,129	4,570,370	.0062	45	0.63
Nevada	50,379	3,478,725	.0145	7	1.48
New Hampshire	30,914	2,885,609	.0107	20	1.09
New Jersey	268,441	30,298,748	.0089	28	0.91
New Mexico	36,638	3,226,503	.0114	17	1.16
New York	496,606	71,151,726	.0070	40	0.71
North Carolina	93,668	18,358,568	.0051	50	0.52
North Dakota	12,856	1,601,984	.0080	30	0.82

Ohio	531,518	45,356,196	.0117	13	1.19
Oklahoma	82,865	8,859,462	.0094	25	0.96
Oregon	224,398	9,290,901	.0242	2	2.47
Pennsylvania	407,135	45,071,677	.0090	27	0.92
Rhode Island	36,027	3,172,627	.0114	18	1.16
South Carolina	52,192	8,799,377	.0059	46	0.60
South Dakota	9,058	1,528,375	.0059	47	0.60
Tennessee	95,890	14,723,793	.0065	43	0.66
Texas	506,255	51,710,551	.0098	24	1.00
Utah	28,394	4,057,701	.0070	41	0.71
Vermont	10,446	1,434,307	.0073	35	0.74
Virginia	119,615	16,412,456	.0073	36	0.74
Washington	224,770	14,906,610	.0151	5	1.54
West Virginia	125,599	6,413,352	.0196	3	2.00
Wisconsin	123,333	17,427,533	.0071	39	0.72
Wyoming	9,603	1,777,748	.0054	48	0.55
Total	\$8,086,352	\$826,501,418	.0098		

SOURCES:

1. Daniel N. Price, "Workers' Compensation: Coverage, Benefits, and Costs, 1979," *Social Security Bulletin*, September 1981, Vol. 44, No. 9, table 2.
2. Unemployment Insurance Program Letter No. 41-80, *Handbook of Unemployment Insurance Financial Data, 1978, Taxable*, p. 1, U.S. Department of Labor, Employment and Training Administration.

Table 5
Maximum Weekly Benefit for Temporary Total Disability-1978

State	Rank	Maximum weekly benefit ¹	UI average weekly wage ²	Maximum weekly benefit ratio to UI average weekly wage
Alabama	40	\$128.00	\$208.10	0.62
Alaska	1	607.85	394.53	1.54
Arizona	34	153.85	218.43	0.70
Arkansas	51	87.50	186.53	0.47
California	33	154.00	243.15	0.63
Colorado	25	173.60	226.99	0.76
Connecticut	36	147.00	243.61	0.60
Delaware	32	154.50	257.87	0.60
District of Columbia	2	367.22	264.82	1.39
Florida	41	126.00	199.41	0.63
Georgia	46	110.00	209.22	0.53
Hawaii	16	189.00	208.00	0.91
Idaho	47	109.80	206.25	0.53
Illinois	3	321.50	259.54	1.24
Indiana	43	120.00	242.65	0.49
Iowa	4	265.00	215.94	1.23
Kansas	39	129.06	211.27	0.61

Kentucky	45	112.00	219.60	0.51
Louisiana	38	130.00	229.81	0.57
Maine	5	231.72	185.77	1.25
Maryland	12	202.00	224.14	0.90
Massachusetts	35	150.00	224.21	0.67
Michigan	28	171.00	288.96	0.59
Minnesota	14	197.00	226.97	0.87
Mississippi	49	91.00	182.91	0.50
Missouri	44	115.00	226.20	0.51
Montana	17	188.00	201.87	0.93
Nebraska	30	155.00	199.78	0.78
Nevada	10	212.02	227.34	0.93
New Hampshire	20	180.00	196.14	0.92
New Jersey	37	146.00	250.31	0.58
New Mexico	26	172.46	202.37	0.85
New York	21	180.00	259.47	0.69
North Carolina	29	168.00	192.30	0.87
North Dakota	22	180.00	200.70	0.90
Ohio	8	216.00	255.64	0.84
Oklahoma	42	121.00	219.25	0.55
Oregon	6	224.16	232.45	0.96
Pennsylvania	9	213.00	233.96	0.91
Rhode Island	23	176.00	194.55	0.90

Table 5 (continued)

State	Rank	Maximum weekly benefit ¹	UI average weekly wage ²	Maximum weekly benefit ratio to UI average weekly wage
South Carolina	27	172.00	192.01	0.90
South Dakota	31	155.00	175.99	0.88
Tennessee	48	100.00	201.23	0.50
Texas	50	91.00	230.93	0.39
Utah	15	197.00	211.85	0.93
Vermont	19	181.00	191.88	0.94
Virginia	18	187.00	205.76	0.91
Washington	24	175.30	251.49	0.70
West Virginia	7	224.00	243.84	0.92
Wisconsin	13	202.00	228.46	0.88
Wyoming	11	211.15	241.26	0.88

SOURCES:

1. U.S. Department of Labor, Employment Standards Administration, Division of State Workers' Compensation Standards, July 1978.
2. Unemployment Insurance Program Letter No. 41-80, *Handbook of Unemployment Insurance Financial Data, 1978, Taxable*, p. 1, U.S. Department of Labor, Employment and Training Administration.

Furthermore, since Michigan had experienced no major changes in statute while other states had been moving to implement some of the National Commission recommendations, Michigan's standing relative to those other states was steadily deteriorating. In 1972, when the average state compliance score with the 19 essential recommendations of the National Commission stood at 6.9, Michigan had complied with 11 of the 19, ranking 4th among the states. Table 6 shows that by 1978 the average compliance score had risen to 11.7 and Michigan, still with only 11, had fallen to a rank of 27th.¹¹

By 1979, even those who might have preferred to do nothing rather than moving in the direction of reform along the lines of the National Commission recommendations were frustrated. There was no shortage of opinions as to what reforms were needed to cope with Michigan's problems.¹² What was missing was a spirit of compromise, or a feeling of sufficient urgency to overcome old adversarial attitudes and patterns.

When the Governor and the legislative leadership announced a joint Workers' Compensation Reform Task Force in May of 1979, it seemed that the lessons of the past would enable the Task Force to effectively negotiate around the shoals of previous failures and bring workers' compensation reform to reality. Unfortunately it was not to be. Agreement was reached on changes in the benefit formula and on maximums and minimums, but progress was ended when it could not be established whether the savings from coordination of benefits (which employers wanted) would truly offset the cost of inflation protection (which organized labor sought for employees). There were recriminations over the available data and accusations about the fairness of the analysis; more fundamentally there was insufficient sentiment for compromise, and neither side could impose its will on the other.

Table 6
Full Compliance Scores Based on the 19 Essential Recommendations
January 1, 1972 through January 1, 1980

	1972	1974	1976	1978	1980
Mean score	6.9	8.6	11.2	11.7	12.1
Standard deviation	3.07	3.03	2.96	2.42	2.40
Alabama	2.00	6.00	9.00	9.00	9.00
Alaska	5.50	5.50	14.00	14.00	14.00
Arizona	7.50	13.50	11.50	11.50	11.50
Arkansas	2.50	2.50	3.50	8.50	7.50
California	7.00	7.00	11.00	11.00	12.00
Colorado	10.00	11.00	12.00	12.50	16.00
Connecticut	10.50	10.50	10.50	10.75	13.75
Delaware	8.00	8.00	11.00	11.00	11.00
District of Columbia	11.00	14.00	14.00	14.00	14.00
Florida	5.00	6.00	6.50	6.50	10.50
Georgia	5.00	8.50	9.50	9.50	9.50
Hawaii	12.00	12.00	14.50	14.50	14.50
Idaho	9.00	9.00	9.00	9.00	9.00
Illinois	4.00	4.00	14.00	14.00	14.00
Indiana	7.00	7.00	11.00	11.00	11.00
Iowa	8.50	11.50	14.50	14.50	14.50
Kansas	1.00	1.00	9.50	9.50	9.50
Kentucky	6.00	8.50	9.50	11.50	11.50
Louisiana	1.50	1.50	10.75	11.25	11.25
Maine	9.00	10.00	13.50	13.50	13.50
Maryland	8.50	10.75	14.25	14.25	14.25
Massachusetts	6.50	9.00	9.50	9.50	11.50
Michigan	11.00	11.00	11.00	11.00	11.00
Minnesota	6.75	8.25	10.50	12.50	12.75
Mississippi	7.00	7.00	7.00	7.00	7.00
Missouri	6.00	6.00	10.25	10.25	10.75
Montana	3.00	14.25	14.50	14.50	15.50
Nebraska	10.25	13.00	14.00	13.50	13.50

Table 6 (continued)

	1972	1974	1976	1978	1980
Mean score	6.9	8.6	11.2	11.7	12.1
Standard deviation	3.07	3.03	2.96	2.42	2.40
Nevada	3.00	8.00	14.00	14.00	14.00
New Hampshire	11.75	13.75	18.50	18.50	18.50
New Jersey	10.50	10.50	10.50	10.50	10.50
New Mexico	2.00	8.00	8.00	9.50	12.50
New York	9.00	9.00	9.00	10.00	10.00
North Carolina	3.00	6.00	12.50	12.50	12.50
North Dakota	8.75	8.75	13.75	13.75	13.75
Ohio	8.50	10.50	16.50	16.50	16.50
Oklahoma	4.50	6.50	6.50	9.75	9.75
Oregon	10.50	11.50	13.50	13.50	13.50
Pennsylvania	8.00	8.00	13.00	13.00	13.00
Puerto Rico	11.75	11.75	11.75	11.75	11.75
Rhode Island	10.00	10.00	13.50	13.50	13.50
South Carolina	3.00	4.00	8.00	11.00	11.00
South Dakota	6.50	8.50	9.00	9.25	13.25
Tennessee	2.00	4.50	5.50	8.50	8.50
Texas	4.50	9.50	9.50	9.50	9.50
Utah	8.00	11.00	12.00	12.00	12.00
Vermont	5.00	7.50	7.75	11.75	13.75
Virginia	3.50	7.50	10.50	10.50	10.50
Washington	10.00	10.00	10.00	9.00	9.00
West Virginia	6.00	6.50	14.50	14.50	14.75
Wisconsin	10.50	10.50	16.00	15.00	15.00
Wyoming	7.00	7.00	9.00	9.00	9.00

SOURCE: U.S. Department of Labor, Employment Standards Administration, Division of State Workers' Compensation Standards, January 1981.

After meeting intermittently from June through December 1979, the Workers' Compensation Reform Task Force collapsed as well.

During 1980 there were occasional rumors of progress, especially when the Democratic Chairman of the Senate Labor Committee announced that a new coalition of small business and the AFL-CIO had agreed on a compromise package. Hearings were held on this package, and it was reported out by the Committee, but the lack of enthusiasm from the state's largest employers and its largest union (i.e., the auto industry) doomed the effort. Finally, in December of 1980, the Governor and the legislative leadership held a series of closed-door meetings and hammered out a minimal reform package very similar to old S.B. 1285 from 1977. When this bill (S.B. 1044) was subsequently passed and signed into law without major amendment, the long legislative log jam in Michigan was finally broken. Round one was at last completed.

The goal of the 1979-80 effort had been not simply to reform Michigan's workers' compensation system, but to make improvements in the system without imposing any substantial cost penalty on Michigan's already burdened employers. However, the 1980 package when evaluated by the actuarial consulting firm of Tillinghast, Nelson & Warren, was found to meet these goals only for those employers who purchased commercial insurance coverage. Estimates were that S.B. 1044 would increase the workers' compensation costs for this group of employers by just 0.7 percent overall. For larger employers who self-insure the increase would be in the range of 25 to 35 percent.¹³ This uneven impact resulted primarily from past inequities in income replacement rates between high-wage and low-wage workers. The old benefit formula severely capped weekly benefits for high-wage workers while sometimes giving more than 100 percent wage replacement to low-wage workers. Thus when

the benefit formula was rationalized, by making the replacement of lost wages at a more consistent rate for many more workers, employers who had formerly been paying at the relatively low maximums would experience the most significant cost increases.

This is demonstrated in table 7, developed from the Michigan Closed Case Survey. It shows that 98 percent of weekly payment cases from the big three auto producers were paid the maximum benefit for their dependency class in 1978. Over 73 percent of other self-insured cases and 52 percent of carrier-insured cases also received the maximum benefit. On the other hand, no big three cases at all received the minimum benefit while 9 percent of other self-insured and 22 percent of carrier cases qualified for minimum payments.

As a result there was a massive outcry from employer groups throughout the State of Michigan. Insistent demands for workers' compensation *cost reductions* became an important part of the political climate in 1981 in many legislative districts. The pressure from employer groups, together with the general pro-business swing in the nation and in the state, resulted in another series of amendments to the workers' compensation system at the end of 1981; most of these were designed simply to reduce the cost of workers' compensation coverage for all employers large and small. These changes were enacted over the outraged objections of both the UAW and AFL-CIO.

The reform coalition this time consisted of a unanimous Republican caucus and a dozen or so "renegade" Democrats who risked the wrath of organized labor to secure leadership positions in this round of workers' compensation reform. The result was that the legislative leadership for the 1981 reforms was almost totally new; the "old hands" at workers' compensation issues were generally excluded from the pro-

Table 7
Benefit Rate by Insurer Type

Benefit rate	Insurer type							
	Total		Carrier		Big three		Other self-insurers	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Minimum benefit	546	15.6	467	21.9	0	0	79	8.8
Two-thirds of wage	719	20.5	551	25.9	8	1.7	160	17.7
Maximum benefit	2,244	63.9	1,110	52.2	470	98.3	664	73.5
Total	3,509	100.0	2,127	100.0	478	100.0	904	100.0
Missing cases	1,134							
Grand total	4,642							

Chi-square (unweighted) = 197.07** with 4 degrees of freedom.

Unlitigated cases are inflated by a factor of 3.583 to compensate for the smaller sampling ratio in the unlitigated sample.

Columns may not add to total due to rounding.

cess. Round two of reform in Michigan thus had a very different flavor.

While these two separate reform packages had very different objectives and mechanisms of attack, it seems appropriate to discuss all the new provisions together to provide a better feel for the magnitude of change enacted in Michigan's workers' compensation system. Most of these new provisions went into effect either on January 1 or April 1, 1982.¹⁴

Benefit Formula

The most significant change in the workers' compensation system is clearly the change in the benefit formula. This will have a direct impact on claimants and is also the single biggest cost item of all the reforms. The old benefit formula provided replacement of two-thirds of *gross* earnings (including fringe benefits not continued during disability). The new law calls for a basic benefit of 80 percent of *after-tax* earnings (deductions to include federal and state income tax and OASDHI taxes). These 1980 changes were amended in 1981 to provide that fringe benefits are to be included in the calculation of the benefit only if the level of the benefit is less than the old maximum benefit.¹⁵

Maximum Benefit

The old maximum benefit was two-thirds of the state average weekly wage (SAWW), but less if fewer than five dependents were claimed. As noted above, this resulted in a majority of claimants receiving less than two-thirds replacement of their gross earnings in workers' compensation benefits.¹⁶ The new maximum benefit is set at 90 percent of the SAWW without regard to dependency. Currently the number of dependents influences the benefit level only through its effect on deductions, and thus after-tax earnings.

The net result is that most workers who earn more than the SAWW will qualify for higher benefits than they would have under the old law.

Minimum Benefit

The old minimum benefits (which were very high due to an earlier court decision that indexed them along with the maximums) were eliminated.¹⁷ There is now no minimum benefit for general disability cases; low-wage workers simply receive 80 percent of their after-tax earnings. Exceptions are made for fatality claims and specific loss claims, where minimum benefit levels are set at 50 percent and 25 percent of the SAWW respectively.

Coordination of Benefits

The second most significant area of reform is the coordination of benefits between different income maintenance programs paid for, in part or in total, by the disabled worker's employer. The basic approach here is to put the workers' compensation benefit dollar *last* in the queue in those cases where multiple benefits are received by the claimant. The Michigan approach is very broad; the offset against other benefits applies to unemployment insurance, other state workers' compensation benefits for the same condition, private disability, wage continuation or pension plans, Old Age and Survivor's Insurance (OASI), and "other" income maintenance plans. It is also provided that, if and when it becomes possible again, Michigan's workers' compensation benefits will be coordinated with federal Disability Insurance payments.

In each case, the workers' compensation benefit under Michigan law is reduced by benefits in these other programs according to the proportion of the benefit financed by employer payments. Thus in the case of OASI, the employer

is allowed a credit of 50 percent of the monthly OASI benefit against the workers' compensation benefit, since the employer provided 50 percent of the tax payments to the OASI program. These benefit coordination provisions do not apply to benefits for specific loss claims, or to payments from disability pension plans that were in operation previous to the effective date of the statute. However, the statute specifically allows that such existing plans may be modified to allow coordination if the parties wish. These coordination of benefits provisions are expected to lead to significant cost savings for Michigan employers, particularly larger employers with extensive fringe benefit plans.

Retiree Claims

In addition to the coordination of benefits described above, there was another attack on what many had regarded as the most flagrant abuse of Michigan's workers' compensation system—claims from retired workers. The 1980 package introduced a new presumption of no loss of earnings or earning capacity on the part of a claimant who is receiving nondisability pension or retirement benefits (including OASI). While this presumption can be rebutted by a preponderance of the evidence, it should help to reduce claims from retired workers, especially when considered in conjunction with the offset for other retirement benefits provided under the coordination of benefits provisions.

Inflation Protection

The 1980 reforms also included the addition of a new retrospective inflation protection plan applying to all cases with injury dates before January 1, 1980. A state-financed Compensation Supplement Fund was established for this purpose. A benefit supplement equal to the increase in the SAWW (not to exceed 5 percent for any year) is to be paid to all continuing claims from these years. The benefit adjust-

ment payments are made by the insurers directly to claimants, with quarterly reimbursements from the Compensation Supplement Fund. This provision is an attempt to maintain a major share of the original purchasing power of workers' compensation benefits for existing long term disability cases. There are no provisions for additional adjustments in the future for these or other claimants, but the Director of the Bureau of Workers' Disability Compensation is ordered to conduct biannual studies of the general adequacy of benefits, specifically including the impact of inflation.

Statute of Limitations

Both the 1980 and 1981 reform packages addressed the statute of limitations under the workers' compensation law. The old statute of limitations had been rendered ineffective by a requirement that if the employer did not give notice of the injury to the Bureau of Workers' Disability Compensation, the time period did not begin to toll. The 1980 reforms resurrected by the statute by striking the employer notice requirement and simply providing that the claim must be entered within two years of the occurrence of the injury, the date the disability manifests itself, or the last day of employment. The 1981 reforms re complicated this by adding a new requirement that the *employee* must give notice to the employer within 90 days of the injury. If this requirement is not met, the employer can contest the case on the grounds that the failure by the employee to provide notification of the injury prejudiced the employer's defense against the claim.¹⁸

Definition of Disability

Both packages also attacked the issue of the definition of disability. The 1980 reforms contained language designed to tighten up on claims involving mental disabilities, conditions

resulting from the aging process, and social and recreational injuries. The 1981 reform went much deeper into the substance of the law. It defined disability in terms of a general field of employment, rather than a specific job as in the old law. It also separated the issue of disability from that of wage loss in an attempt to further tighten eligibility standards. There is a new provision for disqualification if the claimant refuses a bona fide offer of reasonable employment. A significant complication was introduced concerning reemployment and favored work. If an injured employee has returned to work for more than 100 weeks and subsequently loses that job, only partial disability payments can be paid. If fewer than 100 weeks of new work experience are obtained, full disability eligibility is maintained on the basis of the original job.

There is also a requirement for notification to the Michigan Employment Security Commission when disabled workers are unemployed. That agency is directed to give priority treatment to such referrals. The intent was to urge partially disabled workers to return to work, but the statute is so complex it will take some sorting out by the courts. Meanwhile, the entire definition of disability section is slated to expire at the end of 1984.

Logging Industry

The 1980 package expanded the Silicosis and Dust Disease Fund to the Silicosis, Dust Disease, and *Logging Industry* Compensation Fund (emphasis added). This imposes a \$12,500 insurer liability limit on each workers' compensation claim arising in the logging industry. Any benefits above \$12,500 per claim will be paid by the Fund rather than the individual insurer. This has the effect of transferring the burden of expensive claims in the logging industry to the general employer population, since the Fund is financed by

proportional assessment on all employers. This special fund is due to expire at the end of 1985.

Medical Costs

Another complicating provision is the imposition of a medical cost regulation scheme into the workers' compensation system. The Bureau of Workers' Disability Compensation is directed to establish fee schedules for medical treatment under the workers' compensation statute. In addition, they are to monitor the performance of providers of service and establish utilization review procedures for individual workers' compensation cases. This reflects the interest of one of the major Democratic participants in the 1981 reform coalition.

Redemptions

The 1981 reform package also included an outright prohibition of redemptions (compromise and release settlements) for any petitions filed after January 1, 1984. Inasmuch as 70 percent of all litigated cases are redeemed in Michigan (settled with a lump sum), this provision could have enormous significance for the way the Michigan workers' compensation system really works.¹⁹ No one is yet able to predict what this will mean, however.

Rate-making

Last, but by no means least, reform of the workers' compensation insurance procedures should also be reported here. Even though this provision was not enacted until 1982, it was under discussion with the 1981 reforms, and everyone understood it to be a part of the total package. The legislature mandated a 20 percent rollback for the 1982 policy year in the average manual premium rate for workers' compensation insurance coverage in the state. They also

directed that Michigan should move to "open competition" in workers' compensation insurance rates effective January 1, 1983.

Michigan's system provides for a "file and use" procedure with a new public body, the Workers' Compensation Data Collection Agency, responsible for collecting and disseminating the pure premium data to be used by the individual insurance companies to set their rates. Undoubtedly, the way that workers' compensation insurance carriers do their business will be altered; it is not clear exactly what impact this change in procedures will have on the system as a whole. Those who promoted this reform felt that it would lead to lower prices for workers' compensation insurance as the competitive pressures of the free market were felt in the insurance industry.²⁰

There are many smaller changes that have been omitted from this discussion, some of which may turn out to have greater significance than is evident now. The most important point to make may be that many of these enactments will depend on court decisions for their specific content. Obviously, it will be some years before the true impact of this entire set of reforms will be apparent. At the moment, one must be content to point out the significant changes that have been accomplished: (1) the benefit structure has been rationalized considerably; (2) some of the most serious abuses cited by employer groups have been addressed; and (3) part of the loss imposed on the long term disabled by inflation in the last decade has been restored.

Early in 1982, commercial insurance carriers through the Workers' Compensation Rating and Inspection Association of Michigan (WCRIAM) filed for a rate reduction of 22 percent in the average workers' compensation premium. As was discussed earlier, this was not the result of an actuarial evaluation, but was WCRIAM's response to a legislatively

mandated rollback of at least 20 percent in premium levels. Thus it is not at all clear that this represents the actual anticipated cost impact of the reforms.

Even if some of the reforms turn out to have been ill-advised, any errors were the natural by-product of the pressure-cooker legislative environment that was required to break the stalemate that had developed in Michigan. It is to be hoped that necessary updating will not prove as difficult in the future. Taken as a whole, the two rounds of reform appear to constitute a significant improvement in Michigan's workers' compensation system.

NOTES

1. H. Allan Hunt, *Workers' Compensation in Michigan: Problems and Prospects* (Kalamazoo, MI: W. E. Upjohn Institute for Employment Research, May 1979).
2. In each case these cost measurements are for adjusted insurance manual rates as reported in the analysis of Professor John F. Burton, Jr., of Cornell University. Professor Burton has published a series of articles on interstate cost comparisons. The most recent was coauthored by Martin W. Elson, "Workers' Compensation Insurance: Recent Trends in Employer Costs," *Monthly Labor Review*, Vol. 104, March 1981, pp. 45-50.
3. See *The Report of the National Commission on State Workmen's Compensation Laws* (Washington, DC: Government Printing Office, 1972).
4. Governor's Workmen's Compensation Advisory Commission, *Workers' Compensation in Michigan* (Ann Arbor, MI: The Commission, 1975), p. 5.
5. Letter of transmittal, *op. cit.*, p. 1.
6. See Hunt, *Workers' Compensation in Michigan: Problems and Prospects*, for a more complete discussion of the S.B. 1285 story.
7. Data from Elson and Burton, "Workers' Compensation Insurance: Recent Trends in Employer Costs," *Monthly Labor Review*, March 1981.

8. Daniel N. Price, "Workers' Compensation: Coverage, Benefits, and Costs, 1979," *Social Security Bulletin*, Vol. 44, September 1981, table 2, p. 11.
9. Data from U.S. Department of Labor, Employment Standards Administration, Division of State Workers' Compensation Standards.
10. See Hunt, *The Workers' Compensation System in Michigan: A Closed Case Survey* (Kalamazoo, MI: W. E. Upjohn Institute for Employment Research, 1982), especially chapter 4, for a more adequate account of Michigan benefit levels.
11. *State Compliance with the 19 Essential Recommendations of the National Commission on State Workmen's Compensation Laws, 1972-1980*, U.S. Department of Labor, Employment Standards Administration, Division of State Workers' Compensation Standards, January 1981, table 1, p. 18.
12. See "A Report to the People of Michigan, Workers' Compensation in Michigan: Report of the House Republican Task Force on Workers' Compensation" (mimeo, no date), or "Areas for Reform in the Workers' Disability Compensation System in the State of Michigan," published by the Business and Industry Compensation Reform Coalition in March 1979.
13. Actuarial evaluation of S.B. 1044 prepared for Workers' Compensation Rating and Inspection Association of Michigan.
14. See also the separate description of the legislative changes published by the Michigan Department of Labor. The 1980 reforms were described in "Workers' Compensation Changes Explained," *LABORregister*, February 1981, pp. 28-30. The 1981 package was presented in "Workers' Compensation Changes Summarized," *LABORregister*, February 1982, pp. 22-23.
15. In other words, an injured worker shall not be deprived of the previous benefit level by the elimination of fringe benefits from the wage base. This elimination was a reaction to the very significant increase in the effective maximum benefit.
16. According to the Upjohn Institute's Michigan Closed Case Survey, 64 percent of all claimants qualified for the maximum benefit, i.e., received less than two-thirds gross wage replacement in their weekly workers' compensation benefit. See Hunt, *The Workers' Compensation System in Michigan: A Closed Case Survey*, table 2-13, p. 50.

17. Indexing was extended to minimum benefits by *Jolliff v. American Advertising*, 49 Mich App 1 (1973). This decision was reversed in *Gussler v. Fairview*, 412 Mich 270 (1981).

18. There is a great deal of confusion about the meaning of this provision. Some contend that reintroduction of any notice requirement may lead to nullifying the statute of limitations once again.

19. See Hunt, *The Workers' Compensation System in Michigan: A Closed Case Survey*, chapter 3, for a discussion of the influence of litigation in the Michigan system.

20. Reports from Kentucky and Oregon, based on the first six months of experience under their open-competition systems, indicate savings in premiums ranging from 8 to 40 percent. In addition, there are reports that the price competition among carriers is making some inroads on the self-insured market share as well. See *Business Insurance*, January 10, 1983, January 3, 1983 and September 20, 1982.